

ADB

**Asian Judges Symposium
on Environmental Decision Making,
the Rule of Law, and Environmental Justice**



The Proceedings of the Symposium

Asian Development Bank



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the Rule of Law, and Environmental Justice**

The Proceedings of the Symposium

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Foreword

The judiciary plays a critical role in environmental enforcement by enunciating principles of environmental law, facilitating the development of environmental jurisprudence, and leading the legal profession to pursue the integration of sustainable development and environmental justice within strong national rule of law systems. Judges need to have the knowledge and tools available to pursue such noble objectives.

The long-term strategic framework of the Asian Development Bank (ADB), Strategy 2020, recognizes 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.” These commitments are further expounded in ADB’s Safeguard Policy Statement, which places importance on increasing the capacity of countries to develop national regulatory systems focused on environment, and in the forthcoming Environment Operational Directions Paper (2012–2020), which highlights ADB’s climate priorities, and its role in environmental and climate governance.

In response to requests from several developing member countries, ADB approved a regional technical assistance¹ seeking, in part, to contribute information and knowledge on what Asian and developed countries are doing on environmental adjudication. Moreover, on 28–29 July 2010, ADB held the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Adjudication (Symposium), as one activity under the regional technical assistance designed toward this end.

The United Nations Environment Programme (UNEP) noted that the Symposium was the largest gathering of judges and legal stakeholders dedicated to strengthening the rule of law and justice for the environment since the 2002 Global Judges Symposium in Johannesburg, South Africa. It brought together 110 judges, environmental ministry officials, and civil

¹ ADB. 2010. *Technical Assistance for Building Capacity for Environmental Prosecution, Adjudication, Dispute Resolution, Compliance, and Enforcement in Asia*. Manila.

society representatives from Asia, Australia, Brazil, and the United States to share experience to strengthen the rule of law, environmental justice, and the ability of judges to decide environmental cases.

The Symposium formed an important part of ADB's work in strengthening the rule of law, justice, and governance for sustainability. Symposium participants all agreed on the need to strengthen the complete chain of environmental enforcement, but recognized the key role that the judiciary can or should play, both by developing environmental jurisprudence and by championing the promotion of environmental justice in strong and credible rule of law systems. Symposium participants also agreed that regular meetings where judges could share environmental law experience were needed. Hence, participants proposed that the Symposium initiate, and reconvene as, the Asian Judges Network on Environment to facilitate the exchange of experience, ideas, and information among judges in Asia.

This volume records the proceedings of the Symposium. Members of the judiciary and other environmental law stakeholders presented a rich array of ideas on environmental decision making, the rule of law, and environmental justice. ADB has sought to record them here to serve as a foundation from which to begin to understand environmental justice and jurisprudence in Asia and as a basis for strengthening governance, justice, and the rule of law on environment in the Asia and Pacific region.

Jeremy H. Hovland
General Counsel
Office of the General Counsel

Acknowledgments

Many staff at the Asian Development Bank (ADB) and its development partners worked hard to make the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice a success.

ADB's development partners provided important collaborative support in bringing together a diverse group of stakeholders and resource persons from various jurisdictions to share their experiences and challenges in environmental justice. In hosting the Symposium, ADB appreciated the strong partnership of the United Nations Environment Programme (UNEP), where Bakary Kante and Masa Nagai gave strong institutional support, while Wanhua Yang led UNEP's operational inputs and went to considerable lengths to ensure the success of the Symposium. UNEP also contributed in the publication costs of these symposium proceedings. Support from ADB's development partners also included the United States Environmental Protection Agency (Scott Fulton, Kathy Stein, Steve Wolfson, Timothy Epp, and Robert Ward), The Access Initiative of the World Resources Institute (Lalanath de Silva), and the Asian Environmental Compliance and Enforcement Network (Peter King and Milag Ballesteros).

The Supreme Court of the Philippines was country host partner, with strong support from Chief Justice Renato C. Corona opening the Symposium and sharing his thoughts on the benefits of regional judicial collaboration in closing. Midas Marquez from the Supreme Court provided helpful convening assistance. ADB recognizes and appreciates the support of the Indonesian delegation which, led by Chief Justice Harifin Tumpa, included 18 representatives. Chief Justice Tumpa extended the work of the Symposium by offering to convene the first sub-regional Chief Justices Roundtable on Environment in Indonesia in 2011.

Neric Acosta (Secretary-General, Council of Asian Liberals and Democrats), Vivien Rosa Ratnawati (Assistant Deputy Minister, Indonesia Ministry of Environment), Patricia Moore (Head, International Union for Conservation of Nature, Asia Pacific), Milag Ballesteros, Robert Ward, Nessim Ahmad (director, Environment and Safeguards Division, ADB), Kathie Stein (judge, United States Environmental Adjudication Board), and Hamid Sharif

(principal director, Central Operations Services Office, ADB) each chaired a symposium session and facilitated a panel discussion.

At ADB, Vice-President for Finance and Administration Bindu N. Lohani opened the Symposium. From the Office of the General Counsel (OGC), then Deputy General Counsel Philip Daltrop gave strong support. Kala Mulqueeny, senior counsel, was responsible for convening the Symposium, with the assistance of an excellent team comprising Sherielysse Bonifacio, Mark Alain Villocero, Maria Angelica Magali, Mary Gay Alegora, Jackie Espenilla, Marietta Santos, Marichu Abeleda-Milward, and Elenita Cruz-Ramos who provided invaluable administrative, secretariat, and research support. The Office of Administrative Services represented by Rebecca Salvo, Anna Clarissa Araullo, and Thelma Gail Abiva assisted with the travel requirements. From the Department of External Relations, Rodel Bautista, Portia Andres, Anthony Victoria, Cynthia Hidalgo, Vicente Angeles, Miguelito Paulino, Ma. Priscila del Rosario, and Anna Maria Juico assisted in this publication and the various publication requirements of the symposium.

Kala Mulqueeny and Sherielysse Bonifacio prepared and edited this record of proceedings.

Abbreviations

ADB	– Asian Development Bank
ADR	– alternative dispute resolution
AECEN	– Asian Environmental Compliance and Enforcement Network
ALJ	– administrative law judge
APJA	– Asia Pacific Jurist Association
ASEAN	– Association of Southeast Asian Nations
BELA	– Bangladesh Environmental Law Association
CSO	– civil society organization
DMC	– developing member country
EAB	– Environmental Appeals Board (USEPA)
ECTs	– environmental courts and tribunals
EDCC	– Environmental Dispute Coordination Commission (Japan)
EIA	– environmental impact assessment
EJE	– environmental judicial enforcement
EU	– European Union
EUFJE	– European Union Forum of Judges for the Environment
LAWASIA	– Law Association for Asia and the Pacific
LEC	– Land and Environment Court (Australia)
MAB	– Mines Adjudication Board (Philippines)
NEAA	– National Environment Appellate Authority (India)
NEDRC	– National Environmental Dispute Resolution Commission (Republic of Korea)
NET	– National Environment Tribunal (India)
NGT	– National Green Tribunal (India)
ORES	– One Roof Enforcement System (Indonesia)
PAB	– Pollution Adjudication Board (Philippines)
PEC	– Planning and Environment Court (Australia)
PEPA	– Pakistan Environmental Protection Act
PHILJA	– Philippine Judicial Academy
PPEC	– Prefecture Pollution Examination Commission (Japan)
PRC	– People’s Republic of China
TA	– technical assistance
TAI	– The Access Initiative (World Resources Institute)
UNEP	– United Nations Environment Programme
USAID	– United States Agency for International Development
USEPA	– United States Environmental Protection Agency

Executive Summary

The Asian Development Bank (ADB) hosted the Asian Judges Symposium on Environmental Decision Making, the Rule of Law and Environmental Justice from 28 to 29 July 2010 in Manila. The symposium was hosted as part of ADB's regional technical assistance on strengthening judicial capacity in environmental adjudication. The symposium was a response to requests from ADB's developing member countries for information on developments and good practices on environmental adjudication and governance in the region. It brought together 110 judges, environmental ministry officials, and civil society representatives from Asia, Australia, Brazil, and the United States, and is understood to be the largest gathering of judges and legal stakeholders since the 2002 Global Judges Symposium on Sustainable Development and the Role of Law in Johannesburg, South Africa. ADB and the United Nations Environment Programme, together with the Asian Environmental Compliance and Enforcement Network, The Access Initiative of the World Resources Institute, the Supreme Court of the Philippines, and the United States Environmental Protection Agency, partnered in convening the symposium which served as a venue to share experiences in environmental adjudication and developments in environmental justice in Asia.

Judges and key stakeholders were asked to share their experiences in environmental adjudication and also the challenges and needs that arise in doing their work. The symposium emphasized improving environmental and natural resource decision making and adjudication within Asian judiciaries, without assuming that any particular form or structure is the best way in any particular country context. It highlighted environmental specialization within general courts and explored work done by specialist environmental courts, boards, and tribunals. In addition, the symposium looked at demand-side drivers, which include the role of civil society in creating this demand, and other informal ways to institutionalize access to environmental justice in developing Asia. Without drivers for increasing the demand for effective environmental judicial decision making from the judiciary, environmental judicial specializations could go unused.

The symposium comprised seven sessions: Judicial Innovation in Environmental Law, Evolution of Judicial Specialization in Environmental

Law (five countries and two legal systems), International Experience in Environmental Boards and Tribunals, Institutionalizing Systems for Promoting Environmental Law in Judicial Education, Trans-Judicial Networks for the Environment, Asian Judges and the Environment: Capacity Needs and Potential for a Network, and breakout sessions on Challenges of Environmental Decision Making.

The conclusions drawn from the 2-day symposium, as reflected in the Symposium Statement that participants produced, include the following:

1. The senior judiciary in Asia play a key role in improving environmental enforcement not only by their direct actions in making environmental decisions, or developing environmental jurisprudence, but also by championing and leading the rest of the legal profession toward credible rule-of-law systems that have integrity and promote environmental sustainability.
2. Because of the unique role played by the judiciary, there is a need to strengthen their capacity. One way to do this is through the institutionalization and mainstreaming of environmental law training in judicial education, which should include environmental litigation techniques and dispute resolution.
3. Expanding access to justice involves the formal justice and administrative justice system and informal ways to resolve disputes. Environmental tribunals and other forms of alternative dispute resolution may provide an expeditious mode of dispute resolution or adjudication.
4. There is a need for a judicial network on the environment. Issues in environmental cases transcend national boundaries, and thus there is a need to share information, experience, and best practices on identical issues faced by judges across the region.

Symposium Highlights

Opening Session

Opening Addresses

Bindu N. Lohani, Vice-President for Finance and Administration of the Asian Development Bank (ADB), opened the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice and welcomed the participants and resource persons. Mr. Lohani suggested two points for consideration during the symposium discussions. First, environmental and climate change is key to reducing poverty. In identifying the environment as a core operational area, ADB will seek “to strengthen the legal, regulatory, and enforcement capacities of public institutions in regard to environmental considerations.” The symposium supports ADB operational policies by strengthening the environmental enforcement capacity of a key public institution and arm of government (the judiciary). Second, there is a need to strengthen the ability of Asian judges to decide environmental cases. Environmental enforcement is vital in establishing the right enabling frameworks to ensure public and private sector infrastructure investments. Senior Asian judiciaries play a key role in environmental enforcement.

Mr. Lohani concluded by issuing a challenge to participants to present a concrete outcome from the symposium. He informed the participants that, at the end of the symposium, ADB hopes to learn (i) the challenges to accessing environmental justice and strengthening judicial capacity to decide environmental cases; and (ii) actions needed to overcome these challenges to successfully ensure environmental enforcement.

Renato Corona, Chief Justice of the Supreme Court of the Philippines, also delivered an opening address on environmental justice. Mr. Corona shared that the Supreme Court of the Philippines is institutionally committed to the protection of the environment. It considers environmental protection to be a sacred duty, due to the right to a healthy environment of both present and future generations. This right is of such transcendental importance that it need not be written in the Philippine Constitution.

Mr. Corona mentioned that developing a road map to strengthen the capacity of judges in environmental adjudication is the call of the moment because environmental concerns cannot be sacrificed at the altar of economic growth. He concluded that judges, lawyers, and people in general have the obligation not only to identify solutions to environmental problems but also to implement them.

Bakary Kante, Director of the Division of Environmental Law and Conventions of the United Nations Environment Programme (UNEP), also welcomed the participants to the symposium. Mr. Kante observed that the symposium is the largest gathering of judges since the 2002 Johannesburg Global Judges Symposium. He remarked that the symposium is (i) a concrete contribution to the preparation of Rio+20, the 20th anniversary of the Rio Earth Summit; (ii) a concrete demonstration of the special role of the judiciary in promoting good environmental governance and effective environmental justice; and (iii) a concrete opportunity to share successes and challenges in environmental compliance and enforcement in Asia and how these could be improved not only in Asia but globally.

Mr. Kante concluded by informing the participants that UNEP, as lead authority for the environment in the United Nations, is ready to continue offering assistance in making law the foundation of sustainability in the local, national, and global sphere.

Symposium Overview

Kala Mulqueeny, senior counsel at ADB's Office of the General Counsel, gave a short introduction regarding the symposium and the outcomes expected from it. The symposium is a move forward from the 2002 Johannesburg Global Judges Symposium where judges made a commitment to contribute to realizing sustainable development principles. A stocktaking exercise on what has been done since 2002 and what more needs to be done is needed. At the end of the symposium, participants are expected to present ambitious and concrete outcomes on how to move forward in environmental governance.

Ms. Mulqueeny stated three expected outcomes from the symposium: (i) a consensus on actions going forward, (ii) a report of Asian environmental adjudication and governance based on the conference proceedings, and (iii) consensus on the key messages that would be discussed in detail during the breakout groups.

Ms. Mulqueeny concluded by giving an overview of the sessions and breakout session topics.

Symposium Highlights

Session 1

Judicial Innovation in Environmental Law: Landmark Cases

Session 1 highlighted the innovations in Asian environmental jurisprudence and the drivers that brought such innovations to court. A number of Asian jurisdictions have introduced international environmental law principles from the Stockholm and Rio declarations into their jurisdictions: Indonesia has recognized the precautionary principle, and the Philippines has made use of *writ of continuing mandamus* to clean up Manila Bay. In addition, the public trust doctrine, which states that the government holds natural resources for the benefit of the public, has been used in Sri Lanka.

Adalberto Carim Antonio, a judge from the Court of Environment and Agrarian Issues, State of the Amazonas, Brazil, discussed the innovations introduced by his court, which is an environmental criminal court that has educated the public on environmental law and alternative sentencing and penalties for ecological delinquents. Popular mediums such as comic books and educational shows in schools are used to popularize environmental rights. For ecological delinquents, penalties include community service, e.g., attending night school for ecological offenders, publishing one's violation or crime in newspapers or on public buses for corporate offenders, and building schools for environmental education in areas that do not have any. These penalties are in addition to repairing the environmental damage done.

For the Asian countries, the presentations of the Session 1 discussants are described in more detail under the description of each respective country jurisprudence.

Sessions 2–6

Evolution of Judicial Specialization in Environmental Law: Asian Environmental Jurisprudence and Courts

Sessions 2–6 presented the evolution of environmental jurisprudence in different Asian countries. The goal of the sessions was to understand how the evolving jurisprudence developed and the significance of the judicial structure in the development: did jurisprudence evolve because of the particular judicial structure, or did it contribute to the establishment of different structures, for example, environmental courts, green benches within generalist courts, or other forms of environmental specialization? The Asian panels in the symposium were designed to provide a range of perspectives, from a senior judge, a district or trial court judge, a public

interest environmental lawyer, and, where possible, a representative from an environment ministry.

South Asia

India

Bisheshwar Singh, a former judge of India's Supreme Court, gave a short history on the development of environmental jurisprudence in India. The Supreme Court of India has decided many environmental cases using unique and novel judicial innovations that have served as both national and international landmark precedents. It has interpreted the constitution's guarantee of a right to life expansively as including a right to a wholesome and pollution-free environment.¹ It has integrated international environmental law principles in its decisions, including the precautionary principle, polluter pays principle, and "inter-generational equity" principle.

The active role played by the Supreme Court in environmental adjudication has been criticized as being "judicial activism." However, Mr. Singh countered that such progressiveness or "activism" is only a response to and necessitated by executive inaction and indifference. In environmental law, the Supreme Court has had to take the lead in enforcing the laws and, at the same time, filling in the legislative gaps in order to uphold the right to life which has been interpreted to include the right to a healthy environment.

Mr. Singh also pointed out that because of the inadequacies of the tribunals and huge caseload of environmental cases, the Supreme Court has advocated the establishment of a specialized environment court. As early as 1986, in the *Oleum Gas Leak* case, the Supreme Court recommended the establishment of specialized courts. In 1999, in the *A.P. Pollution Control Board vs. M.V. Nayudu* case,² the Supreme Court requested the Law Commission of India³ to consider establishing specialized courts in view of the inadequacy of the administrative tribunals, which do not have judges or the assistance of experts.

Hima Kohli, a judge from the High Court of Delhi, discussed the evolution of judicial specialization at the high court level. High courts in

¹ M.C. Mehta vs. Union of India, A.I.R. 1988 S.C. 1037, 1045 (1987) (Kanpur Tanneries case).

² 1999, 2 Supreme Court Cases (India) 718.

³ In its 186th Report, the Law Commission of India concurred with the suggestion of the Supreme Court on the "need to constitute environment courts due to multidisciplinary issues relating to the protection of the environment."

India share the Supreme Court's progressive thinking when it comes to environmental issues. Under the Indian Constitution, high courts share concurrent jurisdiction with the Supreme Court in the enforcement of fundamental rights, and these courts have been innovative in deciding environmental disputes brought before it. The Supreme Court has outlawed the use of plastic bags to enforce the Solid Waste Management Act, directed the reduction of noise pollution regarding the construction of a railway, and instructed the local government of Delhi to implement rainwater harvesting. In numerous cases, the Supreme Court has opined that the high courts should take cognizance of environmental matters situated in their jurisdiction to ensure compliance and effectiveness in enforcing the order. One such example is the *Idgah* slaughterhouse case which was originally filed at the Supreme Court but was remanded to the Delhi High Court since it involved a local subject. This case involved the closure of various industries alleged to be noxious and hazardous, including the slaughterhouse located in the middle of Delhi. The Delhi High Court ordered the closure of the slaughterhouse.

Ishwer Singh, director of law from the Ministry of Environment and Forests, discussed the National Green Tribunal (NGT) Act of 2010. In October 2010, India's Parliament passed a law establishing the NGT⁴ with broad jurisdiction to expeditiously dispose of civil environmental cases. It has been empowered to order compensation, restitution of property damaged, and compensation for damage to the environment. On procedural matters, the NGT is to be guided by the principles of natural justice and not bound by the Code of Civil Procedure (1908). It also has the power to regulate its own procedure and is not bound by the Indian Evidence Act (1872). The central government is required to establish the rules to carry out the NGT Act, including specifying the places where the tribunals would sit and its territorial jurisdiction. The NGT is to be composed of a full-time chair and 10–20 full-time judicial and expert members. The establishment of the NGT does not affect the jurisdiction of the Supreme Court and High Court over environmental cases.

Mr. Singh explained that the NGT would provide greater access to justice as any aggrieved person may file a case before it; and appellate jurisdiction over (i) a grant of environmental clearances, (ii) matters falling under the Biological Diversity Act, and (iii) matters falling under certain legislation. In addition, the establishment of the NGT is expected to reduce the environmental case backlog of the courts, including the Supreme Court.

⁴ The National Green Tribunal Act, No. 19 of 2010. The act was approved in April and notified by the President in October 2010.

Ritwick Dutta, founder of the Legal Initiative for Forest and Environment provided civil society's perspective on judicial specialization in India. Mr. Dutta noted that the Supreme Court of India has recognized the need for specialization in a number of cases. The court's preference for specialization in environmental matters could also be seen in the establishment of the Central Empowered Committee, a bench at the Supreme Court exclusively dedicated to hear forestry cases and chaired by the Chief Justice.

Mr. Dutta recounted that India has had three experiments in green tribunals, including the recently approved NGT. These are (i) the National Environment Tribunal (NET) of 1995 which was constituted to determine liability in accidents like the Bhopal incident and provide relief and compensation to the victims; (ii) the National Environment Appellate Authority (NEAA) of 1997, which was set up as a judicial forum to hear appeals of those affected by the grant of environmental clearances to projects; and (iii) the NGT of 2010. It has been pointed out that neither of the two tribunals was successful. The government did not establish the NET after Parliament passed the law. No chair has been appointed for the NEAA since its establishment in 2000. The NEAA denied every appeal filed before it; but through the intervention of the Delhi High Court (through a petition for review), some appellants have been granted relief.

Mr. Dutta viewed the new NGT with skepticism for the following reasons: (i) *locus standi* is limited to aggrieved persons;⁵ (ii) under its appellate jurisdiction, the time given for filing an appeal is too short (30 days from the communication of decision or order); and (iii) the qualification and rank given to the chair of the NGT is incongruous. The NGT chair would have the rank and pay of a Secretary-level appointment. However, only a Chief Justice of a High Court or a judge or former judge of the Supreme Court could be qualified to be chair. Hence, no judge would accept the position, since it would be considered a demotion.

⁵ Sec. 18 (2) of the NGT Act provides that an application for grant or relief may be made to the Tribunal by (a) the person, who has sustained the injury; (b) the owner of the property to which the damage has been caused; (c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; (d) any agent duly authorized by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; (e) any person aggrieved, including any representative body or organization; or (f) the Central Government or a State Government of a Union Territory Administration of the Central Pollution Control Board or a State Pollution Control Board or Pollution Control Committee or a local authority or any environmental authority constituted or established under the Environment (Protection) Act, 1986, or any other law for the time being in force.

East Asia

People's Republic of China

Hong-yu Shen, a judge from the Fourth Civil Division of the Supreme People's Court, People's Republic of China (PRC) gave an overview of the PRC judicial system on water resources protection. The PRC has 10 maritime courts which have jurisdiction over maritime cases and maritime trade cases of the first instance including disputes in relation to sea transport, accidents at sea, maritime administrative disputes, and port operation disputes.

The PRC is a signatory to international conventions on marine resource protection and one such convention is the International Convention on Civil Liability for Oil Pollution Damage 1969, as amended. In 10 years (1998–2008), the 10 maritime courts have adjudicated 300 cases of oil pollution by vessels totaling \$433 million in claims. More than half of these cases were settled by mediation.

The existing green courts have also resolved inland water pollution cases, the majority of which have been criminal cases. The roles of the Supreme People's Court in strengthening water resources protection have been given to be to (i) adjudicate on petitions for review from appellate decisions, (ii) supervise lower courts by providing guidelines and assessing court performance, (iii) provide judicial interpretation, and (iv) provide judicial training. The Supreme People's Court also needs to address the following issues: (i) cross-regional water pollution, (ii) jurisdictional reform, (iii) evaluating damage, and (iv) capacity building.

Liu Ming, president of an environmental chamber of the Qingzhen People's Court, shared his court's experience in environmental adjudication in Mandarin through a translator. In its short existence (the court was established in November 2007), the court has handled a lot of environmental cases and has promoted public interest litigation. The court has allowed a procuratorate to bring a civil suit against polluters and ordered the tearing down of a building constructed over a water source protection area. It also ordered the reforestation of the area.

Alex Wang, senior attorney and director of the China Environmental Law and Governance Project, Natural Resources Defense Council, discussed environmental judicial enforcement (EJE) in the PRC. EJE involves environmental enforcement and strengthening public health through the courts in general, not just environmental courts. Environmental

courts are technically not sanctioned by the government: there is no formal authority for the designation of environmental courts as such; thus, they are forums for experimentation in legal reform. The goal of EJE experiments is to expand access to justice and to the courts, and to reduce barriers to using the courts for environmental protection. Some examples include (i) expanding standing in environmental cases by allowing government criminal prosecutors, government agencies, and nongovernment organizations and citizens to file civil enforcement environmental cases; (ii) revising rules on types of remedies to focus on injunctive-type reliefs; and (iii) revising jurisdiction as a way to break the hold of local protectionism, which has been cited as one barrier to environmental enforcement. Local judiciaries are dependent on provincial and local governments for funding. Thus, if the case conflicts with the local government's priority of economic development, it would be resolved in favor of the latter. A proposal has been made to include regional and transboundary water pollution cases under the jurisdiction of maritime courts which are administered by the Supreme People's Court and not under that of the local government. Thus, a maritime court would have no interest in protecting local interests.

While 11 environmental courts have been established in the PRC, Mr. Wang concluded that they have not yet proven to be effective.

Zhang Jingjing, deputy director of the Public Interest Law Institute, elaborated further on the efficiency and effectiveness of environmental courts in the PRC. She pointed out that people in general still do not trust the courts and prefer to bring their disputes to administrative tribunals because of the difficulty in filing cases, and securing and enforcing a judgment. Because of political considerations (local economic development and social stability), courts have been hesitant to try politically sensitive cases, i.e., those involving local companies which provide most of the livelihood for the town. Also, even if one is successful in obtaining a judgment, enforcement still depends on the government agency in charge of enforcement, since not all courts are empowered to enforce their judgment. Environmental courts have been indirectly disallowed to hear class action suits with the issuance of a judicial interpretation which stated that all class action suits must be filed at the basic courts. Since almost all environmental courts are established at the intermediate court level, they have been indirectly disqualified from hearing class suits.

Aside from the difficulty in filing cases, there is also a big hurdle to surpass in establishing causation in environmental cases. Under PRC tort law, the burden of proof is on the defendant to show that the action complained of did not produce the harm alleged to have caused

injury. However, most courts are hesitant to apply this rule because of political considerations: most defendants are local business owners. Thus, plaintiffs are still required by the courts to prove causation, and this is difficult to do given the lack of access to environmental information and lack of technical experts willing to testify. Again, political pressure from the local government to promote local economic development and stability plays a role in the trial of environmental cases. Ms. Zhang pointed out that given the lack of independence of environmental courts, establishment of more may not be the solution to ensuring environmental protection and conservation.

Southeast Asia

Philippines

Reynato Puno, former Chief Justice of the Supreme Court of the Philippines, discussed the new Philippine environmental rules of procedure. The Supreme Court has ruled that the right to a healthy environment is not less important than political and civil rights, and this decision enabled a rights-based approach in promulgating the environmental rules of procedure. In promulgating the rules, pursuant to the Supreme Court's rule-making power, judicial remedies have been granted to the people to enable them to protect their right to a balanced and healthful ecology.

The salient features of the rules include (i) recognition of the inter-generational equity principle, (ii) empowerment of poor and marginalized litigants through the deferment of docket fee payment (fees constitute a lien on the judgment) and option to litigate as an indigent, (iii) provision against strategic legal actions against public participation suits, and (iv) prioritization of environmental cases in the judicial docket.

Marilyn Yap, a judge from a regional trial court, shared her experience in resolving environmental cases by explaining a case which involved the demolition of structures in a popular island resort. Beach resorts have been constructing structures within the seashore to exclude public use of the area. This was questioned in a taxpayers' suit as a violation of the Water Code of the Philippines which mandates a 20-meter margin within the seashore as subject to the easement of public use: recreation, navigation, floatage, fishing, and salvage. The court found in favor of the plaintiffs and directed public respondent the Department of Environment and Natural Resources to demolish structures constructed within the 20-meter margin easement, thereby establishing that areas subject to the easement are for public use and business owners cannot exclude the public from using them.

Antonio Oposa, president of the Laws of Nature Foundation, highlighted that there is a need to reframe the debate about the environment: the environment is not about the trees and seas but is about life and the tools of life—land, water, and air. He also said that there is a need to change the discourse: the economic paradigm should be reframed as extraction and consumption; thus, developed countries should be considered as overly consuming countries, to change meanings and mindsets. Mr. Oposa concluded that the outcome of environmental conservation and degradation is in people's hands.

Thailand

Winai Ruangsri, a research judge of the Supreme Court environment bench, discussed the evolution of environmental law in Thailand. Based on the 1997 Thai constitution (B.E. 2540), Thailand court's system is a dual court system composed of the court of justice and the administrative court. The court of justice has jurisdiction over civil and criminal cases, while the administrative court has jurisdiction over administrative cases. Under this dual court system, an environmental dispute may be brought in either the court of justice or the administrative court based on the issues involved.

Under the court of justice, the highest court is the Supreme Court, followed by the Court of Appeal and the courts of first instance. Both the Supreme Court and the Court of Appeal have formally established environmental divisions: 1 at the Supreme Court level in 2005 and 10 at the appellate level—1 central appeals court and 9 regional appeals courts in 2006. The jurisdiction of the green benches covers civil and criminal cases that may arise from various natural resources and pollution laws. Currently, these green benches have no specialized rules of procedure; however, it is in the process of developing procedural rules for the environment to address standing, evidence, and alternative dispute resolution (ADR).

For the court of justice green benches, the development of environmental jurisprudence has been slow. This has been attributed to the characteristics of the Thai legal system in that being a civil law jurisdiction, judges are limited to the interpretation of the constitution, and the law and court decisions must be within the existing legal framework. Currently, cases are filed and tried under existing civil and criminal procedural and substantive laws which present challenges to environmental plaintiffs like strict standing rules and standards of proving causation (footnote 5). In spite of the challenges, there have been jurisprudential breakthroughs (footnote 5). In a water pollution

case,⁶ the court relaxed the standard of proving causation and shifted the burden of proof to the defendant. The spirit of preservation and the goal of sustainable development was cited by the court in a park encroachment case by granting a relief (removal of buildings constructed in the park) not expressly asked for in the complaint, contrary to the rules of procedure.⁷

Prapot Klaisuban, a judge of the Central Administrative Court, shared the administrative court's experience in environmental adjudication. The Thai Supreme Administrative Court's jurisdiction includes environmental cases relating to administrative actions of government officials. It has established one green bench at the trial court level in the Central Administrative Court in Bangkok. The court is also considering a proposal to establish an environmental bench at the Supreme Administrative Court level. The administrative green benches do not have specialized rules of procedure; however, the act establishing the green benches is congenial to the filing of environmental administrative cases. The act allows for the use of expert witnesses, an out-of-court judicial investigation, and relaxed procedural rules, i.e., a general time bar of 1 year in the filing of a case, from the time when the action complained of happened. But such period may be extended to 10 years if the filing of the case would benefit the public (footnote 7). This is illustrated in the *Sakhom Canal Mouth* case which involved fishermen as plaintiffs suing the Harbor Department for constructing jetties in their fishing areas. Plaintiffs filed the case beyond the 1-year time bar. However, the Songkla Administrative Court accepted the case since it involved public interest: the resolution of the case would benefit other fishermen living in the area and not just the plaintiffs.

The green administrative bench has decided a number of notable environmental cases, the most notable of which are the *Sridhavaravadi* Group and the *Map Tha Phut* cases. In the *Sridhavaravadi* Group case, the Supreme Administrative Court recognized the right of residents from Nakhon Pathom Province to file a case against the Department of Fine Arts questioning the permit granted for the construction of an office building at an important archeological site, Pra Pathom Chedi, in Nakhon Pathom. Under "community right of a traditional community," plaintiffs who are studying the history and archeology of Pra Pathom Chedi have special interest to protect the site.

⁶ Supreme Court Decision No. 3621/2551 (3621/2009).

⁷ Supreme Court Decision No. 2291/2551 (2291/2009).

The *Map Tha Phut* case reflects the new vision of the Administrative Court to apply preventive measures rather than corrective ones. The court is of the opinion that if more factories are allowed to be constructed, more environmental damage would occur which would not be felt immediately but would be felt in the near future. The damage these factories would cause would be difficult to estimate and correct; thus, the court should employ preventive measures.

Suntariya Muanpawong, research justice and secretary of the environmental division of the Court of Appeal, shared her court's experience in environmental adjudication. In the past 3 years, a central appeals court and nine regional appeals courts established environmental divisions. The types of cases handled by these divisions depend on their geographical location: courts from the northern region handle mostly forest law cases; southern region courts handle fishery, water, and coastal law cases; and cases involving encroachment of public land are common to all courts. Because of the case backlog, these divisions have not focused exclusively on environmental cases, their dockets still include non-environmental cases.

Capacity building activities of these green bench judges remain ad hoc and have not been institutionalized. She stressed that the ultimate first step in training green judges is the development and cultivation of their environmental awareness. Without this awareness, judges would not be able to appreciate environmental issues when faced with contending values: social justice versus ecological justice, development or environment, and industry or health.

Srisuwan Janya, president of the Stop Global Warming Association, shared in Thai his organization's experience in filing the *Map Tha Phut* case.

Indonesia

Takdir Rahmadi, a justice of the Indonesian Supreme Court, discussed Indonesian efforts to institutionalize green judges and green rules of procedure. Because environmental issues know no boundaries, Indonesia's commitment under international conventions requires it to consider international environmental law principles in deciding national environmental cases. The Indonesian Ministry of Environment took the initiative and proposed training programs for judges. In late 2009, the Ministry of Environment and the Supreme Court entered into a memorandum of understanding with two objectives: first, to establish a program to certify judges with environmental law expertise; and second, to develop rules on the handling of environmental cases. As a

result, in March 2010, the Chief Justice established a high-level taskforce comprising members of the Supreme Court and senior members of the judiciary to be overseen by the Ministry of Environment. The group was tasked with developing a program and reporting back by the end of 2010. Specifically, the working group was tasked with (i) proposing methods of enhancing the capacity of judges in environmental law; (ii) designing the training programs and training materials for judges; (iii) preparing the guidelines for handling and hearing environmental cases—civil, criminal, and administrative; and (iv) designing a system of evaluation.

Prim Haryadi, vice-chief judge of Depok District Court, shared, in Bahasa, an environmental case resolved by his court involving environmental damage in *Bangka* Island by two defendant corporations. Defendants engaged in mining activities which caused a 10-meter deep by 20-meter wide excavation. Plaintiff Ministry of Environment filed suit and asked for compensation for environmental damage equivalent to approximately \$3.1 million. The defendant questioned the plaintiff's method of determining environmental damage. The court convened a panel of judges to consider the scientific and technical evidence. The panel ruled that the evidence supported the defendant having caused the environmental damage alleged by the plaintiff and awarded the compensation claimed.

Ilyas Asaad, deputy minister of the Ministry of Environment, discussed environmental enforcement in Indonesia. Environmental disputes under the Law Enforcement Act of 2009 could take three paths: administrative, criminal, or civil enforcement. The government has devised a plan to strengthen each of these paths. Under criminal enforcement, a program called the One Roof Enforcement System (ORES) has been initiated by the Ministry of Environment, the Attorney General's Office, and the police through a memorandum of understanding. These government agencies have agreed to work together to strengthen environmental enforcement by prosecuting environmental offenders criminally. Under ORES, specialized investigators have also been empowered to arrest environmental offenders, aside from investigating environmental criminal cases. To strengthen civil enforcement, the government has been working on establishing environmental dispute resolution and certifying judges in environmental law training. A major challenge for the administrative enforcement system has been to integrate complaints coming from different levels: district, provincial, and central; and an online complaint system has been proposed to foster the integration of such complaints.

Mas Achmad Santosa, member of the Presidential Task Force and advisor to the President, discussed the prerequisites for effective environmental enforcement in Indonesia. The crucial elements to ensure effective environmental enforcement include a green constitution which embraces an ecocentric approach (fundamental rights plus nature rights) and acknowledges sustainable development principles, environmental leadership, strong civil society, and good governance of government programs in environmental administrative enforcement, ORES, and the certified judges program.

Mr. Santosa concluded that the green future looks bright for Indonesia because of the support of the judiciary for greening the bench. The executive has also shown strong support for environmental governance having included the concept of “green constitution” in the proposed (fifth) amendments to the constitution developed by the Presidential Advisory Council. Access to information and public participation, considered pillars of environmental governance, have been realized in the promulgation of a freedom of information law and freedom of the press acts which would enable civil society to participate more effectively in environmental governance.

International Panel (Common Law)

Queensland, Australia

Michael Rackemann, a judge of the Planning and Environment Court (PEC) of Queensland, Australia, gave an overview of the history of the PEC. In Australia, environmental law is passed at the federal level but enforcement falls to states. Each state has its own environment court, which for Queensland is the PEC. The PEC originally started as a land use court, but through jurisprudential development and statutory change, it became a full environment court. The PEC’s jurisdiction includes hearing different matters, such as a merits review. A merits review is not limited to determining if the agency acted within law; the PEC considers the evidence and comes up with the decision they think is best. The PEC also hears a judicial review of an agency’s decision and determines if it is lawful. It has broad enforcement powers to constrain activity that violates existing laws and to order remedies for the harm done.

Mr. Rackemann explained that ecological sustainability is the core jurisprudence of the court. In 1997, the Integrated Planning Act was passed, and its stated purpose was to “seek to achieve ecological sustainability.” Pursuant to this national legislation, the Queensland local government implemented the Integrated Development Approval

System allowing an applicant to make one consolidated application for development approval. This application would be referred to all relevant government agencies, and these agencies would all have inputs into the decision. The Integrated Development Approval System minimized the potential for conflicting decisions of government agencies. It also streamlined the appeals process to the PEC, since the court would consider only one decision, which included all relevant aspects of the development—town planning, environmental impact, infrastructure provision, and others—for consideration.

The PEC receives and disposes of approximately 700 cases a year. Of the 700, only 100 go to trial, and the rest are settled. The court adopts an active case management approach geared toward encouraging dispute resolution through a problem solving approach. An example is the pretrial meetings of expert witnesses. The experts chosen by the parties become the court's experts as well. They conduct a joint investigation and prepare a joint report which notifies matters of agreement, disagreement, and reasons for these, if any. Mr. Rackemann shared that the process of choosing experts allows for the objectivity of the experts, since they are acting in the interest of the court and not for the party who hired them. The respect shown by the court for the expert's credibility has generally resulted in impartial and unbiased expert opinions which the court could rely upon in resolving the matter before it.

United States

Siu Tip Lam, director of the United States–China Partnership for Environmental Law and an assistant professor at Vermont Law School, gave a historical perspective on the establishment of environmental courts in the United States. The question was first brought up in 1972 when amendments to the Federal Water Pollution Control Act mandated a study on the need and feasibility of environmental courts. Comments were solicited from 26 federal agencies and 9 private organizations, including various divisions from the United States Department of Justice. Agencies were asked to give their inputs to the following: (i) total litigation experience of new cases since 1970, (ii) number of cases with significant environmental issues versus cases with minor tangential environmental issues, and (iii) opinion on ability of court system to handle technical environmental issues. Three models of an environmental court were suggested: (i) it would hear environmental cases in general, (ii) it would review federal administrative orders affecting the environment, and (iii) it would review orders of designated federal agencies or of specified types of matters handled by federal agencies.

The nearly unanimous decision response from the federal agencies was that environmental courts should not be established. Issues raised include the difficulty in determining the court's jurisdiction, the reduced feasibility to develop expertise because of the broad range of environmental issues, the fear that the court would be subjected to pressure by special interest groups, and uncertainty over environmental caseloads warranting a specialized court. These issues were revisited in subsequent studies, and some states established environment courts in their jurisdiction. The Vermont Environmental Court was established in 1990 to improve the enforcement of environmental laws. It has jurisdiction over civil enforcement cases, local land use zoning and planning permit appeals, state land use permit appeals and appeals of state environmental permits, and decisions of the state environmental agency. It has no jurisdiction over criminal cases or civil cases for compensation to individuals (environmental tort cases).

Ms. Lam emphasized that these issues may not be applicable to other jurisdictions and they must be taken together with the conditions particular to the United States: a well-established and robust rule of law; a mature and independent judicial system, a well-developed environmental bar, experienced prosecutors and enforcement agencies (both federal and local) with expertise and capability to inform the court of the law and environmental issues, and administrative agencies with effective tools and resources to enforce the law. She concluded that environment courts are not the only tool to resolve environmental challenges. Addressing these challenges needs an approach from different angles—developing and strengthening the environmental bar, and working with local agencies and civil society organizations—to bring together different tools needed to solve environmental challenges.

New Zealand

Marlene Oliver, environment commissioner of the Environment Court of New Zealand, presented a brief overview of the Environment Court of New Zealand. Ms. Oliver noted that there are three key issues that must be considered in moving forward with environmental decision making: (i) it relates to the future and uncertainty, thus one must understand risk prediction, (ii) it is a multidisciplinary exercise which goes beyond the law and involves other disciplines, and (iii) it requires a toolbox with a range of techniques and methods. What differentiates environmental decision making from other judicial work is the additional step the court is required to take: it must assess the probabilities of adverse effects and events and their consequences. It needs to make an informed assessment of what will happen in the future.

New Zealand's resource management policy is embodied in the Resource Management Act which was passed in 1991. The Resource Management Act integrated the law and policy on the use of land, water, air, energy, and the coastal environment. Its purpose is "to promote the sustainable management of natural and physical resources."

New Zealand has had a system of appeals from environmental planning and local government for more than 50 years. The Environment Court was established in 1996 and is composed of environment judges and environment commissioners. Judges are appointed directly as environment judges and hold concurrent positions as district judges. Appointed environment commissioners are specialists in planning, sciences, engineering, surveying, architecture, and other disciplines. The structure and composition of the Environment Court recognizes that the business of the court is multidisciplinary, and not merely a matter of law. The court has an active case management system and offers a non-mandatory ADR service which is performed by the environment commissioners. If a settlement is reached, then the agreement is presented to the environment judges for approval. If parties do not settle, then they go to trial.

Ms. Oliver concluded by reiterating that environmental decision makers need to understand the concept of risk prediction, probabilities, and concepts; understand the language of other disciplines involved in environmental disputes; and use a toolbox of techniques and methods for sustainable management.

New South Wales, Australia

Brian Preston, chief judge of the Land and Environment Court (LEC) of New South Wales, Australia, provided a short background on the LEC. The LEC is the first specialist environmental superior court of record in the world. It was established by statute in 1979 and became operational in 1980. It was part of legislation that established environmental law, specifically environmental impact assessments (EIAs) and public participation, which were important drivers in the establishment of the court.

Mr. Preston explained that two principal objectives for the LEC's establishment were rationalization and specialization. Relating to rationalization, the court was envisioned to be a one-stop shop for environmental, planning, and land matters. Environmental jurisdiction over all matters relating to environmental disputes was integrated and vested in the LEC to handle the critical mass of cases. In relation

to specialization, the court was given exclusive jurisdiction to environmental, planning, and land matters. No other court or tribunal could exercise jurisdiction over such matters. The personnel appointed to the court also promoted specialization. LEC judges must be judges of a superior court or a court of record, or lawyers of at least 7-year standing, with knowledge and expertise within the court's jurisdiction. In addition to judges, commissioners would also be appointed. These commissioners must have special knowledge and expertise in town planning, environmental science, land valuation, and other relevant areas. Specialization was a means to an end and ensured (i) consistency in decision making; (ii) greater efficiency (through its understanding of the characteristics of environmental disputes); and (iii) development of environmental laws, policies, and principles.

The jurisdiction of the LEC could be categorized into three: merits review, enforcement (both civil and criminal), and appellate. Mr. Preston noted that the court has been instrumental in developing jurisprudence on criminal enforcement which has provided guidance to the lower courts in environmental crime sentencing. The LEC has developed the world's first sentencing database for environmental offenses. The court operates as a multi-door courthouse by providing a variety of dispute resolution services matched to the particular dispute. Aside from the traditional adjudication (judges or commissioners), conciliation, mediation, and neutral evaluation are also provided by the LEC.

Brazil

Vladimir Passos de Freitas, former chief judge of the Federal Court of Appeal for the Fourth Region, gave an overview of Brazil's environmental enforcement. Brazil is a federal state with a civil law tradition. All environmental cases go to the judiciary; Brazil does not have an administrative process for handling such disputes. Most environmental cases are civil in nature and filed predominantly by prosecutors who have the legal standing to do so. The first environmental district court was established in 1996 in the State of Mato Grosso. The first state court of appeal was established in São Paulo in 2005 with 360 judges and only handles civil damages cases. In 2010, four federal environmental district courts were created in the Amazon region by the Federal Council of Justice.

Regarding environmental adjudication, the first environmental decision was handed down in 2003, where a judge disallowed the turnover of a building constructed without sanitary treatment. Although the decision was reversed by the Court of Appeal, it was an important milestone

in Brazil's environmental jurisprudence. The judiciary has also handed down its first criminal judgment on a corporation. The court imposed a fine of \$5,000 on the corporation for extracting sand without the appropriate permits; and a corporate director was also penalized with 1 year's imprisonment which was converted to community work. The Brazilian judiciary has ruled that environmental damage arising from civil crimes does not prescribe due to the transcendental importance of environmental rights.

Mr. Freitas emphasized that the feasibility of enforcing decisions must be considered by judges in deciding environmental disputes. Mr. Freitas concluded by suggesting ways to further increase environmental law awareness. His suggestions include inclusion of environmental law in judicial education and training, and participation of the judiciary in environment-themed activities like essay writing to increase judicial awareness.

Antonio Benjamin, a justice from the *Superior Tribunal de Justiça* (High Court of Brazil), gave a message by video on the role of the judiciary in protecting the environment. His message consisted of four parts: the need for judges in environmental governance, the types of judicial action in environmental conflicts, challenges to judicial practice, and a Brazilian perspective on the future ahead.

Mr. Benjamin explained that the Superior Tribunal de Justiça has vast experience in environmental litigation, handling a diversity of cases from pollution and environmental permitting to environmental crimes, among others. It hears appeals from 27 state supreme courts and 5 federal appellate courts.

Mr. Benjamin posed the fundamental question of whether judges are needed in environmental governance. In replying in the affirmative, Mr. Benjamin gave three reasons why judges are essential: (i) judges have been empowered by the constitution, expressly or implicitly, to decide environmental cases; (ii) judges play a major role in protecting "traditional" rights such as the right to life, health, and property, and these rights are impossible to separate from environmental issues; and (iii) one cannot speak of the rule of law without talking about the protection of the environment: sustainability is part of the rule of law.

Mr. Benjamin discussed two elements under the judicialization of environmental conflicts: procedural judicialization and substantive judicialization. Under procedural judicialization, judges are called to ensure environmental due process and statute requirements regulating state action in EIAs and granting permits, among others.

For substantive judicialization, judges are called upon to decide two or more conflicting interests. In choosing one interest over the other, judges may be accused of using the bench to create public policy. Mr. Benjamin explained, however, that in most cases, the policy choice has been decided on by the legislative branch, and judges merely implement these choices.

Mr. Benjamin enumerated some challenges faced by the judiciary: (i) conceptual uncertainty from the volume and complexity of environmental cases; (ii) hierarchical uncertainty in using various legislation from different levels—international, national, and state; and (iii) historical and unethical uncertainty. In passing legislation, lawmakers are increasingly using scientific concepts in environmental laws, and the judge is expected to know and understand the technical terms. Judges are also expected to make a dialogue between all sources of environmental law—international principles, national, state, and local—in deciding environmental cases. Further, these laws were passed in different historical moments, each with a differing prevalent ethos. Judges are expected to synthesize all these historical and ethical considerations in weighing one interest over the other. The rapid and permanent scientific evolution also poses a challenge as judges must keep up with the developments and discoveries in environmental law. Lastly, judges have been trained to operate from a prospective perspective which poses a challenge in imposing environmental remedies which require a retrospective approach.

Mr. Benjamin shared his view on future developments in the field: the global growth of environment courts and the need for more judicial capacity building in environmental law. He concluded with the thought that the growing role of judges in environmental protection poses both an opportunity and a challenge. To meet the challenges, there is a need to build judicial capacity and equip judges with adequate tools to interpret and implement the law.

France

Jean Philippe Rivaud, former senior judge of the Court of Appeal of Amiens and current deputy prosecutor general of the French Judicial Academy, discussed the developments in environmental law in France. Environmental law in France has grown since the first significant environmental law (on hazardous installations) was passed in 1917. As a member of the European Union (EU), France also has to comply with EU directives, the two most significant being the directive of the European Parliament and Council on environmental liability (2004) and the protection of the environment through criminal law (2008). In

2004, France inserted an environmental charter in the preamble of its constitution which includes the right to a balanced environment, the right to information, the right to access environmental education, and the obligation to repair environmental damage. Beginning in the 1990s, the government has improved its environmental law training program for its judges and prosecutors. The training programs have been implemented by the National School for the Judiciary (*École Nationale de la Magistrature*).

Mr. Rivaud shared that in implementing the European Parliament directive on protecting the environment through criminal law, the French government has ordered the reorganization of the prosecutor's office and the posting of one prosecutor in the environmental crimes department of each Court of Justice. Two courts, Paris and Marseilles, have been given jurisdiction to exclusively hear environmental criminal cases, e.g., international trafficking of wastes. In addition, three inter-coastal courts have been given jurisdiction for sea pollution cases: Marseilles (Mediterranean Sea), Brest (Atlantic Sea), and Le Havre (the Channel). These courts have specialized teams of judges and prosecutors with dedicated police units from the OCLAESP, the national police unit created in 2004 to investigate the most important criminal cases in the French territory.

Mr. Rivaud shared that a European prosecutors network for the environment was about to be established and stressed the importance of networks in combating environmental trafficking which has been on the rise in Europe. He concluded by stressing the need for networks—for the judiciary and prosecutors—and establishing linkages between these networks in enforcing environmental governance.

Session 7

International Experience in Environmental Boards and Tribunals

Session 7 presented the experience—both successes and challenges—of environmental tribunals in providing an alternative form of environmental adjudicatory specialization which may offer more expeditious dispute resolution.

Pakistan

Ashraf Jahan, chair of the Sindh Environmental Tribunal, shared the development of environmental courts and tribunals (ECTs) in Pakistan. Prior to 1983, there was no comprehensive framework law on the environment. In 1983, the Environmental Protection Ordinance was

framed which provided a basic structure for administering environmental law and established the Pakistan Environmental Protection Council and the Pakistan Environmental Protection Agency at the federal level.

Since there was no comprehensive legal framework, public interest litigants brought environmental cases to the Supreme Court, and the court would also initiate action suo moto; thus, case law emerged with innovative concepts being imported from international jurisprudence. In 1994, the Supreme Court ruled in the *Shehla Zia vs. WAPDA* case⁸ that the fundamental “right to life” and “right to dignity” under the Constitution included the right to a clean environment. This case paved the way to other landmark judgments and further development of environmental jurisprudence.

In 1997, due to pressure from international organizations and concerned citizens, legislators passed a comprehensive statute regularizing environmental adjudication, the Pakistan Environmental Protection Act (PEPA). The PEPA was not implemented right away, and it was only in 1999 when the Supreme Court directed the setting up of ECTs that these were established. However, the environmental tribunal in Sindh remained non-operational until 2007. Currently, each province (Lahore, Karachi, Quetta, and Peshawar) has one operational environmental tribunal.

Under the PEPA, environmental tribunals operate as a judicial forum, as a trial and intermediate appellate court, for the enforcement of the act. They can hear both civil and criminal cases under the Civil and Criminal Code. Since environmental tribunals were established under the PEPA, which is considered to be a special law, it is treated as a specialist court whose decisions on environmental matters override those of generalist courts. Appeals from these tribunals go to the High Court (one in each of the four provinces), then to the Supreme Court.

Mrs. Jahan shared information on some of the cases she handled since sitting as chair in 2009. In a case involving the construction of four flyovers in Karachi, the Pakistan Environmental Protection Agency required a compliance report on the EIA, in addition to the EIA, to check if recommendations under the EIA were being followed. Another case involved a ban on the use of asbestos in the country where the tribunal constituted a commission of experts to study the case.

Mrs. Jahan concluded that, ultimately, the solution to environmental problems is to have the consciousness to inculcate concern for the

⁸ PLD 1994 SC 692.

environment. Concern for the environment is a mindset and does not merely involve refraining from committing certain acts like polluting.

United States

Kathie Stein, a judge from the Environmental Appeals Board (EAB) of the United States Environmental Protection Agency (USEPA), described the administrative adjudication system of EPA. Under the USEPA, there are two tribunals: administrative law judges (ALJs) and the EAB. ALJs conduct administrative evidentiary enforcement trials and make liability and penalty determinations. The EAB hears appeals under all of the pollution control laws administered by the USEPA, including appeals from ALJ penalty cases and petitions to review permitting decisions made by USEPA regional offices or a state. Since 1992, EAB decisions are the final word of the USEPA on the matter and are precedential for future cases.⁹

Ms. Stein enumerated the hallmarks of the administrative adjudicative process: (i) adjudicatory independence, (ii) public transparency, (iii) a prohibition on ex parte communication, (iv) full and fair hearings, (v) record-based decision making, (vi) adjudicative consistency, and (vii) expeditious resolution of cases and less cost. Ms. Stein explained that the USEPA has adjudicatory independence: it is independent of other agencies and is not involved in investigation, enforcement, or policy making. The ALJs and EAB may rule against the agency. USEPA proceedings are transparent: ex-parte communication is prohibited; all communication must be part of the record. Judges are mandated to report all ex parte contact and may sanction the party who made contact. All hearings are open to the public and all decisions, orders, and briefs are available to the public online. All parties are entitled to present their best case to either the ALJ or EAB through the presentation of evidence and witnesses, filing of briefs, and presenting oral argument if so determined to be beneficial by the EAB. All findings of fact and law must be based on the records of the case: transcripts, exhibits, and formally filed papers.

Ms. Stein concluded that cases resolved through the administrative procedures of the USEPA are resolved more efficiently, at less cost, and are rarely appealed.¹⁰ Thus, the system provides a good alternative to court adjudication.

⁹ Under the Administrative Procedure Act, the decision of the head of agency constitutes the final word of the USEPA on the matter. However, since 1992, the decision-making power has been delegated to the three-judge EAB.

¹⁰ Less than 10% of EAB decisions are appealed. For decisions that are appealed, less than 1% have been reversed.

Japan

Yoshikazu Suzuki, an examiner from the Environmental Dispute Coordination Commission (EDCC), described the environmental dispute resolution system of Japan. Industrialization in Japan began in 1868. As industrialization scaled up, so did the environmental problems, beginning with the *Ashio Copper Mine* case in the 1880s which was the first large-scale pollution case. As the country experienced high economic growth due to heavy industrialization, numerous environmental disputes also erupted involving large-scale pollution which required immediate remedies for victims because of health damage. Claiming compensation was hard because victims found it difficult to establish causation.

However, there have been breakthroughs in Japanese environmental litigation, and the most popular one involves what has been collectively called the four great pollution lawsuits: (i) Minamata Disease and (ii) Niigata-Minamata Disease (involving organic-mercury poisoning), (iii) Itai-Itai Disease (cadmium poisoning), and (iv) Yokkaichi Asthma (air pollution). The Japanese are not known to be litigious and prior to these four cases, pollution disputes were generally settled out of court, with victims receiving token compensation in exchange for agreeing not to go to court.¹¹ However, with growing public awareness and support of the media, the individuals affected by these cases decided to bring their grievance to the courts which awarded them a near-complete victory. As a result of these pollution cases, a new law on pollution compensation was passed in addition to the jurisprudential precedents set. However, in spite of the victory of pollution victims, these cases again illustrated the difficulty of litigating environmental disputes in court: the difficulty in establishing the cause-effect relationship and specifying the details of damage; and the high costs of trial and long duration of the case.

To make up for the difficulties of the judicial system, the 1970 Environmental Disputes Settlement Law established an administrative ADR system to settle pollution-related disputes outside the courts. The 1970 Environmental Disputes Settlement Law provides for the establishment of the EDCC at the national level by the national government and the Prefecture Pollution Examination Commission (PPEC) at the prefecture level by the prefectural governors. These commissions do not function like a first instance and appeals court.

¹¹ H. Kato. 2004. The Role of the Judicial System in Promoting Environmental Management in Japan. Paper presented at the Regional Symposium on the Role of the Judiciary in Promoting Sustainable development: Case Studies from Japan and Developing Countries in East Asia. Bangkok, Thailand. 21–23 June 2004.

Each commission handles disputes according to the jurisdictional delineation provided by the law, with EDCC handling “important and serious environmental pollution cases or cases involving several prefectures or covering wide areas” and the PPEC handling cases other than those falling within EDCC jurisdiction. Both commissions are tasked to settle environmental disputes¹² through conciliation, mediation, and arbitration. The EDCC is also empowered to conduct adjudication: cause–effect and damages responsibility adjudication.¹³ In availing of ADR, parties are not restricted from filing lawsuits. However, the prescription period for filing a judicial action is tolled only if parties availed of conciliation and adjudication procedures. The prescription period for filing a judicial action continues to run while parties undergo mediation. The EDCC consists of a chair and six commissioners nominated by the Prime Minister with the consent of the Diet. The law provides for the neutrality and independence of each commissioner. A secretariat composed of 39 personnel assists the commission, including 8 examiners and staff of certified attorneys and specialists from environment-related ministries.

The ADR system of Japan is characterized by the following: (i) employment of professional knowledge and expertise (technical experts may be appointed by the commission, at the commission’s expense); (ii) fact-finding on official initiatives (the EDCC or PPEC may initiate a fact-finding process *motu proprio*); (iii) quick settlements of dispute; (iv) lower-cost alternatives (the EDCC bears the bulk of the cost of proceedings and fees are kept low, about 20%–30% lower than judicial court fees for civil conciliations); (v) simplified procedures; (vi) a follow-up system (the EDCC and PPEC may offer necessary follow-up services to check on compliance with agreements); and (vii) the

¹² Environmental disputes include air and water pollution, soil contamination, noise, vibration, ground subsidence, and offensive odors. Environmental pollution is defined as interference with environmental conservation (any of the seven previously mentioned environmental disputes) affecting an extensive area as a result of business and other human activities which cause damage to human health or the living environment (including property closely related to human life, as well as fauna and flora closely related to human life and their living environment).

¹³ Adjudication services are only available from the EDCC, and the process is similar to a civil litigation and involves adjusting the issues, examining documentary evidence, and witnesses. An adjudication committee composed of three or five members of the commission is legally authorized to render a legal judgment to settle the dispute. An adjudication award is presumed to be a mutual agreement of the parties, unless a dissatisfied party files suit in a judicial court within 30 days after the adjudication. The Adjudication committee may conduct either of these types of adjudication: cause-effect adjudication where the committee establishes whether a cause–effect relationship in legal terms exists between the alleged illegal act and the damage in the pollution case; or damages responsibility adjudication where the committee investigates whether a party is responsible for the compensation of environmental pollution damages and the amount of compensation thereof.

commission may give recommendations to appropriate government ministries regarding pollution control measures, based on experience in dispute handling.

Commentators have generally agreed that the judiciary has played an important role in the development of environmental law and policy, especially in pollution-related tort law and injunctive reliefs through civil litigation.¹⁴ Lower courts have been more progressive in their interpretation of laws to support environmental rights and protect environmental harm victims (footnote 14). In spite of the work of the courts, however, environmental rights are still not formally recognized by the judiciary. The 1946 Japanese Constitution contains two provisions which have been used as a basis for a right to a clean and healthy environment in environmental cases: (i) the right to life, liberty, and pursuit of happiness (Article 13); and (ii) the right to maintain the minimum standards of wholesome and cultured living (Article 25). Though these rights have been recognized and upheld by the courts and used as a basis for awarding damages to plaintiffs in environmental cases, they are considered as “personal rights” and not a human or private right which has implications on standing in filing environmental cases.

Republic of Korea

Kim Won Kim, chair of the National Environment Dispute Resolution Commission (NEDRC), discussed the role the NEDRC plays in resolving environmental disputes in the country. Like Japan, the Republic of Korea prioritized economic development over environmental conservation and protection, and it was only in the 1960s that environmental conservation became a significant issue.

The 1980 Constitution of the Republic of Korea provided a right to a healthy and clean environment. This right was amended and clarified in the 1987 Constitution which provides that all citizens have a right to a healthy and pleasant environment and the “substance of such right shall be determined by statutes.”¹⁵ The Supreme Court has ruled that this provision is not self-executing and a claim must be based on a specific statute (footnote 15). Claims based on this constitutional provision have been considered by the courts as groundless and the courts have asked

¹⁴ Footnote 11. See also N. Okubo. 2004. Improving Capability and Responsiveness in the Judicial System. Paper presented at the Regional Symposium on the Role of the Judiciary in Promoting Sustainable Development: Case Studies from Japan and Developing Countries in East Asia. Bangkok, Thailand. 21–23 June 2004.

¹⁵ R. Kim. 2007. Principles of Sustainable Development in Korean Environmental Law: Towards the Earth Charter Principles. *The New Zealand Postgraduate Law e-Journal*. 4. p. 17.

litigants to prove personal and immediate damage. Thus, although a right to a healthy environment is included in the Constitution, accessing this right is somewhat limited. The Supreme Court has also refrained from recognizing the precautionary principle and allowed a project to proceed with care, in light of the scientific uncertainty.¹⁶ The Supreme Court also upheld a high court's ruling that the natural environment does not hold legal rights and thus cannot be the plaintiff in a case.¹⁷

The enactment of an act on environmental dispute resolution led to the establishment of the NEDRC in June 1991 as a permanent institution under the Ministry of Environment. Its mandate is the "rapid, fair and economical" adjustment of environmental disputes with a charge to parties to participate in good faith.¹⁸ "Adjustment" of disputes is defined as the settlement through conciliation, mediation, and arbitration. Environmental dispute means "strife concerning environmental damage and concerning installation of management of environmental facilities" as defined by law.¹⁹

The NEDRC can hear environmental disputes involving the national or local government as a party; amounts exceeding 100 million won; and dispute resolutions that involve two or more cities and provinces. The NEDRC is composed of 15 members, including a chair, who are appointed (by the President of the Republic of Korea upon recommendation by the Minister of Environment) for a renewable term of 2 years. Together with the NEDRC, local environmental dispute resolution commissions were also established as non-permanent institutions of cities and provinces. Local environmental dispute resolution commissions take cognizance of environmental disputes arising in their jurisdictional area and involving amounts less than 100 million won. Local environmental dispute resolution commissions are not empowered to conduct compulsory mediation and adjudication involving national and/or local governments and disputes involving obstruction of sunlight, ventilation, and view. They are also composed

¹⁶ Footnote 15. The Saemangeum case, decided by the Supreme Court of the Republic of Korea in 2006, involved a government project in the North Jeolla Province to convert tidal flats into farmland by building a seawall on the coast.

¹⁷ Footnote 15. The Dorongyong case is the first case to test the concept of interspecies justice. The case involved a proposed construction of a high-speed rail link connecting Seoul to Busan, and Buddhist monks and environmentalists alleged that the project would threaten 30 endangered species. A suit was filed on behalf of the *dorongyong* or salamander which is one of the endangered species.

¹⁸ Articles 3 and 5, Environmental Dispute Adjustment Act. www.eiskorea.org/04_Policy/01_Law.asp?schMenuCode=MC100&schtCode=MC170&strIdx=397&schtCom=&schtSearch=&intPage=1

¹⁹ Footnote 18. Art. 2.

of 15 members with deputy city mayors or deputy provincial governors serving as chair.

Session 8

Institutionalizing Systems for Promoting Environmental Law in Judicial Education

Session 8 presented the existing generalist judicial training schemes and programs in some Asian jurisdictions to generate a discussion on the appropriate entry points for further environmental judicial training in Asia.

Delilah Magtolis, head of the Academic Affairs Division of the Philippine Judicial Academy (PHILJA), described the training program for judges in the Philippines. PHILJA is a distinct unit under the Supreme Court of the Philippines created to be a school for judges, justices, and aspirants to judicial positions, as well as a training provider for court personnel. It has a corps of professors considered to be experts in their respective fields of law. PHILJA has a core as well as special focus programs. Core programs are regularly conducted throughout the year (i.e., training programs for new judges) while special focus seminars deal with particular subject matter like new laws and rules or issuances of the Supreme Court.

PHILJA has conducted a number of seminars on environmental law, the most recent being the one on Multi-Sectoral Capacity Building on Environmental Law and Rules of Procedure for Environmental Cases. The Rules of Procedure issued by the Supreme Court in April 2010 is applicable in all courts, and thus every judge must be familiar with its provisions.

Sarawut Benjakul, deputy secretary-general of the Thailand Training Institute, discussed the mandate of the Judicial Training Institute. The Judicial Training Institute is a division of the Office of the Judiciary mandated to provide training programs for the judges and judicial staff of the Courts of Justice. It has three sections: the Judge Training Academy, the Judicial Staff Training Academy, and the National Academy of Criminal Justice. The Judge Training Academy provides training for judges in all levels in both standard and specialized law programs. Standard programs include courses for senior judges, Supreme Court judges, trainee judges, and others. Specialized programs include seminars on specific law subjects such as environmental law, taxation, trade law, and others. The Judicial Staff Training Academy provides training programs for judicial staff and offers standard and professional programs. The National Academy of Criminal Justice provides training programs for senior executives in criminal justice administration.

In 2009, the Judicial Training Institute conducted two specialized training programs in environmental law.

Agung Sumantha, head of judicial techniques of the Indonesia Judicial Training Center, described the continuing judicial education program for judges and court staff. The Judicial Training Center adheres to a continuing judicial education program which provides training and education to judges and staff throughout their career in the judiciary. The training program includes candidate judges training and internships; programs for judges who have served for 0–5 years and 6–10 years. There is also an enrichment program for specialized matters where a certification training is required by the Supreme Court.

In deciding environmental cases, the Supreme Court has required that only judges who have undergone certification training can do so. A working group has drafted a certification program which consists of recruitment and selection, according to selection criteria determined through needs analysis, training, placement and promotion, and monitoring and evaluation. After the certification training, certified judges are expected, among others, to (i) be skilled in deciding environmental cases, (ii) demonstrate knowledge and comprehension of national and international environmental law principles, (iii) be able to apply norms in deciding cases, (iv) discover law (*rechtsvinding*) to establish environmental justice in the absence of law, and (v) demonstrate integrity as a judge.

Sessions 5 and 13

Trans-Judicial Networks for the Environment; Asian Judges and the Environment: Capacity Needs and Potential for a Network

Session 5 presented network developments in other regions and its successes and failures, as consideration for the formation of an Asian Judges Network on the Environment.

Scott Fulton, general counsel of the USEPA, shared by video message the importance of international networks in environmental governance. Judicial networks encourage the growth of dialogue and facilitate the development of shared professional values. They highlight best practices which ensure judicial independence, accountability, and efficiency, and advance the rule of law on a global scale. Mr. Fulton's experience with networks has shown that judiciaries have more commonalities than differences in the environmental law setting. Opportunities for beneficial exchange among judiciaries abound, and these exchanges

should be encouraged as they make judges better prepared, energized, and committed to environmental protection.

Mr. Fulton also shared that he is committed to environmental courts and their role in the effective enforcement of environmental law. Environmental courts provide a forum for stakeholders to raise their competing views about appropriate implementation of environmental law before an impartial decision maker. However, he noted that these courts are not sufficient by themselves. A fully functional, multi-component system (which includes regulatory agencies, prosecutors, environmental enforcement officials, civil society organizations, and the bar) of environmental governance is needed to ensure environmental protection.

Mr. Fulton further shared the seven key themes of the USEPA's work: (i) taking action on climate change, (ii) improving air quality, (iii) assuring the safety of chemicals, (iv) cleaning up communities, (v) protecting America's waters, (vi) expanding the conversation of environmentalism and working for environmental justice, and (vii) building strong state and tribal partnerships. The three principles which would enable the organization to achieve their work are sound science, transparency, and respect for the rule of law.

Brian Preston, chair of the Environmental Committee of the Law Association for Asia and the Pacific (LAWASIA), gave a brief background on LAWASIA and the work of the environmental committee. He explained that LAWASIA is an international organization of lawyers' associations, individual lawyers, judges, legal academics, and others focused on the interests and concerns of the legal profession in the Asia and Pacific region. It was formed on 10 August 1966 in Australia and is governed by the LAWASIA Council comprising representatives of the peak legal bodies in 25 countries. LAWASIA's policies and agenda directly address issues confronting the profession throughout the region. It has over 1,500 individual members from over 50 countries, who contribute directly to LAWASIA activities through participation in sections and standing committees.

One committee is the Environmental Law Committee (a standing committee under the Business Law Section) and its activities involve not only practitioners but judiciaries as well. For the LAWASIA annual conference, the committee ensures that environmental law topics are part of the program. For the 2010 conference, sessions on human rights and environmental law, climate change, and clean energy were included. The committee also organizes other conferences aside from

the LAWASIA annual conference. It also publishes conference papers and articles.

Mr. Preston proposed that the Environmental Law Committee may forge networks with other nongovernment organizations, international organizations, and national government organizations. He also suggested the establishment of national environmental law associations and the development of environmental law in universities.

Luc Lavrysen, president of the European Union Forum of Judges for the Environment (EUFJE), provided by video conference an overview of the establishment and work done by the EUFJE. As a follow-up to UNEP's Global Judges Symposium on the Role of Law and Sustainable Development, European judges met and decided to establish a European Union (EU) standing committee to implement the resolution adopted at the end of the Global Judges Symposium. In addition to the symposium impetus, the EU is the main driver of domestic environmental law. The environmental caseload of the EU's Court of Justice was hovering at 15%–20%. Considering the court's mandate to ensure that EU legislation is interpreted and applied in the same way in all EU countries, there was a need to ground judges in the common interpretation of environmental laws. Thus, a group of judges established the EUFJE in Paris on 28 February 2004 as the platform on which judges could exchange experiences in environmental case law and environmental law judicial training.

The EUFJE is supported by the Directorate General for the Environment of the European Commission and has a rotating presidency. Membership is open to all judges from the EU and the European Economic Area²⁰ with a special interest in environmental law. Judges from states with pending EU membership application may participate as observers in activities. The main activity of the network is an annual conference. In 2010, the conference's theme was application of European biodiversity law at the national level. Other activities include involvement in the working bodies of the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) and developing the dialogue between EU national judges through a training program sponsored by the European Commission.

Hima Kohli, vice-president of the Asia Pacific Jurist Association (APJA), shared the work that has been done by APJA. APJA is a

²⁰ Composed of Iceland, Liechtenstein, Norway, and Switzerland.

nongovernment organization composed of like-minded jurists, leading lawyers, and academicians who have joined hands with the objective of promoting the interests of the Asia and Pacific region, particularly through interactions and deliberations resulting in recommendations, suggestions, and resolutions backed by academic and intellectual impetus in the thrust areas of law and regulations. The areas primarily identified for the purpose are environmental laws—their implementation and enforcement, ADR mechanisms, and intellectual property rights.

APJA's principal role is to provide a forum to members of the legal profession and associated fields in the Asia and Pacific region to meet, interact, cooperate, and share their experiences, and to provide insight into the different legal systems with a view to promoting the region for maximum utilization of its resources and achieving sustainable economic development.

APJA has a specific interest in environmental laws and their enforcement with particular reference to the Asia and Pacific region. With the advancement of industrial development and fast economic growth in the region, it has become imperative that people in the Asia and Pacific region work closely to meet the challenges resulting from the haphazard, random, and unorganized development in the region and the awareness among the public on risk management in matters spanning the spectrum of environmental aspects and emergency planning to conserve the environment and natural resources and encourage sustainable development.

Some activities of APJA in environmental law include conferences and seminars held in India and awareness-raising activities targeting the student community. APJA is also a founding member of AECEN.

Session 13 elicited brief reflections from Asian court justices and judges on the establishment of an Asian Judges Network on the Environment.

Renato Corona, chief justice of the Supreme Court of the Philippines, observed that judicial institutions around the world are taking a more proactive role in addressing environmental issues. There is a great willingness to create a regional network of judicial institutions for capacity building of judges and officers because of the shared concerns and threats which are borderless and difficult to address.

Harifin Tumpa, chief justice of the Indonesian Supreme Court, remarked that because the issues of enforcement faced by judges

are similar, there is a need for closer cooperation among judges of the member countries of the Association of Southeast Asian Nations (ASEAN) to jointly develop their “green bench.” Mr. Tumpa graciously offered to host a meeting of ASEAN chief justices and environmental justices to facilitate the cooperation among judges from the region.

Peerapol Pitchayawat, vice-president of the Thailand Supreme Court, remarked that because of the need to share experiences in environmental law, there is a potential for a network of Asian judges for the environment in the ASEAN region.

Mirza Hussain Haider, a justice from the Supreme Court of Bangladesh, observed that the common concern shared by all countries of the world is concern for the environment. The environment has no territorial limits and cannot be separated by the existing political boundaries of states. Thus, the experience of one country would be of immense help and importance to other countries. The sharing of experience among judges and other stakeholders would contribute to establishing a uniform environmental law and developing guidelines in adjudicating environmental issues. Establishing a strong and effective network system among private and public organizations and among judges has become a necessity. Mr. Haider concluded by sharing his optimism over the contribution a green network could make in making the world a habitable place for generations to come.

Hong-yu Shen, a judge from the Fourth Civil Division of the PRC’s Supreme People’s Court, enumerated three things the PRC government must do to promote environmental governance in the country: (i) promote capacity building of judges, (ii) introduce ADR in the judicial system, and (iii) develop environmental awareness at the Supreme People’s Court level. Ms. Shen expressed support for the establishment of an Asian judges network on the environment to promote cooperation in the Asia and Pacific region and provide a forum for the beneficial exchanges between judges.

Kanagasabapathy Sripavan, a justice from the Supreme Court of Sri Lanka, observed that there has been a growing awareness about environmental law and judges have shown increasing willingness to intervene in environmental cases. To further strengthen environmental justice work and promote the exchange of ideas, judges must work together as a team to foster dialogue in the region. A judicial network could help facilitate this dialogue and provide a forum for the exchange of ideas, challenges, and successes faced by contemporaries in the region and also provide inspiring leadership to others. Mr. Sripavan

reminded everyone that the initiative to establish the forum must be collective and its success depends on everyone contributing to the work that needs to be done.

Sessions 9–12

Breakout Groups on Challenges of Environmental Decision Making

Participants were asked to attend one breakout session—Expert Evidence and Remedies, ADR in Environmental Cases, Access to Justice, and Strengthening Judicial Capacity to Decide Environmental Cases and Resisting Threats to Integrity—and share the experience of their jurisdiction on the chosen subject matter. The sessions took the form of a panel discussion, with a chair moderating the proceedings and a rapporteur documenting the proceedings. The outcome of each session was shared with the plenary and is recorded in the Symposium Statement.

Session 9 discussed the challenges faced by various jurisdictions on expert evidence and remedies. The discussion confirmed that most judiciaries are challenged by understanding scientific and expert evidence, and weighing and evaluating such complex evidence. The high cost of obtaining expert evidence and the scarcity of experts in various technical fields are additional challenges cited. Understanding how to evaluate environmental damages in different circumstances is another challenge. The key challenge faced by most jurisdictions regarding environmental remedies is the lack of legal tools to address environmental problems and harm. Most rely on civil damages remedies which are not appropriate in most environmental damage cases.

Session 10 focused on ADR in environmental cases. Common critiques against litigating environmental disputes are that they are too technical and complicated for a judge and also too expensive to try. Thus, ADR is frequently proposed as the ideal solution to address the complex and inclusive nature of environmental disputes. However, is ADR ideal for all types of disputes, e.g., one involving the violation of a criminal statute? Should ADR be possible for crimes or does it dilute the criminal nature of the act complained of?

The group reached a consensus that ADR is an effective method for resolving environmental disputes, in whole or in part, by consensus. ADR should be readily accepted in Asia, given the cultural acceptance of the resolution of community disputes. The group acknowledged that there are challenges to optimizing the use of ADR in environmental cases and gave suggestions on how these could be minimized. One suggestion is that environmental

mediators should have appropriate experience and/or training in the resolution of environmental disputes.

ADR also is one way of increasing access to environmental justice since it encourages wider public participation, lowers standing requirements, reduces costs and time, and encourages parties to come up with mutually agreeable and enforceable solutions to the problems. The group suggested that environmental dispute ADR should adopt uncomplicated procedures and be conducted in a timely manner, with minimum expense. Judges, litigants, and other stakeholders must also be educated about the availability and benefits of ADR.

Session 11 tackled access to environmental justice. Access to justice is a key pillar of environmental governance contained in Principle 10 of the Rio Declaration, which also includes transparency, inclusiveness, and accountability. Ensuring access to justice is often considered to involve expanding citizens' access to courts, and expanding the rights of public interest litigants to bring cases in courts. Thus, access to justice is often conceived as access to the formal legal system. However, it is broader and also involves access to administrative justice and fairness through the resolution of administrative complaints and other formal and informal ways of achieving accountability of those who have power and make decisions affecting the environment.

Major barriers to accessing the formal justice system, as discussed by the group, include complicated filing procedures, expensive costs for filing suit, and harassment of victims and litigants of environmental disputes.

Session 12 focused on judicial capacity to decide environmental cases and resisting threats to integrity. Strengthening judicial capacity to decide environmental cases and increasing the extent that judges are able to resist threats to integrity are issues for generalist and environmental judges and courts alike, particularly in developing Asia. These issues are critical to ensuring an effective judiciary, and similarly important for ensuring effective environmental decision making and dispute resolution. They are also interrelated because without sufficient numbers of skilled judicial staff—both judges and court staff—the threats to integrity are greater.

A major challenge to judicial capacity cited by the group is the lack of training in environmental law. The majority of judges are essentially generalist judges called upon to decide on a specialized branch. Learning on-the-job is not an adequate source of training for judges. The group proposed that there is a need to substantially train judges in diverse areas of environmental law, regardless of the volume of environmental cases handled.

Concluding Sessions

Concluding Thoughts from Development Partners

Lalanath da Silva, director of The Access Initiative (TAI) of the World Resources Institute, shared why TAI cosponsored the symposium. TAI's basic objective is to promote transparency, inclusiveness, and accountability in environmental decision making. Civil society and public interest lawyers play a critical role in the development of environmental jurisprudence and as end users of environmental adjudicatory mechanisms such as environmental courts and tribunals (ECTs). Most of TAI's partners are civil society and public interest environmental lawyers who are involved in creating or improving adjudicatory institutions around the world.

Mr. da Silva concluded by saying he looked forward to future collaborations with ADB and other practitioners from Asia.

Milag Ballesteros, AECEN Secretariat, remarked that after the event, the challenge is to take stock and look at good practices which can be replicated and applied in different jurisdictions. AECEN could assist countries through twinning arrangements which partner countries with developing environmental programs to countries with more experience in environmental governance.

Ms. Ballesteros encouraged development partners to merge their efforts to make their responses more efficient and relevant. She concluded with the reminder that it is during challenging times that the most innovative solutions and workable approaches are defined and identified.

Kathie Stein, a judge of the Environmental Appeals Board of the USEPA, shared that the USEPA is interested in furthering environmental protection in the region and thus is interested in events like the symposium. Ms. Stein was struck by the commonalities in the range of issues presented during the symposium and remarked that she was looking forward to future collaboration with participants.

Masa Nagai, a senior legal officer of the Division of Environmental Law and Conventions of UNEP, remarked that UNEP would be actively supporting efforts to strengthen capacity of judges and judiciaries. UNEP is actively supporting South–South cooperation in environmental law and also sustaining sub-networks of lawyers and judges. Mr. Nagai observed that there was a consensus on the need for a dynamic exchange of information and sharing of good practices and experience in the region and beyond. He remarked that UNEP would be privileged to associate with ADB on the development of a network of judges.

Mr. Nagai concluded by informing the participants about the second Global Judges Symposium which would include judges and prosecutors and be held during the Rio+20 Conference.

Closing Remarks

Jeremy Hovland, general counsel of ADB, closed the 2-day symposium, highlighting the three key messages that emerged from the discussions.

The symposium discussions confirmed the important role played by the judiciary in environmental enforcement. The Johannesburg Principles remain relevant, and there is a need for the further implementation of such principles on the ground.

The symposium sessions and discussions produced a snapshot of environmental justice in the region. The state of environmental adjudication and governance is encouraging, taken with the positive developments in Asian courts which include the approval of environmental rules in the Philippines, approval of a new environmental bill in Bangladesh, and the establishment of a new green tribunal in India.

The symposium also highlighted the urgent need to strengthen capacity and good governance, which are critical to ensuring environmental justice. Capacity development is a major focus of ADB's assistance and is embodied in its long-term strategic framework, Strategy 2020. It recognizes that good governance and capacity development are drivers of change that will improve the cost-effective delivery of public goods within ADB core operational areas, such as the environment.

Symposium Outcomes

Symposium Statement

Statement of Key Messages on the Role of the Judiciary in Environmental Enforcement and Promoting Environmental Justice

Participants agreed on the immense value of this regional symposium as a unique platform for bringing together the judiciary and key actors in environmental enforcement, including civil society, to share practical experience and ideas on how to improve environmental adjudication and access to environmental justice. The participants proposed that an Asian judges network on the environment should be convened to facilitate the sharing of information and best practices. They also called for a similar

symposium next year, with interim regional roundtables to be held before the symposium, which the Chief Justice of Indonesia graciously offered to host for the Southeast Asia region and the Chief Justice of Pakistan for the South Asia region.

The key messages of the symposium as agreed by consensus are:

1. Environmental change and climate change within the Asian region compel an immediate and urgent response to implement strategies toward a more sustainable Asia.

With ever-worsening national, regional, and global environmental change, which is likely to be further exacerbated by climate change, many environmental challenges are not sufficiently addressed in existing policy and regulatory frameworks. If they have been adopted as laws, they have often not been translated into implementing rules and regulations at national, provincial, and local levels. Even where Asian countries have appropriate policy, legal, and regulatory frameworks, effective implementation, enforcement, and compliance continue to pose challenges.

2. Ensuring effective compliance and enforcement of environmental law requires ensuring that the complete environmental compliance and enforcement chain is effective.

Ensuring effective compliance and enforcement of environmental law requires ensuring that the complete enforcement chain works: from environmental, forest, and marine enforcement officials, to legal prosecutors, legal civil society professionals, and the judiciary. In increasing the effectiveness of environmental compliance and enforcement, each aspect of the enforcement chain needs to be considered separately and distinctly, and also with the integrity of an integrated chain. Without law enforcement officials effectively apprehending and prosecuting civil and criminal offenders, the judiciary has no cases to hear. Similarly, if legal civil society has limited capacity, or no rights to bring civil or administrative cases, the environmental cases brought before the courts will be limited. However, if enforcement officials and civil society play their role effectively, they need to be confident that the outcomes of filing cases in court will be worth the time and expense: they, and the community as a whole, need to perceive the entire judiciary as having the integrity and skills required to dispose of environmental cases effectively.

3. Judges play a key and unique role in improving environmental enforcement and must be given some dedicated attention.

The senior judiciary in Asia—as leaders of the legal profession in Asian countries—plays a key role in improving environmental enforcement not only by their direct actions in making environmental decisions, developing environmental jurisprudence, or establishing environmental courts, but also by championing and leading the rest of the legal profession toward credible rule-of-law systems that have integrity and promote environmental sustainability. They also issue rules and directions to lower courts which affect their priorities and often play a role in judicial education. Thus, their influence is direct and indirect. All these influences affect not only the courts, but also the way the legal system operates, and the way that sector lawyers, such as environmental, water, and energy lawyers, understand the legal and regulatory frameworks and how they should be enforced. Moreover, this affects private sector investment in related sectors. Because its role is unique, aspects of strengthening its capacity also need dedicated attention.

4. The Johannesburg Principles on the Role of Law and Sustainable Development continue to be relevant.

In August 2002, more than 120 senior judges from around the world, including many from the Asia and Pacific region, met at the Global Judges Symposium immediately prior to the World Summit on Sustainable Development in Johannesburg, South Africa. At the 2002 Global Judges Symposium, participants committed to the Johannesburg Principles on the Role of Law and Sustainable Development. In those principles, participating judges fully committed to using their judicial mandate to realize sustainable development to implement, develop, and enforce the law, and to uphold the Rule of Law and democratic processes. They also agreed that judicial education and training on environmental law through regional and subregional initiatives are urgently needed, and that judges need to collaborate within and across regions to improve enforcement, compliance, and implementation of environmental law.

5. Ensuring access to environmental justice, pathbreaking environmental jurisprudence, and effective routine environmental decision making and environmental dispute resolution need different institutional forms in different contexts.

Environmental courts and tribunals (ECTs) provide one way of achieving effective environmental adjudication and dispute resolution, and have many advantages. In developing Asia, a key advantage is that resources for capacity building and environmental law expertise may be concentrated upon a smaller number of judges who are specifically selected for their integrity and environmental expertise. However, ECTs may not be necessary and are not sufficient for good environmental adjudication and dispute resolution. General courts, environmental courts, environmental tribunals, and environmental divisions of general courts (“green benches”), and grassroots alternative dispute resolution or outreach also provide other possible ways of resolving environmental disputes.

6. Judicial education in Asia needs to mainstream and integrate environmental training throughout the process.

Judicial education in Asia will require institutionalized forms of environmental law training, together with training on the techniques of environmental litigation and dispute resolution. Curriculum will need to be designed for (i) cadre or candidate judges, (ii) continuing legal education, and (iii) environmental law specialist judges. It will need to be conducted as part of an institutionalized ongoing scheme, including monitoring, evaluation, feedback, and retraining.

7. Integrity within the entire chain of environmental enforcement and within the justice system is critical to ensuring effective environmental enforcement.

Many environmental enforcement problems relate to a lack of integrity, and the presence of corruption or crimes, such as illegal logging, illegal mining, and illegal fishing, that go unenforced for a range of reasons, including bribes. Justice will be thwarted if there is corruption anywhere in those systems. A clean judiciary is critical, but it is also embedded within the broader system of the rule of law and is influenced by wider social attitudes on integrity and corruption. In an effort to promote integrity, in 2000, senior judges from several African and Asian countries formed the Judicial Group on Strengthening Judicial Integrity, under the auspices of the Global Programme against Corruption of the United Nations Office for Drug Control and Crime Prevention, and developed the Bangalore Principles of Judicial Conduct.

Widely regarded as the international norm, these principles highlight independence, impartiality, integrity, propriety, equality, competence, and diligence as key values and can be used as the basis for promoting judicial integrity.

8. Expanding access to environmental justice involves the formal justice and administrative justice system and informal ways to resolve disputes.

Access to justice is a key pillar of environmental governance contained in Principle 10 of the Rio Declaration, which also includes transparency, inclusiveness, and accountability. Access to environmental justice will involve expanding access to the formal justice system, expanding access to administrative justice, and expanding access to informal ways to resolve disputes and achieve fairness and equity.

9. Environmental tribunals and other forms of alternative dispute resolution may provide an expeditious mode of dispute resolution or adjudication that may avoid the formal judicial process altogether.

Environmental tribunals can often more expeditiously resolve disputes. Moreover, alternative dispute resolution is one way of increasing access to environmental justice since it encourages wider public participation, lowers standing requirements, reduces costs and time, and encourages parties to come up with mutually agreeable and enforceable solutions to problems.

10. Regional transjudicial networks have been touted as a new mode of global governance and can provide key ways of promoting environmental enforcement.

Transjudicial networks and organizations seek to serve similar purposes of sharing and exchanging their successes and challenges, and working together to improve their work in their own countries and in the region, and may serve as a locus for capacity building and bilateral exchanges.

Statement of Key Messages from Breakout Sessions

**Session on Challenges in Environmental Decision Making—
Expert Evidence and Remedies**

Expert Evidence

In most jurisdictions, the major challenges to obtaining expert evidence are the following:

- the difficulty in evaluating conflicting evidence from experts,
- the high cost of obtaining expert evidence, and
- the scarcity of experts in various technical fields.

To counter these challenges, the following are recommended:

1. Courts could direct all parties' experts to discuss the case to elicit an objective discourse on the points of conflict and simplify the issues.
2. Courts could draft internal guidelines on assessing credibility of experts to assist judges in zoning in on their expertise.
3. Courts could appoint a committee of experts to study the case and give a recommendation to the court.
4. Courts could prepare a register of experts from government scientific and technical institutions who could be tapped to act as experts.
5. Courts could convene panels and/or a division of judges from the court to brainstorm on what questions to ask experts.
6. Courts could partner with the academic and scientific community to tap scientists and researchers as experts in court cases.
7. Scientific and technical matters should be included in the environmental education for judges in their continuing professional development course.
8. Courts could appoint "in-house" technical experts who would advise the court on technical matters.

Environmental Remedies

Aside from New South Wales (Australia), Brazil, and the United States, most jurisdictions do not have special environmental remedies; thus, the challenge faced by most is the lack of legal tools to address environmental problems and harm. To address this, the following are proposed:

1. Policy makers should pass new laws providing (i) appropriate remedies to address environmental harm, and (ii) judges with wider latitude in imposing remedies in environmental disputes;
2. Judges should be challenged to think out of the box and be creative in imposing remedies. In environmental crimes, examples of penalties being imposed are the following:
 - a. community service;
 - b. environmental training for the offender;

- c. environmental audit;
- d. restoration of or establishment of alternative habitat;
- e. publication of the environmental crime and/or penalty; and
- f. advising offender's bank, or the stock exchange (if a publicly listed company) of its offense.

Session on Challenges in Dispute Resolution: Alternative Dispute Resolution

Alternative dispute resolution (ADR) is an effective method for resolving environmental disputes, in whole or in part, by consensus. The use of ADR can minimize delay, costs, and the use of court or tribunal resources, while achieving an appropriate outcome which is satisfactory to all parties. ADR should be readily accepted in Asia, given the cultural acceptance of the resolution of community disputes generally. There are, however, challenges to optimizing the use of ADR in environmental cases. To meet these challenges, it is recommended that

1. ECTs be invested with the power to refer matters to ADR;
2. ECTs be adequately resourced to offer court-assisted ADR, or have access to adequately resourced external ADR services;
3. the judges or members of the ECT and the parties to disputes be educated about the availability and benefits of ADR;
4. ADR be an integral part of case management of civil and administrative environmental disputes, where appropriate;
5. ADR services be provided free of charge, particularly where community litigants are involved;
6. those conducting ADR be neutral, have appropriate experience, and/or training in the resolution of environmental disputes, and be sensitive to the imbalance of power which often exists among parties to such disputes;
7. ADR of environmental disputes be carried out in a "problem solving" way, informed by relevant expertise, in order to achieve an appropriate environmental outcome, to the satisfaction of the parties; and
8. ADR in environmental disputes adopt uncomplicated procedures and be conducted in a timely way, with a minimum of expense.

Session on Challenges in Environmental Justice: Access to Justice

The major obstacles to access to justice are

- the lack of transparency in government agency databases (e.g., on air or water quality); permits and conditions; and the proceedings before courts and tribunals;
- the costs of filing suits, including the costs of filing, lawyer's fees, and the costs of marshaling evidence;
- filing procedures that are complicated and difficult for poor plaintiffs to understand;
- harassment of victims and litigants of environmental problems and/or cases by defendants or potential defendants;
- the lack of standing to file suit in some jurisdictions;
- the unclear jurisdiction of courts and tribunals and overlapping agency jurisdiction;
- corruption throughout the law enforcement chain; and
- illiteracy and language barriers by poor litigants.

The proposed solutions are the following:

1. To ensure transparency, policy makers need to enact or strengthen freedom of information laws, and policy makers, regulators, and enforcement agencies need to make available air and water quality data.
2. To help defray costs of suit, policy makers (i) provide for legal aid for environmental cases, (ii) strengthen and support civil society organizations (CSOs) to help the poor and marginalized gain access to justice, and (iii) provide access to formal and informal mechanisms such as consumer forums and mediation boards.
3. To address complicated procedures, policy makers and supreme courts need to simplify procedures through judicial and/or legislative interventions.
4. To address harassment, policy makers, the senior judiciary, regulators, and law enforcement officers need to protect litigants and victims from harassment.
5. To address standing, in countries where standing to bring a suit is still a problem, judicial and legislative interventions are needed to liberalize standing; however, in many Asian jurisdictions, formal

standing procedures have been opened up and are not a major obstacle.

6. To clarify jurisdictions of various courts and tribunals, policy makers and the senior judiciary need to issue guidelines or enact a comprehensive system of ECTs, where appropriate.
7. To address corruption, policy makers and the senior judiciary need to adopt system solutions for corruption, which is always a country-wide issue.
8. To address illiteracy and language barriers, the channel of communication, e.g., comics, graphics, or radio, must be chosen carefully to ensure that ways of accessing justice are effectively communicated.
9. A key and important message in enhancing access to justice is for CSOs to be strengthened to help ensure that citizens gain access to justice.

Session on Strengthening Judicial Capacity to Decide Environmental Cases and Resisting Threats to Integrity

Judicial Training and Capacity Building

The major challenges to judicial training and capacity building are

- the late entry of environmental law in the system of formal legal education;
- the majority of judges are essentially generalist judges called upon to decide a specialized branch involving the interface of natural and social sciences;
- judges are inadequately trained in (i) imposing remedies to address environmental harm when ordinary laws are not comprehensive enough to deal with environmental concerns, and (ii) interpreting complex environmental legislation and being asked to make an assessment of future needs to protect the environment and remedy environmental damage; and
- learning on-the-job is not an adequate source of training for judges.

There is a need to substantially train judges in diverse areas of environmental law, regardless of the volume of environmental cases handled.

Most jurisdictions have the institutional mechanisms for judicial training, but these need to be strengthened in the following areas: (i) knowledge

of the norms applied, (ii) knowledge on norms applied in the national and international context, (iii) knowledge on case studies in the region, (iv) techniques used by colleagues in the region in addressing environmental issues, and (v) adopting requisite remedies to address environmental wrongs.

Prosecutors must also be trained because they are involved in the enforcement of the regulatory mechanisms.

Allowing CSOs to participate in judicial training has advantages (there is a need to open up judicial training to the wider concerns of civil society) and disadvantages (issues on judicial independence). One important consideration is the careful selection of CSOs who would be given access to train judges, since there is a sensitivity involved in relation to the integrity of the judicial process.

Integrity of Judges and Threats to Integrity

Trust, confidence, and credibility in the adjudicatory process must be strengthened since these are the foundation of a system based on the rule of law.

Integrity of the judicial process lays the foundation of the rule of law in any society. An honest and credible judiciary would encourage victims of environmental problems to file complaints.

In relation to environmental litigation, there are two concerns:

- a. The nature of the activity sought to be regulated involves either (i) organized business and/or corporate interest, or (ii) illegal activity—in most societies, there is a nexus between those who indulge in illegal activity and the regulatory mechanisms that are put into place; and
- b. The ability of the victims of environmental harm or crime to complain is compromised because of poverty, ignorance, illiteracy, and/or the marginalized position they occupy in society. Therefore, litigants' perception of the adjudicatory process is important—if they trust the judges and judicial process, then they will come forward. Integrity of the judicial process lays the foundation of the rule of law in any society.

To ensure judicial integrity is upheld, erring judges must be dealt with swiftly using the disciplinary process.

Integrity of judges is a very complex issue and involves a number of procedures: (i) appointment of judges; (ii) manner of insulating judges

after the appointment process to protect their independence; and (iii) dealing with misdemeanor of judges and the disciplinary process. There are measures which may be implemented to protect the integrity of judges, e.g., adequate salaries and guarantees and independence from the political process; but ultimately, protecting integrity means dealing with erring judges swiftly through the disciplinary process; when there is a misdemeanor, there must be swift recourse to disciplinary action.

There is also a need to develop the integrity of judicial officers of quasi-judicial bodies, including specialized tribunals and mediation boards. These judicial officers are not governed by a code of conduct and, thus, mechanisms to promote integrity must be put in place.

Ultimately, integrity is not just a matter of legal guarantees but is a complex concept—an evolving social ethos involving political culture and the majority of society and, thus, the concept evolves and develops over time.

Integrity also necessarily includes efficiency and effectiveness in dealing with court cases; a court system which is not efficient and effective is as much a threat to integrity as one which does not have honesty.

The Need for a Judges' Network

There is a need for evolving a network of judges across and within the region.

Environmental concerns are universal and thus transcend jurisdictions, cultures, and society.

Having a judicial network would facilitate and enable judiciaries across the region to (i) share knowledge, (ii) exchange information, (iii) share training materials, (iv) participate in video conferencing, (v) participate in study tours, and (vi) share best practices in one's jurisdiction.

There are certain universal norms applied by judges in the environmental context, and it would be useful to share how judges have applied these norms, techniques used, and remedies adopted.

ADB Regional Technical Assistance Project Building Capacity for Environmental Prosecution, Adjudication, Dispute Resolution, Compliance, and Enforcement in Asia

Building on the work started by the technical assistance project Strengthening of Judicial Capacity to Adjudicate Upon Environmental

Laws and Regulations,²¹ ADB has approved a new technical assistance project: Building Capacity for Environmental Prosecution, Adjudication, Dispute Resolution, Compliance, and Enforcement in Asia.²² Effective judicial participation in ensuring environmental justice and the rule of law also depends upon other stakeholders doing their part to promote environmental governance. Thus, strengthening judicial capacity also requires strengthening various stakeholders responsible for environmental governance. Equally, to ensure environmental justice, there is also a need to strengthen the demand side by capacitating civil society which plays an important role in making justice accessible to the poor through their work in legal rights awareness. Through the regional technical assistance project, it is expected that there will be an increase in knowledge of adjudication and enforcement of environmental law at the regional and subregional (South and Southeast Asia) level through the sharing of best practices with the establishment of the Asian Judges Network on the Environment and the conduct of subregional roundtables and the second judges symposium in 2011 or early 2012.

²¹ ADB. 2009. *Technical Assistance for Strengthening of Judicial Capacity to Adjudicate Upon Environmental Laws and Regulations*. Manila.

²² ADB. 2010. *Technical Assistance for Building Capacity for Environmental Prosecution, Adjudication, Dispute Resolution, Compliance, and Enforcement in Asia*. Manila.

Part I

Background Paper

Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice

*Prepared as background for discussion at the Asian Judges Symposium
on Environmental Decision Making, the Rule of Law,
and Environmental Justice
Asian Development Bank Headquarters,
Manila, 28–29 July 2010*

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and Jackie Espenilla, Legal Researcher, Asian Development Bank²³

Abstract

The Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice is an opportunity for judges, environmental officials and decision makers, and civil society representatives from Australia, Bangladesh, Belgium, Brazil, the People’s Republic of China, France, India, Indonesia, Japan, the Republic of Korea, New Zealand, Pakistan, the Philippines, Sri Lanka, Thailand, and the United States to share cutting-edge experiences on the evolution of environmental jurisprudence and adjudication in their respective jurisdictions, and learn from prior successes and failures in facing the challenges of achieving effective environmental decision making. Their sharing will be supported by key development partners including the Asian Environmental Compliance and Enforcement Network, the Supreme Court of the Philippines, The Access Initiative of the World Resources Institute, the United Nations Environment Programme, and the United States Environmental Protection Agency. The symposium is the largest gathering of Asian judges and other legal stakeholders in Asia since the Johannesburg Global Judges Symposium, with about 50 judges and 110 participants in attendance.

²³ The views expressed in this paper are those of the authors and do not necessarily reflect the views and policies of the Asian Development Bank (ADB) or its Board of Governors or the governments they represent. ADB does not guarantee the accuracy of the data included in this paper and accepts no responsibility for any consequence of their use. Use of the term “country” does not imply any judgment by the authors or ADB as to the legal or other status of any territorial entity. The authors are grateful to Wanhua Yang for her helpful comments.

The symposium's emphasis is improving environmental and natural resource decision making and adjudication within Asian judiciaries, without assuming that any particular form or structure is the best way in any particular country context. It will highlight environmental specialization within general courts, as well as explore work done by specialist environmental courts, boards, and tribunals. Importantly, without drivers for increasing the demand for effective environmental judicial decision making from the judiciary, environmental judicial specializations could go unused. Hence, the symposium will look at demand-side drivers, including the role of civil society in creating this demand, and other informal ways to institutionalize access to environmental justice in developing Asia. Judges and key stakeholders will be asked to share their experiences in environmental adjudication and the challenges and needs that arise in doing their work. In developing this work, several key themes and messages arise as described below.

Key Themes and Messages

1. Environmental change and climate change within the Asian region compel an immediate and urgent response to implement strategies toward a more sustainable Asia.

With ever-worsening national, regional, and global environmental change, which is likely to be further exacerbated by climate change, many environmental challenges are not sufficiently addressed in existing policy and regulatory frameworks. If they have been adopted as laws, they have often not been translated into implementing rules and regulations at national, provincial, and local levels. Even where Asian countries have appropriate policy, legal, and regulatory frameworks, effective implementation, enforcement, and compliance continue to pose challenges.

2. Ensuring effective compliance and enforcement of environmental law requires ensuring that the complete environmental compliance and enforcement chain is effective.

Ensuring effective compliance and enforcement of environmental law requires ensuring that the complete enforcement chain works: from environmental, forest, and marine enforcement officials, to legal prosecutors, legal civil society professionals, and the judiciary. In increasing the effectiveness of environmental compliance and enforcement, each aspect of the enforcement chain needs to be considered separately and distinctly, and also with the integrity of an integrated chain. Without law enforcement officials effectively apprehending and prosecuting civil and criminal offenders, the judiciary has no cases to hear. Similarly, if legal civil

society has limited capacity, or no rights to bring civil or administrative cases, the environmental cases brought before the courts will be limited. However, if enforcement officials and civil society effectively play their role, they need to be confident that the outcomes of filing cases in court will be worth the time and expense: they, and the community as a whole, need to perceive the entire judiciary as having the integrity and skills required to dispose of environmental cases effectively.

3. Judges play a key and unique role in improving environmental enforcement and must be given some dedicated attention.

The senior judiciary in Asia—as leaders of the legal profession in Asian countries—plays a key role in improving environmental enforcement not only by their direct actions in making environmental decisions, or developing environmental jurisprudence, or establishing environmental courts, but also by championing and leading the rest of the legal profession toward credible rule-of-law systems that have integrity and promote environmental sustainability. They also issue rules and directions to lower courts which affect their priorities and often play a role in judicial education. Thus, their influence is direct and indirect. All these influences affect not only the courts, but also the way the legal system operates and the way that sector lawyers, such as environmental, water, and energy lawyers, understand the legal and regulatory frameworks and how they should be enforced. Moreover, this affects private sector investment in related sectors. Because its role is unique, aspects of strengthening its capacity also need dedicated attention.

4. The Johannesburg Principles on the Role of Law and Sustainable Development continue to be relevant.

In August 2002, more than 120 senior judges from around the world, including many from the Asia and Pacific region, met at the Global Judges Symposium immediately prior to the World Summit on Sustainable Development in Johannesburg South Africa in 2002. At the 2002 Global Judges Symposium, participants committed to the Johannesburg Principles on the Role of Law and Sustainable Development. In those principles, participating judges fully committed to using their judicial mandate to realize sustainable development to implement, develop, and enforce the law, and to uphold the Rule of Law and democratic processes. They also agreed that judicial education and training on environmental law through regional and subregional initiatives is urgently needed, and that judges need to collaborate within and across regions to improve enforcement, compliance, and implementation of environmental law.

5. Ensuring access to environmental justice, pathbreaking environmental jurisprudence, and effective routine environmental decision making and environmental dispute resolution need different institutional forms in different contexts.

Environmental courts and tribunals (ECTs) are one way of achieving effective environmental adjudication and dispute resolution and have many advantages. In developing Asia, a key advantage is that resources for capacity building and environmental law expertise may be concentrated upon a smaller number of judges who are specifically selected for their integrity and environmental expertise. However, ECTs may not be necessary and are not sufficient for good environmental adjudication and dispute resolution. General courts, environmental courts, environmental tribunals, and environmental divisions of general courts (“green benches”), and grassroots alternative dispute resolution or outreach are all possible ways of resolving environmental disputes.

6. Judicial education in Asia needs to mainstream and integrate environmental training throughout the process.

Judicial education in Asia will require institutionalized forms of environmental law training, together with training on the techniques of environmental litigation and dispute resolution. Curriculum will need to be designed for (i) cadre or candidate judges, (ii) continuing legal education, and (iii) environmental law specialist judges. It will need to be conducted as part of an institutionalized ongoing scheme, including monitoring, evaluation, feedback, and retraining.

7. Integrity within the entire chain of environmental enforcement and within the justice system is critical to ensuring effective environmental enforcement

Many environmental enforcement problems relate to a lack of integrity, and the presence of corruption or crimes, such as illegal logging, illegal mining, and illegal fishing, that go unenforced for a range of reasons including bribes. Justice will be thwarted if there is corruption anywhere throughout those systems. A clean judiciary is critical, but it is also embedded within the broader system of the rule of law, and is influenced by wider social attitudes on integrity and corruption. In an effort to promote integrity, in 2000, senior judges from several African and Asian countries formed the Judicial Group on Strengthening Judicial Integrity, under the auspices of the Global Programme against Corruption of the United Nations Office for Drug Control and Crime Prevention, and developed the Bangalore Principles of Judicial Conduct. Widely regarded as the international norm, these

principles highlight independence, impartiality, integrity, propriety, equality, and competence and diligence as key values and can be used as the basis for promoting judicial integrity.

8. Expanding access to environmental justice involves the formal justice and administrative justice system and informal ways to resolve disputes.

Access to justice is a key pillar of environmental governance contained in Principle 10 of the Rio Declaration, which also includes: transparency, inclusiveness, and accountability. Access to environmental justice will involve expanding access to the formal justice system, expanding access to administrative justice, and expanding access to informal ways to resolve disputes and achieve fairness and equity.

9. Environmental tribunals and other forms of alternative dispute resolution may provide an expeditious mode of dispute resolution or adjudication that may avoid the formal judicial process altogether.

Environmental tribunals can often more expeditiously resolve disputes. Moreover, alternative dispute resolution is one way of increasing access to environmental justice since it encourages wider public participation, lowers standing requirements, reduces costs and time, and encourages parties to come up with mutually agreeable and enforceable solutions to the problems.

10. Regional transjudicial networks have been touted as a new mode of global governance and can be key ways of promoting environmental enforcement.

Transjudicial networks and organizations seek to serve similar purposes of sharing and exchanging their successes and challenges, and working together to improve their work in their own countries and in the region, and may serve as a locus for capacity building and bilateral exchanges.

Background Paper

Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice

*Prepared as background for discussion at the Asian Judges Symposium
on Environmental Decision Making, the Rule of Law,
and Environmental Justice
Asian Development Bank Headquarters, Manila, 28–29 July 2010*

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Asia is distinguished by unique ecological diversity. Asian countries collectively possess 20% of the world's biodiversity,²⁵ 14% of the world's tropical forests,²⁶ and 34% of global coral resources.²⁷ However, Asia has experienced dramatic environmental change over the last 30 years. These changes were brought about by its rapid economic and industrial development. Asia's developing economies are now characterized by desertification, deforestation, water scarcity, natural resource exploitation, urban air pollution, and hazardous waste contamination.²⁸

Moreover, Asia's contribution to global climate change will increase over the next 20 years,²⁹ and climate change will worsen all preexisting environmental

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²⁵ ASEAN Centre for Biodiversity. *ASEAN's Rich Biodiversity*, www.aseanbiodiversity.org/index.php?option=com_content&view=article&id=79:acb-asean-rich-biodiversity&catid=69:acb-presskit&Itemid=98

²⁶ Food and Agriculture Organization of the United Nations (FAO). 2000. *Global Forest Resources Assessment 2000*. Rome. www.fao.org/forestry/fra/2000/report/en/

²⁷ See Laretta Burke and Mark Spalding. 2002. *Reefs At Risk in South East Asia*. World Resources Institute, February. www.wri.org/publication/reefs-risk-southeast-asia

²⁸ See World Bank. 2005. *Environmental Challenges of Development in the East Asia and Pacific Region*. Environment Strategy for East Asia and the Pacific. http://siteresources.worldbank.org/INTEAPREGTOPENVIRONMENT/Resources/EAP_Env_Strat_Chap_1.pdf (last accessed 19 July 2010).

²⁹ See M. den Elzen et al. 2005. Analyzing countries' contribution to climate change: scientific and policy-related choices. *Environmental Science & Policy*. 8 (6). pp. 614–636.

problems within Asian countries. This will require Asian countries to adapt, and will in addition lead to large-scale human migration to avoid natural disasters and the worst effects of climate change. All such environmental problems further manifest in their effects not only on the environment in general but also on the quality of life of the peoples of Asia.

Water pollution and poor watershed and forest management have led to water scarcity and subsidence of the water table in Indonesia and the Philippines leaving poor-quality raw water and lack of supply of drinking water. Coal-fired power stations and industrial facilities contribute to excessive air pollution in all major Asian cities leading to significant health impacts for residents.

Natural resources are often illegally obtained and unsustainably extracted affecting Asian living standards. Illegal and unsustainable land clearing and exploitation of tropical forests destroys 200,000 hectares or at least 1% of its forest cover each year,³⁰ guaranteeing an annual decline in endemic species, and prevents forest-dwelling peoples from earning an income. Large illegal fishing operations also overharvest fish and other marine stocks, leading to coral degradation and destruction of marine ecosystems, and declines in the living standards of fishing communities who rely on marine resources for income and sustenance. Mining and oil exploration and development have led to further water and air pollution, land degradation, and biodiversity loss with similar effects on people.

Despite varying levels of development in different Asian countries, regional environmental problems consistently cluster in the same areas: air and water pollution, waste management, and unsustainable natural resource exploitation. These areas suggest disputes and unresolved tensions between competing economic development goals as well as forest, mining, and marine crimes, all of which compel further attention to environmental regulatory systems, and compliance and enforcement thereof, throughout all stages of the environmental enforcement chain.

Beginning in the early 1970s, following the Stockholm Conference on the Human Environment in 1972,³¹ Asian countries began adopting environmental policy and regulatory frameworks. In response to the 1992 United Nations Conference on Environment and Development, they adopted the 1992 United Nations Framework Convention on Climate Change and later other international laws. Further momentum for Asian countries to adopt new national policies and laws increased. Similarly, some revisions

³⁰ FAO. 2005. *Global Forest Resources Assessment 2005*. Rome. www.fao.org/forestry/fra/fra2005/en/

³¹ United Nations General Assembly. 1972. Report on the United Nations Conference on the Human Environment. www.un.org/documents/ga/conf151/aconf15126-1annex1.htm

to preexisting regulatory frameworks followed the 2002 World Summit on Sustainable Development, and a recent wave of Asian regulatory reform has seen many countries adopt regulatory frameworks on renewable energy and energy efficiency.³²

However, with ever-worsening national, regional, and global environmental change, which is likely to be further exacerbated by climate change, many environmental challenges are not sufficiently addressed in existing policy and regulatory frameworks. If they have been adopted as laws, they have often not been translated into implementing rules and regulations at national, provincial, and local levels. Even where Asian countries have appropriate policy, legal, and regulatory frameworks, effective implementation, enforcement, and compliance continue to pose challenges.

Ensuring effective compliance and enforcement of environmental law requires ensuring that the complete enforcement chain works: from environmental, forest, and marine enforcement officials, to legal prosecutors, legal civil society professionals, and the judiciary. In increasing the effectiveness of environmental compliance and enforcement, each aspect of the enforcement chain needs to be considered separately and distinctly, and also with the integrity of an integrated chain. Without law enforcement officials effectively apprehending and prosecuting civil and criminal offenders, the judiciary has no cases to hear. Similarly, if legal civil society has limited capacity, or no rights to bring civil or administrative cases, the environmental cases brought before the courts will be limited. However, if enforcement officials and civil society effectively play their role, they need to be confident that the outcomes of filing cases in court will be worth the time and expense: they, and the community as a whole, need to perceive the entire judiciary as having the integrity and skills required to dispose of environmental cases effectively.

Thus, while effective judicial participation in enhancing environmental governance and the rule of law depends upon other arms of the environmental compliance and enforcement chain, the judiciary also plays a unique and distinct leadership role.

The chief justices and senior judiciary lead the legal profession in their respective jurisdiction in shaping normative interpretations of legal and regulatory frameworks. They also issue rules and directions to lower courts which affect their priorities and often play a role in judicial education. Thus, their influence is direct and indirect. All these influences affect not only

³² K. Mulqueeny. 2010. Clean Energy Governance and Regulation in the Asia-Pacific Region. Background paper for the Asia-Pacific Dialogue on Clean Energy Governance and Regulation at the Asian Development Bank. Manila. 21–22 June. www.adb.org/Documents/Conference/Clean-Energy-Governance/background-paper.pdf

the courts, but the way the legal system operates, and the way that sector lawyers, such as environmental, water, and energy lawyers, understand the legal and regulatory frameworks and how they should be enforced. Moreover, this affects private sector investment in related sectors.

The critical role of the judiciary in environmental governance and sustainable development is well recognized.³³ Its important role led the United Nations Environment Programme (UNEP) to convene more than 120 senior judges from around the world, including many from the Asia and Pacific region, at the Global Judges Symposium immediately prior to the World Summit on Sustainable Development in Johannesburg, South Africa, in 2002. At the Global Judges Symposium, participants committed to the Johannesburg Principles on the Role of Law and Sustainable Development. In those principles, participating judges fully committed to using their judicial mandate to realize sustainable development to implement, develop, and enforce the law, and to uphold the Rule of Law and democratic processes.³⁴ They also agreed that judicial education and training on environmental law through regional and subregional initiatives is urgently needed,³⁵ and that judges need to collaborate within and across regions to improve enforcement, compliance, and implementation of environmental law.³⁶

In the lead-up to the Global Judges Symposium on the Role of Law and Sustainable Development, UNEP also convened several regional judicial meetings around the world including in Asia: a meeting for countries in South Asia, organized in collaboration with the South Asia Co-operative Environment Programme, was held in Colombo, Sri Lanka, in July 1997; a meeting for judges from the Southeast Asian countries was held in Manila, Philippines in March 1999; and a meeting for judges from Pacific island states was held in Brisbane, Australia, in February 2002.³⁷ In June 2004, the World Bank Institute convened a gathering for Southeast Asian countries on the Role of the Judiciary in Promoting Sustainable Development in Bangkok, Thailand. Subsequently, in July 2007, the Supreme Court of the Philippines and the Philippine Judicial Academy convened an Asian justices forum on

³³ See e.g., B. Preston. 2005. The Role of the Judiciary in Promoting Sustainable Development: The Experience of Asia and the Pacific. *Asia Pacific Journal of Environmental Law*. 9 (2, 3). pp. 113–114.

³⁴ Principle 1 of the Johannesburg Principles on the Role of Law and Sustainable Development adopted at the Global Judges Symposium, held in Johannesburg, South Africa, on 18–20 August 2002, www.unep.org/law/Symposium/Documents/RESOLUTION%201-FINAL%2020%20AUGUST.doc

³⁵ Footnote 33. Principle 3.

³⁶ Footnote 33. Principle 4.

³⁷ UNEP Executive Director's Background Paper to the Global Judges Symposium, Global Judges Symposium on Sustainable Development and the Role of Law in Johannesburg, South Africa, 18–20 August 2002.

the environment in Manila,³⁸ and a similar follow-up event was convened in 2009.

These regional events have helped gather momentum for further work on the judiciary and environmental law, and in recent years, public interest litigation in courts in Asia has increased, leading to evolving environmental jurisprudence within the region—in some countries emergent and in others sophisticated. These public interest cases, together in some cases of dramatic incidences of water or air pollution have also led to increased demand for environmental specialization in general courts, which has taken the form of “green benches” within these courts. It has also increased demand and the perceived need for the establishment of environmental courts and tribunals (ECTs). Similarly, this has led courts in Asia to consider establishing environmental rules of procedure for their courts to further institutionalize the processes for resolving environmental law cases. However, there is still considerable work to do in terms of institutionalizing the systems and processes for ensuring Asian judges have the capacity to decide environmental cases, and that a sufficiently large docket exists for them to review.

The Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice is the largest gathering of Asian judges and other legal stakeholders in Asia since the Johannesburg Global Judges Symposium, with about 50 judges and 110 participants. It seeks to advance on these past events and conferences by starting where these past events left off, recognizing the importance of environmental adjudication and working not only to share experience, but also to collectively achieve a consensus on the implementation challenges of promoting more effective environmental enforcement by the judiciary and how to achieve more effective environmental decision making, rule of law, and access to justice.

Session 1

Innovations in Environmental Jurisprudence: Landmark Cases

The judiciary plays a key role in meeting environmental enforcement and compliance challenges, because it is a way to (i) give effect to constitutional protections, (ii) introduce international environmental law in national jurisprudence, and (iii) provide concrete remedies to prevent environmental harm or compensate for it.³⁹ Typically driven by environmental public interest

³⁸ See <http://sc.judiciary.gov.ph/publications/benchmark/2007/07/070703.php> (sponsored by AECEN, USAID, EPA, Asia Pacific Jurist Association (APJA), and the Supreme Court Program Office).

³⁹ See e.g., L. Kurukulasuriya. 2003. *The Role of the Judiciary in Promoting Environmental Governance and the Rule of Law*. October.

lawyers, many landmark cases have been decided. In Asia, many senior judiciaries have interpreted their respective constitutions to afford a right to a healthy environment, whether or not this is express.⁴⁰ Similarly, landmark decisions have introduced principles of international environmental law from the Stockholm and Rio Declarations⁴¹ such as “inter-generational responsibility,”⁴² “the precautionary principle,”⁴³ and “the polluter pays principle” which has been applied to preserve cultural heritage like the Taj Mahal and the Ganges River.⁴⁴ They have also introduced innovative remedies such as the “writ of continuing mandamus,” which has been applied in India and to institute the cleanup of Manila Bay in the Philippines.⁴⁵ Additionally, the doctrine of public trust, whereby the government holds natural resources for the benefit of the public and preserves their use, has been adopted in Sri Lanka and several other Asian jurisdictions.⁴⁶ By sharing landmark judicial decisions from Brazil, the People’s Republic of China, Indonesia, the Philippines, and Sri Lanka, and this session will introduce the drivers that bring such novel innovations to court, and will highlight several of these innovations.

Sessions 2–4 and 6

Evolution of Judicial Specialization in Environmental Law

Environmental jurisprudence—or the case law reflecting the cases and thinking or ideology behind environmental decision making—is not synonymous with the institutional form or structure of the decision-making body. Access to environmental justice, pathbreaking environmental jurisprudence, and effective routine environmental decision making and environmental dispute resolution can be facilitated by different forms. General courts, environmental courts, environmental tribunals, environmental divisions of general courts (“green benches”), and grassroots alternative dispute resolution or outreach are all possible ways of resolving environmental disputes.

⁴⁰ E.g., *Oposa vs. Factoran*, G.R. No. 101083 (S.C. 30 July 1993) (Phil.); *M.C. Mehta vs. Union of India*, Judgment of 22 September 1987, AIR 1988 SC 1037, 1045 (Kanpur Tanneries case); *Dr. Mohiuddin Farooque vs. Bangladesh and Others*, Civil Appeal No. 24 of 1995, 17 BLD (AD) 1997, Vol. XVII, pp. 1–33; 1 BLC (AD) (1996), pp. 189–219, 1996.

⁴¹ Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), UN Doc. A/Conf.48/14/Rev. 1(1973); 11 ILM 1416 (1972); Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (Vol. I); 31 ILM 874 (1992).

⁴² *Oposa*, *supra* note 40.

⁴³ *Mandalawangi case* (2003), Indonesian Supreme Court.

⁴⁴ *M.C. Mehta vs. Union of India* W.P. 13381/1984 (30 December 1996); AIR 1997 SC 734 (known as the Taj Trapezium case.); *M.C. Mehta vs. Union of India* (AIR 1988 SC 1115) and *M.C. Mehta vs. Union of India* (AIR 1988 SC 1037).

⁴⁵ *Concerned Residents of Manila Bay vs. MMDA*, G.R. Nos. 171947-48, (8 December 2008).

⁴⁶ *Bulankulama vs. Secretary, Ministry of Industrial Development (Eppawela Case)* Application No. 884/99, Supreme Court of Sri Lanka 243 (7 April 2000).

ECTs are one way of achieving effective environmental adjudication and dispute resolution and have many advantages. In developing Asia, a key advantage is that resources for capacity building and environmental law expertise may be concentrated upon a smaller number of judges who are specifically selected for their integrity and environmental expertise. However, ECTs may not be necessary and are not sufficient for good environmental adjudication and dispute resolution. For example, the European Union has largely not used environmental courts, but has developed a system of environmental jurisprudence and decision making that is notable. Similarly, the United States rejected the idea of a national environmental court, but has developed strong environmental case law without one (although the Environmental Appeals Board of the United States Environmental Protection Agency, which reviews appeals on water and air pollution cases, has served as the principal environmental tribunal for these matters, with litigants rarely seeking to appeal its decisions to federal courts).⁴⁷

These sessions seek to introduce the evolution of environmental jurisprudence within different countries and to understand how that evolving jurisprudence either arose from particular judicial structures, or contributed to the establishment of different structures, such as, environmental courts, green benches within generalist courts, and other forms of environmental specialization. Moreover, the Asian panels in the symposium are designed to do this from a range of perspectives, including the perspective of a senior judge, a district or trial court judge, a public interest environmental lawyer, and, where possible, a representative from an environment ministry. The international panels in this session will share their experience of environmental jurisprudence and the functioning of their respective environmental court. Set out below is a brief overview of the movements toward judicial specialization in the various Asian panels.

Session 2

Evolution of Judicial Specialization in Environmental Law

India

The Supreme Court of India has the responsibility to protect the rights enshrined in the constitution. In performing this role, it has played a significant part in protecting individual rights and the public interest across a range of disciplines, including, over the past 25 years, environmental protection.⁴⁸ As

⁴⁷ A.L. Wolgast, K.A. Stein, and T.R. Epp. 2010. The United States' Environmental Tribunal: The Environmental Protection Agency's Environmental Appeals Board, paper prepared for Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice in Manila, Philippines, 28–29 July 2010.

⁴⁸ G. Sahu. 2008. Implications of Indian Supreme Court's Innovations for Environmental

a court of general jurisdiction, it has proactively interpreted the constitution's guarantee of a right to life, as including a right to a wholesome and pollution-free environment, deciding many environmental cases with unique and novel judicial innovations. These cases have served as landmark precedents within India and internationally. Thus, Indian environmental jurisprudence is characterized by innovations that imbue international environmental law principles into decisions,⁴⁹ give expansive constitutional interpretation,⁵⁰ dispense with procedural barriers for public interest litigants to access the courts to avoid environmental issues, by both taking notice of news items⁵¹ and allowing litigants to petition the court through a simple letter,⁵² and provide ongoing supervision of environmental cleanup post decision.⁵³ Most environmental lawyers regard these cases as progressive and pathbreaking, yet some have been concerned that they are "contrary to the traditional legalistic understanding of the judicial function."⁵⁴

In 2010, the legislature adopted the National Green Tribunal Act of 2010, which was subsequently approved by the President.⁵⁵ The act established a National Green Tribunal (NGT), with four circuit benches, to expeditiously dispose of civil environmental cases.⁵⁶ It will comprise judges and experts (scientists or engineers) to be hired and let go by the government.⁵⁷ The NGT has jurisdiction over civil cases that have a substantial question relating to the environment under environmental laws on air and water pollution,⁵⁸ the Environment Protection Act, the Forest Conservation Act, and the Biodiversity Act, and appellate jurisdiction over decisions of government

Jurisprudence. *Law, Environment and Development Journal*. 4 (1). www.lead-journal.org/content/08001.pdf

⁴⁹ See e.g., *Narmada Bachao Andolan vs. Union of India* AIR 2000 SC 2751, 3804 (defining "Sustainable Development"); *Indian Council for Environmental Legal Action vs. Union of India* (1996) 2 JT (SC) 196: (1996 AIR SCW 1069) (adopting the polluter pays principle); *Vellore Citizens Welfare Forum vs. Union of India*, AIR 1996 SC 2715, 821[37]–[39] (declaring that the precautionary principle is part of the law of India).

⁵⁰ *M.C. Mehta vs. Union of India*, Judgment of 22 September 1987, AIR 1988 SC 1037, 1045 (Kanpur Tanneries case).

⁵¹ *M.C. Mehta vs. Kamal Nath & Others*, (1997) 1 SCC 388.

⁵² *Rural Litigation and Entitlement Kendra vs. State of Uttar Pradesh*, AIR 1988 SC 2187. 2189[1].

⁵³ *T.N. Godavarman Thirumulpad vs. Union of India*, W.P. No. 202 of 1995 (Continuing mandamus).

⁵⁴ Sahu, *supra* note 48, at p. 4.

⁵⁵ The National Green Tribunal Act, No. 19 of 2010, India Code.

⁵⁶ Footnote 55, Section 3.

⁵⁷ Footnote 55, Section 4.

⁵⁸ Footnote 55, Section 14(1).

environmental authorities.⁵⁹ The government establishes its rules, and the Supreme Court will hear appeals.⁶⁰

People's Republic of China

The Constitution of the People's Republic of China (PRC) recognizes the state's responsibility to protect and improve the living and ecological environment, prevent and control pollution and other public hazards, and organize and encourage forest protection and afforestation.⁶¹ However, the PRC has experienced significant environmental problems stemming from rapid economic development, including air and water pollution, significant greenhouse gas emissions, desertification (particularly in the western provinces), and water scarcity. The PRC's increasing environmental problems have led to a growing number of environmental disputes. Most of these disputes are resolved through the administrative process. However, the amount of environmental litigation has been increasing, with those going to court typically filed and determined in courts of general jurisdiction—the people's courts. In 2005, the number of recorded environmental disputes heard in the general people's courts reached a record of nearly 700,000, and the average number of environmental disputes has been increasing by 25% each year since 1998.⁶² Moreover, while public interest litigation is not widespread, the Center for Legal Assistance to Pollution Victims has had some notable successful environmental cases.⁶³ A 2010 study suggested the challenges of resolving environmental disputes within general people's courts are that judges often lack training in environmental laws, refuse to accept environmental cases, or make decisions inconsistent with other precedent.⁶⁴

In addition to general courts, the Supreme People's Court has formally recognized specialist maritime courts and forest courts. Moreover, triggered principally by serious environmental pollution accidents, 11 environmental courts established mostly within the last 15 years, have been created to determine administrative, civil, and criminal cases, with provincial plans for

⁵⁹ Footnote 55, Section 16.

⁶⁰ Footnote 55, Section 22.

⁶¹ Article 26 [CITE] <http://english.people.com.cn/constitution/constitution.html>

⁶² T. Lin et al. 2009. *Green Benches: What Can the People's Republic of China Learn from Environment Courts of Other Countries?* Manila: ADB. p. 5.

⁶³ C. Wang. 2007. The Role of Law in Environmental Protection in China: Recent Developments. *Vermont Journal of Environmental Law*. 8 (2). 159. pp. 178–183.

⁶⁴ Footnote 62, pp. 9–10.

new environmental courts.⁶⁵ However, the legal power and authority for environmental courts is not clear.⁶⁶

Session 3

Evolution of Judicial Specialization in Environmental Law

Philippines

In the Philippines, a progression of environmental nongovernment organizations litigated landmark cases, which together with a succession of progressive environmental chief justices championed environmental justice and law. This partnership led to evolving environmental jurisprudence, the creation of environmental courts, and rules of procedure which would in effect make it easier for environmental plaintiffs to access environmental justice.

The 1987 Philippine Constitution provides that “the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”⁶⁷ The landmark environmental case in the Philippines is the 1993 *Oposa Factoran* decision, in which the Supreme Court famously recognized the standing of several minors to sue on their own behalf and on behalf of “generations yet unborn.”⁶⁸ While the legal significance of this case cannot be overemphasized, it was not the first instance that the court upheld the importance of environmental protection, but continued a series of similar cases that pre-dated *Oposa*.⁶⁹ More recently, in December 2008, the Supreme Court delivered judgment on *MMDA vs. Concerned Residents of Manila Bay*, where the court said that the maintenance of Manila Bay free from pollution was a ministerial duty that the respondents were required to uphold and granted a request for a continuing mandamus, allowing the court to monitor the implementation of its decision through a committee.

⁶⁵ Footnote 62, p 2; A.L. Wang and J. Gao. 2010. Environmental Courts and the Development of Environmental Public Interest Litigation in China, paper prepared for Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice in Manila, Philippines, 28–29 July 2010.

⁶⁶ Personal Communication, Xiaohua Peng, Lead Counsel, ADB, to author, 2 June 2010 (suggesting that there is no concept of green bench or environmental courts or tribunals under the guidance of the Supreme People’s Court); see also Wang and Gao, 2010, footnote 65.

⁶⁷ Philippine Constitution (1987), Article II, Sec. 16.

⁶⁸ *Oposa v. Factoran*, G.R. No. 101083 (Supreme Court of the Philippines, 30 July 1993).

⁶⁹ *Director of Forestry v. Munoz*, G.R. No. L-24796 (Supreme Court of the Philippines, 28 June 1968); *Tan vs. Director of Forestry*, G.R. No. L-24548 (27 October 1983); *Laguna Lake Development Authority vs. Court of Appeals*, G.R. No. 110120 (16 March 1994).

Over this period, the Philippine Judicial Academy also conducted environmental training of judges of their own initiative and in conjunction with development partners.

Arising from the evolving environmental jurisprudence and public interest litigations, in January 2008, the Chief Justice designated 117 municipal and regional trial courts across the country as environmental courts. In April 2009, the Supreme Court of the Philippines, together with other development partners, conducted the Forum on Environmental Justice, which initiated work on environmental rules of procedure championed by the Chief Justice.

In April 2010, the Supreme Court of the Philippines adopted its new Rule of Procedure for Environmental Cases, which features many best practices in environmental adjudication, including provisions preventing strategic legal actions against public participation; a statement adopting the precautionary principle and an environment protection order, which empowers a court to direct or enjoin any person or government agency to perform an act to protect, preserve, or rehabilitate the environment, or stop performing an act that causes it harm; a *Writ of Continuing Mandamus* (which allows the court to compel the performance of an act specifically required by law, and to also retain its jurisdiction after judgment to monitor compliance with the decision) and a *Writ of Kalikasan* (which means nature), which seeks to protect the constitutional right of persons to a balanced and healthy ecology by directing a private person, an entity, or a public official to perform a lawful act, or stop committing an unlawful act, involving environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces. The new rule also has provisions to expedite the hearing of environmental cases, including a 1-year period to try and decide the case.

In addition to the environmental courts, forestry courts had earlier been designated, but were never fully operational. Moreover, two quasi-judicial bodies deal specifically with environmental protection. These are found within the framework of the Department of Environment and Natural Resources: the Pollution Adjudication Board (PAB)⁷⁰ and the Mines Adjudication Board (MAB).⁷¹ The PAB is co-equal with a regional trial court⁷²

⁷⁰ Providing for the Organization of the Department of Environment, Energy and Natural Resources; Renaming it Department of Environment and Natural Resources and for Other Purposes, Executive Order 192, Sec.19 (1987).

⁷¹ See www.mgb.gov.ph/Files/Policies/Significant%20Provisions.pdf

⁷² Providing for the Revision of Republic Act No. 3931, commonly known as the Pollution Control Law, And for Other Purposes, Presidential Decree No. 984, Sec. 7 (d) (1976).

and has original jurisdiction over air and water pollution cases.⁷³ It has the power to issue cease and desist orders, directing the discontinuance of the emission or discharge of pollutants or the temporary cessation of operation of the establishment or person generating such pollutants. The PAB may also impose fines based on environmental damage caused. Meanwhile, the MAB has appellate jurisdiction over the resolution of the Panel of Arbitrators in each Department of the Environment and Natural Resources regional office regarding mining disputes.⁷⁴ Like the PAB, the MAB has the power to enjoin any or all acts involving or arising from any case pending before it which may cause grave or irreparable damage to any of the parties to the case or seriously affect social and economic stability.⁷⁵

Session 4

Evolution of Judicial Specialization in Environmental Law

Thailand

Thailand's 2007 Constitution lays the framework for broad environmental governance and individual rights of participation and rights to environmental quality. During the 1990s and 2000s, several environmental cases were litigated in the Supreme Court and the administrative courts, giving effect to these protections.⁷⁶ More recently, in the Map Tha Phut case, the Supreme Administrative Court stopped 65 of the 76 industrial development projects not following the constitutional requirement of a rigorous environmental impact assessment analysis.

Thailand, a civil law jurisdiction, has three different court systems: the Supreme Courts of Justice, the Supreme Administrative Courts, and the Constitutional Court. The Thailand Supreme Court is a general court with jurisdiction over cases not falling within the jurisdiction of the other courts. It has established 11 green benches: 1 at the supreme and 10 at the appellate level, with green benches at the trial level currently being considered. The Thai Supreme Administrative Court is a general administrative court whose jurisdiction includes environmental cases relating to administrative actions of government officials. It has established one green bench at the trial

⁷³ An Act Creating the National Water and Air Pollution Control Commission, Republic Act No. 3931 (1964); An Act Providing for a Comprehensive Water Quality Management and for Other Purposes, Republic Act No. 9275 (2004); An Act Providing for a Comprehensive Air Pollution Control Policy and for Other Purposes, Republic Act No. 8749 (1999).

⁷⁴ An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation, Republic Act No. 7942, Section 78 (1995).

⁷⁵ Footnote 74, Section 79(c)(2).

⁷⁶ E.g., Klity Creek Judgment, Victory for Local Residents in Klity Creek Case, www.angkor.com/2bangkok/2bangkok/forum/showthread.php?t=3558

court level, in the Central Administrative Court in Bangkok. At the Supreme Administrative Court level, while no environmental bench has yet been established, a proposal to achieve this has been discussed.

The green benches established under the two court systems currently do not have separate legal standing and separate rules or procedure. However, the Supreme Court is developing new procedural rules for its green benches that would address standing, evidence, and other issues.

Session 6

Judicial Specialization in Environmental Law

Indonesia

The judiciary has a significant potential role to assist enforcement and compliance of the natural resources and environmental laws of Indonesia. In 2003, in the landmark Mandalawangi case, the Supreme Court affirmed the application of the precautionary principle. However, Indonesia loses 1.08 million hectares of forests each year.⁷⁷ Local peatland conversion has become the single biggest source of greenhouse gases in Indonesia, accounting for roughly 60% of emissions.⁷⁸ Indonesia's mangrove forests have declined by 59% in the 12-year period from 1993 to 2005.⁷⁹ Many environmental problems relate to coastal and marine resources, with 40% of Indonesia's coral reefs severely damaged and 29.2% moderately damaged.⁸⁰ Commercially viable fish populations are already exploited at unsustainable levels, leaving subsistence-level fishers vulnerable.⁸¹ Indonesia's fresh water sources have also been given scant attention; 60%–70% of the country's fresh water is sourced from lakes that suffer from high siltation rates, while Jakarta's raw water is heavily polluted. Thus, there is a need to improve environmental enforcement along the full chain.

During 1998–2005, Indonesia provided 6-day environmental law training courses, led by the Indonesia Center for Environmental Law for members of the legal profession including the judiciary.⁸² Over 1,500 people and about 600 judges were trained; however, the vast majority are not currently

⁷⁷ ADB. 2010. Country Environment Note: Indonesia (June).

⁷⁸ National Council on Climate Change and United Nations Framework Convention on Climate Change. 2009. National Economic, Environment and Development Study (NEEDS) for Climate Change. Indonesia Country Study. Final Report (December).

⁷⁹ AECEN. 2008. *Environmental Compliance and Enforcement in Indonesia Rapid Assessment* (November).

⁸⁰ ADB. 2010. Country Environment Note (June).

⁸¹ Ministry of Marine Affairs and Fisheries (Kelautan dan Perikanan dalam Angka). 2009; quoting 2006 data from the Komisi Nasional Pengkajian Sumber Daya Ikan.

⁸² The Australian Agency for International Development funded these programs.

deciding environmental cases. Since the early 2000s, the Indonesia Center for Environmental Law has also worked with the Supreme Court and the Ministry of Environment to drive a program to establish a form of green bench. Constitutional constraints prevent easy establishment of a green court; however, the potential exists to establish green benches (or divisions), within the existing general and administrative court structure. As an initial step, in late 2009, the Ministry of Environment and the Supreme Court entered into a memorandum of understanding to establish an environmental certification program and develop rules on the handling of environmental cases. As a result, in March 2010, the Chief Justice established a high-level task force and working group, including senior members of the judiciary and senior officials from the Ministry of Environment, to oversee the certification program and the development of the new rules. The group is to consider these issues and report back by the end of the year.

Current work is examining preexisting certification programs for forests, commercial law, anticorruption activities, and other specialist areas to determine an appropriate model. The certification program would certify judges as possessing environmental expertise after they have completed a series of training courses and they would be subject to ongoing conditions to retain their environmental expert status. If the conditions are breached, the ultimate sanction would be for the certificate to be revoked. This environmental judicial certification scheme would seek to strengthen the capacity of the judiciary in handling environmental cases, by institutionalizing environmental training and ensuring that only trained (expert) judges decide environmental and natural resource cases. The training should establish a cadre of judges qualified to adjudicate natural resources and environmental quality cases. The scheme will also enlist the Supreme Court to establish new rules of court with procedures for handling environmental cases.

Bangladesh

On 20 July 2010, Bangladesh announced Cabinet and prime ministerial approval for a bill to establish a new and stronger environmental court, which would soon be put to Parliament.⁸³ As in India and Pakistan, the Bangladesh courts have interpreted the right to life under the constitution to include the right to “protection and preservation of the ecology and right to have a pollution-free environment.”⁸⁴ It has liberalized standing rules⁸⁵

⁸³ Bangladesh plans environment court to jail polluters. *World Bulletin*. www.worldbulletin.net/news_detail.php?id=61538

⁸⁴ J. Razzaque. Undated. Access to Environmental Justice Role of the Judiciary in Bangladesh. www.ban.org/ban_news/2009/090318_court_ruling.html

⁸⁵ Dr. Mohiuddin Farooque vs. Bangladesh and Others, Civil Appeal No. 24 of 1995, 17 BLD (AD) 1997, Vol. XVII, pp. 1–33; 1 BLC (AD) (1996), pp. 189–219, 1996.

and also given decisions that incorporate the international environmental law principles of sustainable development (footnote 85), polluter pays,⁸⁶ and precaution,⁸⁷ within its jurisprudence.

While these innovations in environmental jurisprudence occurred through generalist courts, in 2000, Bangladesh adopted the Environment Court Act, which sets out three ways to resolve environmental disputes.⁸⁸ It provides for Special Magistrate Courts for 64 district magistracy and 5 metropolitan magistrates who try petty cases like air pollution by motor vehicles;⁸⁹ and a divisional environment court which hears major environmental offenses and disputes,⁹⁰ and are operational in Dhaka (the national capital) and Chittagong (a regional capital). An environmental appeals court to hear appeals from the environmental court is also formally provided under the law. From 2003 to 2010, the Dhaka green court disposed of 238 of 372 cases filed.⁹¹

In 1992, the Bangladesh Environmental Law Association (BELA) was established with the goal of promoting environmental justice and contributing to the development of sound environmental jurisprudence. BELA and its lawyers have played a major role in Bangladesh's public interest litigations and have brought many of the country's landmark cases. In conjunction with the Judicial Administration Training Institute, the Ministry of Environment and Forest, and the United Nations Development Programme, BELA has been involved in judicial training on the environment and for the purposes of strengthening environmental courts.

Pakistan

As in neighboring South Asian countries, environmental jurisprudence in Pakistan has been progressive. In 1992, the Supreme Court appointed a judge to hear environmental public interest cases.⁹² In 1994, the Supreme Court held that the Constitution's fundamental right to life included the

⁸⁶ Footnote 85, Bangladesh Environmental Lawyers Association (BELA) vs. Bangladesh and Others, Writ Petition No. 1430 of 2003 (pending for hearing).

⁸⁷ Footnote 86, Bangladesh Environmental Lawyers Association (BELA) vs. Bangladesh and Others, Writ Petition No. 2224 of 2004 (Protection and Conservation of Sunderbans) (pending).

⁸⁸ The Environment Court Act, 2000. Act No. 12 of 2000. www.moef.gov.bd/html/laws/env_law/167-177.pdf

⁸⁹ Footnote 88, Article 5 B and 5 C.

⁹⁰ Footnote 88, Article 5.

⁹¹ Personal Communication, FOWZUL AZIM to Sherielysse Bonifacio, 22 July 2010.

⁹² J. Razzaque. Environmental Human Rights in South Asia: Towards stronger participatory mechanisms. www.cleanairnet.org/caiasia/1412/articles-58293_Jona.doc

right to a clean and healthy environment,⁹³ and thereafter commenced a rich jurisprudence based on this landmark precedent and the leadership of the Chief Justice.⁹⁴ By way of example, the Pakistan Supreme Court has also moved to eliminate procedural barriers to public interest environmental cases,⁹⁵ including by taking notice of news items revealing hazardous waste,⁹⁶ and to reflect international environmental law principles within their environmental jurisprudence.⁹⁷

In 1997, first-instance environmental tribunals were established under the Pakistan Environmental Protection Act to handle serious civil and criminal environmental complaints filed by the government or individuals (including public interest cases) and to hear appeals against orders of the national or local Environmental Protection Agency. Appeals from these tribunals go to the High Court, then to the Supreme Court. In addition to these tribunals, the 1997 Act established an “environmental magistrate” with jurisdiction to hear criminal and other offenses at the district court level. All four High Courts in the provinces of Pakistan have empowered such magistrates whose decisions are appealable to the Court of Sessions, which is the primary criminal trial court for serious crimes. In 1999, a former Supreme Court judge and leading environmental lawyer established the Pakistan Environmental Law Association, which has continued to gather momentum amongst the legal profession for promoting environmental law.⁹⁸

Malaysia

In Malaysia, environmental jurisprudence is emergent. Court decisions have ruled that only persons who can demonstrate sufficient connection with or interest in the subject matter in dispute can seek judicial remedy.⁹⁹ In

⁹³ Ms. Shehla Zia and Others v. WAPDA, PLD 1994 SC 693.

⁹⁴ Parvez Hassan. Environmental Protection, Rule of Law and the Judicial Crisis in Pakistan. Paper presented at the International Congress on Environmental Law. Rio de Janeiro, Brazil, 22–24 May 2007 in tribute to Professor Charles O. Okidi. http://cmsdata.iucn.org/downloads/cel10_hassan.pdf

⁹⁵ General Secretary, West Pakistan Salt Miners Labour Union vs The Director, Industries and Mineral Development, 1994 SCMR 2061.

⁹⁶ In re: Human Rights Case (Environment Pollution in Balochistan), PLD 1994 SC 102.

⁹⁷ Zia, *supra* note 93 (the precautionary principle).

⁹⁸ Dr. Parvez Hassan. *The Role of the Pakistan Environmental Law Association in Strengthening the Environmental Laws in Pakistan*. www.cleanairnet.org/caiasia/1412/articles-59803_pela.pdf

⁹⁹ A. Tan. Preliminary Assessment of Malaysia’s Environmental Law. APCEL Report – Malaysia. Singapore: National University of Singapore and Asia-Pacific Centre for Environmental Law. <http://law.nus.edu.sg/apcel/dbase/malaysia/reportma.html>

the 1996 case involving the Bakun Dam,¹⁰⁰ the High Court ruled that an environmental nongovernment organization had the right to sue or *locus standi* on the basis that they were directly and adversely affected by the inundation of the land caused by the construction of the dam as they were residents of the area. However, the Court of Appeals disagreed for several reasons.¹⁰¹ Other challenges in seeking legal remedies in Malaysian courts include (i) the high burden of proof required of plaintiffs to prove cause of damage; and (ii) the limitation period for filing cases which makes it difficult for plaintiffs to seek redress such that if an injury caused by exposure to toxic substances manifests after the time limit, the plaintiff has no remedy in courts. In early 2010, a high court in Sarawak, Borneo, issued an important environmental case declaring a lease issued for palm oil agriculture illegal.¹⁰² Malaysia has specialized planning appeal boards which have decisional authority over the land use planning or development decisions of local planning authorities, but not specific environmental courts or tribunals. These planning boards are quasi-judicial tribunals established at the state level and appointed by state government units. Of the 11 Malaysian states, only 3 have set up these tribunals. The 1974 Environmental Quality Act authorized the Environmental Quality Appeal Board within the Department of Environment (DOE) to hear appeals of the DOE director's license refusals, conditions, revocations, and related negative license decisions. Rules for this tribunal were adopted in 2003.

Session 7

International Experience in Environmental Tribunals

Environmental tribunals provide an alternative form of adjudicating environmental disputes and may offer more expeditious dispute resolution. In 1991, the Republic of Korea established the National Environmental Dispute Resolution Commission (NEDRC) including regional environmental dispute resolution commissions to hear environmental disputes involving national and local governments as parties and dispute resolutions involving two or more cities and provinces.¹⁰³ The NEDRC is a quasi-judicial organization under the Ministry of Environment and has

¹⁰⁰ Kajing Tubek and Others vs. Ekran Bhd and Others (1996) 2 M.L.J. 388.

¹⁰¹ These reasons included that (i) the plaintiffs had suffered no injury as the right to life, which includes the right to a reasonably healthy and pollution free environment, may be extinguished in accordance with existing law; (ii) the plaintiffs did not include the cause of the other 10,000 natives whose livelihood and customary rights were equally affected by the project; and (iii) the public and national interest were greater than that of the plaintiffs.

¹⁰² Court Voids Malaysian Palm Oil Giant's Leases on Native Lands. www.ens-newswire.com/ens/apr2010/2010-04-01-01.html

¹⁰³ Republic of Korea, Ministry of Environment. http://eng.me.go.kr/content.do?method=moveContent&menuCode=abo_sub_resolution

addressed approximately 2,400 cases of environmental disputes since its establishment. The purpose of the NEDRC is to protect the environment by addressing environmental disputes promptly, fairly, and efficiently. In 1972, Japan established the Japan Environmental Dispute Coordination Commission at the national level and an Environmental Dispute Council in each prefecture to provide a quick and just settlement of environmental pollution disputes through a simplified proceeding, apart from the judicial solution.¹⁰⁴ In 1992, the administrator of the United States Environmental Protection Agency (USEPA) established the US Environmental Appeals Board of the USEPA, which reviews appeals on water and air pollution cases and has served as the principal environmental tribunal for these matters. In Pakistan, environmental tribunals have been established under the 1997 Pakistan Environmental Protection Act. This session seeks to consider the experience of these environmental tribunals in providing an alternative form of environmental adjudicatory specialization which may seek to avoid the formal judicial process altogether. Their successes and challenges will be considered.

Session 8

Institutionalizing Systems for Promoting Environmental Law in Judicial Education

Judicial education in Asia will require institutionalized forms of environmental law training, together with training on the techniques of environmental litigation and dispute resolution. Curriculum will need to be designed for cadre or candidate judges, continuing legal education, and environmental law specialist judges. Indonesia, the Philippines, and Thailand each have judicial training institutions that govern the training of their civil law judges and with which all institutionalized training systems need to be associated. Environmental law training programs for judges need to be institutionalized into the preexisting fabric of legal education through regularized and repeated training sessions, and conducted as part of an institutionalized ongoing scheme, including monitoring, evaluation, feedback, and retraining. This session seeks to better understand the preexisting generalist judicial training schemes and programs in Indonesia, the Philippines, and Thailand, in addition to any environmental training they have conducted, in order to generate a discussion on the appropriate entry points for further judicial training for the environment in Asia.

¹⁰⁴ Government of Japan, Ministry of Internal Affairs and Communications. www.soumu.go.jp/kouchoi/english/english10.html

Sessions 9–12

Challenges in Environmental Decision Making, the Rule of Law, and Access to Justice

The breakout sessions focus on key challenges to improving environmental decision making, promoting the rule of law, and accessing environmental justice. The four key areas for discussion are (i) challenges in judicial decision making on environmental issues: expert evidence and remedies; (ii) challenges in resolving environmental disputes: alternative dispute resolution; (iii) challenges in ensuring access to justice; and (iv) challenges for the judicial system: strengthening judicial capacity to decide environmental cases and resisting threats to integrity. The breakout groups will seek to obtain contributions to share with the plenary from all participants on the particular successes and challenges in different jurisdictions, and will seek to obtain a deeper understanding of the challenges and capacity building needs to overcome these challenges that could be included in the Symposium Statement. Set out below is a more extensive explanation of session background and objectives.

Session 9

Challenges in Environmental Decision Making

Environmental cases and the application and interpretation of environmental laws present challenges to judicial decision making. These include the receipt of expert and scientific evidence and testimony, the evaluation and determination of damages, and the issuance and award of sometimes unconventional remedies.¹⁰⁵ Judges in developing Asia face these challenges in greater magnitude.

Understanding scientific and expert evidence, and weighing and evaluating such complex evidence is a key challenge. Understanding how to evaluate environmental damages in different circumstances is another challenge. In this discussion, the breakout group is to consider challenges on the ground in environmental decision making:

- What are the key challenges and successes different national judiciaries have faced in achieving effective environmental adjudication?
- What are the challenges faced in the use of expert and scientific evidence?
- What methods ensure the courts have access to unbiased experts?

¹⁰⁵ D. Shelton and A. Kiss. 2005. *Judicial Handbook on Environmental Law*. Nairobi, Kenya: United Nations Environment Programme. p. xix.

- What remedies exist and are possible for environmental cases?
- What special environmental remedies are available in different jurisdictions and how do these work?
- What should Asian courts do to better overcome these challenges?

Session 10

Challenges in Dispute Resolution: Alternative Dispute Resolution in Environmental Cases

Alternative dispute resolution (ADR) techniques and mechanisms are being used more widely. Common critiques against litigating environmental disputes are that they are too technical and complicated for a judge and also too expensive to try. Thus, ADR is frequently proposed as the ideal solution to address the complex and inclusive nature of environmental disputes. However, is ADR ideal for all types of disputes, e.g., one involving the violation of a criminal statute? Should ADR be possible for crimes, or does it dilute the criminal nature of the act complained of? ADR is also one way of increasing access to environmental justice since it encourages wider public participation, lowers standing requirements, reduces costs and time, and encourages parties to come up with mutually agreeable and enforceable solutions to the problems.

In this discussion, the breakout group is to consider challenges on the ground in using ADR in environmental dispute resolution:

- What are the key challenges and successes different national judiciaries have experienced for environmental ADR?
- What environmental ADR mechanisms are being used?
- What procedures are essential for the use of ADR?
- How can ADR be most effectively used to promote restitutive environmental disputes?
- Is ADR always appropriate for environmental cases?
- Who should bear the cost?
- How can Asian courts most effectively use environmental ADR?

Session 11

Challenges in Environmental Justice: Access to Justice

Access to justice is a key pillar of environmental governance contained in Principle 10 of the Rio Declaration, which also includes transparency, inclusiveness, and accountability. Ensuring access to justice is often

considered to involve expanding the ability of citizens to access courts and expanding the rights of public interest litigants to bring cases in courts. Thus, access to justice is often conceived as access to the formal legal system. However, it is broader and also involves access to administrative justice and fairness through the resolution of administrative complaints and other formal and informal ways of achieving accountability of those who have power and make decisions affecting the environment. Access to an informal justice system can be more accessible to the poor and marginalized. Informal systems provide quick, cheap, and socially relevant remedies and usually resolve 80%–90% of disputes.¹⁰⁶ Thus, access to environmental justice will involve at least (i) expanding access to the formal justice system, (ii) expanding access to administrative justice, and (iii) expanding access to informal ways to resolve disputes and achieve fairness and equity.

Given the prevalence of these systems and the fact that so many people access them for their justice needs, the support to informal justice systems is very limited. The breakout group should thus consider the following:

- What are the key innovations that help open access to judicial institutions for environmental disputes?
- Are special measures needed to increase access to justice for the poor, marginalized groups, and indigenous people?
- Are there informal ways to promote environmental adjudication that increase access to justice?

Session 12

Strengthening Judicial Capacity to Decide Environmental Cases and Resisting Threats to Integrity

Strengthening judicial capacity to decide environmental cases and increasing the extent to which judges are able to resist threats to integrity are issues for generalist and environmental judges and courts alike, particularly in developing Asia. These issues are critical to ensuring an effective judiciary and effective environmental decision making and dispute resolution. They are also interrelated because without sufficient numbers of skilled judicial staff—both judges and court staff—the threats to integrity are greater.

¹⁰⁶ E. Wojkowska. 2006. *Doing Justice: How Informal Justice Systems Could Contribute*. Oslo: UNDP Oslo Governance Center. www.undp.org/oslocentre/docs07/DoingJusticeEwaWojkowska130307.pdf?bcsi_scan_B90AE85AF6AB15C6=0&bcsi_scan_filename=DoingJusticeEwaWojkowska130307.pdf

ADB defines capacity as the ability of people, organizations, and society as a whole to manage their affairs successfully.¹⁰⁷ The judiciary must have the financial and human resources predictably available in sufficient numbers over time to enable it to discharge its mandate.¹⁰⁸ Moreover, the judiciary needs judges who can demonstrate leadership, access to or the ability to mobilize and manage adequate financial resources that are predictable and stable over time, and the ability to attract and maintain a sufficient number of judges with sufficient competence to perform their duties (footnote 108). This competence includes the right professional skill set, knowledge, and experience, and those who are able to obtain continuing legal education to expand their skills and knowledge (footnote 108). These requirements apply to the general judiciary and also to the specific requirements of environmental and natural resource law expertise.

In this discussion, the breakout group is to consider challenges on the ground in building capacity for environmental decision making within Asian judiciaries and ways to overcome them.

- What challenges and successes have different national judiciaries faced in building capacity in environmental and natural resource law? Are environmental and natural resource cases any different from any others?
- What are the generalist training requirements for new candidate judges? Do these training requirements include environmental training? How much and in what form?
- What specialist environmental training is provided?
- How many judges and/or other environmental practitioners were trained, and are they using their expertise to decide environmental and natural resource cases? How is the impact of this environmental training monitored, evaluated, and measured?
- What institutional mechanisms ensure that judges trained in environment get to decide environmental cases?
- What trans-judicial networking and sharing on environmental law has been conducted?

Integrity within the entire chain of environmental enforcement and within the justice system in general is critical to ensuring effective environmental enforcement. Many environmental enforcement problems relate to a lack

¹⁰⁷ ADB. 2010. *Governance and Anticorruption in Project Design*. Manila.

¹⁰⁸ ADB. 2010. *Attaining Access for All: Pro-Poor Policy and Regulation for Water and Energy Services*. Manila.

of integrity and the presence of corruption or crimes such as illegal logging, mining, and fishing, that go unenforced for a range of reasons including bribes. Justice will be thwarted if there is corruption anywhere throughout those systems.¹⁰⁹ A clean judiciary is critical, but it is also embedded within the broader system of the rule of law and influenced by wider social attitudes on integrity and corruption (footnote 109).

In an effort to promote integrity, in 2000, senior judges from several African and Asian countries formed the Judicial Group on Strengthening Judicial Integrity, under the auspices of the Global Programme against Corruption of the United Nations Office for Drug Control and Crime Prevention, and developed the Bangalore Principles of Judicial Conduct.¹¹⁰ Widely regarded as the international norm, these principles highlight independence, impartiality, integrity, propriety, equality, and competence and diligence as key values. In November 2002, chief justices from several major traditions at the Round-Table Meeting of Chief Justices held at the Peace Palace at The Hague in the Netherlands in November 2002. The principles express normative values and recognize that judges are active players in upholding the rule of law and ensuring a justice system that promotes integrity and fairness.

In this discussion, the breakout group is to consider challenges on the ground in Asian judiciaries and a way to promote integrity within the justice system as well as ways to overcome them.

- What challenges and successes have different national judiciaries faced in promoting integrity in environmental and natural resource cases? Are environmental and natural resource cases any different from any others?
- How common is it for judges to be offered bribes in deciding environmental and natural resource cases? How have judges dealt with such offers?
- Have any judges reported threats, intimidation, or interference regarding the outcomes of environmental cases either from the private sector or the government?
- How can judges best deal with threats to integrity and independence?

¹⁰⁹ Transparency International. 2007. *Global Corruption Report 2007: Corruption in Judicial Systems*. Executive Summary, Cambridge University Press.

¹¹⁰ G. Mayne. 2007. *Judicial Integrity: The Accountability Gap and the Bangalore Principles*. In Transparency International. *Global Corruption Report 2007*. Cambridge University Press.

Sessions 5 and 13

Transjudicial Networks for the Environment and the Potential for a Regional Network

Transgovernmental networks have been touted as a new mode of global governance and can be a key way of promoting environmental enforcement.¹¹¹ In the fields of environmental governance, several regional and international global networks have been contributing to improvements in environmental enforcement and compliance. For example, the Association of Southeast Asian Nations Wildlife Enforcement Network, the world's largest wildlife enforcement network, has been vigilantly trying to plug the gaps in national enforcement in Southeast Asia. The Asia-Pacific Fishery Commission has sought to promote the full and proper utilization of the living aquatic resources of the Asia and Pacific area by the development and management of fishing and culture operations.¹¹² The Asian Environmental Compliance and Enforcement Network exists as a grouping of environmental ministries and agencies from around Asia to promote environmental enforcement, while the International Network on Environmental Compliance and Enforcement is an international network devoted to similar purposes. However, not all such networks have produced considerable gains. In 2001, forest law enforcement officials entered into a ministerial agreement on Forest Law Enforcement and Governance in East Asia, which has facilitated a dialogue but achieved very little concrete progress according to the World Bank.¹¹³

In the judicial arena, different networks and organizations seek to serve similar purposes of sharing and exchanging their successes and challenges, working together to improve jurisprudence in their countries and in the region, and serving as a locus for capacity building and bilateral exchanges. These include the International Network for Environmental Compliance and Enforcement, in partnership with the International Union for Conservation of Nature, the European Union Forum of Judges for the Environment, the Law Association for Asia and the Pacific (LAWASIA), and the Asia Pacific Jurist Association, which are not exclusively focused on the environment.

These sessions seek to introduce Asian judges to network developments in other regions, and to consider what makes them succeed and fail in other fields of law, and to allow Asian judges to consider their own interest in and commitment to establishing an Asian judges network on environment as a form of regional environmental governance.

¹¹¹ A.-M. Slaughter. 2004. *A New World Order*. Princeton University Press.

¹¹² Indo-Pacific Fisheries Commission. 1996. *Agreement for the Establishment of the Asia Pacific Fishery Commission* (October).

¹¹³ World Bank. 2007. *Forest Law Enforcement and Governance Program: Review of Implementation*. Washington, DC.

Conclusion

Through the symposium, we seek to achieve a concrete consensus of ways forward to increase and improve the role of the judiciary in environmental enforcement. During the 2-day sessions, we will work to achieve this statement of consensus.

Part II

Opening Addresses

**Bindu N. Lohani, Vice-President (Finance and Administration),
Asian Development Bank**

Good morning. Welcome all to the symposium.

It is an honor for ADB to host the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice, together with the United Nations Environment Programme, and also on behalf of its development partners, the United States Environmental Protection Agency, The Access Initiative of the World Resources Institute, the Asian Environmental Compliance and Enforcement Network, and the Supreme Court of the Philippines.

The diversity in the partnership of all five supporters of this dialogue has helped achieve a very rich and strong representation of participants.

We welcome justices, judges, and environmental officials from Bangladesh, the People's Republic of China, India, Indonesia, Malaysia, Pakistan, the Philippines, Sri Lanka, Thailand, and as far away as Washington, DC., in the United States, France, and even Brazil.

We understand it to be the largest collection of Asian judges assembled to discuss the environment since the 2002 Global Judges Symposium in South Africa, which was held in the lead-up to the World Summit on Sustainable Development.

It is the first time that so many Asian judges, environment ministries, and civil society representatives have come together, with their counterparts from the United States, Australia, and other countries, to discuss their work in environmental law and the challenges and successes in more effective environmental decision making and ensuring access to justice.

These are key issues that are essential to drive Asia toward the environmentally sustainable future that it needs.

Let me share with you some of the three points that I think are important as we share our insights in this symposium:

First, environment and climate change is key to reducing poverty.

ADB's **Strategy 2020** identifies environment and climate change as one core operational area. It indicates that ADB will seek to "strengthen the legal, regulatory, and enforcement capacities of public institutions in regard to environmental considerations." Strategy 2020 also recognizes good governance and capacity development as one driver of change that will improve the cost-effective delivery of public goods within core operational areas.

Similarly, ADB's governance policy recognizes the importance of accountability, transparency, predictability, and participation with a national framework as components of good governance, and the importance of stable rule-of-law frameworks in ensuring this.

ADB's new **Safeguard Policy Statement** (2009) also prioritizes the strengthening of country environmental safeguard systems in terms of both regulation and environmental enforcement.

To help implement the new Safeguard Policy requirements for strengthening and implementing country safeguard systems, this month (July 2010) the ADB Board approved \$5 million for regional technical assistance that will strengthen country safeguard systems throughout ADB's developing countries' subprojects on (i) improving legal and regulatory frameworks for environmental assessment, and (ii) strengthening institutions and their capacity for effective implementation and enforcement of and compliance with laws and regulations pertaining to environmental assessment. The technical assistance is open to all **developing member countries** (or DMCS) and the subprojects would be in line and supportive of DMCS' priorities set out in their development plans and programs and country partnership strategies.

This symposium supports these key operational priorities of ADB, and by bringing together members of senior Asian judiciaries, as well as counterparts from around the world, to consider environmental decision making and environmental justice, it strongly supports our strategic objective of strengthening the environmental enforcement capacity of a key public institution and arm of government.

Second, there is a need for Asian judges to strengthen the ability to decide environmental cases.

The senior Asian judiciary—as leaders of the legal profession in Asian countries—plays a key role in improving environmental enforcement not only by their direct action in making environmental decisions, developing environmental jurisprudence, or establishing environmental courts, but also by championing and leading the rest of the legal profession toward credible rule-of-law systems that have integrity and promote environmental sustainability.

Improving environmental enforcement is vital to establishing the right enabling frameworks to ensure public and private sector infrastructure investments contribute to providing infrastructure services without inflicting avoidable or irreparable harm on the environment—and indeed, the judiciary has a key role here.

Let me share with you some examples of ADB’s work in this important area.

In the Philippines, ADB has existing work in a \$300 million loan and a \$2 million technical assistance grant for the Governance in Justice Sector Program. Environmental judges provided inputs and brought to bear international experience in relation to development of the Supreme Court rules.

In Indonesia, ADB provided technical assistance for the improvement of the administration of the Supreme Court. Environmental judges are working with the Ministry of Environment, and the Supreme Court is supporting the design of their Judicial Certification Program.

In the People’s Republic of China, ADB has provided technical assistance on Strengthening Enforcement of Environmental Laws and Regulations with the Ministry of Environmental Protection as the executing agency. Environmental judges recently published *Green Benches: What Can the People’s Republic of China Learn from Environment Courts of Other Countries?*

In the Asia and Pacific region, ADB is consolidating work to establish a record of information on regional and international environmental adjudication, and collect experiences on environmental jurisprudence, and courts in Indonesia, the Philippines, and Thailand, and other Asian countries as well as Australia and the United States to assist judges in Asian developing countries strengthen their expertise in environmental and natural resource law.

We also note some of the recent developments around the environmental courts and/or tribunal systems in Asia. On 20 July 2010, Bangladesh established a new environmental court. In April 2010, the Supreme Court of the Philippines approved new environmental rules. In 2010, India adopted

legislation to establish a new environmental tribunal. Currently, Indonesia is developing a system on environmental certification for judges.

And, finally, concrete actions will be a challenge.

We see the symposium as continuing a conversation, not just a conference.

We would like to challenge the participants to come up with a concrete outcome from the conference by the end of the 2 days.

From this symposium, we hope to learn what you (the regions judges and environmental officials) agree are the challenges to access to environmental justice and strengthening the capacity of judges to decide environmental cases; and what you need to overcome these challenges and successfully ensure environmental enforcement.

Thank you and I wish you all a very good day.

**Renato Corona, Chief Justice,
Supreme Court of the Philippines**

A Green Supreme Court: Delivering Environmental Justice

Asian Development Bank (ADB) President Haruhiko Kuroda, Chief Justice of Indonesia Dr. Harifin Tumpa, Indonesian Ambassador Yohanes K.S. Legowo, Indonesian Deputy Chief of Mission Mr. Abdullah Kusumaningprang, ADB Vice-President Bindu Lohani, former Chief Justice of the Philippines Reynato Puno, United Nations Environment Programme Director Bakary Kante, Vice-President of the Thailand Supreme Court Peerapol Pitchayawat, ADB General Counsel Jeremy Hovland, distinguished members of the judiciary and guests, and ladies and gentlemen, good morning.

It is my distinct honor to welcome all of you to this very important gathering among members of the judiciary and the legal profession, of the different environment ministries, of civil society, and of environmental experts, to address a very important issue—environmental justice.

We are deeply honored to host this year's Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice. We are personally and institutionally committed to the protection of the environment. Improving the quality of environmental adjudication is our humble contribution to our sacred relationship with Mother Earth.

We have come to live in a borderless world; and nowhere is this more evident than in the resources we all share. But sharing and enjoying the earth's bounty entail certain iron-clad responsibilities, and it is time we owned up to them. Developing a road map to strengthen the capacity of judges to apply environmental and natural resources law and regulations is the call of the moment, especially now that pressures are great to sacrifice the environment or loosen the rules on the environment at the altar of economic growth.

Many are misled into thinking that it is always a trade-off between a healthy environment and a strong economy. It is not. We need them both, and we can have them both.

Looking at the faces of the participants gathered here this morning gives me renewed hope that, together, we can make a difference, not only for the present generation but the future generations as well.

Lawyers today have become a lot more than mere advocates of the law. Judges are going beyond the normal call of duty. More than protecting individual rights, they, as advocates of environmental justice, have become vanguards, even warriors, in a war that involves the protection of the environment.

We are all here for a common cause and that is to understand the factors that have led to the evolution of environmental jurisprudence, as well as the ways different jurisdictions seek to promote environmental justice. But more importantly, we are here to share our experiences in the hope of improving the quality of environmental adjudication and education not only within the region, but, hopefully, all over the world.

The right of the people to a healthy environment is of such transcendental importance that our Supreme Court, in its landmark ruling in the case of *Oposa vs. Factoran*,¹¹⁴ stated that the right to a balanced and healthful ecology need not even be written in the Constitution for it is assumed, like other civil and political rights guaranteed in the Bill of Rights, to exist from the inception of humankind.

As protectors of the Constitution, the Supreme Court of the Philippines has considered environmental protection as a sacred duty, not only because the people have a right to it but, more importantly, because future generations deserve it.

¹¹⁴ G.R. No. 101083, 30 July 1993, 224 SCRA 792.

According to one report,¹¹⁵ the number of environment courts and tribunals worldwide has more than doubled in the last 2 years, with more than 130 new national, regional, and local environmental courts and tribunals created in the People's Republic of China, Thailand, Belgium, and the Philippines alone. The same report states that there are now over 350 such institutions in 41 countries.

One institution has noted that court cases addressing environmental issues have increased in the Asian region due to rapid urbanization, industrialization, and related ecological problems. Undoubtedly, Asia is the most dynamic region in the world today and its economic growth has been phenomenal. But unfortunately, the heavy strain on its natural resources has led to untold miseries for the environment. Pollution, destruction of forests and ecosystems, massive flooding and intense dry spells, food shortages, and new diseases—all these are said to be the consequences of humankind's wanton disregard of the environment.

In addition to creating green courts, the Supreme Court of the Philippines has stepped up its efforts in the area of environmental justice with the promulgation of new rules that govern environmental cases. These not only aim to provide for a simplified, speedy, and inexpensive procedure for the enforcement of environmental rights and duties, but more importantly to enable the courts to better enforce their orders and judgments.

These new rules, considered the first of their kind in the world, introduced concepts like the *Writ of Kalikasan* (or nature) and the *Writ of Continuing Mandamus*. They also include provisions on citizens suits, consent decree, environment protection order, strategic lawsuits against public participation (or SLAPP), and the precautionary principle, to name just a few. Most of these concepts and provisions will be discussed during this symposium.

These rules will not solve the problems of the environment overnight. But it is one good way to start.

We are in a war to save the environment. But the problems caused by many generations cannot be solved by our generation alone, or even the next.

The future of this planet is in our hands. And what we do today will determine the fate of the generations to come. Therefore, it is but right that we not only identify the possible solutions but also implement them.

¹¹⁵ G. Pring and C. Pring. 2009. *Greening Justice, Creating and Improving Environmental Courts and Tribunals*. USA. The Access Initiative.

As judges and lawyers, we have a significant role to play in the protection of the environment. We have to make sure that people are able to claim their rights to live.

Before I close, I would like to express my deep appreciation to the Asian Development Bank for organizing this auspicious and relevant event. I thank ADB for its many initiatives on energy, security, and environmental protection, including this Forum on Environmental Justice.

Thank you, *Mabuhay*, and a pleasant day to all of you.

**Bakary Kante, Director,
Division of Environmental Law and Conventions,
United Nations Environment Programme**

Mr. Bindu Lohani, Vice-President, Asian Development Bank (ADB); Honorable Chief Justice Renato Corona, Chief Justice of the Philippines; distinguished participants; and ladies and gentlemen.

It is a great honor to have the opportunity of addressing you this morning, and of welcoming you to the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice.

Looking out, I see ideals, I see experience. Both, I believe, are imperative for us to make real headway on decisive steps toward environmental justice and sustainability.

It reminds me in fact of another similar occasion: the Global Judges Symposium on Sustainable Development and the Role of Law which the United Nations Environment Programme (UNEP) organized in 2002 in Johannesburg, on the eve of the World Summit on Sustainable Development.

On that occasion we brought together 126 judges, including chief justices and senior judges, from over 60 countries worldwide, to discuss the role of the judiciary in safeguarding the environment.

Similarly, this symposium also brings together a large number of judges and other legal stakeholders to discuss the same topic in the Asian region.¹¹⁶

¹¹⁶ Judges, including chief justices and senior judges, environmental officials and other legal stakeholders from more than 16 Asian countries and countries outside the region are set to be represented at the meeting. Other legal stakeholders include various organizations and

Ladies and gentlemen, we may all come from different national and even organizational backgrounds, but we are united in purpose for environmental justice and sustainability. We know for environmental justice and sustainability to become reality, to be tangible on the ground to the everyday life of people, it has to be applied. Law may be born in parliaments, but it is judges and the broader legal community—in other words, you—that are crucial to the development, interpretation, and enforcement of environmental law.

You are at the forefront. You administer environmental litigation. You hold those accountable that need to own up to their responsibilities. You guarantee environmental rights. You play a pivotal role in environment sensitization through your ability to influence societal attitudes and values by operationalizing the oftentimes abstract principles of sustainable development. You provide a critical link between our global imperative of environmental protection and safeguarding the well-being of our world's 6.8 billion people,¹¹⁷ and our national and local obligations to give concrete form to this aspiration.

For this reason, UNEP began its support to the judiciary in 1995. Since then, we have convened six regional judges symposia on environmental law, sustainable development, and the role of the judiciary in Africa (1995), South Asia (1997), Southeast Asia (1999), Latin America (2000), the Caribbean (2001), and the Pacific (2002), all culminating in the just-mentioned Global Judges Symposium in Johannesburg in 2002.

The main outcome of the Global Judges Symposium of 2002 were the Johannesburg Principles on the Role of Law and Sustainable Development, which unanimously recognize the crucial role of the judiciary in enhancing environmental law and public interest in a healthy and secure environment, and also stressed that the fragile state of the global environment requires the judiciary, as the guardian of the rule of law, to boldly and fearlessly implement and enforce applicable international and national laws, and in so doing assist in alleviating poverty, while also ensuring that the inherent rights and interests of succeeding generations are not compromised.

Since Johannesburg, UNEP has partnered with regional and global organizations to produce materials that range from refreshers on environmental law to advanced materials on key areas of the environment, including the interlinkages with development and the Millennium Development Goals. Through workshops and forums we have promoted

associations, including the International Union for Conservation of Nature, regional judges associations, legal nongovernment organizations, and others.

¹¹⁷ The United Nations expects the global population to be 7 billion in 2011.

these materials and trained hundreds of judges in Asia, Africa, and Latin America. We have also worked with countries individually upon their request to assist in the further development and strengthening of legal tools for sustainability. I know others, such as ADB, the International Union for Conservation of Nature, private foundations, nongovernment organizations, and regional and global judges associations, have also taken on similar roles.

I believe this work has found fruitful ground in Asia. Today we see a growing trend in public litigation and judicial activism on environmental matters, as well as the establishment of environmental courts, green benches, and environmental tribunals in many jurisdictions in Asia. Asia and you as representatives of its legal communities can be proud of these decisive steps.

This work though must continue. As more judges become more knowledgeable on the environment, they are better able to apply their best judgment to environmental matters and further to transfer their knowledge to the new generation of judges. And as environmental decisions become more frequent, familiarity with environmental law will become more widespread and nationally grounded, and so our role of providing capacity from outside the country becomes less urgent.

Ladies and gentlemen, we at UNEP Division of Environmental Law and Conventions know how important and catalytic in fact your work is, what a difference it makes. And Asia has come a long way, but we must keep up the pace. Continuing the promotion of effective judicial decision making and environmental justice remains as critical as ever. For while you have achieved much already, in the current context of climate change, unabated biodiversity loss and ecosystems degradation, increased vulnerability to natural disasters, and the potentially profound destruction by human-made disasters (as we are witnessing in recent weeks in the Gulf of Mexico), the role the judiciary and broader legal community play in safeguarding the environment and, in fact, in safeguarding life, is ever expanding. We must continue to push forward.

There is more work to be done, at all levels. This includes aligning international governance structures and national frameworks, strengthening the implementation of multilateral environmental agreements at all levels, making environmental laws less general and more focused on key problems, more effective use of carrots and sticks to promote compliance, improving policing and reducing bureaucracy, reestablishing the strong link between environmental and social justice, and facilitating ways to learn from each other.

In little over 18 months, we will recall the 20th anniversary of the Rio Earth Summit that gave birth to a new generation of law and policy for the

environment and sustainability. Last year, German Chancellor Angela Merkel and French President Nicolas Sarkozy wrote a joint letter to United Nations Secretary-General Ban-ki Moon in which they called for a new institutional architecture to foster the development of international environmental law. They called for an “overhaul” of global environmental governance to facilitate this strengthening of law to be the foundation of sustainability.

Ladies and gentlemen, I take this meeting, the largest judges gathering since the Johannesburg Global Judges Symposium to discuss the rule of law and environmental justice in the region, as a concrete contribution to the preparation of Rio+20; a concrete demonstration of the special role of the judiciary in promoting good environmental governance and effective environmental justice; and more so, as a concrete opportunity for us to share our successful stories from the region, and assess where we fall short and how we can improve environmental compliance and enforcement of Asia, but also globally. We are here in fact to renew our commitment to effective global environmental justice.

UNEP, as the lead authority for the environment in the United Nations system, mandated to assist developing countries to promote the development of environmental law and build capacity, including in the areas of compliance and enforcement, is ready as ever both from our headquarters and through our regional offices to continue our assistance to ensure law is the foundation of sustainability—locally, nationally, and globally.

Let us deepen our strategic partnerships, many of which are represented here today and tomorrow. Let us continue to work together, using our various expertise and experiences to continue to give shape to reaching our ideals.

At this point, let me also formally thank ADB for initiating, organizing, and hosting this important event. UNEP is very happy indeed to join hands with ADB and each of you working in this field in this region. I trust the seeds for deeper collaboration will find plenty of fruitful ground over these 2 days of deliberation, and will continue to grow strongly even after we have left this beautiful city of Manila.

Thank you!

Part III

Closing Address

Jeremy Hovland, General Counsel, Asian Development Bank

Good afternoon.

In the past 2 days, you have shared with us many of the developments—and challenges—you face in achieving environmental justice in your countries. Although each country naturally has its own challenges and constraints, I have been impressed by the dedication and commitment you have shown to finding creative solutions to some common problems. Of course many of those problems transcend national boundaries, and I hope that some of the examples and approaches you have heard about during this symposium will be useful to you as you try to develop solutions to those problems back home.

For me, there have been at least three key messages to emerge from your discussions.

First of all, your presentations and discussions have confirmed the importance of the role of the judiciary in environmental enforcement. There also appears to be agreement on the importance and relevance of the Johannesburg Principles on the Role of Law and Sustainable Development and the need to move toward further implementation of those principles on the ground.

Second, I think we have a much clearer picture of where the courts of the region are in relation to environmental justice. In many ways, it is an encouraging picture, despite the challenges and frustrations that many of you face. As we have heard, there have been quite a number of major new developments just this year, including:

- in Bangladesh, where the Cabinet and Prime Minister have just approved a bill for a new environmental court;
- in the Philippines, where the Supreme Court approved new environmental rules several months ago and is now rolling out a large-scale program on judicial environmental training;

- in India, where legislation has been adopted to establish a new environmental tribunal;
- in Indonesia, where a system on environmental certification for judges is being developed, to be finalized by the end of this year;
- in Thailand, where work is being undertaken on new environmental rules for its existing green bench; and
- in the People's Republic of China, where consideration is being given to the adoption of expanded jurisdiction for environmental courts and the establishment of more such courts.

A third message to come out of our discussions has been the urgent need to strengthen capacity and good governance. I think there is a consensus that these will be critical to ensuring access to environmental justice.

Although the institutional mechanisms will vary from country to country, the emphasis should be on strengthening the capacity for environmental decision making and the integrity of the process, whether or not it is conducted in a specialized environmental court or tribunal.

It would appear, however, that environmental courts and tribunals are in many cases the best way of ensuring a critical mass of specialized knowledge and expertise in this area.

Capacity development is a major focus of ADB's assistance. ADB's long-term strategic framework, *Strategy 2020*, identifies environment and climate change as one of our core operational areas. It indicates that ADB will seek to "strengthen ... the legal, regulatory, and enforcement capacities of public institutions in regard to environmental considerations." It also recognizes that good governance and capacity development are drivers of change that will improve the cost-effective delivery of public goods within our core operational areas, such as the environment.

ADB is therefore committed to strengthening country safeguard systems, and we consider the role of the judiciary in environmental enforcement to be a key part of this. This event is timely, because ADB's Board of Directors has just this month approved a \$5 million technical assistance grant to strengthen country safeguard systems in the region.

Many people have worked hard and given generously of their time to make this symposium a success. I would especially like to thank our development partners for their support, assistance, and cooperation, including Bakary Kante, and his delegation from the United Nations Environment Programme; Scott Fulton and the representatives from the United States Environmental

Protection Agency; Lalanath de Silva of The Access Initiative; Peter King and his colleagues from the Asian Environmental Compliance and Enforcement Network; and the Supreme Court of the Philippines under Chief Justice Corona. I would also like to thank Kala Mulqueeny and the team from ADB who have worked so hard to organize this event.

We have been honored to have so many distinguished speakers and guests join us for this symposium. Many of you have traveled far to be with us these past 2 days, and I want to thank you for making these sessions so interesting and the discussions so rich. I hope you have found them as constructive as we have. We look forward to continuing the conversations started by this symposium and to partnering with you in the future.

We all share the same planet, and we all share a concern for the quality of life for future generations. One of the key benefits of a gathering such as this is that it gives us an opportunity to share ideas about common problems, and to be reminded that we are all involved in a collective effort. We recognize that the same approach will not work in all situations, but I hope that you will go back to your countries inspired by the efforts that are being made, around the region, and indeed around the world, to tackle what is probably one of the greatest challenges of our time, and one with the most long-lasting impact on our planet.

May I wish you all success in your future endeavors, and a safe and smooth journey home.

Appendixes

Appendix 1

Program Agenda

Day 1: Wednesday, 28 July 2010

7:45 Registration

8.30 Welcome Remarks

- **Bindu N. Lohani**, Vice President (Finance and Administration), Asian Development Bank (ADB)
- **Renato Corona**, Chief Justice, Supreme Court of the Philippines
- **Bakary Kante**, Director, Division of Environmental Law and Conventions, United Nations Environment Programme (UNEP)

9:00 Overview

- **Kala Mulqueeny**, Senior Counsel, Office of the General Counsel, ADB

9:10 **Session 1: Judicial Innovation in Environmental Law: Landmark Cases**

Session Chair: **Neric Acosta**, Secretary General, Council of Asian Liberals and Democrats

- Indonesia
Harifin Tumpa, Chief Justice, Supreme Court of Indonesia
- Sri Lanka: *Judicial Innovations in Environmental Jurisprudence*
Kanagasabapathy Sripavan, Judge, Supreme Court of Sri Lanka
- Philippines: *The Manila Bay Case—the Writ of Continuing Mandamus*
Presbitero Velasco, Associate Justice, Supreme Court of the Philippines
- People's Republic of China (PRC)
Wang Canfa, Director, Center for Legal Assistance to Pollution Victims

- Brazil
Adalberto Carim Antonio, Judge Titular, Court of the Environment and Agrarian Issues, State of the Amazonas
- Q & A; *Discussion*

10:30 **Coffee Break**

10:45 **Session 2: Evolution of Judicial Specialization in Environmental Law**

Session Chair: Wanhua Yang, Officer in Charge, Environmental Law in Asia-Pacific, UNEP

- India
 - *Supreme Court*
Bisheshwar Singh, Justice (retired)
 - *High Court of Delhi*
Hima Kohli, Judge, High Court of Delhi
 - *Ministry of Environment and Forests: A Green Tribunal as the Next Step*
Ishwer Singh, Director (Law), Ministry of Environment and Forests
 - *Civil Society*
Ritwick Dutta, founder, Legal initiative for Forest and Environment (LIFE)
- Q & A; *Discussion*
- PRC
 - *Supreme People's Court: The Road to Environmental Justice*
Hong-yu Shen, Judge, Fourth Civil Division of Supreme People's Court
 - *Guiyang Intermediate Court*
Liu Ming, President of Environment Chamber, Qingzhen People's Courts
 - *Civil Society: Environmental Courts and the Development of Environmental Public Interest Litigation in China*
Alex Wang, Senior Attorney and Director, China Environmental Law and Governance Project, Natural Resources Defense Council (NRDC)
Zhang Jingjing, Deputy China Country Director, Public Interest Law Institute
- Q & A; *Discussion*

12:45 **Lunch**, Executive Dining Room Coffee Lounge, hosted by Daniele Ponzi, Lead Environment Specialist, Regional and Sustainable Development Department, ADB

13:45 **Session 3: Evolution of Judicial Specialization in Environment Law**

Session Chair: **Vivien Rosa Ratnawati**, Assistant Deputy Minister,
Ministry of Environment, Indonesia

- Philippines (Mixed Common and Civil Law)
 - *Supreme Court—Establishing Green Courts and Environmental Rules of Procedure*
Reynato Puno, former Chief Justice, Supreme Court of the Philippines
 - *Green Trial Court—Handling Environment Cases in the Islands*
Marilyn Yap, Judge, Regional Trial Court, Philippines
 - *The Laws of Nature Foundation—From Oposa vs. Factoran to the Tanon Strait to the Rainwater Catchment Case*
Antonio Oposa, President, Law of Nature Foundation
- Q & A; Discussion
- International Panel (Common Law)
 - *Queensland, Australia*
Michael Rackemann, Judge, Queensland Planning and Environment Court
 - *United States*
Siu Tip Lam, Director, U.S.–China Partnership for Environmental Law, and Assistant Professor, Vermont Law School
 - *New Zealand*
Marlene Oliver, Environment Commissioner, Environment Court of New Zealand
- Q & A; Discussion

15:45 **Coffee Break**

16:00 **Session 4: Judicial Specialization in Environmental Law**

Session Chair: **Patricia Moore**, Head, International Union
for Conservation of Nature (IUCN) Regional
Environmental Law Programme

- Thailand (Civil Law)
 - *Supreme Court (Environmental Division): Environmental Law in the Thai Supreme Court Green Bench*
Winai Ruangsri, Research Justice, Environmental Division
 - *Court of Appeal*
Suntariya Muanpawong, Research Justice and Secretary, Environmental Division, Court of Appeal
 - *Supreme Administrative Court: The Development of Legal Principles on Environmental Disputes: Experiences of the Thai Administrative Court*

- **Prapot Klaisuban**, Judge, Central Administrative Court
- *Civil Society: Environmental Protection in Thailand through the Courts*
- **Srisuwan Janya**, President, Stop Global Warming Association
- International Panel
 - *Australia: Judicial Specialization in Environmental Law: 12 Advantages*
 - **Brian Preston**, Chief Judge, New South Wales Land and Environment Court
 - Brazil
 - **Vladimir Passos de Freitas**, former Chief Judge of the Federal Appeals Court for the Fourth Region
 - France
 - **Jean Philippe Rivaud**, former Senior Judge, Court of Appeal of Amiens, Deputy Prosecutor General (prosecutor in charge of the environment), French Judicial Academy
- *Q & A; Discussion*

18:00 Photo Session and Reception, Mezzanine ADB Cafeteria

20:00

Video Message from Antonio Benjamin, Justice, Superior Tribunal de Justica (High Court of Brazil) on “The Role of the Judiciary in Protecting the Environment”

Day 2: Thursday, 29 July 2010

8:30 **Session 5: Trans-Judicial Networks for the Environment**

Session Chair: Milag Ballesteros, Secretariat, Asian Environmental Compliance and Enforcement Network (AECEN)

- *International Network on Environmental Compliance and Enforcement*
 - **Scott Fulton**, General Counsel, Office of the General Counsel, United States Environmental Protection Agency (USEPA), former Environmental Appeals Board Judge (via video message)
- *LAWASIA*
 - **Brian Preston**, Chair, LAWASIA Environmental Committee
- *European Union Forum of Judges for the Environment*
 - **Luc Lavrysen**, President, European Union Forum of Judges for the Environment (via video conference)
- *Asia Pacific Judges Association*
 - **Hima Kohli**, Judge, High Court of Delhi and Vice President, Asia Pacific Judges Association

- *Q & A; Discussion*

9:30 **Coffee Break**

9:45 **Session 6: Judicial Specialization in Environmental Law**

Session Chair: Robert Ward, Regional Counsel, USEPA

- Indonesia (Civil Law)
 - *Supreme Court: Institutionalizing Green Judges and Green Rules of Procedure: Indonesian Efforts*
Takdir Rahmadi, Justice, Supreme Court
 - *District Court*
Prim Haryadi, Vice-Chief Judge, Depok District Court
 - *Ministry of Environment: Judicial Certification as a Pillar of the Green One Roof System: Establishing Systems of Environmental Compliance and Enforcement*
Ilyas Asaad, Deputy Minister, Environmental Compliance
 - *Indonesian Center for Environmental Law (ICEL): The Relevance of a Greenbench to Save Indonesia's Environment*
Mas Achmad Santosa, Founder/Member of Presidential Task Force/Advisor to the President
- *Q & A; Discussion*

11:00 **Session 7: International Experience in Environmental Boards and Tribunals**

Session Chair: Nessim J. Ahmad, Director, Environment and Safeguards Division concurrently Practice Leader (Environment), ADB

- *Pakistan Environmental Tribunal*
Ashraf Jahan, Chair, Sindh Environmental Tribunal Karachi
- *United States Environmental Appeals Board*
Kathie Stein, Judge
- *Japan Environmental Dispute Coordination Commission*
Yoshikazu Suzuki, Examiner
- *South Korea National Environment Dispute Resolution Commission*
Kim Won Min, Chair
- *Q & A; Discussion*

12:00 **Lunch**, Executive Dining Room Coffee Lounge hosted by Jeremy H. Hovland, General Counsel, Office of the General Counsel, ADB

13:00 **Session 8: Institutionalizing Systems for Promoting Environmental Law in Judicial Education**

Session Chair: Kathie Stein, Judge, U.S. Environmental Appeals Board

- *Philippine Judicial Academy*
Delilah Magtolis, Head, Academic Affairs
- *Thailand Judicial Training Institute*
Judge Sarawut Benjakul, Deputy Secretary-General
- *Indonesia Judicial Training Center*
Agung Sumantha, Head, Judicial Techniques

13.45 **Break-Out Groups on Challenges of Environmental Decision Making**

Session 9: Challenges in Judicial Decision Making on Environmental Issues: Expert Evidence and Remedies

Session Chair: Brian Preston, Chief Judge, New South Wales Land and Environment Court

Rapporteur: Sherielysse Bonifacio, Legal Research Consultant, ADB

Panel Discussion

- Adalberto Carim Antonio, Judge Titular, Court of the Environment and Agrarian Issues, State of Amazonas, Brazil
- Fowzul Azim, Judge, Dhaka Divisional Environmental Court, Bangladesh
- Artha Theresia Silalahi, Judge, South Jakarta District Court, Indonesia
- Prapot Klaisuban, Judge, Central Administrative Court, Thailand
- D.S.C. Lecamwasam, Judge, Court of Appeal, Sri Lanka
- Rekha Sharma, High Court of Delhi, India
- Kathie Stein, Judge, U.S. Environmental Appeals Board
- Ummu Kalthom Abdul Samad, Judge, Sessions Court, Sabah, Malaysia

Session 10: Challenges in Dispute Resolution: Alternative Dispute Resolution in Environmental Cases

Session Chair: Michael Rackemann, Judge, Queensland Planning and Environment Court

Rapporteur: Windu Kisworo, former Deputy Director, Indonesian Center for Environment Law (ICEL)/ADB Consultant

Panel Discussion

- Alfredo Tadiar, Chair, Alternative Dispute Resolution Department, Philippine Judicial Academy
- Katsuhiko Naito, Examiner, Japan Environmental Dispute Coordination Commission

- **Kim Won Min**, Chair, South Korea National Environment Dispute Resolution Commission
- **Marlene Oliver**, Commissioner, Environment Court of New Zealand
- **Wiwiek Awiati**, Judicial Reform Team, Supreme Court of Indonesia
- **Ishwer Singh**, Director (Law), Ministry of Environment and Forests, India
- **Alex Wang**, Senior Attorney and Director, China Environmental Law and Governance Project, NRDC
- **Marimuthu Thirunavukarasu**, Consultant, Ministry of Justice, Sri Lanka Tsunami-Affected Areas Rebuilding Project

Session 11: Challenges in Environmental Justice: Access to Justice

Session Chair: **Lalanath de Silva**, Director, The Access Initiative, World Resources Institute

Rapporteur: **Ritwick Dutta**, founder, LIFE

Panel Discussion

- **Antonio Oposa**, President, Law of Nature Foundation
- **Bisheshwar Prasad Singh**, Former Judge, Supreme Court of India
- **Wang Canfa**, Director, Center for Legal Assistance to Pollution Victims
- **Mirza Hussain Haider**, Judge, High Court Division, Supreme Court, Bangladesh
- **Rino Subagyo**, Director, ICEL
- **Jawad Hassan**, Chief of General Advocate Office, High Court of Lahore
- **Janaka Ranatunga**, Consultant, Ministry of Justice, Sri Lanka Tsunami-Affected Areas Rebuilding Project

Session 12: Strengthening Judicial Capacity to Decide Environmental Cases and Resisting Threats to Integrity

Session Chair: **Zhang JingJing**, Deputy China Country Director, Public Interest Law Institute

Rapporteur: **Sumithra Rahubaddhe**, Additional Secretary, Ministry of Justice and Deputy Project Director, Governance and Legal Assistance, Sri Lanka Tsunami-Affected Areas Rebuilding Project

Panel Discussion

- **Mas Achmad Santosa**, Founder, ICEL; and Member of Presidential Task Force / Advisor to the President
- **Hong-yu Shen**, Supreme People's Court, PRC

- **Geraldine Faith Econg**, Administrator, Judicial Reform Program, Philippine Supreme Court
- **Vladimir Passos de Freitas**, former Chief Judge of the Federal Appeals Court for the Fourth Region, Brazil
- **Dhananjaya Chandrachud**, Judge, Bombay High Court, India
- **Yew Jen Kie**, Judge, High Court of Sarawak, Malaysia
- **Prasert Onopparatwibul**, Justice, Environment Division, Thailand Supreme Court
- **Kamini Dissanayake**, Consultant, Ministry of Justice, Sri Lanka Tsunami-Affected Areas Rebuilding Project

15:30 **Coffee Break**

15:45 **Plenary Reports on Break-Out Groups on Challenges of Environmental Decision Making**

Session Chair: **Kala Mulqueeny**, Senior Counsel, Office of the General Counsel, ADB

Session 9: Challenges in Judicial Decision Making on Environmental Issues: Expert Evidence and Remedies

Session 10: Challenges in Dispute Resolution: Alternative Dispute Resolution in Environmental Cases

Session 11: Challenges in Environmental Justice: Access to Justice

Session 12: Strengthening Judicial Capacity to Decide Environmental Cases and Resisting Threats to Integrity

16:45 **Session 13: Asian Judges and the Environment: Capacity Needs and Potential for a Network?**

Panel Discussion: Asian Courts Views: Brief Reflections

Session Chair: **Hamid L. Sharif**, Principal Director, Central Operations Services Office, ADB

- *Supreme Court of the Philippines*
Renato Corona, Chief Justice
- *Supreme Court of Indonesia*
Harifin Tumpa, Chief Justice
- *Supreme Court of Thailand*
Peerapol Pitchayawat, Vice-President
- *Supreme Court of Bangladesh*
Mirza Hussain Haider, Justice, High Court Division
- *Supreme People's Court of PRC*
Hong-yu Shen, Fourth Civil Division
- *Supreme Court of Sri Lanka*
K. Sripavan, Justice
- *Q & A; Discussion*

17:30 **Concluding Thoughts from Development Partners**

- **Lalanath De Silva**, Director, The Access Initiative, World Resources Institute
- **Milag Ballesteros**, Secretariat, AECEN
- **Kathie Stein**, Judge, Environmental Appeals Board, USEPA
- **Nagai Masa**, Senior Legal Officer, Division of Environmental Law and Conventions, UNEP

17:50 **Closing**

Jeremy H. Hovland, General Counsel, Office of the General Counsel, ADB

Appendix 2

List of Resource Persons

Resource Person	Designation, Agency
Acosta, Neric	Secretary General, Council of Asian Liberals and Democrats
Ahmad, Nessim	Director, Environment and Safeguards Division concurrently Practice Leader (Environment), Asian Development Bank (ADB)
Antonio, Adalberto Carim	Judge Titular, Court of the Environment and Agrarian Issues, State of the Amazonas, Brazil
Asaad, Ilyas	Deputy Minister, Environmental Compliance, Ministry of Environment, Indonesia
Awiate, Wiwiek	Judicial Reform Team, Supreme Court of Indonesia
Azim, Fowzul	Judge, Dhaka Divisional Environmental Court, Bangladesh
Ballesteros, Milag	Secretariat, Asian Environmental Compliance and Enforcement Network
Benjakul, Sarawut	Deputy Secretary-General, Thailand Judicial Training Institute
Benjamin, Antonio	Justice, Superior Tribunal de Justica (High Court of Brazil)
Bonifacio, Sherielysse	Legal Research Consultant, Office of the General Counsel, ADB
Chandrachud, Dhananjaya	Judge, Bombay High Court, India
Corona, Renato	Chief Justice, Supreme Court of the Philippines
Dissanayake, Kamini	Consultant, Tsunami-Affected Areas Rebuilding Project Ministry of Justice, Sri Lanka

Resource Person	Designation, Agency
Dutta, Ritwick	Founder, Legal Initiative for Forest and Environment
Econg, Geraldine Faith	Administrator, Judicial Reform Program, Supreme Court of the Philippines
de Freitas, Vladimir Passos	Former Chief Judge of the Federal Appeals Court for the Fourth Region, Brazil
Fulton, Scott	General Counsel, Office of the General Counsel, United States Environmental Protection Agency, and former Environmental Appeals Board Judge
Haider, Mirza Hussain	Judge, High Court Division, Supreme Court, Bangladesh
Haryadi, Prim	Vice-Chief Judge, Depok District Court, Indonesia
Hassan, Jawad	Chief, General Advocate Office, High Court of Lahore, Pakistan
Jahan, Ashraf	Chair, Sindh Environmental Tribunal Karachi, Pakistan Environmental Tribunal
Janya, Srisuwan	President, Stop Global Warming Association
Kim, Won Min	Chair, National Environment Dispute Resolution Commission, South Korea
Kisworo, Windu	Former Deputy Director, Indonesian Center for Environmental Law (ICEL)
Klaisuban, Prapot	Judge, Central Administrative Court, Thailand
Kohli, Hima	Judge, High Court of Delhi, India; and Vice President, Asia Pacific Judges Association
Lam, Siu Tip	Director, U.S.–China Partnership for Environmental Law, and Assistant Professor, Vermont Law School
Lavrysen, Luc	President, European Union Forum of Judges for the Environment
Lecamwasam, D.S.C.	Judge, Court of Appeal, Sri Lanka
Magtolis, Delilah	Head, Academic Affairs, Philippine Judicial Academy

Resource Person	Designation, Agency
Ming, Liu	President of Environment Chamber, Qingzhen People's Courts, People's Republic of China (PRC)
Moore, Patricia	Head, Regional Environmental Law Programme, International Union for Conservation of Nature
Muanpawong, Suntariya	Research Justice and Secretary, Environmental Division, Court of Appeal, Thailand
Mulqueeny, Kala	Senior Counsel, Office of the General Counsel, ADB
Naito, Katsuhiko	Examiner, Environmental Dispute Coordination Commission, Japan
Oliver, Marlene	Commissioner, Environment Court of New Zealand
Onopparatwibul, Prasert	Justice, Environment Division, Supreme Court of Thailand
Oposa, Antonio	President, Law of Nature Foundation
Pitchayawat, Peerapol	Vice-President, Supreme Court of Thailand
Preston, Brian	Chief Judge, New South Wales Land and Environment Court, Australia; and Chair, LAWASIA Environmental Committee
Puno, Reynato	Former Chief Justice, Supreme Court of the Philippines
Rackemann, Michael	Judge, Queensland Planning and Environment Court, Australia
Rahmadi, Takdir	Justice, Supreme Court of Indonesia
Rahubaddhe, Sumithra	Additional Secretary, Ministry of Justice; and Deputy Project Director, Governance and Legal Assistance, Sri Lanka Tsunami-Affected Areas Rebuilding Project
Ranatunga, Janaka	Consultant, Tsunami-Affected Areas Rebuilding Project, Ministry of Justice, Sri Lanka
Ratnawati, Vivien Rosa	Assistant Deputy Minister, Ministry of Environment, Indonesia

Resource Person	Designation, Agency
Rivaud, Jean Philippe	Former Senior Judge, Court of Appeal of Amiens, Deputy Prosecutor General (prosecutor in charge of the environment), French Judicial Academy, France
Ruang Sri, Winai	Research Justice, Environmental Division, Supreme Court of Thailand
Samad, Ummu Kalthom Abdul	Judge, Sessions Court, Sabah, Malaysia
Santosa, Mas Achmad	Founder, ICEL; Member of Presidential Task Force and Advisor to the President, Indonesia
Sharif, Hamid	Principal Director, Central Operations Services Office, ADB
Sharma, Rekha	High Court of Delhi, India
Shen, Hong-yu	Judge, Fourth Civil Division, Supreme People's Court, PRC
Silalahi, Artha Theresia	Judge, South Jakarta District Court, Indonesia
de Silva, Lalanath	Director, The Access Initiative, World Resources Institute
Singh, Bisheshwar Prasad	Justice (retired), Supreme Court of India
Singh, Ishwer	Director (Law), Ministry of Environment and Forests, India
Sripavan, Kanagasabapathy	Justice, Supreme Court of Sri Lanka
Stein, Kathie	Judge, United States Environmental Appeals Board
Subagyo, Rino	Director, ICEL
Sumantha, Agung	Head, Judicial Techniques, Indonesia Judicial Training Center
Suzuki, Yoshikazu	Examiner, Japan Environmental Dispute Coordination Commission
Tadiar, Alfredo	Chair, ADR Department, Philippine Judicial Academy
Thirunavukarasu, Marimuthu	Consultant, Tsunami-Affected Areas Rebuilding Project, Ministry of Justice, Sri Lanka
Tumpa, Harifin	Chief Justice, Supreme Court of Indonesia

Resource Person

Designation, Agency

Velasco, Presbitero

Associate Justice, Supreme Court of the Philippines

Wang, Alex

Senior Attorney and Director, China Environmental Law and Governance Project, Natural Resources Defense Council

Wang, Canfa

Director, Center for Legal Assistance to Pollution Victims

Ward, Robert

Regional Counsel, United States Environmental Protection Agency

Yang, Wanhua

Officer in Charge, Environmental Law in Asia-Pacific, United Nations Environment Programme

Yap, Marilyn

Judge, Regional Trial Court, Philippines

Yew, Jen Kie

Judge, High Court of Sarawak, Malaysia

Zhang, Jingjing

Deputy China Country Director, Public Interest Law Institute

Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice

The Proceedings of the Symposium

The symposium held on 28–29 July 2010 at the Asian Development Bank—whose proceedings are documented in this publication—brought together senior members of the judiciary and environmental ministry officials from Asian jurisdictions, academe, civil society, international organizations, and distinguished experts from developed countries and development institutions to share experience that will lead to an improvement in the quality of environmental adjudication on environment and natural resource cases in Asian jurisdictions. At the symposium, Asian judges proposed an Asian Judges Network on the Environment to improve the quality of environment court rulings and cases.

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: 1.8 billion people who live on less than \$2 a day, with 903 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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