



SIXTH ASEAN CHIEF JUSTICES' ROUNDTABLE ON ENVIRONMENT

FORGING THE SUSTAINABLE FUTURE OF THE ASEAN REGION

The Proceedings

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OF THE ASEAN REGION**

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FOREWORD

The Asian Development Bank (ADB) recognizes and supports the vital role played by judges in strengthening their capacity to interpret, apply and enforce environmental treaties, laws and regulations based on the rule of law, thereby enabling effective environmental adjudication. Over the last 6 years, ADB has had the privilege of cohosting the annual Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable on Environment with six esteemed ASEAN cohost judiciaries: the Supreme Court of Indonesia in 2011, the Federal Court of Malaysia in 2012, the Supreme Administrative Court of Thailand in 2013, the Supreme People's Court of Viet Nam in 2014, the Supreme Court of Cambodia in 2015, and the Supreme Court of the Philippines in 2016.

The platform provided by the ASEAN Chief Justices' Roundtable on Environment has evidently increased the ASEAN judiciaries' knowledge and expertise in environmental and climate change law. In previous roundtable conferences, some judges admitted learning about this field of law only after the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice cosponsored by ADB, the United Nations Environment Programme (UNEP), and the Supreme Court of the Philippines on 28–29 July 2010. Others said they first researched this topic after their chief justice assigned them to present at the roundtable. But through the years, ASEAN judges have grown to embrace principles of sustainable development, such as the polluter-pays principle, intergenerational equity, participation, and the precautionary principle—whether in drafting specialized rules of procedure for environmental cases or in deciding environmental disputes.

Many ASEAN judiciaries now better understand the barriers to the successful prosecution of environmental violations and crimes. Some are already considering drafting their own specialized rules of procedure for environmental cases similar to that of the Philippines. They now impose penalties based on the applicable law, the gravity of the environmental violation committed, and the damage caused to the environment.

ASEAN judiciaries have also realized the importance of judicial specialization in environmental adjudication. For instance, the Philippine and Malaysian judiciaries designated more than 100 trial courts as specialized environmental courts. The Thailand judiciary has environmental divisions throughout its hierarchy, while the Indonesian judiciary has established a judicial certification program on environment for judges. These judiciaries now value continuous training in environmental law, with many supreme courts encouraging law schools and legal professional associations to incorporate environmental law into their curricula. Some judiciaries, notably those of the Philippines and Thailand, have also offered to organize environmental law training programs through the Philippine Judicial Academy and the Judicial Training Institute, respectively. Judicial training on environmental laws and issues is clearly bearing fruit as an increasing number of judges have become more aware of the value and threats to the environment and natural resources and are imposing penalties that can more effectively deter environmental crime.

Bearing in mind the unique situation, resources, and priorities of several ASEAN countries, the Sixth ASEAN Chief Justices' Roundtable on Environment (the Sixth Roundtable) enabled the ASEAN judiciaries to review their agreements on how they see, and aim to fulfill, their role in protecting the environment, advancing environmental justice, and upholding the rule of law. These agreements are all embodied in three outcome documents of prior roundtables: A Common Vision on Environment for ASEAN Judiciaries (the Jakarta Common Vision),¹ the Hanoi Action Plan to Implement the Jakarta Common Vision (the Hanoi Action Plan),² and the Angkor Statement of Commitment to ASEAN Judicial Cooperation on the Environment (the Angkor Statement).³

The Sixth Roundtable's theme, "Forging the Sustainable Future of the ASEAN Region," is also timely and relevant. The roundtable featured distinguished speakers walking the participants through significant environment and climate change treaties and international laws and jurisprudence and the benefits of judicial networking and knowledge sharing. It also allowed the participants to examine their progress in implementing the Jakarta Common Vision and to decide how best they would like to further strengthen their regional cooperation.

I am pleased to witness the ASEAN chief justices and their nominees expanding their environmental law knowledge and become increasingly resolute and equipped advocates of environmental justice. ADB is eager to continue to assist in advancing capacity building and knowledge sharing across the ASEAN judiciaries.

This volume captures the reports, presentations, and discussions during the Sixth Roundtable. It aims to serve as a reference for judicial capacity building in the field of environmental law and as a record of the ASEAN judiciaries' efforts to continue their environmental law work.

Christopher H. Stephens

General Counsel

Office of the General Counsel

Asian Development Bank

¹ <https://www.adb.org/publications/inaugural-asean-chief-justices-roundtable-environment-proceedings>.

² <https://www.adb.org/publications/4th-asean-chief-justices-roundtable-environment-proceedings>.

³ <https://www.adb.org/sites/default/files/publication/209906/5th-asean-cj-roundtable-envt-proceedings.pdf>.

ACKNOWLEDGMENTS

Countless officers and staff from the Asian Development Bank (ADB), the Supreme Court of the Philippines, the local government of Palawan, and various Philippine government departments, offices, agencies, and committees worked relentlessly and wholeheartedly to achieve the goals of the Sixth ASEAN Chief Justices' Roundtable on Environment.

The Supreme Court of the Philippines, led by Chief Justice Maria Lourdes P. A. Sereno, the Association of Southeast Asian Nations (ASEAN) National Organizing Committee, managed by Director General for Operations Ambassador Marciano Paynor Jr.; and the Puerto Princesa city government, headed by Mayor Lucilo R. Bayron, graciously received the delegates in Puerto Princesa City, Palawan. Mayor Bayron delivered the welcome remarks during the reception. Chief Justice Sereno gave the opening remarks, served as conference chairperson, delivered the closing remarks, and presented the heads of delegations with tokens of appreciation. Atty. Theodore O. Te, assistant court administrator and chief of the Supreme Court Public Information Office, served as master of ceremonies and introduced the delegates. Atty. Brenda Jay C. Angeles-Mendoza, chief of the Philippine Mediation Center Office, synthesized the reports on each ASEAN judiciary's implementation of A Common Vision on Environment for ASEAN Judiciaries (the Jakarta Common Vision), Hanoi Action Plan to Implement the Jakarta Common Vision (the Hanoi Action Plan), and Angkor Statement of Commitment to ASEAN Judicial Cooperation on the Environment (the Angkor Statement). The Palawan provincial government hosted the culmination night. Palawan Governor Jose Ch. Alvarez delivered the welcome remarks and Chief Justice Sereno gave the closing remarks.

ADB expresses its gratitude and appreciation to Justice Rachel Pepper, a judge of the New South Wales Land and Environment Court in Australia; Prof. Dr. Diane A. Desierto, associate professor of law and Michael J. Marks Distinguished Professor in Business Law, William S. Richardson School of Law, University of Hawaii, and co-director, ASEAN Law & Integration Center; and Mr. Matthew Baird, consultant at Pact's Mekong Partnership for the Environment Project and Vermont Law School's U.S.-Asia Partnerships for Environmental Law, for sharing their expertise in environment and climate change laws and litigation and in judicial networking.

From ADB, Ms. Deborah Stokes, vice-president for administration and corporate management, gave the welcome and concluding messages. Mr. Christopher H. Stephens, general counsel, presented an overview of the ADB Law and Policy Reform (LPR) Program, the Asian Judges Network on Environment (AJNE), and the ASEAN Chief Justices' Roundtable on Environment. Ms. Atsuko Hirose, then advisor at the ADB Office of the General Counsel, discussed all three outcome documents of previous roundtables. She also led the LPR team composed of Ms. Ma. Celeste Grace A. Saniel-Gois, senior legal operations officer, Atty. Maria Cecilia T. Sicangco, senior legal and policy specialist for ADB's LPR Program, and Atty. Francesse Joy J. Cordon, legal specialist and staff consultant for ADB's LPR Program.

Atty. Cordon prepared and edited this record of proceedings.

ABBREVIATIONS

- ADB – Asian Development Bank
- ADR – alternative dispute resolution
- AJNE – Asian Judges Network on Environment
- ASEAN – Association of Southeast Asian Nations
- CACJ – Council of ASEAN Chief Justices
- ESD – ecologically sustainable development
- Lao PDR – Lao People’s Democratic Republic
- LPR – Law and Policy Reform Program
- NSW – New South Wales
- PHILJA – Philippine Judicial Academy
- PPUR – Puerto Princesa Underground River
- PRC – People’s Republic of China
- UK – United Kingdom
- UNESCO – United Nations Educational, Scientific and Cultural Organization
- US – United States

EXECUTIVE SUMMARY

The Asian Development Bank (ADB) and the Supreme Court of the Philippines cohosted the Sixth Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable on Environment (the Sixth Roundtable), on 10–13 November 2016 at Princesa Garden Island Resort and Spa, Puerto Princesa City, Palawan, Philippines. The roundtable shows ADB's commitment to “strengthen... the legal, regulatory and enforcement capacities of public institutions on environmental considerations...” and enhance the capacity of ASEAN judiciaries to enforce environmental laws, develop environmental jurisprudence, and drive the legal profession and environmental decision makers to build systems based on credible rule of law, have integrity, and promote environmental justice.

Chief Justice Maria Lourdes P. A. Sereno of the Supreme Court of the Philippines formally opened the Sixth Roundtable and served as conference chairperson. She wanted the roundtable to serve as a forum for discussing (i) the assimilation of the ASEAN Chief Justices' Roundtable on Environment's work into the primary functions of the Council of ASEAN Chief Justices (CACJ), formerly known as the ASEAN Chief Justices' Meeting; and (ii) the elevation of the status of the CACJ to the same level as the ASEAN Inter-Parliamentary Assembly.

ADB representatives gave the background of the ASEAN Chief Justices' Roundtable on Environment and the highlights of the Sixth Roundtable. In her welcome message, Ms. Deborah Stokes, vice-president for administration and corporate management of ADB, lauded the ASEAN judiciaries for their pioneering work in the field of environmental law. She also noted the timeliness of the presentations on climate change, the implications of climate change for ASEAN judiciaries, and the benefits of judicial networking. Mr. Christopher H. Stephens, general counsel of ADB, briefed the participants on ADB's Law and Policy Reform (LPR) Program, the Asian Judges Network on Environment (AJNE), and the ASEAN Chief Justices' Roundtable on Environment. ADB started the LPR Program to support the Asia and Pacific region's economic development fueled by properly functioning legal systems, anchored on the rule of law and comprising a comprehensive legal framework with effective legislative, regulatory, administrative, and judicial institutions. An effective legal infrastructure complements the basic premise of ADB's broader commitment to physical infrastructure development and its overall development strategy over the last 50 years. This link explains ADB's engagement with judiciaries in Asia and the Pacific, through the AJNE and other partnerships. Ms. Atsuko Hirose, then advisor at the Office of the General Counsel, discussed the three outcome documents of prior roundtables: A Common Vision on Environment for ASEAN Judiciaries (the Jakarta Common Vision), the Hanoi Action Plan to Implement the Jakarta Common Vision (the Hanoi Action Plan), and the Angkor Statement of Commitment to ASEAN Judicial Cooperation on the Environment (the Angkor Statement).

The ASEAN judiciaries reported on their progress in implementing the Jakarta Common Vision, the Hanoi Action Plan, and the Angkor Statement. Chief Justice Sereno observed the ASEAN judiciaries' seriousness in protecting the environment, the cross-border nature of many of the region's environmental challenges, and the timeliness of an actionable framework to guide their efforts.

Eminent speakers talked about the growing body of climate change laws and litigation, and the advantages of judicial networking. Justice Rachel Pepper, a judge of the New South Wales Land and Environment Court in Australia, provided a comparative review of climate change jurisprudence in Australia and other countries. She emphasized that countries with constitutionally enshrined human rights and environmental rights have higher regard for international decisions and the promotion of better environmental protection outcomes. She also encouraged the ASEAN judiciaries to reverse the burden of proof in environmental litigation, relax legal standing, and implement the principle of non-regression in interpreting domestic environmental law.

Prof. Dr. Diane A. Desierto, associate professor of law and Michael J. Marks Distinguished Professor in Business Law, William S. Richardson School of Law, University of Hawaii, and co-director, ASEAN Law & Integration Center, next discussed the link between the ASEAN Charter obligations of member states and their new obligations under the Paris Agreement, and the issues that are likely to arise. Based on ASEAN instruments on climate change that existed prior to the Paris Agreement, ASEAN countries must undertake mitigation, adaptation, loss and damage measures, and technology transfer and capacity building. Similarly, the Paris Agreement requires states to implement mitigation, adaptation, and loss and damage measures. But it does not provide for any dispute settlement mechanism. Thus, national jurisdictions must take charge of implementing the treaty. She ended by identifying three issues likely to arise out of the implementation of the Paris Agreement: (i) the different interpretations and evidentiary treatment of adaptation and mitigation measures; (ii) the technical and scientific expertise needed to comprehend issues related to the climate science on which state policies are based, and the appropriate standard for evaluating potential scientific risk; and (iii) the need for ASEAN judiciaries to discuss the growing body of ASEAN law serving as additional sources of state obligations regarding climate change, and the correct interpretation of these laws amid the competing interests of environmental groups, the private sector, and government agents in defining the nationally determined contributions of states.

Mr. Matthew Baird, consultant at Pact's Mekong Partnership for the Environment Project and Vermont Law School's U.S.-Asia Partnership for Environmental Law, identified renowned judges and legal practitioners in the field of environmental law. He pointed out the crucial role played by judges and bench attorneys in advancing environmental law jurisprudence and lauded the ASEAN judiciaries and ADB for their contributions to the development of environmental law. He reminded the participants of the ASEAN Charter's objective of "[promoting] sustainable development so as to ensure the protection of the region's environment, the sustainability of its natural resources, the preservation of its cultural heritage and the high quality of life of its peoples." He concluded by encouraging the ASEAN judiciaries to continuously share decisions, ideas, and research; cooperate and engage in constructive dialogue; train legal practitioners to file cases before the judiciaries; and ultimately develop an ASEAN environmental jurisprudence.

Justice Pepper noted how globalization has increased the stressors to the environment. But global judicial networks can also help protect the environment. Judicial networks, facilitated by globalization, can encourage knowledge sharing, mutual assistance, and capacity building. Some of the ways by which judges can benefit from judicial networks are the following: (i) by publishing judgments to inform parties of the rationale for court decisions; (ii) by sharing their judgments with other judges to find out how the latter weigh their decisions and write them down; (iii) by attending conferences to learn about recent legal developments in other jurisdictions; (iv) by joining professional bodies to participate in conferences

organized by these bodies and receive updates about the law; (v) by utilizing court websites that feature court lists, court practice notes, publications, and judicial newsletters; (vi) and by joining international networks that promote broader information exchange through environmental law colloquiums and accessing websites featuring international law and litigation. In summary, judicial networks facilitate widespread information sharing between judges from different jurisdictions, domestic and international, and thereby enhance technical skills, judicial decision making, and ultimately the environmental rule of law.

Atty. Brenda Jay C. Angeles-Mendoza, chief of the Philippine Mediation Center Office, then synthesized the background of the ASEAN Chief Justices' Roundtable on Environment and the progress reports made by the ASEAN delegations. With some of the action points contained in the Jakarta Common Vision and the Hanoi Action Plan clarified, the participants reviewed and updated the Jakarta Common Vision and the Hanoi Action Plan matrices vis-à-vis their judiciaries' own accomplishments.

Chief Justice Sereno confirmed that the participants had already accomplished the first two deliverables of the Sixth Roundtable: discussions on the proposed joint judicial training on environment and information-sharing mechanism for global legal jurisprudence, and ASEAN judicial processes related to the environment. The participants then discussed how they would organize their efforts to deal with their common legal and judicial concerns. Chief Justice Sereno invited the participants to refer to their chief executives' position on environmental and climate change issues as reflected in three ASEAN instruments: (i) the Joint Communiqué of the 49th ASEAN Foreign Ministers' Meeting; (ii) the Chairman's Statement of the 28th and 29th ASEAN Summits, Vientiane; and (iii) the Singapore Declaration on Climate Change, Energy and the Environment. They agreed to refer the matter to the CACJ, for discussion at its next meeting in Brunei Darussalam, the matter regarding the creation of a judicial working group on the environment and its possible inclusion in the CACJ.

Brunei Darussalam and Singapore repeatedly emphasized that they support the efforts of the ASEAN judiciaries to protect the environment and recognized the relevance of the ASEAN Chief Justices' Roundtable on Environment to many ASEAN countries. As small city-states, they face unique challenges that are not common to other ASEAN countries. Thus, Chief Justice Dato Kifrawi Kifli of the Brunei Darussalam Supreme Court and District Judge Luke Tan of the State Courts of Singapore noted that the Jakarta Common Vision, the Hanoi Action Plan, and the Angkor Statement are all aspirational and nonbinding documents.

HIGHLIGHTS

DAY 1: 10 NOVEMBER 2016



▲ Supreme Court of the Philippines Chief Justice Maria Lourdes P. A. Sereno with the participants, Supreme Court of Guam Chief Justice Robert J. Torres Jr., and ADB representatives

WELCOME RECEPTION AND DINNER

The Philippine Supreme Court, led by Chief Justice Maria Lourdes P. A. Sereno, warmly welcomed the 10 Association of Southeast Asian Nations (ASEAN) judicial delegations to Puerto Princesa City, Palawan, an ecotourism capital, on 10 November 2016. Chief Justice Sereno gave her welcome message and emphasized that the Philippine Supreme Court chose Puerto Princesa City, Palawan, as the site for the Sixth ASEAN Chief Justices' Roundtable on Environment (the Sixth Roundtable), because of the island's rich marine biodiversity. The island is surrounded by the Tubbataha Reef, which is only 150 kilometers away from Puerto Princesa. The reef is a United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Site. It also contains vast natural gas deposits.

Chief Justice Sereno acknowledged the presence of the heads of delegations, particularly Chief Justice Dato Kifrawi Kifli of the Brunei Darussalam Supreme Court and Chief Justice Tun Arifin bin Zakaria of the Malaysian Federal Court. She then introduced her colleagues, associate justices and officers of the Supreme Court of the Philippines and the Philippine Judicial Academy, and the various departments and offices that helped organize the conference, and wished everyone an enjoyable stay in Palawan.

The local chief executive of Puerto Princesa City, Mayor Lucilo R. Bayron, also delivered his welcome remarks. Mayor Bayron greeted the participants and the representatives of the Philippine Supreme Court and of the Asian Development Bank (ADB). He highlighted the geography and demographics of Palawan Province and its wealth of natural resources. The main ecotourism sites include the Puerto Princesa Underground River (PPUR), a UNESCO World Heritage Site, a Ramsar site, a national park, and one of the New 7 Wonders of Nature. He ended by inviting everyone to attend the local street dance and float competition in celebration of PPUR Day the next day and giving away souvenirs to the guests.

Atty. Jenny Lind A. Delorino, deputy court administrator of the Supreme Court of the Philippines, and two local performing groups—Puerto Princesa City Chorale and *Kawangis ng Tribu* (Like the Tribe)—entertained the participants over dinner.



▲ Puerto Princesa City Mayor Lucilo R. Bayron delivers his welcome remarks



▲ Supreme Court of the Philippines Deputy Court Administrator Atty. Jenny Lind A. Delorino



▲ Puerto Princesa City Chorale



▲ Kawangis ng Tribu

HIGHLIGHTS

DAY 2: 11 NOVEMBER 2016



▲ Supreme Court of the Philippines Chief Justice Maria Lourdes P. A. Sereno and the ASEAN heads of delegation

WELCOME CEREMONIES

Opening Remarks

Chief Justice Maria Lourdes P. A. Sereno of the Supreme Court of the Philippines gave her opening remarks. She greeted the heads and members of the ASEAN judicial delegations, the associate justices of the Philippine Supreme Court, ADB representatives, Chief Justice Robert J. Torres Jr. of the Supreme Court of Guam, the local judges of Palawan Province, and all the other participants. She stated the need for the Sixth Roundtable to provide a forum for discussing two means of strengthening judicial cooperation in the region: (i) the assimilation of this roundtable's work into the primary functions of the Council of ASEAN Chief Justices (CACJ), formerly known as the ASEAN Chief Justices' Meeting; and (ii) the elevation of the status of the CACJ to the same level as the ASEAN Inter-Parliamentary Assembly. She also



▲ Supreme Court of the Philippines Chief Justice Maria Lourdes P. A. Sereno presents her opening remarks

wanted to emphasize the importance of the environment among ASEAN judiciaries by formally including it in the agenda of ASEAN chief justices. She highlighted the crucial role played by ASEAN judiciaries in developing and upholding the rule of law, especially environmental justice, in the region, and wished everyone a pleasant tour of the Palawan ecosystem and a wonderful stay in the city.

Welcome Message

Ms. Deborah Stokes, vice-president for administration and corporate management of ADB, delivered her welcome message. On behalf of ADB, she welcomed all the participants and thanked the Supreme Court of the Philippines for cohosting the conference. She noted that Asia is the only region in the world with roundtables among chief justices that focus on the environment. ADB is proud of how it has supported this initiative and of how several international organizations have approached ADB to request assistance in establishing similar efforts in other parts of the world. Credit, however, belongs to the ASEAN judiciaries, whose pioneering chief justices have continuously supported the roundtable initiative.

The Sixth Roundtable, Ms. Stokes said, would feature two timely discussions. The first would be about climate change and its implications for ASEAN judiciaries, in view of the entry into force of the Paris Agreement on 4 November 2016, barely a week before the conference. The success of the Paris Agreement relies on the enactment of domestic laws and policies that enforce each state's obligations under the agreement. The judges serve on the front line of a new field of law: climate change law. The second topic, the role of judicial networks in promoting mutual assistance, sought to strengthen the relationships among the ASEAN chief justices, possibly by institutionalizing the ASEAN Chief Justices' Roundtable on Environment within the ASEAN framework.

Ms. Stokes concluded by looking forward to the judges' robust, frank, and constructive dialogues that demonstrate their leadership role in addressing environmental issues.



▲ Ms. Deborah Stokes, vice-president for administration and corporate management of ADB, gave ADB's welcome message

CONFERENCE PROPER



PART I:

PROGRESS OF THE ASEAN JUDICIARIES IN ADVANCING ENVIRONMENTAL JUSTICE



▲ Surabaya High Court Vice Chief Judge Andriani Nurdin reports on the Indonesian judiciary's progress in implementing the Jakarta Common Vision and the Hanoi Action Plan

Call to Order

Chief Justice Maria Lourdes P. A. Sereno, head of the host judiciary, served as conference chairperson and called the conference to order.

Introduction of Delegates

Atty. Theodore O. Te, assistant court administrator and chief of the Supreme Court Public Information Office, served as master of ceremonies and introduced each member of the ASEAN judicial delegations: (i) Chief Justice Dato Kifrawi Kifli of the Supreme Court of Brunei Darussalam; (ii) Mr. Ben Visnow, secretary general of the Supreme Court Administration of Cambodia, and Mr. Rithya Yeth, deputy director

of the Administrative and Finance Department of the Supreme Court of Cambodia; (iii) Judge Andriani Nurdin, vice chief judge of the Surabaya High Court, and Judge Puji Astuti Handayani, vice chief judge of the Bale Bandung District Court; (iv) Justice Philachanh Phomsouvanh, director of the Judicial Technical and Statistics Department and judge of the People's Supreme Court of the Lao People's Democratic Republic (Lao PDR), and Mr. Chanthanakhone Phougum, deputy director of the Lao PDR's Judicial Research and Training Institute; (v) Chief Justice Tun Arifin bin Zakaria and Justice YA Tan Sri Ahmad bin Haji Maarop of the Federal Court of Malaysia, and Judge Ainul Shahrin binti Mohamad, sessions court judge of Kota Kinabalu, Sabah; (vi) Justice Myint Aung, a justice of the Supreme Court of the Union of Myanmar, Ms. Tin Nwe Soe, deputy director general, and Mr. Min Thant, staff officer, both of the Office of the Supreme Court of the Union of Myanmar, and Ms. Khin Than Dar, a legal environmental specialist; (vii) District Judge Luke Tan, district judge of the State Courts of Singapore, and Mr. Kevin Tang, senior assistant director; (viii) Justice Slaikate Wattanapan, president of the Tax Division of the Supreme Court of Thailand, Judge Sutee Thaichinda, chief judge in the Research Justice Division of the Supreme Court, and Judge Rewat Chaleawsilp, a judge of the Office of the President of the Supreme Court; and (ix) Deputy Chief Justice Nguyen Son, Judge Dang Xuan Dao, and Mr. Ha Tuan Hiep, official at the Department of International Cooperation, all of the Supreme People's Court of Viet Nam.

Atty. Te also acknowledged the presence of Chief Justice Robert J. Torres Jr. of the Supreme Court of Guam; Justice Diosdado M. Peralta, Justice Mariano C. del Castillo, and Justice Estela M. Perlas-Bernabe, associate justices of the Supreme Court of the Philippines; Justice Romeo J. Callejo Sr., vice chancellor of the Philippine Judicial Academy (PHILJA) and retired associate justice of the Supreme Court of the Philippines; Justice Marina L. Buzon, executive secretary of PHILJA, and Justice Delilah Vidallon-Magtolis, chief of Office for Academic Affairs, and other officers of PHILJA; ADB representatives and resource persons; and other officers of the Philippine Supreme Court, the Philippine Department of Foreign Affairs, the American Bar Association Rule of Law Initiative, and local judges.

Overview: The ADB Law and Policy Reform Program, the Asian Judges Network on Environment, and the ASEAN Chief Justices' Roundtable on Environment

Mr. Christopher H. Stephens, general counsel of ADB, began by welcoming everyone to the Sixth Roundtable and expressing appreciation for ADB's partnership with the Supreme Court of the Philippines in convening this year's roundtable. He then provided the background of the ADB Office of the General Counsel's Law and Policy Reform (LPR) Program, the Asian Judges Network on Environment (AJNE), and the ASEAN Chief Justices' Roundtable on Environment.

In 1995, the Office of the General Counsel established the LPR Program to support the role of legal systems in the Asia and Pacific region's economic development. A properly functioning legal system, anchored on the rule of law, is needed to promote sustainable development. The system must have a comprehensive legal framework with effective legislative, regulatory, administrative, and judicial institutions that establish, implement, and enforce laws and regulations fairly, consistently, ethically, and predictably. This legal infrastructure of a civil society complements ADB's broader commitment to the development of physical infrastructure, such as power generation and transmission projects, roads, rails, ports and water facilities, and its overall development strategy over the last 50 years. Such legal infrastructure advances economic development by encouraging all members of society to engage, transact, and invest to maximum efficiency in the production and trading of goods and services.

This means more jobs, more income, and more tax revenues that the government can invest to spur more growth, and therefore less and less poverty for the country.

Mr. Stephens also stated that achieving these benefits of an effective legal system depends on having a capable and resourceful judiciary at its center. The judiciary is responsible for ensuring the fairness, certainty, predictability, integrity, and stability of the rule of law and good governance, which serves as the very foundation of financial investment, commerce, and a civil society.

He added that governments around the world, including those in Southeast Asia, have been signing an increasing number of national laws, regulations, and treaties relating to the environment, and creating agencies to implement these laws, over the last 25 years. But not all of these laws, regulations, and treaties are well written or well understood given the absence of precedents. Yet now governments are adding climate change laws and regulations to the already complex environmental legal framework and jurisprudence. States will need to enact new laws and policies to fulfill their nationally determined contributions under the Paris Agreement and their other climate change-related commitments, all of which directly affect national investment policies, plans, and projects.

Judges have been and will be playing an increasingly larger role amid environmental and climate change laws, regulations, and potential litigation. They will be promulgating rules of procedure for environmental cases, particularly on evidence, impact assessment, and allocations of responsibility and liability; forming specialized environmental courts; and rendering decisions with concrete economic consequences that affect policy making, development priorities, and resource allocation. For instance, some courts have interpreted national laws and treaty commitments to require climate impact assessments with specific scope and adequacy that determine the level of carbon dioxide emissions allowed per project. These prerequisites affect project design and engineering, the selection of equipment and contractors, and the operation of facilities intended to operate for 20 to 30 years. Affected industries include power generation and transmission, transportation, urban planning, and several cross-industrial agriculture and commercial sectors. This interplay between judicial action and infrastructure projects explains why ADB's engagement with judiciaries in Asia and the Pacific supports the economic and social development of its member countries.

Mr. Stephens then discussed the AJNE, which is one of the primary forums for this engagement. The network was first conceived at the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice, held in 2010. Since then, ADB has designed the website to be more user friendly and to provide more comprehensive content, including significant environmental laws and decisions from Southeast Asia and South Asia, and possibly Australia, the People's Republic of China (PRC), New Zealand, and the Pacific islands. ADB would next cohost the Fifth South Asia Judicial Conference on Environment and Climate Change in Dhaka, Bangladesh. Mr. Stephens expressed his hope that the discussions, agreements, and progress achieved with the chief justices would cascade to the grassroots level.

He ended by thanking the Supreme Court of the Philippines, the ASEAN National Organizing Committee, and all the organizing teams for orchestrating the event, and for the opportunity given to ADB to share its work with the Asia and Pacific judiciaries. He then wished everyone productive discussions ahead.

At this juncture, Chief Justice Sereno reminded the participants of their agreement to make the ASEAN Chief Justices' Meeting (ACJM) the principal body for high-level policy coordination among the ASEAN judiciaries and to elevate the ACJM to a formal ASEAN council to ensure regional judicial collaboration. She also recognized ADB's support in this endeavor. Since the Inaugural ASEAN Chief Justices' Roundtable on Environment (the Inaugural Roundtable) in 2011, the ASEAN judiciaries had discussed and agreed on several outcome documents. While some judiciaries had considered the goals and action points listed in these documents to be aspirational, others had acted on these items. Chief Justice Sereno explained that the Supreme Court of the Philippines arranged the agenda to allow the participants to arrive at an understanding of what they have accomplished and how they should integrate their environment-related efforts.

Introduction to the Jakarta Common Vision, the Hanoi Action Plan, and the Angkor Statement

Ms. Atsuko Hirose, then advisor at the Office of the General Counsel of ADB, greeted the participants and traced the roots of the ASEAN Chief Justices' Roundtable on Environment to the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice, mentioned by Mr. Stephens. At this symposium, then Chief Justice Harifin A. Tumpa of the Supreme Court of Indonesia invited the ASEAN chief justices and their nominees to the Inaugural Roundtable in Jakarta, Indonesia, in 2011. With ADB's support, five other judiciaries have hosted the roundtables since then—the Federal Court of Malaysia in 2012, the Supreme Administrative Court of Thailand in 2013, the Supreme People's Court of Viet Nam in 2014, the Supreme Court of Cambodia in 2015, and the Supreme Court of the Philippines in 2016.

Ms. Hirose then discussed three significant outcome documents of prior roundtables that shaped succeeding judicial initiatives and innovations for upholding the environmental rule of law and advancing environmental protection in Southeast Asia. The first document, A Common Vision on Environment for ASEAN Judiciaries (the Jakarta Common Vision), envisioned three roles for the roundtable: (i) providing a forum for exchanging information about the region's common environmental challenges and global best practices on environmental adjudication; (ii) emphasizing the crucial role ASEAN chief justices and senior judges play in steering the legal profession and promoting the rule of law—the cornerstone of good governance—and environmental justice; and (iii) facilitating further judicial cooperation on environmental issues. The Jakarta Common Vision pushed for stronger environmental law compliance, enforcement, and education. It also called for the creation of specialized environmental courts and judicial specialization programs, the promulgation and implementation of special rules of procedure for environmental cases, the institution of environmental alternative dispute resolution, and the sharing of environmental jurisprudence with the public and also with the AJNE members.

She also discussed the composition of AJNE, which includes primarily the ASEAN judiciaries attending the ASEAN Chief Justices' Roundtable on Environment and the South Asian Association for Regional Cooperation (SAARC) judiciaries attending the South Asia Judicial Roundtable on Environmental Justice. Representatives from other countries, such as Australia, Brazil, the PRC, Fiji, New Zealand, the United Kingdom (UK), and the United States (US), had participated in both roundtables either as resource persons or as participants. ADB would like to expand this network with emphasis on Asia.

Discussed and agreed on at the Fourth ASEAN Chief Justices' Roundtable on Environment (the Fourth Roundtable), the Hanoi Action Plan to Implement the Jakarta Common Vision (the Hanoi Action Plan) enumerated concrete steps to accelerate the realization of the Jakarta Common Vision. It urged the ASEAN judiciaries to (i) form the ASEAN Judicial Working Group on Environment, national judicial working groups on environment, and even provincial or district-level committees, where beneficial to judicial networking; (ii) submit regular progress reports on their implementation of the Jakarta Common Vision; (iii) conduct environmental twinning programs between judiciaries; (iv) share sample content of rules of procedure; (v) prepare translated records of proceedings; and (vi) create and maintain the AJNE website.

The last of the three outcome documents, the Angkor Statement of Commitment to ASEAN Judicial Cooperation on the Environment (the Angkor Statement), highlighted the transboundary nature of many environmental challenges confronting Southeast Asia; the renewed commitment of ASEAN judiciaries to cooperate in implementing the Hanoi Action Plan; and the importance of continuing environmental law education and information sharing on environmental laws, jurisprudence, and sentencing.

Ms. Hirose stated that although these three documents could be considered as merely aspirational and nonbinding, many ASEAN judiciaries had shown resolve in achieving the goals of the Jakarta Common Vision and implementing the Hanoi Action Plan. First, each of the ASEAN judiciaries had been sending representatives to attend the annual ASEAN Chief Justices' Roundtable on Environment. Second, they formed the ASEAN Judicial Working Group on Environment, which had met twice since 2014. Third, the judiciaries of Cambodia, Indonesia, Malaysia, Myanmar, and Viet Nam had formed their respective national judicial working groups on environment, with the Malaysian judges even creating state-level groups. Fourth, the Malaysian and Philippine judiciaries had assigned specialized environmental courts, while the Indonesian judiciary had set up a judicial certification program on environment, and the Supreme Court of Thailand had a specialized environmental division.

She also stressed ADB's efforts to help the judiciaries in the region. Aside from the AJNE website, which ADB envisioned as a one-stop shop for the Asia and Pacific judiciaries to research relevant environmental laws and decisions, ADB also published translated records of proceedings of previous roundtables. It also has the regional technical assistance project Strengthening Capacity for Environmental Law in the Asia-Pacific: Developing Environmental Law Champions (or Train-the-Trainers; RETA 8616-REG), which aims to contribute to better understanding of environmental law and decision making. The project equips environmental law professors and practitioners with the best international practices in teaching environmental law. Several workshops had already taken place in Malaysia, the PRC, the Philippines, and Viet Nam.

Ms. Hirose ended by congratulating all the judiciaries for their achievements and expressing her eagerness to hear about their next steps in integrating the ASEAN Chief Justices' Roundtable on Environment into the formal ASEAN body.

Report of the ASEAN Nations on Their Progress on the Jakarta Common Vision, the Hanoi Action Plan, and the Angkor Statement

The ASEAN judiciaries then reported on their progress in implementing the Jakarta Common Vision, the Hanoi Action Plan, and the Angkor Statement.

Philippines

Justice Oscar V. Badelles, associate justice of the Court of Appeals, began by explaining the structure of the Philippine judiciary. At the highest level is the Supreme Court, which is the court of last appeal, followed by the Court of Appeals, the Court of Tax Appeals, and the Sandiganbayan. Next are the regional trial courts, which are courts of general jurisdiction, and finally the municipal and city courts. The Philippines has about 2,400 trial courts, of which 117 are specialized environmental courts. In 2010, the Philippine Supreme Court issued the Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC, which allows for a simplified, expeditious, and inexpensive procedure for environmental cases. The rules liberally define *locus standi* (legal standing), relax the rules of evidence, provide more injunctive relief and special remedies, and introduce other innovations to enable the courts to monitor and exact compliance with their orders and decisions.

The Philippine judiciary also has the Philippine Judicial Academy (PHILJA), which trains current and prospective judges. PHILJA updates them on recent laws, rules and procedures, and regulations, not just in the country but also around the world.

Justice Badelles reported that over the last 5 years, about 212 environmental cases had been filed before the Court of Appeals. Of this number, about 74% had already been resolved. Most of the cases filed involved violations of forestry and fishery laws, poaching, pollution, and illegal mining. In relation to the Hanoi Action Plan, he said that the Philippine judiciary does not yet have a national judicial working group on environment. But the Supreme Court does have the Sub-Committee on the Rules of Procedure for Environmental Cases, which takes charge of implementing and revising the rules on environmental cases. The Philippine judiciary also ensures the immediate publication of landmark environmental decisions and rules of procedure of the Supreme Court and the Court of Appeals on their respective websites. He also mentioned that several law schools had already included environmental law in their curricula, before turning over the floor to Judge Ambrosio B. De Luna, who presides over one of the environmental courts in Palawan Province.

Judge De Luna said that most of the cases his court hears and decides involve illegal logging covered by Presidential Decree No. 705, or the Revised Forestry Code of the Philippines, followed by cases involving violations of Republic Act No. 8550, or the Philippine Fisheries Code of 1998, as amended by Republic Act No. 10654, Republic Act No. 9175, or the Chain Saw Act of 2002. Least common are cases concerning intrusions into the Tubbataha Reef, which is protected by Republic Act No. 10067, or the Tubbataha Reefs Natural Park Act of 2009, a law requiring anyone who wishes to enter the reef to first secure clearance from the Tubbataha Management Park. His court receives these kinds of cases because fishing, agriculture, and timber gathering are the primary sources of livelihood in Palawan.

Judge De Luna added that Republic Act No. 8550 likewise penalizes foreign nationals who poach game in the Philippines or illegally fish in Philippine waters. The judge has handled several cases of similar violations by foreign nationals. On 6 May 2004, foreign nationals entered the waters near the municipality of Dr. Jose P. Rizal, Palawan. They were sentenced to pay a fine of about \$100,000 to \$120,000. The court could not impose a prison sentence because at that time, illegal fishing was punishable only by a fine. Republic Act No. 10654 increased the penalty on foreign persons, corporations, or entities caught illegally fishing in Philippine waters to include imprisonment from 6 months and 1 day to 2 years and 2 months, and a fine of up to \$2.4 million.

The first civil case wherein Judge De Luna's court was able to apply the Rules of Procedure for Environmental Cases was a case filed by several farmers from the southern Palawan town of Narra against former Governor Joel T. Reyes, 23 other local public officials, and 4 small-scale mining companies. The governor issued permits to the mining companies to operate in Narra's strictly protected areas. These companies, in turn, caused laterite pollution, which flowed downstream onto the agricultural lands of the farmers. Contamination reduced the farmers' production. After the trial, Judge De Luna awarded damages and ordered the mining companies to rehabilitate the areas polluted by their mine tailings. The case was appealed before the Court of Appeals.

Judge De Luna also discussed the petition for certiorari with urgent prayer for temporary restraining order and preliminary injunction filed by Berong Nickel Corporation, a large-scale mining company, against the Palawan Provincial Mining Regulatory Board. The regulator recommended the imposition of a fine of P20 million (or about \$402,188) for allegedly extracting and transporting quarry without the necessary permit. The parties entered into a compromise agreement and had the case dismissed.

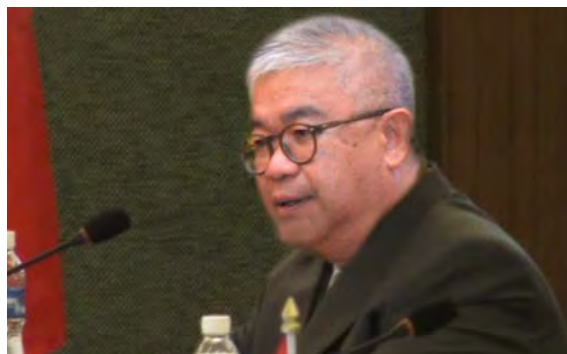
Lastly, Judge De Luna talked about the case of *Limsa, et al. vs. DMCI Power Corporation, et al.*, Civil Case No. 5019. Here, DMCI was planning to build a coal plant in Aborlan, Palawan. The residents of Aborlan challenged the proposed project for allegedly being harmful to the environment and public health. The executive judge of Puerto Princesa issued a temporary environmental protection order to prevent the Palawan Council for Sustainable Development and the local government units concerned from endorsing the proposal. Judge De Luna extended the court order. Ultimately, DMCI abandoned the proposed project, rendering the case moot and academic.

Chief Justice Sereno noted that she would still have to discuss the need to form a national judicial working group on environment with the associate justices of the Supreme Court because the existence of the Sub-Committee on the Rules of Procedure for Environmental Cases could already be considered sufficient compliance with the Hanoi Action Plan. The existence of such subcommittee could already be considered sufficient compliance with the Hanoi Action Plan. She added that as the Philippine judiciary has 117 regional trial court judges, and several Court of Appeals and Supreme Court justices experienced at handling environmental cases, she believed that the judiciary already had substantial judicial expertise in environmental adjudication. But the listing of scientific and expert witnesses would have to be coordinated with the executive branch. Moreover, all significant environmental laws and cases are uploaded to the Philippine Supreme Court website. She noted that the AJNE website already contained a list of many Philippine environmental laws, to which Atty. Te could add. She also noted that Judge De Luna had already identified several instances wherein foreign nationals committed environmental offenses in the Philippines and were consequently incarcerated in the country.

Chief Justice Sereno also suggested postponing the discussion on the ASEAN Judicial Working Group on Environment because the ASEAN judiciaries still had to agree on how to organize their environment-related work as ASEAN judiciaries. She also mentioned the Philippine judiciary's willingness to host all the environmental twinning programs in the region. In terms of areas for improvement, she recalled requesting help from ADB in training judges to evaluate scientific evidence. Finally, she explained the Enhanced Justice on Wheels Program, which involves setting up mobile courts in buses to allow judges to reach remote areas of islands to hear and decide cases, and which the Supreme Court has been trying to expand.

Brunei Darussalam

Chief Justice Dato Kifrawi Kifli, chief justice of the Supreme Court of Brunei Darussalam, thanked the Philippine judiciary for hosting this roundtable and inviting the Supreme Court of Brunei Darussalam to attend it. He talked about the Brunei Darussalam judiciary's recognition of the importance of environmental legislation. Many Brunei Darussalam judges had attended environmental law conferences sponsored by ADB and judicial training programs hosted by other countries, such as Indonesia.



▲ Chief Justice Dato Kifrawi Kifli of the Supreme Court of Brunei Darussalam

Chief Justice Kifli further said that the magistrates' court decides most of the environmental cases in Brunei Darussalam, and the municipal court handles some illegal fishing cases. However, some cases are compounded and therefore no longer reach the courts. These include garbage disposal cases handled by the municipal authorities, and cases of smoking in public places handled by the health authorities.

He highlighted the World Health Organization's classification of Brunei Darussalam's air as being one of the best in the world and cited various contributory factors. First, Brunei Darussalam has a small geographic area and only about 400,000 inhabitants scattered across the country. Second, 80% of the land area is covered by forest. Third, Brunei Darussalam's anti-smoking law prohibits smoking in public places, such as cinemas, shops, restaurants, and hotels. Fourth, Brunei Darussalam's economy relies on oil and gas, rather than logging or other industrial activities that harm the environment. Fifth, most cars use unleaded gasoline. To further improve air quality, Chief Justice Kifli thought that the government should no longer subsidize, and should even ban, diesel. Sixth, in October 2016, the government initiated car-free Sundays in Bandar Seri Begawan by closing certain roads from 6 a.m. to 10 a.m. every Sunday to encourage the public to walk and cycle around the city. Seventh, the Sultan issued the Environmental Protection and Management Order 2016, which aims to strike a balance between environmental protection and economic growth. Its enforcement, however, might take time because the local authorities must first draft the implementing regulations. He also noted that the country has been using liquefied natural gas, instead of burning natural gas, since 1973. But he did admit that Brunei Darussalam suffers occasional haze pollution.

According to Chief Justice Kifli, the Brunei Darussalam government needs to continuously educate the public to protect the environment, instead of causing air, land, and water pollution. Although municipal authorities regularly clean up public beaches and collect garbage from the water villages, people still dispose of garbage in the surrounding areas. The government must also improve its solid waste management system.

He concluded that the Brunei Darussalam judiciary found no need to set up specialized courts because they deal with few environmental cases and do not have enough judicial officers to create a national judicial working group on environment. At present, the relevant government ministries are taking charge of drafting the regulations needed to effectively enforce the Environmental Protection and Management Order 2016.

Cambodia

Mr. Ben Visnow, secretary general of the Supreme Court Administration of Cambodia, greeted Chief Justice Sereno, Mr. Stephens, and the participants, and conveyed the gratitude of Chief Justice Dith Munty, president of the Supreme Court of Cambodia, for the invitation and the warm hospitality shown to the Cambodian delegation. He discussed the progress made by the Cambodian judiciary in fulfilling its commitments under the Jakarta Common Vision and the Hanoi Action Plan. First, in 2015, the Supreme Court of Cambodia, backed by ADB, held the Second ASEAN Judicial Working Group on Environment Meeting in Phnom Penh and the Fifth ASEAN Chief Justices' Roundtable on Environment in Siem Reap (the Fifth Roundtable). Participants at the Fifth Roundtable agreed on the Angkor Statement, with the supreme courts of Brunei Darussalam and Singapore noting that the document is aspirational in nature and therefore does not require a binding commitment.



▲ Secretary General Ben Visnow of the Supreme Court of Cambodia

Second, the Supreme Court of Cambodia established its national judicial working group on environment under Decision No. 78/15 dated 16 February 2015, and its provincial judicial working groups on environment under Decision No. 111/15 SC.D dated 23 September 2015.

Third, the Supreme Court of Cambodia has started providing environment-related training courses for judges and prosecutors in Cambodia. Mr. Ben pointed out that usually the country's courts just hear and decide cases; the Ministry of Justice handles law enforcement and training. On 23 September 2015, the Royal Academy for Judicial Professions, under the Ministry of Justice, sponsored a workshop with the support of the Supreme Court of Cambodia and the United States Agency for International Development (USAID). The workshop provided a forum for sharing expertise in dealing with environmental issues and principles. About 80 judges, prosecutors, court clerks, and administrative staff attended this workshop. All members of Cambodia's judicial working groups on environment maintained their communications following the workshop.

Fourth, from June 2015 to 31 October 2016, courts throughout Cambodia received 2,376 cases, of which they had decided 990 cases, or about 41.6%. The remaining 1,386 cases were still undergoing litigation. Most cases filed relate to forestry offenses. The judiciary compared the number of forestry cases filed from 2014 to 2015 with the corresponding figure from 2015 to 2016 and observed a 55.7% decline in forestry violations in the country. Mr. Ben attributed the decline to more effective anti-forestry offense initiatives and a better interagency coordinating mechanism. But he also traced the challenges related to forestry law enforcement to several factors: (i) the lack of awareness of the importance of forests and the poverty in rural areas, (ii) the lack of technical expertise in environmental adjudication, (iii) the lack of technology and sources of information about anti-environmental crime initiatives, and (iv) the weak penalties provided for environmental crimes. The Cambodian government issued a decree ordering the formation of a committee to draft a new environmental law and create environmental courts.

Mr. Ben said that their national judicial working group on environment would like to develop short-, medium-, and long-term work plans for achieving the Jakarta Common Vision and the Hanoi Action Plan. But the working group faces the challenge of finding suitable resource persons with expertise in the fields of environmental law, assessment, and adjudication. He was pleased to note the Philippine Supreme Court's offer to share its list of technical experts. But he also requested the ADB Office of the General Counsel to share expertise in environmental law, assessment, and adjudication, and hoped for improved information sharing in the development and enforcement of new environmental laws and regulations between the judiciary and the relevant institutions in Cambodia.

Chief Justice Sereno confirmed the Philippine judiciary's offer to provide whatever assistance the Cambodian judiciary requests. She then called for a break to allow the participants and guests to view the largest pearl in the world, which had just been brought in from the mayor's office.

Atty. Te gave a brief background on the pearl. The pearl weighs about 34 kilograms. According to Ms. Aileen Cynthia Amurao, Puerto Princesa City tourism officer, the fisher who found the pearl considered it to be a lucky charm and kept it under his bed for 10 years.



▲ ASEAN delegates take a photo with the largest pearl in the world

Indonesia

Judge Andriani Nurdin, vice chief judge of the Surabaya High Court, first apologized for the unavailability of Chief Justice Muhammad Hatta Ali, chief justice of the Supreme Court of Indonesia, to attend the roundtable. She then discussed the activities of the Indonesian judiciary in furtherance of the Jakarta Common Vision and the Hanoi Action Plan.

First, the Supreme Court of Indonesia has formed a national judicial working group on environment and instituted a judicial certification program on environment under the supervision of the group. Second, more serious penalties for environmental offenses, including orders to clean up the pollution caused and revocation of licenses and permits, were imposed. Third, regular seminars regarding environmental laws and regulations, concepts and principles, and rules of procedure were provided.

At the time of the Sixth Roundtable, approximately 1,000 Indonesian judges had already received such training. The Indonesian judiciary believes that the continuous environmental law training of judges is needed to ensure fair trials, strengthen enforcement, deter environmental violations, and encourage compliance. For instance, after the forest fire crisis in 2015, the Supreme Court of Indonesia worked



▲ Vice Chief Judge Andriani Nurdin of the Surabaya High Court

together with the Ministry of Environment and Forestry and the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD Programme) to provide environmental law training and certification for judges in Bogor, West Java, and to further strengthen the entire justice system.

Moreover, of 8,000 judges in Indonesia, about 577 are already certified environmental judges. These 577 judges comprise 442 general court judges (45 appeal court judges and 397 district court judges) and 135 administrative court judges (25 appeal court judges and 110 first instance court judges). According to Judge Nurdin, the certification program has resulted in increased judicial capacity to hear and decide environmental crimes. She reported that the Supreme Court of Indonesia aimed to have all its judges certified.

Fourth, the Supreme Court of Indonesia has started implementing special rules of procedure covering environmental cases and environmental alternative dispute resolution. These rules provide for special registration numbers for environmental cases and case assignment only to certified judges, among others. Chief Justice Ali's Decree No. 36/KMA/SK/XI/2013 also contains guidelines for environmental cases. Under this decree, judges should interpret environmental law and related legislation in light of the need to protect the environment and consider expert testimonies taking into account issues of causation, scientific uncertainty, and damage assessment. They also have special rules for environmental alternative dispute resolution (ADR) under Environmental Protection and Management Law (Law No. 32/2009 dated 3 October 2009) and Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Courts.

Fifth, all final decisions rendered by Indonesian courts are made available to the public. At the time of the Sixth Roundtable, almost 1.9 million cases had already been uploaded to the Supreme Court website's judgment directory. Mandatory online publication of these cases also simplifies the chief justice's supervision of all cases pending and decided by the lower and appellate courts.

Sixth, the Indonesian judiciary provides timely and appropriate training in environmental law issues for new and junior judges. Lastly, the country's law schools have already included environmental law and jurisprudence in their curricula, while legal professional associations offer continuous legal education. The judiciary has also been attending the annual ASEAN Chief Justices' Roundtable on Environment to discuss important environmental issues.

Judge Nurdin then turned the floor over to Judge Puji Astuti Handayani, vice chief judge of the Bale Bandung District Court, who reported on two significant decisions rendered by the Indonesian judiciary. Judge Handayani first discussed Case No. 651 K/PDT/2015, a forest fire case in Aceh. Justice Takdir Rahmadi of the Supreme Court of Indonesia penned the decision. On 27 November 2012, the Ministry of Environment first sued PT Kallista Alam, an Indonesian national company, before the Meulaboh, Aceh District Court for illegally burning forests within the Tripa Peat Swamps. In January 2014, the district court found Kallista Alam guilty of violating Law No. 32/2009 when it used fire to clear the forests. Thus, the court ordered it to pay Rp114.3 billion (about \$8.6 million) to compensate the government, Rp251.7 billion (about \$18.9 million) to fully restore the affected forests to their original condition, and an additional fine of Rp5 million (about \$376) for each day that the company failed to pay on time. In addition, the court confiscated 57 square kilometers of Kallista Alam's concession land in Tripa. Judge Handayani said that the monetary penalty was thus far the highest handed down to an environmental offender. The High Court denied Kallista Alam's appeal on 15 August 2014. So did the Supreme Court.

Judge Handayani pointed out that on 25 August 2011, Mr. Irwandi Yusuf, former governor of Aceh, granted Kallista Alam a concession permit covering 1,605 hectares of palm plantations in the Tripa Peat Swamps. Tripa is part of the 2.6-million-hectare protected Leuser Ecosystem, the only place in the world where Sumatran elephants, orangutans, rhinoceroses, and tigers can be found living side by side. Acehnese environmentalists immediately sued the governor and the company over the illegal permit and secured its revocation on 27 September 2012. Meanwhile, huge fires ravaged areas of the Tripa Peat Swamp that were covered by concessions granted to different companies.

Case No. 651 K/PDT/2015 demonstrated several breakthroughs made by the Indonesian judiciary. First, the courts recognized the legal standing of both state and regional government institutions to sue violators for compensation and other relief. The state's responsibility to protect the environment entails enforcing environmental laws and monitoring the competence of government institutions. Second, the court established the causal relation between an unlawful action and the damage done to the environment by linking scientific evidence with legal evidence. The court specifically accepted National Aeronautics and Space Administration (NASA) satellite images as evidence that the fires occurred within areas controlled by Kallista Alam, coupled with the testimony of expert witnesses and verification made by local judges. Third, the court accepted the environmental valuation of damage presented by the government based on pertinent government regulations, standards, and methodology. The evaluation took into account the areas that had already lost their use as water reservoirs and biodiversity and genetic resources, the volume of carbon released, the losses suffered by the local economy, and the cost of rehabilitating the peatland's ecological functions. In doing so, the court considered the state's responsibility to protect the environment, the intergenerational equity principle, the polluter-pays principle, and the right to a healthy environment as a human right. The verdict showed that effective environmental law enforcement is possible if all agencies concerned perform their responsibilities and show willingness to use the resources at their disposal.

Judge Handayani next discussed Case No. 131/Pid.B/2013/PN.MBO, wherein the same company, Kallista Alam, represented by its director, Mr. Subianto Rusid, was charged with clearing a plantation area without a permit as prescribed in Articles 69(1)(h), 108, 116(1)(a), 118, and 119 of Law No. 32/2009 and Article 64(1) of the Indonesian Penal Code. The Meulaboh District Court ordered the company to pay a fine of Rp3 billion (about \$225,666). Subsequently, the same district court, in Case No. 132/Pid.B/2013/PN.MBO, sentenced the company director, Mr. Subianto Rusid, to 8 months' imprisonment and imposed a fine of Rp150 million (about \$11,286) and a subsidiary penalty of 3 months' imprisonment. Moreover, the court, in Case No. 133/Pid.B/2013/PN.MBO, sentenced the company development manager, Mr. Khamidin Yoesoef bin Muhammad Yoesoef, to 3 years' imprisonment and exacted a fine of Rp3 billion (about \$225,666) and a subsidiary penalty of 5 months' imprisonment. The accused challenged the adverse decisions in both the civil and criminal cases using the *non bis in idem* principle.¹ The court overruled the objection in consideration of the huge losses to Aceh's economy and natural environment caused by the company's criminal acts.

¹ The *non bis in idem* (not twice in the same) principle provides that nobody shall be tried twice for the same offense. If already tried by a tribunal and either convicted or acquitted, the accused can no longer be tried again.

Lao People's Democratic Republic

Justice Philachanh Phomsouvanh, director of the Judicial Technical and Statistics Department and judge of the People's Supreme Court of the Lao PDR, first conveyed Chief Justice Khamphanh Sitthidampha's apologies for being unable to attend the roundtable. He also extended the latter's regards to Dr. Kala Mulqueeny, former principal counsel at ADB's Office of the General Counsel. He thanked the Philippine judiciary for inviting the Lao PDR judiciary to attend the Sixth Roundtable and ADB for providing financial support to enable his delegation to participate in the conference.

Justice Philachanh said that the Lao PDR differs from other countries in terms of environmental emergency preparedness. They only have 424 judges. Despite that limitation, the Government of the Lao PDR has been striving to protect the environment. From a mere department under the Prime Minister's Office, the agency responsible for enforcing environmental laws has become the Ministry of Natural Resources and Environment. There are also several laws, guidelines, and Prime Minister's orders on environmental protection.

He first discussed the Lao PDR statutes on environmental protection. Article 19 of the Constitution requires the state to protect and sustainably use the country's natural resources and restore the environment to its pre-damaged state. It also enjoins every citizen to protect biodiversity and natural resources. Moreover, Article 6 of the Law on Environmental Protection mandates the pursuit of socioeconomic advancement through the sustainable use of natural resources; protection of society, the environment, and nature; repair of any damage caused to society, the environment, and nature; and public consultation with all affected persons, organizations, and authorities. The use of energy and natural resources should result in maximum benefit to all stakeholders, while causing the least harm to the environment and accounting properly for all damage caused to society, the environment, and nature. He opined that it is better to avoid damage to society, the environment, and nature than to redress damage, and to require an environmental impact assessment before any proposed development begins.

He also mentioned Prime Minister's Order No. 84, the Decree on Compensation and Resettlement Management in Development Projects, dated 5 April 2016. This issuance governs the proper compensation and resettlement of people affected by development projects, and the valuation of damage caused to the people and the environment. In addition, Prime Minister's Order No. 15, the Order on Enhancing Strictness on the Management and Inspection of Timber Exploitation, Timber Movement and Timber Business, dated 13 May 2016, prohibits deforestation and production using wood, protects the Lao PDR's remaining timber, and regulates wood exports. Justice Philachanh noted that the Lao PDR has 119 laws, of which 105 will have to be amended during the 5-year term of the 8th National Assembly.



▲ Justice Philachanh Phomsouvanh, director of the Judicial Technical and Statistics Department and judge of the People's Supreme Court of the Lao PDR

Justice Philachanh next emphasized the importance of sustainable development, given the geography and demographics of the Lao PDR, a landlocked country with a land area of about 237,960 square kilometers, abundant natural resources, and a population of 6.8 million.² Its government aims to have the country delisted as a least developed country by 2020. Thus, while the government cannot guarantee the absolute prevention of environmental damage, it will seek to balance socioeconomic development with environmental protection. For instance, as of November 2016, the Lao PDR had 151 hydropower projects. Only 22 of these projects actually produced electricity; 37 projects remained under study, 61 were being planned, and 31 were under construction. The proponents had to comply with legal and regulatory requirements for environmental protection.

Justice Philachanh said that not all environmental offenses are filed directly with the courts. Government agencies first try to settle these cases administratively. A case is filed in court only after administrative processes fail. From 2011 to 2015, the Lao PDR judiciary heard only 173 cases involving illegal logging; 1, wildlife crime; 7, poaching; and 21, illegal exploitation of natural resources. Enacted in 2005, the current law on environmental crime provides light penalties: only four crimes are punishable by imprisonment and the maximum prison sentence is only 5 years. According to the justice, this law must be amended during the 8th National Congress.

In conclusion, Justice Philachanh noted that it is difficult both to estimate environmental damage and to quickly redress such damage. But it is also hard to ignore the need for economic development. The challenge lies in being able to pursue economic development without harming the environment. The statutes penalizing environmental offenses should be amended and harmonized with those of other countries in the region. As an ASEAN member country and together with other ASEAN countries, the Lao PDR should adopt international best practices in environmental protection, while striving to accomplish both its Millennium Development Goals and its domestic development goals for poverty reduction and removal from the list of least developed countries.

Malaysia

Chief Justice Tun Arifin bin Zakaria, chief justice of the Federal Court of Malaysia, reported that the Malaysian judiciary had already implemented most of the action items under the Jakarta Common Vision and the Hanoi Action Plan. First, through Practice Direction No. 3 of 2012, it established green courts and shortened the time for disposing environmental cases to 6 months from the time they were registered with the courts. So far, about 90% of the environmental cases filed since the directive was issued have been settled within this time frame. Also, about 42 sessions courts and 53 magistrates' courts throughout Malaysia have been



▲ Chief Justice Rt. Hon. Tun Arifin bin Zakaria of the Federal Court of Malaysia

² World Bank. World Bank Open Data. <http://data.worldbank.org/country/lao-pdr> (accessed 13 June 2017).

designated as environmental courts and assigned to handle environmental cases. Judges in these courts train at the Judicial and Legal Training Institute and attend seminars overseas.

Chief Justice Zakaria added that the jurisdiction of environmental courts was initially limited to criminal cases. But on 1 January 2016, the Malaysian judiciary set up specialized environmental courts for civil cases by designating high courts, sessions courts, and magistrates' courts in all 30 states to handle civil cases. The judiciary also placed certain town and country planning issues within the civil environmental courts' jurisdiction. Chief Justice Zakaria expressed the hope that with the environmental specialization it is building, the Malaysian judiciary can soon develop its environmental jurisprudence.

Second, Malaysia does not yet have special rules of procedure for environmental cases similar to what the Philippines has. But its national judicial working group on environment is already considering having such rules in place.

Third, all decisions on environmental cases are featured on the Federal Court of Malaysia's website. The Department of Environment also publishes on its website monthly case reports containing details of cases handled and penalties imposed by the courts. The Sabah and Sarawak state judicial working group on environment also launched its own website on 22 January 2016.

Fourth, the Malaysian judiciary has already formed its national judicial working group on environment and conducted activities to enhance its efforts to protect the environment. One such activity is the judiciary's first environmental workshop, held at the University of Malaysia in 2015.

Fifth, the Malaysian judiciary has also engaged students and the general public in talks regarding environmental challenges. The Perak Court, for example, organized a debate between two schools in Perak on whether the ASEAN had failed to curb the haze problem. In Chief Justice Zakaria's opinion, ASEAN succeeded in this regard because he observed the haze problem to have lessened in 2016. He credited the Indonesian government for its efforts to solve the issue, particularly by discouraging open burning. He lauded the Indonesian courts for imposing significant penalties, as reported by Judge Nurdin and Judge Handayani.

Moreover, together with the US Embassy based in Kuala Lumpur, the Federal Court of Malaysia held the Second National Seminar on Environmental Justice at the Royal Belum Rainforest Resort in Perak, in October 2015. There, over 50 local judges, prosecutors, Department of Environment officials, and other stakeholders deliberated on anti-wildlife trafficking measures. The Federal Court of Malaysia has also organized several judicial outreach programs, bringing judges to forests and seas to develop their appreciation of nature, make them realize the harm caused by the environmental offenses they hear and decide, and therefore encourage them to impose appropriate sentences.

Myanmar

Justice Myint Aung, justice of the Supreme Court of the Union of Myanmar, began by enumerating Myanmar's environmental challenges, including deforestation, increased flooding, landslides, air and water pollution, soil erosion, and river contamination. He then discussed his government's efforts to protect the environment.

Myanmar has several environmental laws and provides two remedies for redressing violations—administrative action before the Ministry of Natural Resources and Environmental Conservation and court action before the judiciary. Also, these laws provide a maximum prison sentence of 7 years and a limited scope of forestry offenses, which fails to account for forest degradation and deforestation, habitat and biodiversity loss, soil degradation, and disturbance of forest ecosystem services.

The Ministry of Natural Resources and Environmental Conservation implements environmental conservation and protection measures. It drafted Myanmar's national climate change strategy and work program with technical assistance from the United Nations Environment Programme (UNEP), the United Nations Human Settlements Programme (UN-Habitat), and other stakeholders. It also drafted environmental impact assessment guidelines for the natural gas, oil, and hydropower sectors. Now it is working to amend the Forest Law.

Justice Aung highlighted the Myanmar judiciary's limited capacity to decide environmental cases. Administrative action serves as the primary recourse for most offenses. Some crimes, such as illegal logging and wildlife trafficking, are often committed in areas bordering the PRC and Thailand. The perpetrators usually escape to neighboring countries so Myanmar law enforcers cannot prosecute them before domestic courts.

The Supreme Court of the Union of Myanmar is aware of the need to build transnational judicial cooperation to bring these offenders to justice and deal with cross-border environmental challenges. It has actively participated in the annual ASEAN Chief Justices' Roundtable on Environment since 2011 and sent delegates to attend the ASEAN regional training for judges on environmental law issues in 2014. It also formed its national judicial working group on environment in collaboration with ADB and launched a website to share information about important laws, rulings, and court-related information. Justice Aung suggested linking this website to the AJNE website. He said that as of November 2016, the Supreme Court was considering revising the training syllabus for judges to include environmental legal issues, instead of creating specialized environmental courts.

In closing, Justice Aung said that the ASEAN Chief Justices' Roundtable on Environment serves as an important forum for ASEAN judiciaries to learn and share their experience in upholding environmental justice. He thanked the Supreme Court of the Philippines and ADB for organizing this last roundtable and looked forward to more ASEAN collaboration in preserving the environment while achieving sustainable development.



▲ Justice Myint Aung of the Supreme Court of the Union of Myanmar

Singapore

District Judge Luke Tan of the State Courts of Singapore thanked the Supreme Court of the Philippines for cohosting this roundtable. He said that Singapore supports the ASEAN judiciaries' efforts to protect the environment and recognizes the relevance of the work of the ASEAN Chief Justices' Roundtable on Environment to many ASEAN countries. As a small city-state with a highly urbanized landscape, Singapore faces unique challenges that are not common to other ASEAN countries. Singapore courts do not hear many environmental cases and have no special procedural rules for environmental cases. He also noted that the Jakarta Common Vision, the Hanoi Action Plan, and the Angkor Statement are aspirational and nonbinding documents.



▲ District Judge Luke Tan of the State Courts of Singapore

District Judge Tan reported on the Singapore government's efforts to raise awareness of environmental issues among members of the judiciary and other stakeholders. The Singapore Judicial College, which trains and develops judges and judicial officers, organized talks on environmental law in 2015 and 2016. Likewise, on 27 September 2016, the Supreme Court of Singapore sponsored a talk titled "An Overview of ASEAN Environmental Law." At that event, Emeritus Professor Koh Kheng Lian discussed the ASEAN's environmental issues and challenges and the possibility of ASEAN environmental legal integration.

He ended by expressing eagerness to attend the various sessions of this roundtable and listen to the speakers and the ASEAN delegations.

Thailand

Justice Slaikate Wattanapan, president of the Tax Division of the Supreme Court of Thailand, said that the Thailand judiciary has not yet established its official national judicial working group on environment. The courts of justice, however, have assigned their environmental division to fulfill their environmental commitments to ADB, the World Bank, and other ASEAN countries. He explained that Thailand has a dual court system, comprising the courts of justice and the administrative courts. Both courts handle civil cases, but only the courts of justice deal with criminal cases. The administrative courts hear and decide administrative cases.



▲ Justice Slaikate Wattanapan of the Tax Division of the Supreme Court of Thailand

Following the Inaugural Roundtable, the chief justice of the Supreme Court of Thailand issued several recommendations on how courts of justice throughout the country should treat environmental cases. First, the recommendations provided definitions for environmental cases, natural resources, and the environment. Second, they expanded the concept of legal standing in environmental cases by emphasizing the community right to a healthy environment. Thus, aside from persons adversely affected by an act causing damage to natural resources and biodiversity, indigenous communities and their members can sue state authorities for failing to perform their mandates or abusing their powers. Third, they required courts to use the precautionary principle and consider irreversible damage caused to the environment in issuing interim relief orders and deciding cases. Fourth, they also promoted the use of alternative dispute resolution in settling environmental cases and a proactive approach to gathering evidence. Judges apply the inquisitorial approach in environmental cases, so they can consider any evidence they deem appropriate to protect the environment.

Justice Wattanapan said that the Supreme Court of Thailand and a subcommission of the Office of Law Reform Commission of Thailand are working on two separate drafts of procedural rules for environmental cases. The Supreme Court's draft deals only with civil cases while the subcommission's draft covers civil, criminal, and administrative cases and contemplates the creation of specialized environmental courts.

Justice Wattanapan talked about the Office of the Chief Justice's recommendation to list experts in particular fields, including environmental adjudication. As of November 2016, they had identified 30 judges who graduated from environmental law and adjudication training courses abroad. The Thailand judiciary now faces the challenge of organizing its court staff to do their jobs effectively and efficiently.

Justice Wattanapan told the roundtable participants that environmental laws, cases, and procedural rules are already being published, mostly in Thai. He remarked on the difficulty of translating these cases into English and suggested that ADB support would be helpful in this regard, as well as in the publication of the English versions online, to be shared with the rest of ASEAN.

Justice Wattanapan relayed the chief justice's message declaring his judiciary's willingness to collaborate with other ASEAN countries in organizing environmental twinning programs through the Judicial Training Institute in Bangkok. He ended by expressing the hope that cooperation on environmental issues would continue.

Viet Nam

Deputy Chief Justice Nguyen Son of the Supreme People's Court of Viet Nam delivered his country's report, which was then translated by Mr. Ha Tuan Hiep, official at the Department of International Cooperation of the Supreme People's Court of Viet Nam. Initial greetings were delivered and words of appreciation addressed to the hosts for convening the Sixth Roundtable. The report noted that from January 2015 to September 2016, the



▲ Deputy Chief Justice Nguyen Son of the Supreme People's Court of Viet Nam

Viet Nam judiciary received more than 350 environmental crime cases with about 450 defendants. These environmental crimes included deforestation, wildlife trafficking, and illegal natural resource exploitation. The Viet Nam judiciary imposed strict penalties in these cases.

The report went on to say that since 2011, the Viet Nam judiciary has been implementing various programs under the Hanoi Action Plan. First, it created a national judicial working group on environment. The working group includes senior judges who actively participated in revising Viet Nam's environmental law and circulars by providing comments and research and who attended national and international conferences dealing with environmental issues.

Second, Viet Nam judges also strive to learn from other countries' experience in environmental adjudication in preparation for the eventual establishment of their own specialized environmental courts or a judicial certification program on environment. Since 2012, support has come from the Federal Court of Australia, through the Australian Agency for International Development (AusAID), in conducting environmental adjudication courses with speakers coming from the New South Wales (NSW) Land and Environment Court. In addition, the research department of the Supreme People's Court of Viet Nam is studying the possibility of establishing green courts.

Third, they also promote environmental law education at the Court Academy under the Supreme People's Court of Viet Nam. The judiciary requires the academy to include environmental law in its training curriculum for aspiring judges and court clerks.

Lastly, the Viet Nam judiciary also encourages law schools to include environmental law in their curricula. The report referred to ADB's Train-the-Trainer Technical Assistance, which supported training in Viet Nam in May 2016.

At this juncture, Chief Justice Sereno highlighted the ASEAN judiciaries' seriousness in promoting environmental protection, the cross-border nature of many of the region's environmental challenges, and the timeliness of an actionable framework to guide the ASEAN judiciaries.

PART II:

EMERGING ENVIRONMENTAL LEGAL AND JUDICIAL CHALLENGES



▲ Justice Rachel Pepper, judge of the New South Wales Land and Environment Court in Australia, and Prof. Dr. Diane A. Desierto, associate professor of law at the University of Hawaii and co-director of the ASEAN Law & Integration Center, discuss significant climate change laws and cases and their implications for ASEAN judiciaries

The Climate Change Regime and Its Implications for ASEAN Judiciaries

Comparative Review of Climate Change Jurisprudence in Australia and Other Countries

Justice Rachel Pepper, a judge of the New South Wales (NSW) Land and Environment Court in Australia, gave the first talk about the climate litigation landscape in Australia. Of all environmental issues, the climate change challenge is arguably the most global in scope. While environmental issues such as deforestation and overfishing already have domestic and regional solutions, climate change is a global concern requiring a global response.

Justice Pepper noted that the international community has made significant advances in addressing climate change. One way is through treaties, including the Paris Agreement, which entered into force on 4 November 2016. However, a gap remains between international and domestic-level efforts, resulting in climate change litigation. She explained climate litigation as legal proceedings focusing on climate change and applying existing legal domestic remedies to produce results that will, at the global level, reduce, mitigate, or enhance adaptation to climate change.

She then compared Australia's climate change litigation landscape with that of other countries. Australia, a common law country, inherited most of its laws and processes from the UK. Its constitution does not provide for environmental rights, not even a right to life or any other right that may be expanded to cover the right to protect the environment. Various factors hinder successful litigation in Australia. In tort cases, the plaintiff would face the difficulty of proving causation. In consumer law remedies, one may sue a particular corporation for false and misleading statements, such as in relation to its greenhouse gas emissions, but the compensation awarded by the court benefits only the plaintiff, and not the environment. Administrative law in Australia tends to be narrowly focused. At best, judicial review can produce only a court order declaring an administrative agency's permit or decision to be invalid. The case then simply reverts to the original decision maker—the agency or the ministry that issued the permit or decision. Thereafter, the agency or ministry can simply render the same decision, but this time following proper procedure. Left with no other choice, climate change cases in Australia tend to be limited to administrative action by way of judicial review, which is likely to fail.

Despite the barriers, some climate change cases in Australia did succeed. First, in *Gray v. The Minister for Planning*, the applicant, Mr. Peter Gray, challenged the approval by the director general of planning of Centennial Coal Company Limited's proposal to build an open coal mine in Hunter Valley in NSW despite missing the required detailed greenhouse gas assessment.³ Centennial Coal's report covered only scope 1 and scope 2 emissions. The report failed to address scope 3 emissions, or emissions generated by a third party's burning of coal produced from the mine. Nonetheless, the director general of planning accepted Centennial Coal's report for public display. Mr. Gray questioned the director general's decision because the report failed to comply with environmental assessment requirements and the director general failed to take into account ecologically sustainable development (ESD) principles.⁴ Justice Nicola Hope Margaret Pain ruled that although the director general can determine the sufficiency of the report, his discretion must be exercised in accordance with law. The relevant law, the Environmental Planning and Assessment Act 1979, talked about ESD principles. Thus, the director general should have considered the principle of intergenerational equity and the precautionary principle in looking at the cumulative impact of the proposed mine. The director general's failure to do so justified the return of the matter to him. But ultimately, he evaluated the scope 3 emissions and approved the mine.

³ *Gray v. The Minister for Planning, Director-General of the Department of Planning and Centennial Hunter Pty Ltd.* [2006] NSWLEC 720.

⁴ A. Rose. *Gray v. Minister for Planning: The Rising Tide, of Climate Change Litigation in Australia.* *The Sydney Law Review* 29, no. 4 (December 2007): 725–734 (accessed 14 June 2017).

Second, in *Minister for Planning v. Walker*, the NSW planning minister approved the concept plan for a residential subdivision and retirement home in Sandon Point, a flood-prone coastal area.⁵ Under Part 3A of the Environmental Planning and Assessment Act 1979, the minister should consider whether approving a proposed project would be in the public interest. Ms. Jill Walker, a local resident, argued that the minister failed to take into account the findings of a Commission of Inquiry report—that climate change would aggravate flooding impact—and ESD principles in deciding on the proposal. Studying ESD principles and climate change case law in Australia and the US, Justice Peter Meldrum Biscoe QC found that the minister had failed to include ESD principles, especially the principle of intergenerational equity and the precautionary principle, in deciding on the proposal, by determining whether climate change would compound the impact of the proposed project. On appeal, the NSW Court of Appeal held that although the minister should make decisions based on public interest, he was not required to consider ESD principles in doing so.⁶ Justice Pepper explained that at the time the appeal was heard in 2008, the concept of public interest had not yet evolved to necessarily incorporate ESD principles.

Third, in *Barrington-Gloucester-Stroud Preservation Alliance v. Minister for Planning and Infrastructure*, the court ruled that ESD principles are fundamental considerations in deciding in the public interest.⁷

Justice Pepper concluded that based on these cases, the principle of intergenerational equity and the precautionary principle should be considered in evaluating scope 1, scope 2, and scope 3 emissions and climate change.

But subsequent decisions showed a reversal of the court's stance toward climate change. In *Coast and Country Association of Queensland Inc. v. Smith & Ors*, the land court held that scope 3 emissions did not need to be considered in the approval process for a mining lease.⁸ The court confined the evaluation of adverse environmental impact that may be caused by proposed operations to mining activity scope 1 emissions, and excluded other implications such as those from burning coal in power stations located overseas. In the court's opinion, even if the Alpha Coal project did not proceed, the same volume of coal would still be extracted from other mines in Australia and overseas and burned in overseas power stations. In the end, there would be no difference in the cumulative amount of scope 3 emissions produced.

In *Australian Conservation Foundation Inc. v. Minister for the Environment*, the Australian Conservation Foundation challenged the environment minister's approval of Adani Mining's Carmichael Coal Mine and Rail project on the grounds that the minister did not correctly or fully consider the impact or likely impact of pollution from coal burned in India on the Great Barrier Reef.⁹ The minister asserted that he was not required to consider the impact of the pollution on the reef. For him, quantifying the actual net pollution caused by the project would have been speculative. Moreover, climate change is a global problem with many factors affecting the volume of overseas emissions. Since the minister's reasoning showed that he had considered the effects of coal combustion, the Federal Court of Australia ruled in his favor.

⁵ *Walker v. Minister for Planning* [2007] NSWLEC 741.

⁶ *Minister for Planning v. Walker* [2008] NSWCA 224.

⁷ *Barrington-Gloucester-Stroud Preservation Alliance v. Minister for Planning and Infrastructure* [2012] NSWLEC 197.

⁸ *Coast and Country Association of Queensland Inc. v. Smith & Ors* [2016] QCA 242.

⁹ *Australian Conservation Foundation Inc. v. Minister for the Environment* [2016] FCA 1042. In 1981, the Great Barrier Reef World Heritage Area became a UNESCO World Heritage Site pursuant to the 1972 World Heritage Convention.

Justice Pepper proceeded to discuss climate change litigation in other countries. In *Urgenda Foundation v. The State of the Netherlands*, the Hague District Court ruled that the Dutch government owed a duty of care to protect and improve the living environment and mitigate causes of climate change. Otherwise, it would violate its Civil Code.¹⁰ There, the court gave credence to the climate change reports, particularly the Intergovernmental Panel on Climate Change (IPCC) reports, and perceived the danger posed by climate change to humans and the environment to be very high. Justice Pepper pointed out the court's willingness to accept (i) the United Nations Framework Convention on Climate Change (UNFCCC) as binding, and (ii) the science contained in the IPCC reports. She also noted the court's ruling that the Government of the Netherlands was liable not because it directly contributed toward the emissions, but because it was responsible for establishing the legal framework that facilitated the transition toward reduced greenhouse gas emissions. Further, any anthropogenic greenhouse gas emissions, regardless of volume, will contribute to an increase in greenhouse gas levels in the atmosphere, and consequently climate change. Justice Pepper was pleased that the court did not apply the "but for" test¹¹ and instead observed that the causes of climate change are cumulative. The court held that individual parties should be made liable for their share in causing harm. The court therefore held the Dutch government liable for its share of greenhouse gas emissions.

In *R(ClientEarth (No. 2) v. Secretary of State for Environment, Food and Rural Affairs*, ClientEarth, an environmental nongovernment organization, questioned the sufficiency of air quality plans vis-à-vis the European Union Air Quality Directive in terms of reducing excess nitrogen dioxide before the England and Wales High Court (Administrative Court).¹² Justice Pepper explained that the directive imposed limits on emission levels and if a country cannot meet those limits, then it may be granted an extension subject to the submission of an air quality plan that details how the country will bring down its emissions. In December 2015, the Department for Environment, Food & Rural Affairs (Defra of the UK) published an air quality plan that required compliance by 2020, except for London, which was given until 2025 to comply with the limits. ClientEarth challenged the assumptions underpinning the modeling methodology used, and succeeded. The high court faulted the UK government for simply looking at the cost of compliance instead of finding a solution that would produce the fastest results. The court deemed the 2020 target to be too far away and inconsistent with the government's obligations. It also found the modeling to be overly optimistic and the plan to be missing the measures needed to keep nitrogen dioxide concentrations within limits. It therefore required the UK government to produce a new air quality plan.

In *Ashgar Leghari v. Federation of Pakistan*, Mr. Ashgar Leghari, a Pakistani farmer, assailed the Pakistani government's failure to achieve its 2012 National Climate Change Policy and Framework for Implementation of Climate Change Policy (2014 to 2030).¹³ The court recognized climate change as a threat and ordered the creation of a climate change commission to oversee the effective implementation of both the climate change policy and the implementation framework. The court also granted the

¹⁰ *Urgenda Foundation v. The State of the Netherlands*, C/09/456689/HA ZA 13-1396 (24 June 2015).

¹¹ The "but for" test is used to determine causation. It asks whether the injury would not have occurred but for the defendant's negligent act.

¹² *R(ClientEarth (No. 2) v. Secretary of State for Environment, Food and Rural Affairs* [2016] EWHC 2740 (Admin).

¹³ *Ashgar Leghari v. Federation of Pakistan* (W.P. No. 25501/2015).

commission broad powers, including powers of compulsory examination and the ability to extract money from the government. Justice Pepper remarked that jurisdictions with constitutionally entrenched human rights and environmental rights tend to have much better climate change litigation outcomes.

Justice Pepper also noted the landmark case of *M.C. Mehta v. Union of India and Others*, where the Supreme Court interpreted the right to live in a healthy environment as part of the right to life under Article 21 of the Indian Constitution.¹⁴ She also observed that appeals from India's National Green Tribunal go straight to the Supreme Court of India and other civil courts are precluded from hearing matters over which the tribunal has jurisdiction.

Lastly, she talked about the case of *Juliana v. United States*.¹⁵ Here, the plaintiffs, aged 8–19 years old, challenged the policies, acts, and omissions of the US President, the Council on Environmental Quality, and other government agencies and departments for substantially causing global warming. They alleged that these policies, acts, and omissions lead to hazardous carbon dioxide concentrations in the air and thereby infringe on their constitutional right to life, liberty, and property. The plaintiffs applied for several court orders, including an order to require the government to prepare and implement an enforceable national remedial plan to phase out all fossil fuel emissions and reduce carbon dioxide emissions as well. The National Association of Manufacturers, the American Fuel & Petrochemical Manufacturers, and the American Petroleum Institute intervened. The defendants and intervenors moved to dismiss the case, questioning the plaintiffs' standing to institute the proceedings because of an alleged failure to establish a causal link between the agencies' regulatory decisions and the plaintiffs' injuries. But the court denied their motions, recognizing that plaintiffs have constitutional standing to file the case. Citing *Urgenda*, the court found a redressable injury and determined the constitutional claim of harm caused by government action or deliberate indifference to be a matter of due process.

To end, Justice Pepper repeated that countries with constitutionally enshrined human rights and environmental rights have higher regard for international decisions such as *Urgenda*, enabling better environmental protection outcomes. She urged the ASEAN judiciaries to reverse the burden of proof in environmental litigation, relax legal standing, and implement the principle of non-regression in interpreting domestic environmental law.

Implications of the Paris Agreement for ASEAN Judiciaries

Prof. Dr. Diane A. Desierto, associate professor of law and Michael J. Marks Distinguished Professor in Business Law, William S. Richardson School of Law, University of Hawaii, and co-director, ASEAN Law & Integration Center, next discussed the nexus between the ASEAN Charter obligations of member states and their new obligations under the Paris Agreement, and the issues that are likely to arise.

Prof. Dr. Desierto said that although ASEAN countries contribute less than 1.5% of global emissions, they regularly experience climate change impact. Article 5(2) of the ASEAN Charter enjoins each member to protect the environment. Specifically, it requires member states to “take all necessary measures,

¹⁴ *M.C. Mehta v. Union of India*, AIR 1987 SC 965.

¹⁵ *Juliana v. United States*, No. 6:15-CV-01517-TC, 2016 WL 6661146 (D. Or. 10 Nov. 2016).

including the enactment of appropriate domestic legislation, to effectively implement the provisions of this Charter and to comply with all obligations of membership.” At the same time, Article 52(1) of the ASEAN Charter recognizes the continuous effectivity of all treaties, conventions, agreements, concords, declarations, protocols, and other ASEAN instruments that the members entered into prior to the adoption of the ASEAN Charter.¹⁶

She then discussed the ASEAN instruments on climate change that already existed before the Paris Agreement. First, under the ASEAN Action Plan on Joint Response to Climate Change, adopted at the 12th ASEAN Ministerial Meeting on Environment, ASEAN countries committed themselves to four major sets of actions: (i) mitigation or direct targeting of reduced emissions, (ii) adaptation or prevention and redress of climate change impact, (iii) provision for loss and damage in responses to environmental disasters, and (iv) technology transfer and capacity building. Other ASEAN instruments elaborating on these four key areas include the joint statements of ASEAN member states, the ASEAN Agreement on Transboundary Haze Pollution, and the Singapore Declaration on Climate Change, Energy and the Environment.

In addition, the ASEAN Socio-Cultural Community Blueprint 2025 enumerates climate change adaptation and mitigation measures, particularly for vulnerable and marginalized communities. The blueprint also provides for private sector and community financing mechanisms and consolidated government, private sector, and community efforts to reduce greenhouse gases. It also mentions the conduct of a greenhouse gas inventory—separate from the stocktaking required under the Paris Agreement. Prof. Dr. Desierto highlighted the blueprint’s objective of promoting a climate-adaptive ASEAN and the importance of scientific and evidence-based policies on climate change adaptation and the objective of promoting and considering indigenous and traditional knowledge and practices in responding and adapting to climate change impact.¹⁷ She drew the participants’ attention to the possibility of having evidence-based climate change adaptation policies as the crux of disputes coming before ASEAN courts.

She next discussed the status of the Paris Agreement among ASEAN members. At the time of the Sixth Roundtable, all ASEAN members had signed the agreement. But four countries—Cambodia, Malaysia, Myanmar, and the Philippines—had not yet ratified it. Pending ratification, Article 18 of the Vienna Convention on the Law of Treaties prevents countries from defeating the object and purpose of the treaty.¹⁸

¹⁶ ASEAN country representatives signed the ASEAN Charter on the occasion of the 13th ASEAN Summit in Singapore on 20 November 2007 (ASEAN. 2016. ASEAN Charter. <http://asean.org/asean/asean-charter/>). The charter took effect on 15 December 2008, 30 days after Thailand deposited the last instrument of ratification (ASEAN. 2008. *Significance of the ASEAN Charter*. 10 December. www.asean.org/wp-content/uploads/images/archive/Fact%20Sheet/APSC/2008-APSC-004.pdf).

¹⁷ ASEAN Socio-Cultural Community Blueprint 2025, D.3.

¹⁸ As of 30 June 2017, all but one ASEAN country, Cambodia, had signed and ratified the Paris Agreement. UN Framework Convention on Climate Change. Paris Agreement—Status of Ratification. http://unfccc.int/paris_agreement/items/9444.php (accessed 23 June 2017).

Prof. Dr. Desierto shared the summary of the Paris Agreement, which she had prepared together with Prof. Jorge Viñuales of the University of Cambridge. They had grouped the Paris Agreement's objectives into three major action areas—mitigation, adaptation, and provision for loss and damage—using information-based approaches primarily. The Paris Agreement then follows through by facilitating assistance, promoting efficiency, and enforcing compliance. But it does not provide for any dispute settlement mechanism. So national jurisdictions must take charge of implementing the treaty.

She also discussed the salient features of the Paris Agreement. The treaty aims to cap the increase in global average temperature at 1.5°C–2.0°C above pre-industrial levels. Adopting the principle of equity and of common but differentiated responsibilities, the agreement notes the different endowments, conditions, capabilities, and capacities of states to reduce greenhouse gas emissions and undertake adaptation measures. Applying also the principle of non-regression, a state cannot go below the level of nationally determined contribution it already set out to achieve after the 5-year review period. Instead, the state must attempt to either maintain or increase its level of ambition in terms of mitigation, adaptation, or loss and damage measures. The Paris Agreement also prohibits reservations.

Further, while developed countries should undertake economy-wide absolute emission reduction targets, developing countries should only enhance mitigation efforts “to move over time towards an economy-wide emission reduction or limitation targets in the light of different national circumstances.”¹⁹ On the other hand, least developed countries and small island developing states are only expected to “prepare and communicate strategies, plans and actions for low greenhouse gas emissions development reflecting their special circumstances.”²⁰

Under the Paris Agreement, states are bound to cooperate in mitigation, adaptation, and loss and damage measures in three ways: (i) by conserving and enhancing sinks and reservoirs of greenhouse gases; (ii) by voluntarily implementing their nationally determined contribution, whether as individual states or in groups, to achieve a much higher ambition than the mitigation and adaptation targets they initially established, and promoting sustainable development and environmental integrity; and (iii) by cooperating in addressing issues of loss and damage, particularly those due to natural disasters associated with adverse effects of climate change.

The Paris Agreement is also a unique agreement for three reasons. First, its adoption marked the first time that countries agreed on the importance of climate financing. Developed country parties such as the US agreed to provide financial resources to assist developing country parties in implementing mitigation and adaptation measures. Notwithstanding this agreement, Prof. Dr. Desierto expressed doubts as to whether developing countries would be able to tap the climate funds, given US President Donald J. Trump's rejection of the Paris Agreement. Second, the agreement provides for technology development and transfer to improve resilience to climate change and reduce greenhouse gas emissions. Lastly, it talks about capacity building to enable countries, especially developing countries, to cope with the shift to higher targets over time.

¹⁹ Paris Agreement, Article 4(4).

²⁰ Paris Agreement, Article 4(6).

Prof. Dr. Desierto talked about two climate change litigation cases and the uncertainties they create. In the first case, the US Supreme Court issued an order on 7 February 2017 temporarily stopping the implementation of former US President Barack Obama's Clean Power Plan. The plan covered the direct implementation of the mitigation targets set by the US under the Paris Agreement. She therefore thought it unlikely that the US government would fulfill the promises it had made during the negotiations leading to the Paris Agreement.

In the second case, several European countries relying on coal industries refuse to abide by the European Union's commitment to strongly pursue emission reductions. Under the Paris Agreement, countries set their own nationally determined contribution. But since the European Union is itself a party to the Paris Agreement, these countries may file a case before the European Court of Justice for supposed overreach by the European Union.

Prof. Dr. Desierto noted two ASEAN documents that demonstrate the ASEAN judiciaries' commitment to cooperate with one another on environmental issues. The first one, the draft Melaka Memorandum of Understanding for Cooperation among ASEAN Courts, presented during the Second ASEAN Chief Justices' Roundtable on Environment (the Second Roundtable), detailed the legal, evidentiary, capacity, and governance challenges judges face when hearing and deciding environmental cases.²¹ The second, the Boracay Accord of 2015, signed by the ASEAN chief justices or their nominees at the Third ASEAN Chief Justices' Meeting, reaffirmed the judiciaries' commitment to regional partnership and solidarity, and formed working groups to operationalize the capacity building program needed to deal with the increasing environmental litigation in Southeast Asia.

Prof. Dr. Desierto concluded her presentation by drawing the participants' attention to three issues that are likely to arise out of the implementation of the Paris Agreement. The first has to do with the different interpretations and evidentiary treatment of adaptation and mitigation measures. Mitigation issues may include the question of whether governments are achieving the targets they set based on public interest and related doctrines. Adaptation measures, which may require shifting entire industries into less-emitting ones and changing production methods, may infringe on property rights. Developers may disagree with the scope of environmental impact assessments and the science of climate change. The second issue pertains to the technical and scientific expertise needed to comprehend the climate science on which state policies are based, and the appropriate standard for evaluating potential scientific risk. The third concerns the need for ASEAN judiciaries to discuss the growing body of ASEAN law serving as additional sources of state obligations relevant to climate change and the correct interpretation of these laws amid the competing interests of environmental groups, the private sector, and government agents regarding what states can submit as their nationally determined contribution.

Chief Justice Sereno thanked the resource persons. She requested the heads of delegations to consolidate their questions for the speakers and raise them the next morning. She then adjourned the meeting.

²¹ The participants at the Second Roundtable chose to ignore this draft and instead form a technical working group to draft the terms of their agreement. During the last session of the Third ASEAN Chief Justices' Roundtable on Environment, the participants voiced their proposals for an action plan to implement the Jakarta Common Vision. ASEAN chief justices and their nominees then considered these proposals and came out with the draft Hanoi Action Plan during the First ASEAN Judicial Working Group on Environment Meeting and approved the document, which eventually became the Hanoi Action Plan.

HIGHLIGHTS

DAY 3: 12 NOVEMBER 2016



▲ Supreme Court of the Philippines Chief Justice Maria Lourdes P. A. Sereno commences the third day's discussions

Call to Order

Chief Justice Maria Lourdes P. A. Sereno greeted the participants and once again called the conference to order.

PART II:

EMERGING ENVIRONMENTAL LEGAL AND JUDICIAL CHALLENGES, CONTINUATION



▲ Justice Rachel Pepper, judge of the NSW Land and Environment Court in Australia, and Mr. Matthew Baird, consultant at Pact's Mekong Partnership for the Environment Project and Vermont Law School's U.S.-Asia Partnerships for Environmental Law, talk about the importance of judicial networking and the tools available to judges

The Role of Judicial Networks in Promoting Mutual Assistance

Chief Justice Maria Lourdes P. A. Sereno greeted the participants and requested the resource persons to begin talking about the role played by judicial and other networks in promoting mutual assistance and addressing environmental issues.

Mr. Matthew Baird, consultant at Pact's Mekong Partnership for the Environment Project and Vermont Law School's U.S.-Asia Partnerships for Environmental Law, spoke about his experience as an environmental lawyer. He first identified his mentors and sources of inspiration in the study and practice of environmental law, including Justice Paul Stein, a judge of the NSW Land and Environment Court; Justice Brian Preston, the current chief judge of the NSW Land and Environment Court and a former solicitor of Australia's first Environmental Defender's Office; Prof. Ben Boer, Prof. Donna G. Craig, and

Prof. Koh Kheng-Lian, all environmental law academics who taught Mr. Baird to focus on the need to share ideas in addressing environmental problems and reminded him that environmental law is really about the planet; Mr. M.C. Mehta, an environmental lawyer in India who filed cases before the Indian Supreme Court to protect the Taj Mahal and the Ganges River; and Atty. Antonio Oposa, an environmental lawyer in the Philippines, who showed him what a good environmental lawyer can achieve.

Mr. Baird highlighted the increasingly difficult challenges faced by environmental law practitioners and judges over the last 20 years, from environmental impact assessments and biodiversity loss to loss of productive lands through contamination and climate change. He also stressed the crucial role played by the bench in developing environmental law jurisprudence, specifically the local court lawyers who research environmental crime, the administrative court lawyers who review government action, and ultimately the higher court and supreme court lawyers who establish definitions and distinctions and interpret and apply environmental principles.

He also commended the ASEAN judiciaries for their contribution to the development of environmental law. The Philippine Supreme Court leads in the field of environmental law. Its specialized rules of procedure for environmental cases and landmark decisions relaxed the concept of legal standing in environmental cases, advanced the principle of intergenerational equity, and expanded judicial remedies to include the writ of continuing mandamus. Its publication of its judgments online has enabled judiciaries and practitioners worldwide to learn from them and use them in preparing their cases to pursue the cause of environmental law. Its judicial training arm, the Philippine Judicial Academy, has produced reference materials, such as *Access to Environmental Justice: A Sourcebook on Environmental Rights and Legal Remedies*, for the guidance of the entire judiciary.²²

The other judiciaries have created official websites and published their judgments online so that academics and legal practitioners can learn from these cases and piece together themes and principles for the foundation of ASEAN environmental law. In addition, the Viet Nam judiciary assisted the National Assembly in revising the country's Penal Code to include a chapter on environmental crimes and corporate liability for environment crimes. The Supreme Court of Thailand recognized the community right to participate in planning decisions—a fundamental right of Thailand's people to participate in decisions affecting them and the natural environment. Mr. Baird stressed the significance of this decision when the 1997 Constitution was abrogated following the 2006 coup d'état.

Mr. Baird reminded the participants to focus not only on the number of cases they decide but also on the nature of cases. A recent review of the number of prosecutions in the PRC showed that 97% of those prosecutions were against small farmers for minor offenses. By contrast, the Deepwater Horizon oil spill cost British Petroleum over \$60 billion²³ and the toxic waste disaster in Viet Nam caused by a large Taipei, China-based conglomerate could result in a fine of \$500 million.²⁴

²² A copy of the book is available on the website of the Office of the Ombudsman of the Philippines at www.ombudsman.gov.ph/UNDP4/wp-content/uploads/2013/02/4_A-Sourcebook.-on-Envi-Rights-and-Legal-Remedies-FINAL-B.pdf.

²³ T. Macalister. 2016. BP faces further \$2.5bn charge over Deepwater Horizon Spill. *The Guardian*. 14 July. www.theguardian.com/business/2016/jul/14/bp-fined-further-25bn-over-deepwater-horizon-spill.

²⁴ M. Nguyen. 2016. *Reuters*. 30 June. <https://www.reuters.com/article/us-vietnam-environment/formosa-unit-offers-500-million-for-causing-toxic-disaster-in-vietnam-idUSKCN0ZG1F5>.

Mr. Baird also acknowledged ADB's role in promoting environmental justice by initiating capacity building programs and publishing reference materials on environmental law. From 2011 to 2016, ADB supported the ASEAN Chief Justices' Roundtable on Environment. In 2002, it also published the two-volume *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources* edited by Prof. Craig, Prof. Koh, and Prof. Nicholas A. Robinson.

To end, Mr. Baird recalled the ASEAN Charter's objective of "[promoting] sustainable development so as to ensure the protection of the region's environment, the sustainability of its natural resources, the preservation of its cultural heritage and the high quality of life of its peoples."²⁵ He recognized this as an aspirational goal. But he opined that these goals should still be considered by government agencies in deciding whether to approve or deny proposed development projects, by judges in assessing fines for environmental offenses, by economists in valuing the harm caused to the environment, and by state leaders in choosing options for its citizens. The ASEAN Human Rights Declaration of 2012, after all, guarantees the right of all people to an adequate standard of living for themselves and their families, including the right to safe drinking water and sanitation and to a safe, clean, and sustainable environment.

Mr. Baird exhorted the ASEAN judiciaries to deal with their increasingly grueling environmental challenges by continuously sharing decisions, ideas, and research; promoting cooperation and dialogue with one another; and training legal practitioners to file cases before the bench. In support of Chief Justice Sereno's call for an actionable ASEAN legal framework, he encouraged the participants to actively exchange ideas and foster interjudicial connections and ultimately develop ASEAN environmental law jurisprudence.

Justice Rachel Pepper, a judge of the NSW Land and Environment Court in Australia, observed how globalization has affected judges and domestic legal systems, especially environmental law, through the years. Legislatures had been enacting national laws pursuant to treaties ratified by their governments. International courts and tribunals contributed to the development of environmental law. So did judicial networks, by encouraging knowledge sharing, mutual assistance, and capacity building. These networks are particularly important in the field of environmental law, which is a relatively new and emerging discipline compared with other fields of law. Environmental law reacts to scientific and technological advances and also to social and economic developments, and judicial networks facilitate the dynamic nature of environmental law.

Justice Pepper then identified the opportunities for utilizing judicial networks based primarily on Australian examples. Judges constituting judicial networks share the goal of strengthening the rule of law and developing jurisprudence. Judges can rely on judicial networks operating at local, national, and international levels, and on broader legal networks and resources provided or maintained by the courts themselves or by third parties.

First, judges can facilitate judicial networks by publishing judgments to inform parties of the rationale for court decisions. Publication enhances the transparency of judicial decision making. The NSW Land and Environment Court, for instance, ensures that all its decisions are available on its website, NSW

²⁵ The ASEAN Charter, art. 1(9).

Caselaw. Caselaw facilitates research into decisions through fields such as case citations, parties' names, and key words. External websites, such as Australian Legal Information Institute (AustLII) and Jade, also publish judgments of all Australian courts—not just those rendered by the NSW Land and Environment Court. Some websites also enable users to follow developments in jurisprudence on particular issues by linking cited paragraphs of judgments to subsequent cases.

Second, judges can share their judgments with other judges so that they can understand how other judges think about and write their decisions. This process also enables judges to harmonize their decisions.

Third, judges can organize and attend conferences to learn about recent legal developments in other jurisdictions. With support from the government-funded Judicial Commission of New South Wales, for example, the NSW Land and Environment has been holding annual 2-day judges' conferences. Through field trips to their natural environment, an idea suggested by Chief Justice Zakaria, local judges also get a better appreciation of the environment they are protecting and the laws they are enforcing.

Fourth, judges can join professional bodies—the National Environmental Law Association and the Environmental and Planning Law Association in Australia, for example—to participate in conferences organized by these bodies and receive updates about the law.

Fifth, a court website can also feature court lists, court practice notes, publications, and judicial newsletters. Court lists contain information about the various courts in a jurisdiction, the time and place of court proceedings, and contact information, among others. Court practice notes describe court processes. Publications may include judges' papers and speeches. Judicial newsletters can be quarterly publications to quickly relate information, such as recent important judgments, to readers on a regular basis.

Lastly, there are also international networks like the newly established Global Judicial Institute for the Environment and the International Union for Conservation of Nature (IUCN) that promote broader information exchange through environmental law colloquiums. Other externally maintained websites also give information about international law and litigation. Ecolex contains environmental treaties, declarations, and other nonbinding international policies. The Columbia Law School's Sabin Center for Climate Change Law lists all of the climate change litigation cases in the world, and the Law Review Commons posts law reviews and legal journals.

In conclusion, Justice Pepper said that judicial networks facilitate widespread information sharing between judges across different jurisdictions, domestic and international, and thereby enhance technical skills, judicial decision making, and ultimately the environmental rule of law. Judicial networks, however, require robust legal networks, resources, and technological infrastructure to enable access to information. She ended by stressing that although globalization has increased the stressors to the environment, global judicial networks may be crucial to protecting the environment.

PART III: SYNTHESIS OF THE REPORTS



▲ Atty. Brenda Jay C. Angeles-Mendoza, chief of the Philippine Mediation Center Office, presents her synthesis report

Chief Justice Maria Lourdes P. A. Sereno thanked the speakers for sharing their expertise in judicial networking. She also acknowledged the effort exerted by the participants in taking time away from their domestic obligations to attend the Sixth Roundtable. She asked them if they could already discuss the best solution to address their common judicial concerns in Southeast Asia, while also thinking of questions to ask the resource persons. All participants agreed.

Chief Justice Sereno noted that each delegation had already presented its judiciary's progress in achieving the Jakarta Common Vision and the Hanoi Action Plan. She requested Atty. Brenda Jay C. Angeles-Mendoza, chief of the Philippine Mediation Center Office, to synthesize the reports. Atty. Mendoza enumerated the ASEAN judiciaries that have hosted the ASEAN Chief Justices' Roundtable on Environment since 2011: the Supreme Court of Indonesia in 2011, the Federal Court of Malaysia in 2012, the Supreme Administrative Court of Thailand in 2013, the Supreme People's Court of Viet Nam in 2014, the Supreme Court of Cambodia in 2015, and now the Supreme Court of the Philippines in 2016.

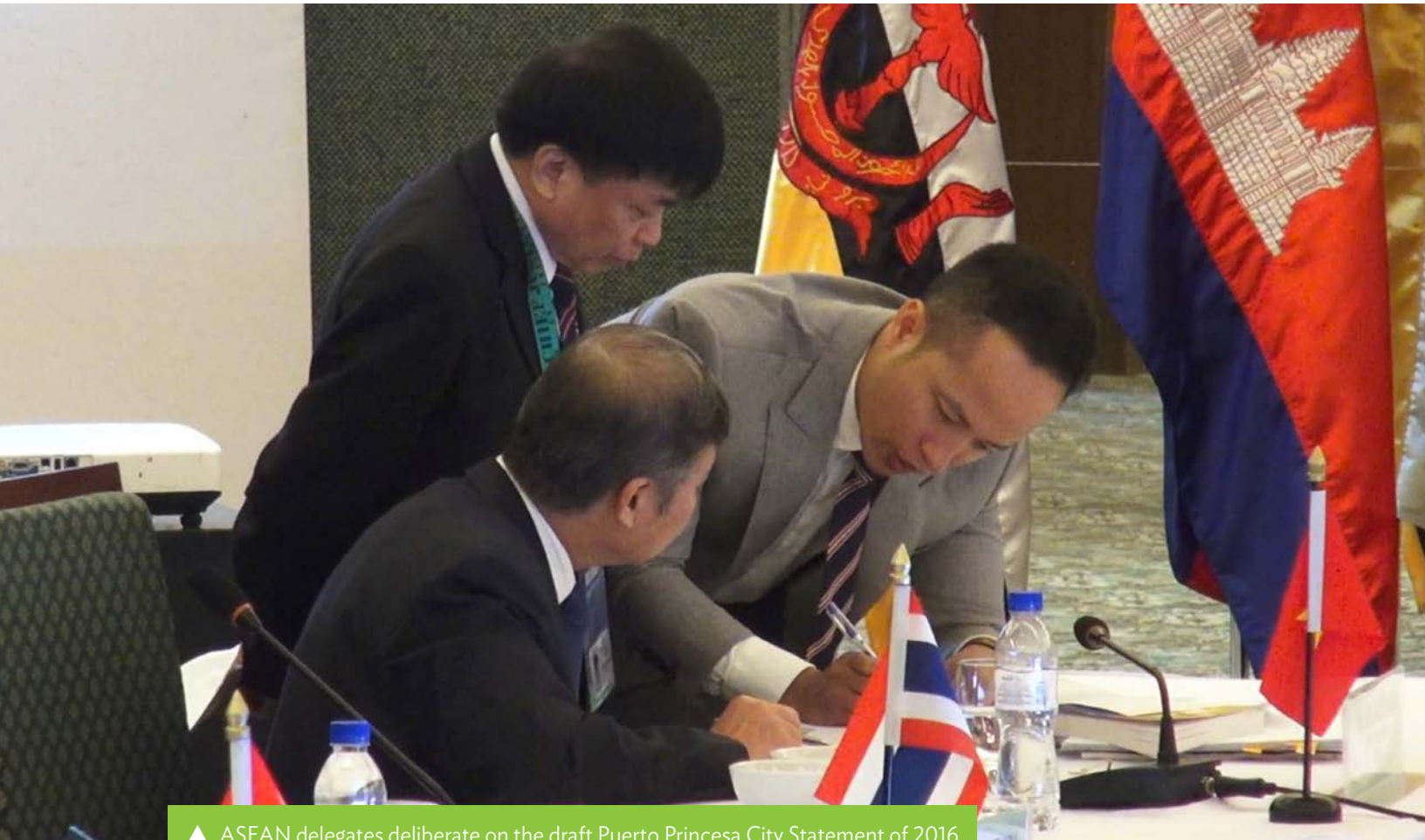
The participants reviewed the synthesis report drafted by Atty. Mendoza. The first paragraph contained background information about the ASEAN Chief Justices' Roundtable on Environment. It was suggested that the report then identify the judiciaries that hosted the roundtable and the three outcome documents, namely, the Jakarta Common Vision, the Hanoi Action Plan, and the Angkor Statement.

The synthesis report would also summarize the progress reports made by the delegations the previous day and note the following factors: (i) the unique situation of each country; (ii) the different accomplishments and innovations of the ASEAN judiciaries; (iii) the actions of the executive and legislative branches; (iv) the increasing complexity of environmental cases; (v) the difficulty in evaluating scientific and technical evidence; (vi) the varying enforcement efforts and penalties provided by law for environmental crimes; (vii) the challenge of balancing economic development with environmental protection; (viii) the cross-border issues that require further collaboration between two or more jurisdictions; (ix) the environmental, legal, and judicial challenges confronting the ASEAN judiciaries; and (x) the resource persons' presentations on climate change litigation, climate change legal frameworks, and judicial networking.

The judicial innovations identified were Malaysia's nature field trips, the Philippine Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC) and the Expanded Justice on Wheels Program. Chief Justice Sereno explained that the Enhanced Justice on Wheels Program involves the use of buses as mobile courts to enable the Philippine judiciary to bring justice even to far-flung areas. The Cambodian, Lao PDR, and Myanmar judiciaries also offer capacity building programs with the assistance of development partners and other countries. Viet Nam's judiciary has already integrated environmental law courses into its judicial training program.

Chief Justice Sereno suggested adding a paragraph detailing the needs of ASEAN judiciaries, such as more environmental law capacity building programs for judges, access to scientific and technical experts, and support for technological infrastructure. She emphasized the participants' agreement to elevate the CACJ, formerly known as the ASEAN Chief Justices' Meeting, to a formal ASEAN body at the same level as the ASEAN Inter-Parliamentary Assembly. She also talked about the importance of arriving at an understanding of how the ASEAN judiciaries would organize their efforts to address their common legal and judicial concerns. This, she said, would be the next objective of the roundtable.

PART IV: FORGING THE ROAD AHEAD FOR ASEAN JUDICIAL COOPERATION ON ENVIRONMENT: ACTION POINTS



▲ ASEAN delegates deliberate on the draft Puerto Princesa City Statement of 2016

At this juncture, the participants reviewed the matrices of important action points under the Jakarta Common Vision and the Hanoi Action Plan vis-à-vis their judiciaries' accomplishments. They found no need to create a separate matrix for their progress against the Angkor Statement because the latter document simply confirms the action points under the first two outcome documents.

Some delegations sought clarification regarding a few of these action points. First, the representatives from Brunei Darussalam, Cambodia, and Thailand asked whether they were required to create a national judicial working group on environment. The participants agreed to interpret all mention of such a working group in the Hanoi Action Plan as references to any group in the judiciary that is responsible for giving priority to environmental concerns. If they so wish, they could also create subsidiary-level working groups, such as Malaysia's state and district judicial working groups on environment.

Chief Justice Maria Lourdes P. A. Sereno then allowed the heads of delegations to ask other clarificatory questions and update the participants on their judiciary's progress vis-à-vis the Jakarta Common Vision and the Hanoi Action Plan. The heads similarly noted that the ASEAN Judicial Working Group on Environment has already been formed under the auspices of the ASEAN Chief Justices' Roundtable on Environment and that the group's e-mail lists for information dissemination and focal points have already been prepared. The ASEAN judiciaries also regularly submit progress reports on their implementation of the Jakarta Common Vision and the Hanoi Action Plan.

Brunei Darussalam

Chief Justice Dato Kifrawi Kifli commented that Brunei Darussalam has a small land area and population, few environmental cases, and a small pool of judges. The country's legal system requires everyone to secure the planning authority's approval before proceeding with a development project. Therefore, he saw no need for the Brunei Darussalam judiciary to create a national judicial working group on environment.

Cambodia

Mr. Ben Visnow confirmed his judiciary's progress. Aside from having hosted the Fifth Roundtable, the Cambodian judiciary already has national and local judicial working groups on environment. It is also collaborating with the Ministry of Justice on the development of an action plan for promoting environmental justice, governance, and the rule of law. Mr. Visnow repeated that his judiciary would like ADB to provide the country's judges and prosecutors with technical support and scientific expertise in environmental issues. Moreover, the judiciary would like to continue sharing information about environmental challenges, given more technical expertise and technology-enabled solutions, and to improve environmental penalties by drafting an environmental code for the country. The judiciary also needs to establish a judicial training academy in collaboration with the Ministry of Justice.

Indonesia

Judge Andriani Nurdin said that the Indonesian judiciary has already started gathering landmark environmental laws and cases; conducted environmental twinning workshops; invited experts, scientists, and other resource persons to judicial training seminars; and organized the Inaugural Roundtable. Now, the judiciary is considering drafting environmental rules of procedure. She then confirmed the Jakarta Common Vision progress list for Indonesia.

Lao People's Democratic Republic

Justice Philachanh Phomsouvanh first disclaimed any inconsistency between his understanding of the Lao PDR judiciary's deliverables under the two roundtable outcome documents and the perception of the other delegates to the previous roundtables. He said that like Brunei Darussalam, the Lao PDR has only a few judges, numbering 424 in fact, and few environmental cases. As regards the Hanoi Action Plan, he expressed certainty that his country's chief justice would head their national judicial working group on environment, once it is created. He added that they had already identified the cross-border legal issues and transnational environmental challenges confronting their judiciary. He also said that the judiciary focal point had been reassigned elsewhere and a new one would have to be appointed. The judiciary has submitted progress reports on its activities under the Jakarta Common Vision and the Hanoi Action Plan.

The justice then raised the issue of translating the records of ASEAN Chief Justices' Roundtable on Environment proceedings into Lao because he thought the Lao PDR judiciary did not have enough staff and financial resources to do so. He also mentioned the judiciary's intent to include experts, scientists, and other resource persons in their judges' meetings, the prospect of hosting an ASEAN Chief Justices' Roundtable on Environment, and their agreement to provide copies of Lao PDR environmental laws and significant environmental jurisprudence on the Asian Judges Network on Environment (AJNE) website. But the country's law schools have yet to include environmental law in their curricula.

Justice Philachanh also said that they had agreed to develop an action plan for justice, governance, the rule of law, and sustainable development. The judges hope to collaborate with other ASEAN judiciaries and other environmental enforcement officers in improving the development, implementation, and enforcement of environmental laws. They also want to share information about the region's common environmental challenges and about legal issues and best practices in environmental adjudication. The justice said that in 2006, the Lao PDR judiciary had tried to establish a chamber of environment. But since there were only 123 deforestation cases and few other environmental cases over the last 5 years, the creation of specialized environmental courts, in his view, is still little more than an aspiration.

Justice Philachanh affirmed the remarks for the other items in the Jakarta Common Vision and said that the Lao PDR judiciary was willing to host the next roundtable conference in 2018 or 2019.

Malaysia

Chief Justice Tun Arifin bin Zakaria said that the Malaysian judiciary has already complied with most of the action items under the Jakarta Common Vision and the Hanoi Action Plan. But the judges are still considering conducting environmental twinning programs, providing timely and appropriate training in environmental legal issues, and drafting environmental rules of procedure for both environmental litigation and alternative dispute resolution (ADR). He also noted that they could not translate their proceedings into the various ASEAN languages for lack of resources. He thought that the judgments at least should be translated into English or Indonesian or Malay and that the ASEAN Secretariat might be able to facilitate the translation.

Chief Justice Zakaria also noted that they hosted the Second Roundtable and had shared their experience in organizing the annual roundtable with the next host. They were also publishing their environmental laws online, in the same way that they were publishing their decisions in environmental cases. They were also imposing penalties based on the gravity of the environmental crimes.

The Malaysian judiciary has already formed its national and state judicial working groups on environment. Chief Justice Zakaria told the participants that the Sabah judicial working group had organized a river cleanup in Kota Kinabalu and assigned a magistrate to monitor the area. The local authorities had provided garbage containers and put out nets to try to stop the flow of rubbish into the sea. Subsequently, other members of the public had written to him asking when he would come to their areas. He observed that people are generally more willing to comply with court policies and actions because they know the courts mean business. Unlike political parties or nongovernment organizations, the judiciary still has the public's confidence. Nonetheless, Chief Justice Zakaria opined that there should be a limit to what judges do in the field of environmental protection, lest they infringe on the functions of the other branches of government.

Myanmar

Ms. Tin Nwe Soe, deputy director general of the Office of the Supreme Court of the Union, reported that the Myanmar judiciary had established its national judicial working group in 2014. But with a change in group leadership following the retirement of the previous director general, the judges were primed for more active implementation of their programs. The judicial working group was set to prepare lists of national environmental expertise, scientific and expert witnesses, and landmark environmental jurisprudence.

The Myanmar judiciary would need assistance in identifying legal issues, organizing their judiciary, organizing environmental twinning programs, and translating court proceedings into other ASEAN languages. There were no plans yet to draft special rules of procedure for environmental cases. They also had not yet included experts, scientists, and resource persons in their conferences or court processes. As for organizing the roundtable, Ms. Soe told the participants that the Supreme Court of the Union of Myanmar had sent representatives to prior roundtables and the chief justice had offered to host the roundtable in 2018. The judges were also considering sharing environmental laws and jurisprudence with other judiciaries via the AJNE website.

Ms. Soe mentioned that the Supreme Court of the Union of Myanmar had already responded to most of the items under the Jakarta Common Vision. But she added that the judiciary could not yet implement special rules of procedure for environment cases and ADR because most of the environmental cases filed were criminal cases and Myanmar had no law on ADR.

Philippines

Justice Diosdado M. Peralta, associate justice of the Supreme Court of the Philippines, delivered the Philippine Supreme Court's updates. The Philippine judiciary had agreed to the development of an action plan for justice, governance, the rule of law, and sustainable development in ASEAN countries. The judges had also created specialized environmental courts by designating existing trial courts as environmental courts, drafted their own rules of procedure for environmental cases, and hosted the Sixth Roundtable. They had agreed to share their experience in organizing the roundtable with the next host judiciary.

The Philippine judiciary had also been collaborating with other judiciaries and other environmental enforcement agencies in improving the development, implementation, and enforcement of environmental law; sharing information about the region's common environmental challenges, legal issues, and best practices in environmental adjudication; imposing sanctions based on law and the gravity of the offense and considering innovative remedies; implementing environmental ADR; publishing the judges' decisions in environmental cases online; conducting training for judges in environmental legal issues through the Philippine Judicial Academy; encouraging law schools to integrate environmental law in their curricula; and including problems concerning environmental laws and procedures in the bar examinations and mandatory continuing legal education program for lawyers and judges.

In relation to the Hanoi Action Plan, Justice Peralta reported that the Philippine Supreme Court's Sub-committee on the Rules of Procedure for Environmental Cases already exists and will perform the functions of a national judicial working group on environment. Its members were already listing and collecting landmark environmental cases; identifying legal issues arising for the judiciary from cross-border

and transnational environmental challenges; and sharing their rules of procedure for environmental cases and their environmental laws and environmental jurisprudence with other judiciaries. But they had not yet prepared a list of environmental expertise of judges and scientific and expert witnesses, nor had they translated their proceedings into other ASEAN languages. Lastly, Justice Peralta recognized the importance of including expert witnesses and other resource persons in conferences of judges to help the judges evaluate technical and scientific evidence in environmental cases.

Singapore

District Judge Luke Tan remarked that the Supreme Court of Singapore shares many similar views with the Supreme Court of Brunei Darussalam, as communicated by Chief Justice Kifli. Singapore supports the efforts of the ASEAN judiciaries to protect the environment and sees the relevance of the work of the ASEAN Chief Justices' Roundtable on Environment to many ASEAN countries. As a small city-state, Singapore faces unique challenges that are not common to other ASEAN countries. District Judge Tan noted that the Jakarta Common Vision and the Hanoi Action Plan are aspirational and nonbinding documents.

Thailand

Justice Slaikate Wattanapan began with updates on the Hanoi Action Plan. First, the Thailand judiciary has partially established its national judicial working group on environment. The environmental division of the Supreme Court of Thailand serves as the de facto national working group pending its official appointment. There is also a parallel environmental division in the Supreme Administrative Court of Thailand. He repeated the Office of the Chief Justice's recommendation to identify and list experts in fields such as environmental adjudication. As of November 2016, the Thailand judiciary had identified 30 judges who completed environmental law and adjudication training courses abroad. Thailand had also hosted the Third ASEAN Chief Justices' Roundtable on Environment. Justice Wattanapan relayed his judiciary's willingness to share its experience in organizing the roundtable.

The justice noted that the judges were already listing their significant environmental cases and laws. But they were having problems in translating these into English and other languages. They had also begun identifying legal issues arising for the judiciary from cross-border and transnational environmental challenges. The justice cautioned that the ASEAN judiciaries should tackle these cross-border issues amicably.

He said that Thailand's judges were willing to collaborate with their ASEAN colleagues in organizing environmental twinning programs and offered the facilities of Thailand's Judicial Training Institute; they just need other countries to contribute their expertise. The judges were also in the process of drafting new environmental procedures, while already promoting environmental ADR as a means of settling environmental disputes. They would invite experts, scientists, and other resource persons to the training programs for judges, whenever relevant to the discussions.

Justice Wattanapan agreed that environmental laws and jurisprudence should be shared with other countries on the AJNE website. But he said his judiciary could not translate proceedings into other ASEAN languages for information dissemination.

About the Jakarta Common Vision, Justice Wattanapan said that the Thailand judiciary had agreed on the need to develop an action plan for justice, governance, the rule of law, and sustainable development in ASEAN countries; to collaborate with other judiciaries in improving environmental law development and enforcement; and to impose sanctions in accordance with law and the gravity of the offense.

The Thailand judiciary already provides online access to information about the environmental challenges and legal issues faced by the judiciary, as well as best practices in environmental adjudication; publishes environmental case decisions; and conducts judicial training in environmental legal issues. Justice Wattanapan added that the judges looked forward to sharing information about the region's common environmental challenges, creating specialized environmental courts in addition to their environmental divisions, and encouraging law schools and legal professional associations to incorporate environmental law into their curricula and continuing legal education.

At this point, Chief Justice Kifli sought clarification of the term “twinning” under item 9 of the Hanoi Action Plan checklist. Ms. Hirose explained that twinning means that two or more judiciaries conduct joint training programs and exchange expertise.

Viet Nam

Deputy Chief Justice Nguyen Son said that as the Viet Nam delegation had already submitted progress reports to the Sixth Roundtable Secretariat, he would focus on particular items in the two outcome documents. First, he conveyed his judiciary's willingness to share information about environmental challenges, legal issues, and best practices in environmental adjudication. But like the Cambodian and Myanmar judiciaries, the Viet Nam judiciary faces a language barrier in translating documents into English and other ASEAN languages. He added that his judiciary would seek financial and technical support for the task of translation from international organizations like ADB.

Second, although the Viet Nam judiciary has not yet established environmental courts, many provincial court judges have already received training in environmental law. Since 2012, the Supreme People's Court of Viet Nam has been organizing training courses in environmental adjudication with the help of Australian judges and AusAID. The court's short-term objective and strategy is to assign environmental cases to judges with environmental law training.

As regards publishing significant environmental law jurisprudence, the Viet Nam judiciary committed to publish all court judgments and decisions. But it has copies of the judgments and decisions of the Supreme People's Court only, and not those of other courts. In the long run, the Viet Nam judiciary would like to have all decisions, regardless of court level, published online and in print. Moreover, since all the decisions are in Vietnamese, the deputy chief justice asked for the support of international organizations and other partner institutions in translating these decisions and making them available on the AJNE website.

Chief Justice Sereno thanked all the participants for giving their updated progress reports vis-à-vis the Jakarta Common Vision and Hanoi Action Plan checklists. She confirmed the completion of the first two deliverables of the Sixth Roundtable: discussions about the proposed joint judicial training in the environment, and about the information-sharing mechanism for global legal jurisprudence and ASEAN judicial processes related to the environment. She urged the participants to contemplate their third deliverable: discussion of the proposed operational structure for a technical working group on environment.

Chief Justice Sereno recalled the inaugural ASEAN Chief Justices' Meeting in Singapore in August 2013, when the chief justices agreed to support their chief executives' position on climate change and environment as reflected in various ASEAN documents. In particular, she directed the participants' attention to the following ASEAN documents: (i) the Joint Communiqué of the 49th ASEAN Foreign Ministers' Meeting, signed in Vientiane on 24 July 2016, particularly paragraphs 65–69 on climate change and the environment; (ii) the Chairman's Statement of the 28th and 29th ASEAN summits, signed in Vientiane on 6–7 September 2016, particularly paragraphs 86–89 on the ASEAN Ministerial Meeting on the Environment; and (iii) the Singapore Declaration on Climate Change, Energy and the Environment, signed in Singapore on 21 November 2007. The participants all agreed to discuss the third deliverable and their future actions based on their chief executives' statements on climate change and the environment. Chief Justice Sereno added that elevating the CACJ to the same level as the ASEAN Inter-Parliamentary Assembly would fully integrate the CACJ into the ASEAN structure. She also suggested that the participants update themselves on other accomplishments within ASEAN, and not just work as judiciaries separate and distinct from other ASEAN bodies. She proposed that they draft a formal request, the draft Puerto Princesa City Statement of 2016, for the creation of a judicial working group dedicated to addressing environmental issues, using the words of the three foregoing ASEAN documents. Deputy Chief Justice Nguyen agreed that the participants should refer the creation of a working group on environment to the CACJ. So did Chief Justice Zakaria, Judge Nurdin, Mr. Ben, Justice Philachanh, and Justice Aung.

The resource persons suggested that the draft statement should treat the working group as a forum for addressing environmental policies and that it recognize the diversity and particular environmental issues faced by each ASEAN judiciary. The participants were likewise requested to comment on the draft. Chief Justice Kifli, Mr. Ben, Judge Nurdin, and Justice Philachanh had nothing to add to the draft.

Chief Justice Zakaria proposed that the environmental working group be named the ASEAN Judicial Working Group on Environment. He asked Chief Justice Sereno why the draft statement declares membership in the group always open to the ASEAN judiciaries. She responded that the wording takes into account the unique concerns of each ASEAN judiciary. Thus, although the working group requires the participation of all jurisdictions, a judiciary may join the group at any time it deems necessary. Justice Aung suggested that the first recommendation deal with the CACJ discussion of the formation of the working group. Chief Justice Sereno agreed. District Judge Tan then suggested that the draft statement itself be discussed at the CACJ meeting. Chief Justice Sereno explained that the draft statement was prepared so as to include the creation of the working group in the agenda of the CACJ meeting. District Judge Tan thanked Chief Justice Sereno for the clarification. Justice Wattanapan approved the draft but said that he could not confirm anything about its language at the moment.

Deputy Chief Justice Nguyen also endorsed the draft statement and emphasized that what matters is that they refer the creation of the working group itself to the CACJ, which would have the final decision in this matter. He relayed Judge Dang Xuan Dao's advice to the participants, that they retain the name ASEAN Judicial Working Group on Environment, as suggested by Chief Justice Zakaria, in the second proposal.

Chief Justice Sereno pointed out that the sole reservation in this regard was expressed by Justice Wattanapan, who needed to confer with his chief justice before deciding whether to approve the wording of the draft statement. She referred the choice of the name of the working group to the CACJ. She also identified paragraphs that she would like to add to the draft statement, such as sections summarizing the individual and collective accomplishments of the ASEAN judiciaries and discussing the elevation of

the CACJ, which she said could be the main venue for cooperation and high-level policy discussions among the judiciaries. For lack of time, however, she gave the participants the option of celebrating those achievements in a separate document.

Chief Justice Zakaria asked whether the ASEAN Judicial Working Group on Environment should be under the CACJ and whether the working group should be present at every CACJ meeting. Chief Justice Sereno answered that the group should be under the CACJ and should attend each CACJ meeting together with the six other working groups.

Chief Justice Kifli approved the current draft, while Mr. Ben wanted to include a paragraph detailing the judiciaries' achievements in the same draft. Judge Nurdin agreed to refer the matter of creating the working group to the CACJ. Justice Philachanh concurred, but he expressed concern over the mention of the judiciary's "institutional independence" in the draft.

Chief Justice Kifli wanted to know how and why the ASEAN Chief Justices' Roundtable on Environment should be reconvened, as the Sixth Roundtable was understood to be the last in the series. Chief Justice Sereno said she wanted the CACJ to absorb the functions of the roundtable precisely for this reason: so that the ASEAN chief justices or their nominees could meet less often. If the chief justices attending the Fifth CACJ Meeting in Brunei Darussalam in March 2017 were to decide in favor of creating a working group on environment, then that group could meet as often as needed to deal with environmental challenges and submit its findings and recommendations to the chief justices. During the annual CACJ meetings, the chief justices could then efficiently have policy-level discussions and make decisions. Otherwise, the chief justices would have to continue meeting separately on environmental issues. Moreover, the time saved would allow the ASEAN chief justices to contribute personally to the AJNE's progress and attend international conferences on the environment.

Mr. Ben asked if ADB would continue supporting the ASEAN judiciaries in dealing with the region's environmental challenges, perhaps by providing secretariat, financial, or other support. Chief Justice Sereno said that the participants should allow the ADB representatives to first discuss among themselves any future support they would give to the ASEAN judiciaries. Chief Justice Kifli also wanted to hear ADB's response, especially if the CACJ were to absorb the functions of the ASEAN Chief Justices' Roundtable on Environment.

Before giving the floor to Mr. Christopher H. Stephens, general counsel of ADB, Chief Justice Sereno mentioned that the ASEAN chief justices had first met under the auspices of the ASEAN Law Association.²⁶ The Federal Court of Malaysia, the Supreme Court of the Philippines, and the Supreme People's Court of Viet Nam hosted the next three ASEAN Chief Justices' Meetings. Necessarily, the host judiciaries shouldered the expenses with the support of nongovernment organizations and private sector groups.

²⁶ The Supreme Court of Singapore hosted the inaugural ASEAN Chief Justices' Meeting on 23 August 2013 as a side event at the 35th ASEAN Law Association Governing Council Meeting. Supreme Court of Singapore. 2013. *ASEAN Chief Justices Held Fruitful Inaugural Meeting in Singapore*. www.supremecourt.gov.sg/news/media-releases/asean-chief-justices-held-fruitful-inaugural-meeting-in-singapore.

Mr. Stephens responded that ADB would continue to support the advancement of capacity building and knowledge sharing across the ASEAN judiciaries. If the CACJ were to take over the functions of the ASEAN Chief Justices' Roundtable on Environment and the ASEAN judiciaries were to find it more efficient to have an ASEAN judicial working group on environment, then ADB would support this manner of promoting efficiency. The overriding goal of ADB, according to Mr. Stephens, is to continue to support the desire of ASEAN judiciaries to further build their capacity and their knowledge of the environment and climate change. But ADB cannot commit itself to any particular form of support without knowing the ASEAN chief justices' response to the participants' proposal. Nonetheless, he assured them that ADB would continue to be supportive of whichever format the chief justices would agree on and commit to for a period of time. ADB would also consider the efficacy of the ASEAN judiciaries' actions in its internal budgeting and resource allocation. He noted the efforts and progress made by the ASEAN judiciaries with ADB's support, and added that to the extent that they could show progress, he was confident that ADB could give financial support.

Going back to the proposals contained in the draft Puerto Princesa City Statement of 2016, Chief Justice Zakaria noted that the CACJ would ultimately decide on the creation of a working group on environment. Therefore, he said that there should be no reservations about the draft statement. He pointed out that since the Inaugural Roundtable, the number of ASEAN chief justices attending the annual ASEAN Chief Justices' Roundtable on Environment had been decreasing. Two chief justices, Chief Justice Harifin A. Tumpa and Chief Justice Zakaria, attended the Inaugural Roundtable. Five chief justices—Chief Justice Kifli, Chief Justice Khampha Sitthidampha of the People's Supreme Court of the Lao PDR, Chief Justice Tun Tun Oo of the Supreme Court of the Union of Myanmar, Chief Justice Sereno, and Chief Justice Sundaresh Menon of the Supreme Court of Singapore—attended the Second Roundtable. Now, only three chief justices—Chief Justice Kifli, Chief Justice Zakaria, and Chief Justice Sereno—were at the Sixth Roundtable.²⁷ Chief Justice Zakaria attributed the absence of many chief justices at the annual roundtable to time constraints as they need to fulfill so many obligations. The creation of a working group on environment would promote efficiency by having the working group thresh out the details of any action plan, strategy, or agreement to be deliberated on at the CACJ meeting, which, Chief Justice Zakaria said, was likely to have more chief justices in attendance.

Chief Justice Kifli thanked ADB for its financial support for the ASEAN judiciaries through the years. However, he raised the question whether the ASEAN chief justices wanted ADB's financial support to continue. He believed that the ASEAN judiciaries should maintain independence and be perceived as independent. Continued support might lead the public to think that the judiciaries were being paid to support a cause. To ease Chief Justice Kifli's worries, Chief Justice Sereno stated that ADB's dealings with the Philippine Supreme Court have always been professional, and ADB has always deferred to the court's knowledge of the priorities of ASEAN judiciaries. She had never observed ADB to be advancing any purpose outside the ASEAN judiciaries' own priorities. She assured Chief Justice Kifli that ADB would listen to all his concerns.

²⁷ Three chief justices—Chief Justice Kifli, Chief Justice Sitthidampha, and Dr. Hassavut Vitiviriyakul, president of the Supreme Administrative Court of Thailand—attended the Third ASEAN Chief Justices' Roundtable on Environment (the Third Roundtable). Only Chief Justice Sitthidampha and Chief Justice Trung Hoa Binh of the Supreme People's Court of Viet Nam attended the Fourth Roundtable. Chief Justice Kifli, Chief Justice Dith Muntuy of the Supreme Court of Cambodia, and Chief Justice Zakaria attended the Fifth Roundtable.

Justice Aung and District Judge Tan did not comment. Justice Wattanapan expressed support for the proposed creation of a working group on environment.

Chief Justice Sereno highlighted the consensus that the creation of a working group on the environment should be referred to the CACJ, and added a note to the draft Puerto Princesa City Statement of 2016 declaring that the Supreme Court of Singapore considered the document nonbinding.

■ CLOSING SESSION

■ Concluding Message

Ms. Deborah Stokes, vice-president for administration and corporate management of ADB, thanked the participants for their contribution to the success of the roundtable. She said she was able to witness firsthand the growth of the ASEAN region into a leading voice in the field of environmental law and the effects of decisions rendered by the region's judiciaries on other jurisdictions.

On behalf of ADB, Ms. Stokes thanked the ASEAN judiciaries for their participation, cooperation, and contribution over the past 6 years in support of the ASEAN Chief Justices' Roundtable on Environment. She thanked in particular the supreme courts of Indonesia, Malaysia, Thailand, Viet Nam, Cambodia, and the Philippines for graciously hosting the roundtables successively over the last 6 years. It was a pleasure for ADB to cohost these conferences, she said, and ADB would like to continuously engage with the judiciaries in the future.

In support of Mr. Stephens' statement, Ms. Stokes affirmed ADB's readiness to assist the ASEAN judiciaries in protecting the environment and advancing the environmental rule of law and wished the participants all the best in their future endeavors.

Chief Justice Sereno also expressed gratitude to Ms. Stokes and ADB for giving the Philippine judiciary many platforms for advocating constitutional rights in the Philippines.

■ Closing Statements of Heads of Delegations

Chief Justice Sereno requested the heads of delegations to give brief closing statements before she concluded the roundtable.

Brunei Darussalam

Chief Justice Kifli thanked the conference hosts and remarked on the usefulness of the annual ASEAN Chief Justices' Roundtable on Environment to the Brunei Darussalam judiciary. He expressed the hope that the roundtable would continue in the future.

Cambodia

Mr. Ben conveyed the Supreme Court of Cambodia's gratitude to the Philippine Supreme Court and ADB and wished all the participants good health and success.

Indonesia

Judge Nurdin thanked everyone for the opportunity to attend the roundtable.

Lao People's Democratic Republic

Justice Philachanh thanked the Supreme Court of the Philippines and ADB for organizing the roundtable. He declared his appreciation for the chance to share knowledge throughout the conference, especially because environmental cases in the Lao PDR are very few. He sought ADB's support for training in environmental adjudication for the Lao PDR judiciary, and then he went on to say how privileged he felt to be in Palawan and how excited he was at the prospect of visiting the Puerto Princesa Underground River (PPUR) the next day.

Malaysia

Chief Justice Zakaria first thanked the Philippine judiciary and ADB for cohosting this roundtable. He also praised Chief Justice Sereno for the excellent arrangements made for the meeting and for graciously accommodating him in the resort water villa. After seeing the little leaves surrounding the water villa that morning, he said he realized that Palaweños had been planting more and more mangrove plants to preserve the environment. He likened the hanging bridge in the resort to Malaysia's canopy walk, while noting that the latter is about six stories above the 3,000-year-old trees in Malaysia's national park. People would enjoy nature more if they maintained the forest, he said.

He also expressed appreciation for ADB's efforts to guide the Asia and Pacific judiciaries' environment-related initiatives. He recalled attending the Inaugural Roundtable, cohosted by ADB. That was the first environment-related conference he attended. It inspired him to become actively involved in environmental law and preservation. Environmental and climate change issues are becoming increasingly important in Malaysia, he pointed out, especially with the ratification of the Paris Agreement.

Myanmar

Justice Aung observed that the roundtable provides a forum for ASEAN judiciaries to discuss the role of judges. The talks on judicial cooperation in environmental protection help address the challenges that confront judges. He then thanked the Philippine Supreme Court and ADB for cohosting the conference.

Singapore

District Judge Tan thanked the Supreme Court of the Philippines and ADB for organizing this roundtable and for showing hospitality to the Singapore delegation. He said he had learned a great deal from the presentations of the resource persons and the discussions among the ASEAN judiciaries. He wished the participants a safe journey home.

Thailand

Justice Wattanapan, on behalf of the Supreme Court of Thailand, thanked the Supreme Court of the Philippines, ADB, and the resource persons for all the information they shared. He noted that the Filipino people are not just basketball champions but also environmental champions.

Viet Nam

Deputy Chief Justice Nguyen thanked Chief Justice Sereno, the organizing committees, and the secretariat for a well-arranged event on a beautiful island and ADB for supporting the ASEAN judiciaries over the last 6 years. He looked forward to ADB's continued support in the future. This dialogue on environmental challenges confronting ASEAN judiciaries, not just in Southeast Asia but in the entire world, should be sustained, he said. He then wished the participants good health, success, and a safe journey home.

Guam

Chief Justice Torres thanked Chief Justice Sereno and the Philippine judiciary for graciously hosting him and his wife. Eager to view the PPUR, he stated how pleased he was to be in Puerto Princesa on PPUR Day (11 November). He also thanked his friends from the various ASEAN judiciaries. He enjoyed getting together and talking about the different challenges confronting their respective judiciaries. He also lauded ADB for continuously supporting the ASEAN judiciaries, providing capacity building programs, and highlighting the importance of the environment in promoting the social and economic development of ASEAN countries.

The chief justice said that although Guam is not a member of ASEAN, it is near the Philippines and other ASEAN countries. That is why he paid special attention to the discussions regarding the environment. According to him, everyone lives in one world, one Asia and Pacific region, one very fragile ecosystem; the pressures felt in one area affect other areas as well. He encouraged the participants to prioritize environmental preservation. As judges, they play a crucial role in developing and enforcing environmental laws in their countries and confronting cross-border environmental issues affecting various jurisdictions.

Closing Remarks

Chief Justice Sereno expressed her sincere gratitude to the ASEAN National Organizing Committee, her Supreme Court staff, her fellow magistrates in Southeast Asia, her colleagues in the Philippine judiciary, including those who have retired but are still serving the judiciary in another capacity, and ADB for strongly supporting this roundtable. She acknowledged that some ASEAN judiciaries might accord less priority to the environment than other judiciaries. But she requested everyone to consider the situation of Cambodia, Indonesia, the Lao PDR, Malaysia, the Philippines, Thailand, and Viet Nam, which share common boundaries and common seas. She urged everyone to realize that the world is getting increasingly smaller and the impact of an action done in one area will reach Puerto Princesa. She said that if the participants enjoyed the beauty of Puerto Princesa, she hoped they would do their best to preserve it and protect the frontier areas in their countries.

The chief justice also affirmed the Philippines' commitment to environmental protection. She encouraged ADB to continue to help the Philippines and other countries in Asia and the Pacific in this endeavor. She emphasized the importance of gatherings such as this roundtable in building and strengthening friendships between ASEAN judiciaries. She then adjourned the meeting by encouraging everyone to be steadfast professionals in the administration of justice and emphatic human beings caring for one another and for the environment.

CULMINATION NIGHT

The conference ended with a farewell dinner sponsored by the Provincial Government of Palawan.



▲ Supreme Court of the Philippines Chief Justice Maria Lourdes P. A. Sereno with the participants and Supreme Court of Guam Chief Justice Robert J. Torres Jr. dressed in Filipiniana

Welcome Remarks

Governor Jose Chavez Alvarez, governor of Palawan, greeted Chief Justice Sereno, the heads of delegations, the associate justices of the Supreme Court and Court of Appeals of the Philippines present, Mr. Stephens, the leaders of the agencies and committees responsible for organizing and securing the roundtable, officers of the Philippine Judicial Academy, and the local chief and vice chief executives and judges of Palawan. He welcomed everyone to the Provincial Capitol Grounds, an old building in the heart of Puerto Princesa City, and promised to serve the guests excellent food and entertainment.

Over dinner, the participants and guests were entertained by four performing groups—the Palawan Performing Arts, the Palawan Dance Ensemble, the Palawan Capital Chorale, and the Palawan Acoustic Band. The Palawan provincial government and local judges also distributed tokens of appreciation.

Messages from the ASEAN Judiciaries

Brunei Darussalam

Chief Justice Kifli, chief justice of the Supreme Court of Brunei Darussalam, thanked the Provincial Government of Palawan for hosting the dinner and the organizers of the roundtable for his pleasurable stay in Palawan. Through the roundtable, he said he had learned how to better appreciate the environment and take care of mangroves and white sand.

Cambodia

Mr. Ben thanked the Philippine judiciary for inviting the Cambodian delegation to attend the Sixth Roundtable. He stated how honored he felt to be nominated by his chief justice to attend the roundtable and how much he enjoyed the hospitality extended to him and his fellow delegates, the cultural performances, and the beautiful natural scenery.

Indonesia

Judge Nurdin thanked the Palawan provincial government for the dinner and the Philippine judiciary for their hospitality.

Lao People's Democratic Republic

Justice Philachanh mentioned how honored and privileged he felt to attend the Sixth Roundtable. He quoted Dr. Surin Pitsuwan, former ASEAN secretary general, who said, "We must dare to dream and learn to share because nobody can live alone." He emphasized what the roundtable had made him realize, including the need to jointly preserve the environment for the future generations.

Malaysia

Chief Justice Zakaria greeted everyone and reported his observation that the Palaweños, or the residents of Palawan, are very happy people who enjoy their life to the fullest, singing and dancing. He praised the Palaweños for promoting ecotourism as their main source of livelihood. Instead of destroying the environment for economic gain, they earn their living by attracting tourists through their clean and beautiful natural environment, which he hoped would be conserved for future generations. He quoted Mahatma Gandhi, who said, "The earth, the air, the land and the water are not an inheritance from our forefathers but on loan from our children."

Myanmar

Justice Aung greeted the hosts, resource persons, and participants. He expressed his gratitude and pleasure at being able to attend the Sixth Roundtable before wishing everyone good health, luck, and happiness.

Singapore

District Judge Tan voiced his appreciation for the invitation to attend the roundtable and experience Filipino warmth and hospitality firsthand. He commended the organizers for their hard work in organizing and managing the conference and the culmination night. He was delighted to be returning to Singapore with new learning and fond memories of new friendships made.

Thailand

Judge Wattanapan pointed out the joint efforts of the Palaweños to preserve their natural environment that he witnessed during the PPUR procession the previous day. He admired the Filipinos for being environmental champions and for cultivating environmental consciousness in their children. He appreciated the new lessons he had learned, especially those relating to environmental preservation; the food; and the songs and folk dances.

Viet Nam

Deputy Chief Justice Nguyen greeted everyone and expressed delight at the success of the roundtable, and at the beauty of the souvenirs and memories of Palawan and its people that his delegation would take home with them. He looked forward to another roundtable on an island as beautiful as Palawan.

Guam

Chief Justice Torres shared the joy he felt during his stay in Palawan and thanked Chief Justice Sereno for inviting him to attend the roundtable, even though Guam is not a member of ASEAN. He commended Governor Alvarez, Vice Governor Victorino Dennis M. Socrates, and Mayor Bayron for the good food and entertainment. He emphasized that they are all stewards of the earth, so they should do everything they can to preserve it for future generations. He mentioned his eight grandchildren; he said he wants them to enjoy living on a planet with clean water, to snorkel around islands such as Palawan, to see whale sharks, and to enjoy the environment. After repeatedly thanking the Philippine judiciary for inviting the Guam judiciary, he said that for him, the Pacific Ocean does not separate Guam from the ASEAN countries; it actually unites them.

Closing Remarks

Chief Justice Sereno began by thanking all the government offices, agencies, and committees that helped organize and run the conference and tours: (i) the Palawan provincial government, headed by Governor Alvarez, Vice Governor Socrates, and the members of the Sangguniang Panlalawigan of Palawan; (ii) the Puerto Princesa city government, headed by Mayor Bayron; (iii) Justice Peralta, Justice Perlas-Bernabe, and Justice del Castillo of the Supreme Court; (iv) the Maritime Rescue Coordinating Council and Coast Guard District Palawan; (v) the ASEAN National Organizing Council team, led by Director General for Operations Ambassador Marciano Paynor Jr.; (vi) Department of the Interior and Local Government Undersecretary Catalino Coy; (vii) the Philippine National Police officers and the security personnel assigned to the event and the delegations; (viii) National Intelligence Coordinating

Agency Regional Director Jose D. De Guzman; (ix) Office of Civil Defense Regional Office IV-B Regional Director Eugene G. Cabrera; (x) Philippine Army officers; (xi) Philippine Navy Flag Officer in Command Vice Admiral Ronald Joseph S. Mercado; (xii) Philippine Coast Guard Commodore Ferdinand M. Velasco; (xiii) Department of Health Regional Office IV-B Director III Faith Alberto; (xiv) Department of Tourism staff Ms. Jennifer O. Factora and Mr. Joshua Naraje; (xv) El Nido Resorts Director of Environment and Sustainability Ms. Mariglo I. Laririt; (xvi) Bureau of Fire Protection Regional Director Senior Superintendent Norman V. Pinion; (xvii) Bureau of Jail Management and Penology Deputy Chief for Operations Doris R. Dorigo; (xviii) liaison officers; and (xix) local court judges and their clerks, stenographers, and other staff.

Chief Justice Sereno likewise thanked the following officers from the Supreme Court and its adjunct offices: (i) Philippine Judicial Academy Vice Chancellor Justice Romeo J. Callejo Sr., Executive Secretary Justice Marina L. Buzon, and Chief of Office for Academic Affairs Justice Delilah Vidallon-Magtolis; (ii) Supreme Court Deputy Court Administrators Atty. Jenny Lind A. Delorino and Atty. Raul Villanueva, and Assistant Court Administrator and Philippine Information Office Chief Atty. Theodore O. Te and his team; (iii) Atty. Brenda Jay C. Angeles-Mendoza, chief of the Philippine Mediation Center Office; (iv) Supreme Court lawyers Atty. Cynthia F. Jacinto-Bongolan, Atty. Reizel Ann A. Tanchico, Atty. Jo Ann Frances D. Madarang, Atty. Gama Olympia, Atty. Cherry C. Coliamco; (v) Supreme Court staff, including Supervising Judicial Staff Officer Joan Tejada, Mr. Sam Samaniego, Mr. Miguel Escarda, Mr. Avram Jornalez, and Mr. Vince Velasquez; (vi) Supreme Court staff who were not able to join the team in Palawan, including Atty. Elmer H. Alea, Atty. Roan Carag, Atty. Eric Voltaire A. Pablo, Atty. Ma. Carina M. Cunanan, Mr. Bong Donato, and Mr. Jay Musngi; and (vii) Atty. Jilliane Joyce R. De Dumo and Atty. Ma. Lourdes Evelyn B. Oliveros, Chief Justice Sereno's chiefs of staff. She lauded her Supreme Court attorneys for leaving their high-paying jobs in the private sector to work for the judiciary and serve the people. As such, Chief Justice Sereno noted that there is still hope for future generations.

In conclusion, Chief Justice Sereno reminded the participants of the urgent need to protect this world for future generations and expressed the hope that the youth would carry on their stewardship role in preserving nature and upholding environmental justice. To show her deepest gratitude to everyone for their contribution, she promised even greater service to the people and again thanked the Palaweños, her fellow public officials, all the volunteers, and all her colleagues from the various ASEAN judiciaries.

APPENDIX 1

Indicative Program of the Sixth ASEAN Chief Justices' Roundtable on Environment “Forging the Sustainable Future of the ASEAN Region”

Princesa Garden Island Resort, Puerto Princesa City, Palawan
10–13 November 2016



10 November (Thursday)

WELCOME RECEPTION AND DINNER

Smart Casual | Sala Restaurant, Princesa Garden Island Resort

Whole day	Arrival and check-in
7 p.m.	Cocktails
7:30 p.m.	Welcome Reception Hosted by the Philippine Supreme Court Welcome Message <ul style="list-style-type: none">• Hon. Maria Lourdes P. A. Sereno, Chief Justice, Supreme Court of the Philippines Message from the City Government <ul style="list-style-type: none">• Hon. Lucilo R. Bayron, Mayor, Puerto Princesa City Dinner Special Performances <ul style="list-style-type: none">• Hon. Jenny Lind A. Delorino, Deputy Court Administrator, Office of the Court Administrator• Puerto Princesa City Chorale and the Kawangis ng Tribu Band

11 November (Friday)

WELCOME CEREMONIES

Business Attire | Hari Meeting Room 3, Princesa Garden Island Resort

Moderator: Atty. Theodore O. Te, Assistant Court Administrator and Chief Public Information Officer

6 a.m.–9 a.m.	Breakfast <i>Rice Restaurant</i>
9 a.m.–9:05 a.m.	Opening Remarks <ul style="list-style-type: none">• Hon. Maria Lourdes P. A. Sereno, Chief Justice, Supreme Court of the Philippines

9:05 a.m.–9:10 a.m.	Welcome Message <ul style="list-style-type: none"> Ms. Deborah Stokes, Vice-President for Administration and Corporate Management, ADB
9:10 a.m.–9:30 a.m.	Official Photo
9:30 a.m.–9:45 a.m.	Coffee Break

11 November (Friday) CONFERENCE PROPER

Business Attire | Hari Meeting Rooms 1 and 2, Princesa Garden Island Resort

Part I: Progress of the ASEAN Judiciaries in Advancing Environmental Justice

9:45 a.m.	Call to Order <ul style="list-style-type: none"> Hon. Maria Lourdes P. A. Sereno, Chief Justice, Supreme Court of the Philippines Conference Chairperson
9:45 a.m.–10 a.m.	Introduction of Delegates
10 a.m.–10:10 a.m.	Overview: The ADB Law, Policy and Reform Program, the Asian Judges Network on Environment, and the ASEAN Chief Justices' Roundtable on Environment <ul style="list-style-type: none"> Mr. Christopher H. Stephens, General Counsel, Office of the General Counsel, ADB
10:10 a.m.–10:20 a.m.	Introduction to the Jakarta Common Vision, the Hanoi Action Plan, and the Angkor Statement <ul style="list-style-type: none"> Ms. Atsuko Hirose, Advisor, Office of the General Counsel, ADB
10:20 a.m.–10:45 a.m.	Report of the ASEAN Nations on Their Progress on the Jakarta Common Vision, the Hanoi Action Plan, and the Angkor Statement–Part I (5–8 minutes each) <ul style="list-style-type: none"> The Philippines (Host Country) Brunei Darussalam Cambodia
10:45 a.m.–11 a.m.	Coffee Break
11 a.m.–12 noon	Report of the ASEAN Nations on Their Progress on the Jakarta Common Vision, the Hanoi Action Plan, and the Angkor Statement–Part II (5–8 minutes each) <ul style="list-style-type: none"> Indonesia Lao People's Democratic Republic Malaysia Myanmar Singapore Thailand Viet Nam
12 noon–1 p.m.	Lunch

Part II: Emerging Environmental Legal and Judicial Challenges

1 p.m.–1:30 p.m.	The Climate Change Regime and Its Implications for ASEAN Judiciaries Overview: Discussion will focus on salient points of the climate change treaties governing the Southeast Asian region and the implications of the new Paris Agreement on their environmental and climate litigation landscape. Resource Persons: <ul style="list-style-type: none"> Justice Rachel Pepper, Judge, New South Wales Land and Environment Court, Australia Prof. Dr. Diane A. Desierto, Associate Professor of Law and Michael J. Marks Distinguished Professor in Business Law, William S. Richardson School of Law, University of Hawaii, and Co-Director, ASEAN Law & Integration Center
1:30 p.m.–2 p.m.	Discussion

2 p.m.–2:30 p.m.	<p>The Role of Judicial Networks in Promoting Mutual Assistance</p> <p>Overview: Discussion will focus on the role played by judicial and other networks in addressing environmental issues and the factors that influenced their success.</p> <p>Resource Persons:</p> <ul style="list-style-type: none"> • Justice Rachel Pepper, Judge, New South Wales Land and Environment Court, Australia • Mr. Matthew Baird, Consultant, Pact’s Mekong Partnership for the Environment Project and Vermont Law School’s U.S.–Asia Partnerships for Environmental Law
2:30 p.m.–3 p.m.	Discussion
3 p.m.–3:15 p.m.	<p>Synthesis</p> <ul style="list-style-type: none"> • Atty. Brenda Jay C. Angeles-Mendoza, Chief, Philippine Mediation Center Office, Philippine Supreme Court Representative
3:15 p.m.–3:30 p.m.	Coffee Break/Free Time
3:30 p.m.–7 p.m.	<p>Puerto Princesa City Tour (Occidental Mindoro, Oriental Mindoro, Marinduque, Romblon, and Palawan [MIMAROPA] Trade Fair, Immaculate Concepcion Church, Plaza Cuartel, MIMAROPA Parade) (Please see Tour Arrangements for detailed itinerary)</p>
7 p.m.–9 p.m.	<p>Dinner <i>Rice Restaurant</i></p>

12 November (Saturday)

CONFERENCE PROPER

Business Attire | Hari Meeting Rooms 1 and 2, Princesa Garden Island Resort

Part III: Forging the Road Ahead for ASEAN Judicial Cooperation on Environment

6 a.m.–9 a.m.	<p>Breakfast <i>Rice Restaurant</i></p>
9 a.m.	<p>Call to Order</p> <ul style="list-style-type: none"> • Hon. Maria Lourdes P. A. Sereno, Chief Justice, Supreme Court of the Philippines, Conference Chairperson
9 a.m.–10 a.m.	<p>Deliverable 1: Discussion on the Proposed Joint Judicial Training on Environment</p> <p>Sub-topics:</p> <ul style="list-style-type: none"> • Updates on Domestic and Transboundary Environmental Issues • Relevant Laws and Judicial Rules of Procedure on Environmental Protection • Assessment of Evidence on Environmental Damage, and Initiatives on Cleanup and Restoration • Best Practices in Adjudication of Environmental Cases <p>Action Items:</p> <ul style="list-style-type: none"> • Commitment from ASEAN Judiciaries as Hosts • Identification of Experts <p>Resource Persons:</p> <ul style="list-style-type: none"> • Justice Rachel Pepper, Judge, New South Wales Land and Environment Court, Australia • Prof. Dr. Diane A. Desierto, Associate Professor of Law and Michael J. Marks Distinguished Professor in Business Law, William S. Richardson School of Law, University of Hawaii, and Co-Director, ASEAN Law & Integration Center • Mr. Matthew Baird, Consultant, Pact’s Mekong Partnership for the Environment Project and Vermont Law School’s U.S.–Asia Partnerships for Environmental Law

10 a.m.–10:45 a.m.	<p>Deliverable 2: Discussion on the Proposed Information-Sharing Mechanism on Global Legal Jurisprudence and ASEAN Judicial Processes on Environment</p> <p>Action Items:</p> <ul style="list-style-type: none"> • Approval of Mechanism on Information Sharing • Identification of Experts <p>Resource Persons:</p> <ul style="list-style-type: none"> • Justice Rachel Pepper, Judge, New South Wales Land and Environment Court, Australia • Prof. Dr. Diane A. Desierto, Associate Professor of Law and Michael J. Marks Distinguished Professor in Business Law, William S. Richardson School of Law, University of Hawaii, and Co-Director, ASEAN Law & Integration Center
10:45 a.m.–11 a.m.	Coffee Break
11 a.m.–11:45 a.m.	<p>Deliverable 3: Discussion on the Proposed Organizational Structure for a Technical Working Group on Environment</p> <p>Sub-topics:</p> <ul style="list-style-type: none"> • Formation of a Technical Working Group on Environment under the Council of ASEAN Chief Justices • Environment Secretariat <p>Action Items:</p> <ul style="list-style-type: none"> • Approval of the formation of the TWG • Identification of Members of the TWG • Hosting of the Secretariat
11:45 a.m.–11:50 a.m.	<p>Synthesis of Action Items</p> <ul style="list-style-type: none"> • Atty. Brenda Jay C. Angeles-Mendoza, Chief, Philippine Mediation Center Office, Philippine Supreme Court Representative
11:50 a.m.–11:55 a.m.	<p>Concluding Message</p> <ul style="list-style-type: none"> • Ms. Deborah Stokes, Vice-President for Administration and Corporate Management, ADB
11:55 a.m.–12 noon	<p>Closing Remarks</p> <ul style="list-style-type: none"> • Hon. Maria Lourdes P. A. Sereno, Chief Justice, Supreme Court of the Philippines
12 noon–onward	<p>Lunch/Free Time <i>Rice Restaurant</i></p>

12 November (Saturday)

CULMINATION NIGHT

Filipiniana/National Costume/Smart Casual | Provincial Capitol Grounds, Puerto Princesa City

6 p.m.–onward	<p>Culmination Night</p> <ul style="list-style-type: none"> • Hosted by the Province of Palawan <p>Welcome Remarks</p> <ul style="list-style-type: none"> • Hon. Jose Ch. Alvarez, Governor, Province of Palawan <p>Dinner</p> <ul style="list-style-type: none"> • With Special Performances <p>Presentation of Tokens to the ASEAN Judiciaries</p> <p>Messages from the ASEAN Judiciaries</p> <ul style="list-style-type: none"> • Heads of Delegations <p>Closing Remarks</p> <ul style="list-style-type: none"> • Hon. Maria Lourdes P. A. Sereno, Chief Justice, Supreme Court of the Philippines <p>Official Photo</p>
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13 November (Sunday)
Checkout/Hosted Underground River Tour

For those not availing of the Hosted Underground River Tour

5:30 a.m.	Breakfast <i>Rice Restaurant</i>
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9 a.m.–12 noon	Free Time
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12 noon	Checkout
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For those availing of the Hosted Underground River Tour
(Please see Tour Arrangements for detailed itinerary)

5 a.m.	Breakfast <i>Rice Restaurant</i>
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5:30 a.m.	Departure from the Hotel Lobby to Brgy. Sabang Tour Proper
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	Arrival at Hotel Checkout
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APPENDIX 2

Revised Agenda for Day 3 of the Sixth ASEAN Chief Justices' Roundtable on Environment *“Forging the Sustainable Future of the ASEAN Region”*

Princesa Garden Island Resort, Puerto Princesa City, Palawan
12 November 2016 | Hari Meeting Rooms 1 and 2

I. Call to Order

II. The Role of Judicial Networks in Promoting Mutual Assistance

Overview: Discussion will focus on the role played by judicial and other networks in addressing environmental issues and the factors that influenced their success.

Resource Persons:

- Justice Rachel Pepper, Judge, New South Wales Land and Environment Court, Australia
- Mr. Matthew Baird, Consultant, Pact's Mekong Partnership for the Environment Project and Vermont Law School's U.S.-Asia Partnerships for Environmental Law

III. Synthesis of the Reports

Atty. Brenda Jay C. Angeles-Mendoza

Chief, Philippine Mediation Center Office, Philippine Supreme Court Representative

IV. Forging the Road Ahead for ASEAN Judicial Cooperation on Environment: Action Points

Resource Persons:

- Justice Rachel Pepper, Judge, New South Wales Land and Environment Court, Australia
- Prof. Dr. Diane A. Desierto, Associate Professor of Law and Michael J. Marks Distinguished Professor in Business Law, William S. Richardson School of Law, University of Hawaii, and Co-Director, ASEAN Law & Integration Center
- Mr. Matthew Baird, Consultant, Pact's Mekong Partnership for the Environment Project and Vermont Law School's U.S.-Asia Partnerships for Environmental Law

V. Concluding Message

Ms. Deborah Stokes

Vice-President for Administration and Corporate Management, ADB

VI. Closing Remarks

Hon. Maria Lourdes P. A. Sereno

Chief Justice, Supreme Court of the Philippines

APPENDIX 3

List of Resource Persons

Resource Person	Designation, Agency
Baird, Matthew	Consultant, Pact's Mekong Partnership for the Environment Project; and Vermont Law School's U.S.-Asia Partnerships for Environmental Law
Desierto, Diane A.	Associate Professor of Law and Michael J. Marks Distinguished Professor in Business Law, William S. Richardson School of Law, University of Hawaii; and Co-Director, ASEAN Law & Integration Center
Pepper, Rachel	Judge, New South Wales Land and Environment Court, Australia

APPENDIX 4

List of Participants

Country/Organization	Participant
Asian Development Bank (ADB)	<p>Deborah Stokes Vice-President for Administration and Corporate Management dstokes@adb.org</p>
	<p>Christopher H. Stephens General Counsel cstephens@adb.org</p>
	<p>Atsuko Hirose Advisor Office of the General Counsel ahirose@adb.org</p>
	<p>Ma. Celeste Grace A. Saniel-Gois Legal Operations Officer Office of the General Counsel mcgsanielgois@adb.org</p>
	<p>Maria Cecilia T. Sicangco Senior Legal Associate for Law and Policy Reform (Consultant) Office of the General Counsel msicangco.consultant@adb.org</p>
	<p>Francesse Joy J. Cordon Legal Research Specialist (Consultant) Office of the General Counsel fcordon.consultant@adb.org</p>
Brunei Darussalam	<p>Dato Kifrawi Kifli Chief Justice Supreme Court</p>
Cambodia	<p>Ben Visnow Secretary General Supreme Court Administration</p>
	<p>Rithya Yeth Deputy Director Administrative and Finance Department, Supreme Court</p>
Indonesia	<p>Andriani Nurdin Vice Chief Judge Surabaya High Court</p>
	<p>Puji Astuti Handayani Vice Chief Judge Bale Bandung District Court</p>

Continued from previous page

Lao People's Democratic Republic	<p>Philachanh Phomsouvanh Director, Judicial Technical and Statistics Department; and Judge, People's Supreme Court</p>
	<p>Chanthanakhone Phougum Deputy Director Judicial Research and Training Institute, People's Supreme Court</p>
Malaysia	<p>Tun Arifin bin Zakaria Chief Justice Federal Court of Malaysia</p>
	<p>YA Tan Sri Ahmad bin Haji Maarop Judge Federal Court of Malaysia</p>
	<p>Ainul Shahrin binti Mohamad Sessions Court Judge Kota Kinabalu, Sabah</p>
Myanmar	<p>Myint Aung Justice Supreme Court of the Union</p>
	<p>Tin Nwe Soe Deputy Director General Office of the Supreme Court of the Union</p>
	<p>Min Thant Staff Officer Office of the Supreme Court of the Union</p>
	<p>Khin Than Dar Legal Environmental Specialist</p>
Philippines	<p>Maria Lourdes P. A. Sereno Chief Justice Supreme Court</p>
	<p>Diosdado M. Peralta Associate Justice Supreme Court</p>
	<p>Mariano C. Del Castillo Associate Justice Supreme Court</p>
	<p>Jose P. Perez Associate Justice Supreme Court</p>
	<p>Estela M. Perlas-Bernabe Associate Justice Supreme Court</p>

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	<p>Oscar V. Badelles Associate Justice Court of Appeals</p> <p>Ambrosio B. De Luna Presiding Judge Regional Trial Court Branch 51, Puerto Princesa (Environmental Court)</p>
Singapore	<p>Luke Tan District Judge State Courts</p> <p>Kevin Tang Senior Assistant Director</p>
Thailand	<p>Slaikate Wattanapan President Tax Division, Supreme Court</p> <p>Sutee Thaichinda Chief Judge Research Justice Division, Supreme Court</p> <p>Rewat Chaleawsilp Judge Office of the President, Supreme Court</p>
Viet Nam	<p>Nguyen Son Deputy Chief Justice Supreme People's Court</p> <p>Dang Xuan Dao Justice Supreme People's Court</p> <p>Ha Tuan Hiep Official Department of International Cooperation, Supreme People's Court</p>
Other Institutions	<p>Matthew Baird Consultant, Pact's Mekong Partnership for the Environment Project and Vermont Law School's U.S.–Asia Partnerships for Environmental Law</p> <p>Diane A. Desierto Associate Professor of Law and Michael J. Marks Distinguished Professor in Business Law, William S. Richardson School of Law, University of Hawaii; and Co-Director, ASEAN Law & Integration Center</p> <p>Rachel Pepper Judge New South Wales Land and Environment Court, Australia</p> <p>Robert John Torres Jr. Chief Justice Supreme Court of Guam</p>

APPENDIX 5

Draft Puerto Princesa City Statement of 2016

at the Sixth ASEAN Chief Justices' Roundtable on Environment held on 10–12 November 2016, Puerto Princesa City, Palawan, Philippines

WHEREAS, Article 1(9) of the Association of Southeast Asian Nation (ASEAN) Charter states that one of the Purposes of the ASEAN is to “promote sustainable development so as to ensure the protection of the region’s environment, the sustainability of its natural resources, the preservation of its cultural heritage and the high quality of its peoples;”¹

WHEREAS, in the JOINT COMMUNIQUÉ of the 49th ASEAN Foreign Ministers’ Meeting in Vientiane on 24 July 2016, the Foreign Ministers of the ASEAN “noted with great concern that climate change has already caused major loss and damage throughout the ASEAN region;”²

WHEREAS, in the CHAIRMAN’S STATEMENT OF THE 28TH AND 29TH ASEAN SUMMITS held in Vientiane on 6 to 7 September 2016, it was noted that “transboundary haze pollution arising from land and forest fires remains a major concern in the region;”³

WHEREAS, the SINGAPORE DECLARATION ON CLIMATE CHANGE, ENERGY AND THE ENVIRONMENT declared that there is a need to “carry out individual and collective actions, in a broad range of sectors, to address climate change... considering the principles of equity, flexibility, effectiveness and common but differentiated responsibilities and respective capabilities, as well as reflecting our different social and economic conditions;”⁴

WHEREAS, the JOINT COMMUNIQUÉ “recognize[s] the importance of strengthening...cooperation in promoting environmental sustainability and building partnership for a clean and green environment as well as renewable energy, and preventing land degradation, promoting sustainable and integrated water resources management at all levels, including through transboundary cooperation as appropriate and ensuring sustainable management of natural resources, restoring watershed forest, conserving coastal and marine environment, including terrestrial and marine biodiversity;”

¹ Association of Southeast Asian Nation Charter, Article 1(9), (2007).

² JOINT COMMUNIQUÉ of the 49th ASEAN Foreign Ministers’ Meeting, Vientiane, Lao People’s Democratic Republic, 24 July 2016, p. 2, par. 65.

³ CHAIRMAN’S STATEMENT OF THE 28TH AND 29TH ASEAN SUMMITS, Vientiane, Lao People’s Democratic Republic, 6–7 September 2016, p. 17, par. 88.

⁴ SINGAPORE DECLARATION ON CLIMATE CHANGE, ENERGY AND THE ENVIRONMENT, 21 November 2007, p. 2, par. 5.

WHEREAS, recalling the agreements above and recognizing that environmental issues are cross border in nature, it is necessary for the ASEAN Judiciaries to have a suitable forum to address high-level policy matters affecting our legal systems in relation to environmental concerns;

WHEREAS, recognizing however that ASEAN Judiciaries are diverse and face varying challenges in terms of environmental issues, there is a need to structure a flexible forum to discuss policy issues on environment, which is responsive to the immediate needs of the ASEAN Judiciaries;

NOW THEREFORE, in order to promote the above agreements of the ASEAN, and in recognition of the different environmental concerns of each ASEAN Judiciary, the Chief Justices and Heads of Delegations of the 6th ASEAN Chief Justices' Roundtable on Environment have agreed, as follows:

- (1) To PROPOSE and RECOMMEND for discussion by the Council of ASEAN Chief Justices (CACJ), previously known as the ASEAN Chief Justices' Meeting,⁵ to discuss the formation of ASEAN JUDICIARIES WORKING GROUP ON ENVIRONMENT to identify potential areas of mutual cooperation, within the spirit of institutional independence and principled partnerships, on issues concerning the environment; and
- (2) To PROPOSE and RECOMMEND to the CACJ that membership to the above ASEAN JUDICIARIES WORKING GROUP ON ENVIRONMENT is open at any time to the ASEAN Judiciaries with the need to immediately address environmental concerns within their respective jurisdictions.

Signed this 12 November 2016 at Puerto Princesa City, Palawan, Philippines.

⁵ Ho Chi Minh City Declaration at the Fourth ASEAN Chief Justices' Meeting, 1 April 2016, Ho Chi Minh City, Socialist Republic of Viet Nam, p. 1.

APPENDIX 6

THE SIXTH ASEAN CHIEF JUSTICES' ROUNDTABLE ON ENVIRONMENT IN PHOTOS





ARRIVAL OF THE DELEGATES



NETWORKING



CULMINATION NIGHT





SIGHTSEEING





Sixth ASEAN Chief Justices' Roundtable on Environment

Forging the Sustainable Future of the ASEAN Region: The Proceedings

The Sixth Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable on Environment, cohosted by the Asian Development Bank, served as a forum to strengthen ASEAN judges' knowledge and expertise in environmental and climate change law. The Sixth Roundtable, held in the Philippines, enabled ASEAN chief justices and their nominees to review prior roundtable agreements and report progress in implementing the Jakarta Common Vision, the Hanoi Action Plan, and the Angkor Statement. The annual roundtable conferences aimed to support ASEAN judges in strengthening their capacity to interpret, apply, and enforce environmental treaties, laws, and regulations based on the rule of law, thereby enabling effective environmental adjudication.

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 a large share of the world's poor. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

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



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