THIRD ASIAN JUDGES SYMPOSIUM ON LAW, POLICY AND CLIMATE CHANGE

26–27 September 2016 • Asian Development Bank, Manila, Philippines
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AGENDA (as of 20 September 2016)

**DAY 1: 26 SEPTEMBER 2016**

**INAUGURAL SESSION**
9 a.m.–10 a.m.

**Moderator:** Ms. Deborah Stokes, Vice-President for Administration and Corporate Management, ADB

1. **Welcome Remarks** – Mr. Takehiko Nakao, President, ADB (10 minutes)
2. **Welcome Remarks** – Hon. Maria Lourdes P.A. Sereno, Chief Justice, Supreme Court of the Philippines (10 minutes)
3. **Opening Remarks** – Dr. Arnold Kreilhuber, Head, International Environmental Law Unit, Division of Environmental Law and Conventions, United Nations Environment Programme (UNEP) (10 minutes)
4. **History of the Asian Judges Network on Environment (AJNE) and its Significant Achievements** – Mr. Christopher Stephens, General Counsel, ADB (10 minutes)
5. **Keynote Address** – Ms. Loren Legarda, Senator, Republic of the Philippines (20 minutes)

**Photo Session and Tea Break**
10 a.m.–10:30 a.m.

**TECHNICAL SESSION 1**
Introduction to Climate Change
10:30 a.m.–12 p.m.

(15 minutes for each presentation and 45 minutes for Q&A)

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

**Facilitator:** Ms. Atsuko Hirose, Advisor, OGC, ADB

1. **The International Climate Change Regime and its 2015 Paris Agreement**
   Dr. Lavanya Rajamani, Research Professor, Centre for Policy Research, India
   *Overview of the UNFCCC regime, especially the key pillars of the Paris Agreement. Particular focus on the legal commitments, differentiation between developed and developing countries and the oversight system.*

2. **Will the Paris Climate Agreement Really Make a Difference?**
   Professor Ralph Sims, Massey University, New Zealand
   *Together, the nationally determined contributions of the 195 parties that negotiated the agreement are inadequate to reach the pathway needed to stay below the 2°C average temperature rise above pre-industrial levels as internationally agreed. Climate mitigation solutions exist and disruptive technologies are showing potential. National and state policies and legislation to accelerate deployment and help change behavior are lagging, with more encouraging progress coming from many cities that are taking the initiative.*
3. Climate Change Rights: Trends and Developments in Asia-Pacific

Professor Ben Boer, University of Sydney and Wuhan University Law School

The presentation explores current legal and policy approaches to climate change and human rights, with a focus on the Asia-Pacific region. It introduces the global debate on the right to a clean and healthy environment, and explores how this plays out through incorporation in national constitutions as well as interpretation by the courts.

Lunch Break
12 p.m.–1:30 p.m.

SPECIAL CASE STUDY PRESENTATION
Descaling Climate Change and UNSDG 7:
Case Study on Sino-Singapore Tianjin Eco-City
1:30 p.m.–1:45 p.m.

Emeritus Professor Koh Kheng-Lian, Faculty of Law, National University of Singapore and Honorary Director, Asia-Pacific Centre for Environmental Law (APCEL)

SPECIAL SESSION 1
A Dialogue with Judges
1:45 p.m–3 p.m.

Moderator: Ms. Irum Ahsan, Senior Counsel, ADB

Panelists:
Hon. Mr. Chief Justice Tun Arifin Bin Zakaria, Supreme Court of Malaysia
Hon. Mr. Justice Qazi Faez Isa, Judge, Supreme Court of Pakistan
Hon. Mr. Justice Emmanuel Ugirashebuja, President, East Africa Court of Justice
Hon. Mr. Justice Adolfo Azcuna, Chancellor, Philippine Judicial Academy

Tea Break
3 p.m.–3:15 p.m.

SPECIAL SESSION 2
Law Moot – Adversarial Format
3:15 p.m.–4:45 p.m.

Presiding Judge: The Rt. Hon. Lord Robert Carnwath of Notting Hill, CVO

Oralists: Ateneo de Manila University and the University of the Philippines International Mooting Teams

Moderator: Mr. Gregorio Rafael P. Bueta, Consultant (Legal and Policy Specialist), ADB

This particular moot will demonstrate the traditional adversarial system of litigation where two parties represent their opposing cases before a judge to decide in favour of one of the parties based on the questions of facts and law. This moot will also highlight an important feature of how this type of litigation is practiced by environmental judges in most civil law countries.
TECHNICAL SESSION 2
Climate Change – Food and Water Security and Urbanization
4:45 p.m.–6 p.m.
(15 minutes for each presentation and 30 minutes for Q&A)

Session Chair: Hon. Mr. Chief Justice Surendra Kumar Sinha, Supreme Court of Bangladesh
Facilitator: Ms. Briony Eales, Environmental Lawyer – Consultant, ADB

1. Climate Change Impacts on Food and Water Security – Legal and Judicial Responses
Mr. Sanjay Upadhyay, Managing Partner, Enviro Legal Defence Firm, India
There is a need to establish the link between climate change and food and water security and to urgently push for climate change adaptation and mitigation to address the depletion of food, water, and aquatic resources, particularly in Asia and the Pacific region. The law and the courts have been used to push this agenda, resulting in both opportunities and challenges as the world continues to face this phenomenon.

2. Urbanization and Green City Development
Dr. Nilmini Silva-Send, Assistant Director/Professor, Energy Policy Initiatives Center, University of San Diego School of Law
Urban climate planning has been taking place at a fast rate in the last few years in California. The City of San Diego adopted an aggressive Climate Action Plan in December 2015, which reflects the regulatory and litigation drivers that are leading to such plans. Three significant recent cases in California based on its Environmental Quality Act and the regulations relied on by the courts will be presented.

3. Towards Water and Food Security through Energy Efficiency: Addressing the Adaptation Gap
Dr. Eva Abal, Associate Professor, Global Change Institute, The University of Queensland, Australia
Science, Technology, Engineering, and Mathematics (STEM) has a key role in developing knowledge and tools for climate change adaptation and mitigation. New technologies, made available most especially for developing countries, are crucial to address the impacts of this phenomenon. The session will explore solutions and best practices on adaptation and mitigation measures addressing climate change impacts on water, food, and urban development.

Dinner Reception at ADB co-hosted by the Philippine Supreme Court and ADB
6p.m.–9p.m.
Third Asian Judges Symposium on Law, Policy and Climate Change

Day 2: 27 September 2016

Recap of Day 1 by Ms. Atsuko Hirose, Advisor, OGC, ADB
8:45 a.m.–9 a.m.

Video Presentation by Hon. Mr. Justice Antonio Herman Benjamin, Superior Tribunal Justicia, Brazil
9 a.m.–9:15 a.m.

Technical Session 3
Global Legal Jurisprudence’s Role in Climate Change
9:15 a.m.–10:45 a.m.
(15 minutes for each presentation and 30 minutes for Q&A)

Session Chair: Hon. Mr. Chief Justice Syed Mansoor Ali Shah, Lahore High Court, Pakistan
Facilitator: Mr. Andy Raine, Legal Officer, UNEP

1. Role of Developing Countries in the Development of International Environmental Rule of Law
Dr. Parvez Hassan, Chair Emeritus, World Commission on Environmental Law, IUCN
Presentation on how climate change and the rule of law are intertwined and/or have developed.

2. Public Interest Litigation: Climate Change and the Environment
Hon. Mrs. Justice Hima Kohli, Judge, High Court of New Delhi, India
The focus of this presentation is the role played by the Supreme Court of India and the State High Courts in redressing grievances related to environmental degradation and climate change, by entertaining Public Interest Litigations.

3. Addressing Climate Change – Evolving Legal Jurisprudence in the ASEAN Region and its Challenges
Hon. Mr. Justice Tan Sri Datuk Seri Panglima Richard Malanjum, Chief Judge, High Court of Sabah and Sarawak, Malaysia
The judiciaries of ASEAN have also been at the forefront of climate change. Significant jurisprudence from around the region present both promising developments and the challenges judges will face in the future.

4. Mapping Climate Change Adjudication
Hon. Mr. Justice Brian J. Preston, Chief Judge, The Land and Environment Court of NSW, Australia
Climate change is a persistent, pervasive and pernicious problem. Climate change litigants have increasingly brought a variety of legal actions before courts and tribunals across the world seeking to compel governments and others to take effective action to grapple with this problem. Such litigation has led courts and tribunals to: compel the implementation of mitigation and adaptation measures, redress the inadequate assessment and consideration of climate change in decision-making, consider climate change issues in making de novo development approval decisions, refuse approval to activities or developments with unacceptable climate change consequences, redress climate change related human or constitutional rights violations and remedy the making of misleading commercial claims relating to climate change.
SPECIAL PRESENTATION
Chinese Experience in Judiciary Countermeasures for Climate Change
11 a.m.–11:15 a.m.
Hon. Bi Dongsheng, Senior Judge, Supreme People’s Court, People’s Republic of China

SPECIAL SESSION 3
A Dialogue – Climate Change Case Study from Pakistan Showcasing Inquisitorial Style of Resolution
11:15 a.m.–12:15 p.m.
Moderator: Ms. Irum Ahsan, Senior Counsel, ADB
Ms. Saima Amin Khawaja, Managing Partner, Progressive Advocates and Legal Consultants, Pakistan; and
Mr. Mansoor Awan, Founder, AJURIS Advocates and Corporate Counsels, Pakistan
This particular dialogue will demonstrate the somewhat non-traditional inquisitorial system of litigation. In this method the judge endeavors to discover facts while simultaneously representing the interests of the parties and public at large. Unlike the adversarial system, the judge is not a passive recipient of information. Rather s/he is responsible for supervising the gathering of evidence and best solutions for resolving the case

Lunch Break
12:15 p.m.–1:45 p.m.

SPECIAL SESSION 4
A Dialogue with Judges
1:45 p.m.–3 p.m.
Moderator: Ms. Briony Eales, Environmental Lawyer – Consultant, ADB
Panelists:
Hon. Mr. Chief Justice Lyonpo Tshering Wangchuk, Supreme Court of Bhutan
The Rt. Hon. Lord Robert Carnwath of Notting Hill, CVO
Hon. Mr. Justice Swatanter Kumar, Chairperson, National Green Tribunal, India
Hon. Mr. Justice Takdir Rahmadi, Judge, Supreme Court of Indonesia
Hon. Mr. Justice Ananda Mohan Bhattacharai, Judge, Supreme Court of Nepal

Tea Break
3 p.m.–3:15 p.m.
TECHNICAL SESSION 4
Climate Change: Its Social Impact and Success Stories
3:15 p.m.–4:45 p.m.
(15 minutes for each presentation and 45 minutes for Q&A)

Session Chair: Ms. P. Imrana Jalal, Senior Social Development Specialist, ADB

1. Impacts of Climate Change on Vulnerable Groups
Ms. Irum Ahsan, Senior Counsel, ADB
Overview of how certain vulnerable groups are affected by climate change; how their current state is worsened due to climate impacts; and how their needs have been overlooked. Solutions and best practices will also be presented.

2. Climate Refugees: Legal Rights and Status in International Law
Hon. Mr. Chief Justice Syed Mansoor Ali Shah, Lahore High Court, Pakistan
The displacement of communities and even whole nations due to climate change has given rise to the concept of climate refugees. Although absent a definition in international law, certain rights and legal remedies are available to these groups.

3. Climate Change: Mitigation and Adaptation Solutions and Success Stories
Ms. Sarah Khan, Founder/Film Maker, Jugnoo Foundation, Pakistan
Best solutions for climate change adaptation and mitigation are only possible if communities also work hand-in-hand with their governments. This session will share communities’ efforts by sharing some of the success stories (including how some women have taken lead and have offered solutions to the impacts of climate change).

CLOSING/VALEDICTORY SESSION
4:45 p.m.–5:15 p.m.

1. Closing Remarks – Ms. Deborah Stokes, Vice-President for Administration and Corporate Management, ADB

2. Closing Remarks – Dr. Arnold Kreilhuber, Head, International Environmental Law Unit, Division of Environmental Law and Conventions, UNEP

Farewell Dinner at EDSA Shangri-La Hotel hosted by ADB
6 p.m.–10 p.m.
INTRODUCTION

The Third Asian Judges Symposium (Symposium) focuses on the central theme of Law, Policy, and Climate Change. The Asian Development Bank (ADB) sincerely thanks our partners—the Supreme Court of the Philippines and the United Nations Environment Programme—for their joint support in organizing this Symposium.

The Symposium aims to bring together senior judges, legal professionals, experts on climate change, and other participants to focus on the core theme and to explore the role that the rule of law can play in responding to climate change. The Symposium provides participants with a platform to discuss the fundamental principles underpinning climate change issues, as well as international best practices in climate change adaptation and mitigation, specifically from the perspective of judicial decision-making. It also includes special sessions featuring various adjudicatory methods used in environmental cases, such as the inquisitorial and adversarial models of dispute resolution. After considering the latest climate change statistics, the Symposium will explore the sub-themes of (i) Food and Water Security and Urbanization, (ii) Global Legal Jurisprudence’s Role in Climate Change, and (iii) Climate Change: Its Social Impact and Success Stories.

We hope to inspire powerful thoughts and discussions on how judiciaries in Asia and the Pacific can work with their governments and people on climate change mitigation and adaptation. We look forward to welcoming participants to the 2016 Third Asian Symposium on Environment.

BACKGROUND

Climate Change Science

In a 2014 summary report for policymakers, the Intergovernmental Panel on Climate Change (IPCC) reported that over the period of 1880 to 2012, the earth’s combined land and ocean surface temperature warmed 0.85 degrees Celsius (ºC).\(^1\) Climate warming means a warmer atmosphere and ocean, melting snow

and polar ice sheets, intense and frequent extreme weather events, rising sea levels, and warmer and more acidic oceans. Rates of warming since the 1950s have been unprecedented compared to temperature records for previous decades and temperature models for millennia. 2016 is predicted to be the hottest year on record, with the first half of the year indicating an average temperature that is 1.05ºC above the entire 20th-century average. July 2016 was also the 15th consecutive month that a monthly global temperature record was broken.

Over half of the recorded increase in the global average surface temperature stems from increased atmospheric concentrations of carbon dioxide (CO₂), methane, and nitrous oxide (greenhouse gases [GHG]). Current atmospheric concentrations of GHG are unprecedented and exceed atmospheric concentrations over the past 800,000 years. If GHG emissions continue to increase, average global temperatures for the period 2081–2100 are likely to increase between 2.8ºC and 4.3ºC above pre-industrial temperatures. IPCC has determined that in order to keep the global mean temperature to less than 2ºC above pre-industrial temperatures, we must limit the cumulative amount of CO₂ to 2,900 gigatonnes (the carbon budget). Total emissions to date are approximately 2,000 gigatonnes of CO₂.

**What are the Significant Climate Change Challenges for Asia and Pacific?**

Home to over 4 billion people, Asia and the Pacific are some of the world’s most vulnerable regions to climate change due to water scarcity, sea level rise, and an increase in extreme weather events. In 2016, Germanwatch listed Myanmar, the Philippines, Bangladesh, Viet Nam, Pakistan, and Thailand among the top 10 countries affected by climate change in the period from 1995 to 2014.
Asia's population is heavily reliant upon agriculture, with over half of the region's population living in rural areas. Eighty-one percent of Asia's rural population relies on agriculture for their living. The region's large agricultural sector relies heavily on water from rain, river run-off, and groundwater. Asia's expanding population and improved living standards also places heavy demands on existing water sources, making water scarcity a significant challenge. Half of Asia's urban population lives in low-lying coastal zones and flood plains, which are at risk of flooding and inundation from rising sea levels. Ninety percent of the world's population that is exposed to tropical cyclones lives in Asia. Asia's staple food will also be impacted. IPCC has reported that higher temperatures will lead to lower rice yields due to shorter growing periods. Climate warming and habitat fragmentation will also lead to an increased risk of extinction for many plant and animal species in Asia.

Small islands within the Pacific are particularly vulnerable to rising sea levels, tropical and extra tropical cyclones, increasing air and sea surface temperatures, and changing rainfall patterns. IPCC estimates on global mean sea level rise vary subject to atmospheric GHG concentrations. However, estimates range between an average of 0.4 m to 0.63 m for the period 2081 to 2100. IPCC predicts that global mean sea levels will continue to rise beyond 2100. These estimates demonstrate the burning urgency of responding to threat of global warming and GHG concentrations.

Climate change is also predicted to increase displacement and forced migration of people, with developing countries being disproportionately affected. Displacement occurs not only as a direct result of climate change-related disasters, such as desertification and floods, but also due to indirect climate change-related factors. Overall socio-economic patterns—including population growth; urbanization rate; and food, water, and energy insecurity—likewise impact the manner by which climate change affects displacement. Climate change impacts may further result in or aggravate tension, conflict, and violence in affected communities, resulting in even further displacement. This contagion effect indicates the far-reaching implications of climate change policy and adjudication, as climate change is also an impact multiplier and accelerator in the broader scheme.

Paris Agreement

The United Nations Framework Convention on Climate Change (UNFCCC) took effect on 21 March 1994. The UNFCCC seeks to stabilize atmospheric GHG concentrations to prevent dangerous interference with the climate system. UNFCCC parties (conference of parties) meet annually to discuss progress with efforts on responding to climate change. The 1997 conference of parties resulted in the Kyoto Protocol. In 2010, the Cancún agreements declared that future global warming should be limited to below 2.0°C relative to the pre-industrial level.

In late 2015, over 180 countries gathered in Paris at the 2015 Climate Change Conference. Parties negotiated commitments on controlling GHG emissions and adapting to climate change. As of 20 September 2016, 28 of the 197 parties to the Paris Agreement had ratified the agreement. The Paris Agreement represents one of the most significant global efforts to respond to climate change.

Adopted on 12 December 2015, the Paris Agreement aims for a low GHG emissions future in order to respond to the threat of climate change. Parties agreed on “holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.”\(^2\) To achieve the emission targets, parties agreed that global GHG emissions must peak as soon as possible and reduce thereafter. Recognizing the importance of forests in tackling climate change, the agreement also calls for the preservation of forests.\(^3\)

The Paris Agreement provides for parties to meet every 5 years to review emissions targets and to report on their progress in implementing targets. The parties agreed to strengthen societies’ ability to respond to climate change impacts via enhancing adaptive capacity, strengthening resilience, and reducing vulnerability to climate change. The agreement recognizes the importance of minimizing and addressing loss and damage resulting from climate change.

United Nations Secretary-General Ban Ki-moon has invited global leaders to deposit their instruments of ratification, acceptance, approval or accession to the Paris Agreement on 21 September 2016. Additionally, UNFCCC parties have invited IPCC to deliver a report in 2018 on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways.

Parties to the Paris Agreement also agreed to support developing countries with climate change mitigation and adaptation. Mitigation policies include (i) reducing emissions from power plants, cars, and landfill sites; (ii) increasing access to clean energy; and (iii) improving energy efficiency within industry and in households. Given that climate warming has occurred, adaptation policies are also needed. In Asia and the Pacific, adaptation policies will likely focus on (i) disaster risk prevention, particularly for extreme weather events; (ii) coastal zone management and flood defense; (iii) water management, particularly for agriculture; (iv) resilience in agriculture; and (v) building code adaptation, to ensure buildings are more disaster resilient and sustainable.

\(^2\) Paris Agreement, art. 2, 12 December 2015.
\(^3\) Paris Agreement, art. 5, 12 December 2015.
Judicial Initiatives

The world’s judiciaries have demonstrated their commitment to the principles of ensuring environmental sustainability by engaging in discussion and sharing best practices through participation in conferences such as (i) World Congress of Justice, Governance, and Law for Environmental Sustainability in 2012, (ii) Rule of Law and Climate Change Symposium in 2015, (iii) Rule of Law for Supporting the 2030 Sustainable Development Agenda 2016, and (iv) World Environmental Law Congress in 2016, which lead to the establishment of the Global Judicial Institute for the Environment.

ADB’s Role

ADB has made a strategic commitment to environmental sustainability and combating climate change. In its Midterm Review of Strategy 2020, ADB reiterated its focus on environment and climate change by scaling up its support for climate change adaptation and maintaining its assistance for mitigation through clean energy and energy efficiency projects and sustainable transport. ADB’s Environmental Operational Directions 2013–2020 noted that many of ADB’s developing member countries recognize the unique and distinct leadership role that the judiciary plays in the environmental enforcement chain.

By 2020, ADB will spend $6 billion annually on climate financing, amounting to approximately 30% of total operations from its own resources. ADB will invest $4 billion in mitigation with advanced technologies such as sustainable transport, renewable energy, and energy efficiency. ADB will invest the remaining $2 billion in adaptation measures focused on enabling more resilient urban infrastructure, climate-smart agriculture, and better preparation for climate-related disasters.

The Office of the General Counsel (OGC) complements ADB’s overall climate change strategy through its Law and Policy Reform (LPR) Program, which focuses on legal development through strengthened policy, legal, judicial, and regulatory systems. The key premise is that a credible rule of law system is necessary to foster inclusive and sustainable development. Judiciaries are thus uniquely positioned to enhance environmental and socio-economic governance; directly, by shaping
environmental jurisprudence and, indirectly, by leading stakeholders to credible rule of law systems that effectively respond to environmental and other climate change issues.

The Symposium will build upon and consolidate past and ongoing work under OGC’s LPR Program, particularly its work to establish and strengthen the Asian Judges Network on Environment (AJNE). AJNE is an informal trans-governmental network of senior judges from 23 countries that serves as a platform for judicial capacity strengthening and multilateral exchanges on environmental adjudication. OGC’s other environment-related projects include an environmental law champions program, innovative train-the-trainers modules implemented to enhance the capacity of environmental law professors and public interest lawyers to pass along their knowledge in their home countries. This Symposium follows the inaugural Asian Judges Symposium on Environment in 2010 on Environmental Decision Making, the Rule of Law, and Environmental Justice and the Second Asian Judges Symposium on Environment in 2013 on Natural Capital and the Rule of Law.

During the 2010 symposium, participants requested the establishment of AJNE to enable collaboration among Asian judiciaries and the legal community on environmental law. ADB facilitated AJNE’s creation and has continued to support regular meetings of judges across the Association of Southeast Asian Nations (ASEAN) and South Asia. In connection with AJNE, ADB has supported annual Chief Justices’ Roundtable meetings in ASEAN and Judicial Roundtable meetings in South Asia since 2011. Roundtable meetings have been held in Cambodia, Indonesia, Malaysia, Thailand, and Viet Nam in ASEAN and in Bhutan, Nepal, Pakistan, and Sri Lanka in South Asia. During the 2013 symposium participants discussed challenges in climate change litigation, such as (i) attributing responsibility for local impacts while considering climate change as a global phenomenon; (ii) identifying responsible parties; and (iii) determining whether national legal frameworks are available for the courts to assess responsibility and liability in the future.
In order to holistically respond to the threat of climate change, we must give consideration to the many facets of human existence that will be impacted on the road ahead. By fully considering these issues, judiciaries in Asia and the Pacific can contribute to:

Saving our planet, lifting people out of poverty, advancing economic growth ... these are one and the same fight. We must connect the dots between climate change, water scarcity, energy shortages, global health, food security and women’s empowerment. Solutions to one problem must be solutions for all.24

Climate Change Disputes

The judiciary will play an important role in climate change governance, particularly regarding mitigation and adaptation policies and plans. The courts will naturally be called upon to interpret new environmental, climate change, and disaster risk reduction laws and determine rights. Judges across Asia and the Pacific will likely have to manage matters relating to:

- legal commitments, responsibilities, and rights flowing from international environmental agreements like the Paris Agreement;
- loss and damage due to floods and rising sea levels;
- actions against the state for failing to adequately regulate GHG emission reduction, actions against polluters for failing to meet emission reduction requirements, and actions on climate change in general;
- review of government administrative decisions on matters such as environmental permitting. Consideration of such actions includes consideration rules of standing, including the ability of indirectly affected citizens to seek review of administrative decisions;
- transboundary litigation on climate change, climate displacement, evidentiary burdens, and climate change science; and
- international environmental dispute resolution, through litigation or alternative modes.

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Output

The papers submitted for the Symposium will be compiled and edited as part of the proceedings that will be published by ADB. The papers and presentations submitted for the Symposium will also be uploaded to the AJNE website.

ADB CONTACTS

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Ms. Briony Eales, Environmental Lawyer - Consultant, Office of the General Counsel, ADB: beales.consultant@adb.org

Ms. Maria Cecilia T. Sicangco, Senior Legal Associate for Law and Policy Reform, Office of the General Counsel, ADB: msicangco.consultant@adb.org
I. Background

1. Since 2010, ADB, through OGC’s Law and Policy Reform Program, has been working with Asian judiciaries to strengthen their capacity for deeper understanding of environmental law issues and for strengthened environmental adjudication.

2. During the First Asian Judges Symposium on Environment in July 2010, the participants (almost 150 judges) discussed ways for effective environmental adjudication and law enforcement, particularly through an Asian judicial network on environment. Implementation of this project began with the judiciaries of ASEAN and SAARC through regional Roundtables and national activities.

II. Outcomes and Achievements

3. **Annual Regional Roundtables** have been held in Southeast Asia in Indonesia (2011), Malaysia (2012), Thailand (2013), Viet Nam (2014), and Cambodia (2015). South Asia has also hosted Roundtables in Pakistan (2012), Bhutan (2013), Sri Lanka (2014), and Nepal (2015). The Philippines and Bangladesh will host this year’s roundtables.

4. Working directly with chief justices and senior judges has proven to be a success due to quick and effective implementation and clearly measurable results. Enhanced judicial understanding has led to an improved enforcement of environmental laws, the protection of peoples’ rights to a clean and healthy environment, as well as the potential for a better legal and policy environment for ADB projects and operations.
5. The **Asian Judges Network on Environment (AJNE)** was established through annual regional Roundtables and was formally launched in December 2013. It is an information- and experience-sharing arrangement among senior judges for judicial capacity building. A few AJNE members have also become founding members of the Global Judicial Institute for the Environment.

6. The TA supported participation of AJNE judges in international fora and gatherings, including: (i) World Congress of Justice, Governance, and Law for Environmental Sustainability in Rio de Janeiro, Brazil, and Judicial Colloquium on Biodiversity in Hyderabad, India (2012); (ii) Rule of Law and Climate Change Symposium in London (2015); (iii) Rule of Law for Supporting the 2030 Sustainable Development Agenda in New Delhi, India (2016); and (iv) World Environmental Law Congress in Rio de Janeiro, Brazil (2016), which led to the establishment of the Global Judicial Institute for the Environment.

7. **National Activities** and achievements include the following:
   
   a. **ASEAN** – Judiciaries Working Group on Environment
   
   b. **Indonesia** – Judicial Certification Program on Environment
   
   c. **Malaysia** – green benches (environmental crimes courts)
   
   d. **Philippines** – green courts and Rules of Procedure for Environmental Cases
   
   e. **Viet Nam** – needs assessment and review of penal code on environmental crime
   
   f. **Thailand** – draft law on better environmental adjudication
   
   g. **Pakistan** – green benches; environmental justice committee; and institutionalization of environmental law training in judicial academies
   
   h. **Sri Lanka** – South Asian Judges Training Centre on Environmental Rule of Law and Sustainable Green Development and training for high court judges
   
   i. **Bhutan** – bench book and establishment of a green bench in the High Court
Takehiko Nakao is the President of the Asian Development Bank (ADB) and the Chairperson of ADB’s Board of Directors. He was elected President by ADB’s Board of Governors and assumed office in April 2013.

Before joining ADB, Mr. Nakao was the Vice Minister of Finance for International Affairs at the Ministry of Finance of Japan.

In a career spanning more than three decades, Mr. Nakao has gained extensive experience in international finance and development. He has held senior positions in the Ministry of Finance in Japan, which he joined in 1978, including Director-General of the International Bureau, where he fostered close ties with leading figures in the Asia-Pacific region, and G20 nations.

He was assigned as Minister at the Embassy of Japan in Washington, DC, between 2005 and 2007, and from 1994 to 1997 served as economist and advisor at the International Monetary Fund.

He has published books and numerous papers on financial and economic issues, and in 2010 and 2011 was a Visiting Professor at the University of Tokyo.

Born in 1956, Mr. Nakao holds a Bachelor’s degree in Economics from the University of Tokyo and a Master of Business Administration from the University of California, Berkeley.
Maria Lourdes P.A. Sereno is the 24th and current Chief Justice of the Supreme Court of the Philippines. At age 52, she became the second youngest and the first female to head the judiciary.

In August 2010, she was appointed Associate Justice of the Supreme Court of the Philippines, its 169th Member and the first appointee to the High Court by President Benigno Aquino III. Sereno is the youngest appointee to the Supreme Court since Manuel Moran in 1945, but she was surpassed by Marvic Leonen in 2012 at the age of 49, and the 13th woman appointed as a Supreme Court Justice.

On 24 August 2012, President Aquino announced the appointment of Justice Sereno as the new Chief Justice of the Supreme Court, replacing Renato Corona, who was removed from office in May 2012 after being convicted in an impeachment trial. She is set to retire in 2030, after 20 years in office (18 years as Chief Justice), pursuant to the requirements of the 1987 Constitution. She earned a bachelor’s degree in economics at the Ateneo de Manila University in 1980, and her Bachelor of Laws degree from the University of the Philippines College of Law at Diliman, graduating as class valedictorian in 1984. She also earned a Master of Laws from the University of Michigan Law School in 1993.

Sereno started her career as a junior associate of the Sycip Salazar Feliciano and Hernandez law firm. At the age of 38, she was appointed as legal counselor at the World Trade Organization’s Appellate Body Secretariat in Geneva. She was the only female member of the 1999 Preparatory Commission on Constitutional Reform where she headed the commission’s Steering Committee. In the same year, with Justice Jose Campos, Commissioner Haydee Yorac, and other professors from the UP College of Law, she co-founded Accesslaw, a corporation that provided the first annotated electronic research system in Philippine law.

She also served as legal counsel for various government offices including the Office of the President, Office of the Solicitor General, Manila International Airport Authority, and the Department of Trade and Industry. She previously headed the Information and Public Division office of the UP Law Complex. She was also a faculty member at The Hague Academy of International Law in Cambodia.
At the time of her appointment, Sereno was Executive Director of the Asian Institute of Management Policy Center. She was also the President of Accesslaw Inc., had taught at University of the Philippines College of Law for 19 years, and has served as a consultant for the United Nations, World Bank, and US Agency for International Development.

Sereno served as a co-counsel with Justice Florentino Feliciano on the Fraport case in Singapore in which the Republic of the Philippines won the case.

Dr. Arnold Kreilhuber, Head of the International Environmental Law Unit, Division of Environmental Law and Conventions, United Nations Environment Programme (UNEP)

Dr. Arnold Kreilhuber is the Head of the International Environmental Law Unit in the Division of Environmental Law and Conventions of the United Nations Environment Programme (UNEP) and an expert in international environmental law and international affairs. He has been intensively involved with UNEP’s work in environmental law since he joined the organization in 2005 and in particular as regards the rule of law in the field of the environment, human rights, environmental governance and the implementation of, compliance with, and enforcement of multilateral environmental agreements (MEAs).

Recently, Dr. Kreilhuber has also worked very actively to enhance UNEP’s work in the areas of international and national water law and environmental crime and led the planning and organization of the UNEP World Congress on Justice Law and Governance for Environmental Sustainability. He has also served as UNEP’s legal counsel on administrative and other matters. Previously, Dr. Kreilhuber has worked for Government institutions such as the Foreign Ministry of Austria and contributed to the development of policy and laws in his native Austria and the European Union as well as lent his expertise to Non-Governmental Organizations in environmental law and policy related matters. Dr. Kreilhuber holds a Doctorate Degree in international law as well as a Masters Degree in International Relations.
Loren Legarda, Senator, Senate of the Philippines

Senator Loren Legarda is chiefly responsible for the passage of several landmark laws for the environment, namely, the Environmental Awareness Education Act (RA 9512); the Renewable Energy Act (RA 9513); the Ecological Solid Waste Management Act (RA 9003); the Disaster Risk Reduction and Management Act of 2010 (RA 10121); the Climate Change Act (RA 9729) and its amendatory law (RA 10174), which provides for the creation of the People’s Survival Fund, among many vital pieces of legislation.

Now on her third term as Senator, she chairs the Senate Committees on Climate Change and Finance.

Senator Legarda has likewise initiated policies and programs to advance climate action. After attending the Summit of Consciences for the Climate in Paris, France back in July 2015, she organized a similar Summit of Conscience at the Senate in October of the same year.

A *cum laude* graduate of the University of the Philippines and National Defense College of the Philippines topnotcher, Legarda is an awardee of the Ten Outstanding Young Men (TOYM) and The Outstanding Women in the Nation’s Service (TOWNS).

Her inspiring advocacy on environmental protection has earned her global recognition. She is named as among the Global Leaders for Tomorrow by the World Economic Forum; a Laureate and among the Global 500 Roll of Honor of the UN Environment Programme (UNEP); and appointed as UNISDR Global Champion for Resilience. She was likewise recognized by the UNISDR as a Hero of Resilience in 2012.

In recognizing her commitment to the fight against climate change and to the promotion of culture and heritage, the French government bestowed upon Legarda the title of Knight in the French National Order of the Legion of Honor.
Deborah Stokes, Vice-President (Administration and Corporate Management), Asian Development Bank

Ms. Deborah Stokes is the Vice-President for Administration and Corporate Management of the Asian Development Bank (ADB). She assumed the position in January 2016.

Ms. Stokes is responsible for the overall management of the operations of the Budget, Personnel, and Management Systems Department; Office of Administrative Services; Office of the General Counsel; Office of Information Systems and Technology; Office of the Secretary; and Operations Services and Financial Management Department.

Prior to this, Ms. Stokes was a senior official in Australia’s Department of Foreign Affairs and Trade and Australian Agency for International Development. She was most recently High Commissioner to Papua New Guinea, and has served as Australia’s Ambassador to Austria and Permanent Representative to the United Nations in Vienna, and Deputy Head of Mission at the Australian Embassy in Tokyo.

She also held positions at the Australian Embassy in Yangon and the United Nations Development Programme in New York.

Ms. Stokes holds a Master of Philosophy in Development Studies from the University of Cambridge in the United Kingdom and a Bachelor of Arts from the University of Adelaide in Australia.
Christopher Stephens has been the General Counsel of the Asian Development Bank (ADB) since the end of 2012. ADB’s legal team comprises 85 staff from 16 countries, and advises ADB’s Board of Governors, resident Board of Directors, and management, and its operations and administrative departments. In 2015, the legal team advised on loans and investments of more than $27 billion in more than 150 financing and investment transactions in 42 of the poorest—and most challenging—countries in the Asia-Pacific region.

The legal department also runs ADB’s Law and Policy Reform—or LPR—Program, in which the legal group leads teams that provide technical assistance (TAs) to ADB’s client countries in areas relating to the role of law in their development. In 2015, LPR TAs included (i) creation of a “Legal Literacy for Women” program to improve access to justice, social and other services for women in Islamic countries in Central Asia, and to improve financial literacy for women on home and small business economics, (ii) convening high court judges from the 10 ASEAN countries and from 8 South Asia countries to share knowledge and to reform the performance of the judiciary, and (iii) advising countries on reforms that will create a favorable climate for private enterprises, facilitate foreign investment and create or improve capital markets, including new companies laws and laws on commercial and financial transactions, insolvency, and public–private partnerships.

Mr. Stephens’ 32 years of law practice include 16 in New York and 20 in Asia.
SESSION CHAIRS
in alphabetical order

Ms. P. Imrana Jalal, Senior Social Development Specialist, ADB

Imrana Jalal is a New Zealand-trained Fijian lawyer who works as a gender specialist at ADB. She is also a Board Member and Commissioner on the Geneva-based International Commission of Jurists (ICJ). Imrana is a former Fiji Human Rights Commissioner.

Hon. Mr. Justice Swatanter Kumar, Chairperson, National Green Tribunal, India

Justice Swatanter Kumar is the Chairperson of the National Green Tribunal (NGT), India and a former Judge of the Supreme Court of India. As a Judge of the Delhi High Court, Chief Justice of the Bombay High Court and Judge of the Supreme Court of India, he has disposed of highest number of cases in a day in all jurisdictions. He took over as the Chairperson of the National Green Tribunal as a sitting Judge of the Supreme Court of India and gave a number of landmark judgments in environmental jurisprudence, including in the field of International Law. He disposed of 209 cases in a day by 51 different judgments. He evolved a new technique for dispensation of environmental justice by invoking stakeholders’ consultative process in adjudication.
Hon. Mr. Chief Justice Surendra Kumar Sinha, Supreme Court of Bangladesh

Hon. Justice Surendra Kumar Sinha obtained his Bachelor of Laws (LLB) under Chittagong University, and was enrolled as an Advocate of the District Court, Sylhet in 1974. He obtained the permission to practice before the High Court Division and Appellate Division of the Supreme Court of Bangladesh in 1978 and 1990 respectively.

Justice Sinha was elevated as Judge of the High Court Division on 10 October 1999 and as Judge of the Appellate Division of the Supreme Court of Bangladesh on 16 July 2009. He assumed the office of the Chairman of the Bangladesh Judicial Service Commission on 12 June 2011 and the office of the Chief Justice of Bangladesh on 17 January 2015. He has visited India, Nepal, Qatar, South Korea, Singapore, Thailand, Indonesia, Malaysia, Hong Kong, China, United States, United Kingdom, and Canada.

Hon. Mr. Chief Justice Syed Mansoor Ali Shah, Lahore High Court, Pakistan

Justice Syed Mansoor Ali Shah was elevated to the bench in 2009 and has since authored several judgments on constitutional law, human rights, administrative law and environmental sustainability. He takes keen interest in judicial and administrative reforms and has spearheaded case management and court automation systems at the Lahore High Court and in the District Judiciary in Punjab. He has helped re-engineer Punjab Judicial Academy in order to improve judicial training and capacity building for the judiciary and the ministerial staff. He is currently working on developing the first ever ADR Centre at Lahore in order to provide alternative dispute resolution platform for the litigant. He lays special emphasis on research and has been the force behind setting up the Lahore High Court Research Centre (LHCRC). Justice Shah has a Masters in Law from University of Cambridge, UK and a Masters in Economics from the University of the Punjab, Pakistan. He is an accredited mediator from CEDR, London.
Assoc. Prof. Eva Abal, Director, Sustainable Water Program, Global Change Institute, The University of Queensland, Australia

Eva is the Director of the recently-established University of Queensland (UQ) Water. Eva served as the Strategic Science Director for the Great Barrier Reef Foundation in a part-time capacity for 9 years. Eva also previously directed the Science/Innovation Program and Ecosystem Health Monitoring activities of the South East Queensland Healthy Waterways Partnership (SEQHWP) in Australia. Through the International Water Centre, Eva works with the Asian Development Bank (Manila) as one of the lead authors in the Asia Water Development Outlook (key dimension on water for liveable cities and water for the environment) in the 2013 and 2016 releases, respectively.

Eva’s scientific expertise and research interests include strategic research framework development towards a clear path to impact; building partnerships amongst research, government and industry; science leadership and coordination of multidisciplinary projects; and effective science communication through Ecosystem Report Cards.

Irum Ahsan, Senior Counsel, Office of the General Counsel, ADB

Irum Ahsan completed her legal education from the London School of Economics and Political Science. Before joining ADB’s public sector legal team, she practiced as a contentious and non-contentious legal counsel in Pakistan, in addition to teaching law. At ADB, she has been working on multi-sector projects for inclusive growth. She has worked on
Mr. Mansoor Awan, Founder, AJURIS Advocates and Corporate Counsels, Pakistan

Mr. Mansoor Usman Awan is the counsel for the petitioner in the first ever climate change litigation in Pakistan, by way of invoking the constitutional jurisdiction of the Lahore High Court, Pakistan. Mr. Awan holds a Master of Laws (LLM) degree from Harvard Law School, USA and Bachelor of Laws (LLB) degree from University of the Punjab, Pakistan where he was awarded Justice M. Jan Memorial gold medal for distinction in Jurisprudence and Charles Earl Bevan Petman Law Prize for distinction in Criminal Law. Mr. Awan has practiced law in the US, the UK, the UAE and currently runs his own practice in Pakistan. He has worked with Shearman & Sterling LLP and Fried, Frank, Harris, Shriver & Jacobson LLP in their New York, London and UAE Offices.
Hon. Mr. Justice Antonio Herman Benjamin, Superior Tribunal Justicia, Brazil

Prof Dr. Dr. h.c. Antonio Herman Benjamin is a member of the National High Court of Brazil (STJ), Chair of the IUCN World Commission on Environmental Law, and Secretary-General of the UNEP International Advisory Council for Environmental Justice. He has published over thirty books and articles on Environmental Law. Justice Benjamin is the original proponent and a leading advocate of the Global Judicial Institute for the Environment, which was launched during the 1st World Congress on Environmental Law, held in Rio de Janeiro in April 2016. In addition to the several awards that he received in Brazil and abroad, Justice Benjamin is a Knight of the National Order of the Legion of Honor of the Republic of France and a Commander of the Order of Leopold of the Kingdom of Belgium, awards bestowed on him in recognition of his global public service.

Professor Ben Boer, University of Sydney and Wuhan University Law School

Ben Boer has taught and researched in the area of environmental law since 1979. He was appointed to a Chair in Environmental Law at the University of Sydney in 1992. He was appointed as a Distinguished Professor at the Research Institute of Environmental Law, Wuhan University, China in 2011, and now works in China for three months per year. Ben has written articles and reports on a wide range of environmental law topics and has produced a number books in the field, including International Environmental Law in the Asia Pacific: The Human Rights Dimensions of Environmental Law (Oxford University Press), which includes his chapter “Human Rights and Environmental Law in the Asia Pacific”. In 2016, he co-wrote a book with Philip Hirsch, Fleur Johns and Ben Saul, The Mekong: A Socio-Legal Approach to River Basin Management, and a co-edited book with Martin and Slobodian Framework for Assessing and Improving Law for Sustainability: A Legal Component of a Natural Resource Governance Framework (IUCN). He is also the co-Chief Editor of the new Chinese Journal of Environmental Law. He was Deputy Chair of the IUCN World Commission on Environmental Law between 2012 and 2016.
Hon. Bi Dongsheng, Senior Judge, Supreme People’s Court, PRC

Bi Dongsheng, was once the vice president of one intermediate people’s court and later engaged in criminal and civil justice and the management of judges in the Supreme Court of China. Bi Dongsheng has handled a number of civil and commercial cases and has participated in the work on the draft of *The Judicial Interpretation on Environment-related Civil Public-interest Litigation*, *The Interpretation on Several Matters of Law Application in Environmental Tortious Liability Disputes* and also on the draft of other judicial interpretations.

Dr. Parvez Hassan, Chair Emeritus, World Commission on Environmental Law, IUCN

Dr. Parvez Hassan, President of the Pakistan Environmental Law Association, President Emeritus of the IUCN World Commission on Environmental Law, and Senior Advocate, Supreme Court of Pakistan.

Ms. Sarah Khan, Founder/Film Maker, Jugnoo Foundation, Pakistan

Sarah Jahaan Khan is a student filmmaker whose work focuses on the impact of climate change on women, and solutions to such issues. Her films have won awards at nine international film festivals, and she was featured in BBCs list of the Top 100 Women of 2014 for her work. She is currently holding workshops in Pakistan aimed at providing rural women and girls with the knowledge and skills required to deal with the impacts of climate change.
Ms. Saima Amin Khawaja, Managing Partner, Progressive Advocates and Legal Consultants, Pakistan

Saima is a lawyer from Pakistan with 18 years of professional experience as consultant and Advocate of the High Court. She has an LLM from Kings College London. Her areas of interest include the Constitution, Environmental Laws, Not for Profit Laws, Public Interest Litigation, Urban, Acquisition and Regulatory Laws. She also has a keen interest in teaching and have taught various subjects at TILS, UCL, LUMS, Civil Services Academy and presently teaching Environmental laws at the Punjab Judicial Academy. She sits as Board of Director of LEAD Pakistan not for profit environmental organization and various charitable organizations including The Citizens Foundation, Bali Memorial Trust and Gurmani Foundation.

Emeritus Professor Koh Kheng-Lian, Faculty of Law, National University of Singapore and Honorary Director, Asia-Pacific Centre for Environmental Law (APCEL)

Dr. Koh Kheng Lian is Professor Emeritus of the Faculty of Law, National University of Singapore, and a founder and the Director of the Asia-Pacific Centre for Environmental Law (APCEL). APCEL was established by the Law Faculty in collaboration with the World Conservation Union – Commission on Environmental Law (IUCN-CEL) and the United Nations Environment Programme. She was the IUCN-CEL (now World Commission on Environmental Law) Regional Vice-Chair for South and East Asia, and a member of its Steering Committee from 1996–2004. She was a consultant of the capacity building in environmental legal education project for the Asian Development Bank.
Hon. Mrs. Justice Hima Kohli, Judge, High Court of Delhi, New Delhi, India

Justice Hima Kohli was a practicing Advocate mainly in the High Court of Delhi, India till she was elevated as a Judge in the year 2006. During her practice as a Standing Counsel and Legal Advisor to the New Delhi Municipal Council and as an Additional Standing Counsel, Government of Delhi, she had appeared in a number of important Public Interest Litigations and issues of public importance including, enforcement of Fire safety norms in high-rise buildings, cleaning river Yamuna and its embankment, removal of unauthorized construction in Delhi, redevelopment and maintenance of ancient monuments and sites in Delhi, free flow of traffic in Delhi and removal of encroachment on public land.

Delhi High Court is the first court in India where Commercial Courts have been recently introduced. Presently, Justice Kohli is a Judge of the Commercial Division of the High Court of Delhi established in November 2015. Along with performing her official duties as a Judge, she takes a keen interest in environmental jurisprudence, mediation as emerging areas of law, and legislations relating to women.

Hon. Mr. Justice Tan Sri Datuk Seri Panglima Richard Malanjum, Chief Judge, High Court of Sabah and Sarawak, Malaysia

The Right Honorable Mr. Justice Richard Malanjum is the Chief Judge of the High Court of Sabah and Sarawak and Justice of the Malaysian Federal Court, the apex Court of the country. After attending several meetings of the Chief Justices’ Roundtable on Environment including meetings of the Working Group, Mr. Justice Malanjum has taken the initiative to implement the Hanoi Action Plan by organizing several workshops on environment in Sabah and Sarawak, Malaysia. It will involve the judiciary, the relevant government agencies on environment and nongovernment organizations. It is his aspiration that such initiative will lead to the fulfilment of the Jakarta Vision as propounded during the 1st Chief Justices’ Roundtable on Environment held in Jakarta, Indonesia on 5–7 December 2011.
Hon. Justice Brian J. Preston, Chief Judge, Land and Environment Court of New South Wales

Justice Preston is the Chief Judge of the Land and Environment Court. Prior to being appointed in November 2005, he was a senior counsel practising primarily in New South Wales in environmental, planning, administrative and property law. He has lectured in post-graduate, environmental law for over 23 years. He is the author of Australia’s first book on environmental litigation and 94 articles, book chapters and reviews on environmental law, administrative and criminal law. He holds numerous editorial positions in environmental law publications and has been involved in a number of international environmental consultancies and capacity-building programs, including for judiciaries throughout Asia. Justice Preston is an Official Member of the Judicial Commission of NSW, Fellow of the Australian Academy of Law and is also a member of various international environmental law committees.

Dr. Lavanya Rajamani, Research Professor, Centre for Policy Research, India

Lavanya Rajamani is professor at the Centre for Policy Research, New Delhi, where she researches legal issues relating to the environment (in particular climate change), international law, and human rights. She has authored or edited several books on international environmental law and is a frequent contributor to periodicals and academic journals. She is co-author of a forthcoming Oxford University Press book, International Climate Change Law. Lavanya has worked on and analyzed the international climate negotiations since 1998. Among other roles, she has served as a consultant to the UNFCCC Secretariat and as a negotiator for the Alliance of Small Island States. She was part of the UNFCCC core drafting and advisory team at the Paris negotiations. Lavanya has taught at Queens’ College, Cambridge and at Worcester College,
Hon. Mr. Chief Justice Syed Mansoor Ali Shah, Lahore High Court, Pakistan

Justice Syed Mansoor Ali Shah was elevated to the bench in 2009 and has since authored several judgments on constitutional law, human rights, administrative law and environmental sustainability. He takes keen interest in judicial and administrative reforms and has spearheaded case management and court automation systems at the Lahore High Court and in the District Judiciary in Punjab. He has helped re-engineer Punjab Judicial Academy in order to improve judicial training and capacity building for the judiciary and the ministerial staff. He is currently working on developing the first ever ADR Centre at Lahore in order to provide alternative dispute resolution platform for the litigant. He lays special emphasis on research and has been the force behind setting up the Lahore High Court Research Centre (LHCRC). Justice Shah has a Masters in Law from University of Cambridge, UK and a Masters in Economics from the University of the Punjab, Pakistan. He is an accredited mediator from CEDR, London.
Dr. Nilmini Silva-Send, Assistant Director and Adjunct Professor, Energy Policy Initiatives Center, University of San Diego

Dr. Nilmini Silva-Send is Assistant Director and Adjunct Professor at the Energy Policy Initiatives Center, University of San Diego where she leads the urban climate planning projects based on GHG and energy mitigation policies and teaches international energy law focusing on regulation of energy investment, dispute resolution, and linkages between national energy policies, trade law and climate change. She has spoken at energy workshops in Mexico, Saudi Arabia, ADB and worked in due diligence environmental consulting in California and Europe. Dr. Silva-Send has a B.S. in Chemistry, an LLB, and a PhD in International Law.

Professor Ralph Sims, Massey University, New Zealand

Ralph Sims is the Professor of Sustainable Energy at Massey University, New Zealand, and Director of the Centre for Energy Research. In 2013, he was appointed to the Scientific and Technical Advisory Panel (STAP) of the Global Environment Facility (GEF) and has been a coordinating lead author for several Intergovernmental Panel on Climate Change (IPCC) Assessment Reports covering renewable energy and agriculture (2001) and leading chapters on “Energy Supply” (2007), “Integration of Renewable Energy” (2011) and “Transport” (2014) in the IPCC 5th Assessment Report – Mitigation (2014). Ralph was seconded to the IEA from 2007–2011, is a Companion of the Royal Society of New Zealand for which he chaired their Climate Change panel for the 2016 project “Transition to a low-carbon economy for New Zealand”, and has acted as a consultant to many organizations and businesses over past decades, including UN FAO, OECD, Shell, Sustainable Business Council.
Sanjay Upadhyay, Managing Partner, Enviro Legal Defence Firm; Advocate, Supreme Court of India

Sanjay is the founder and managing partner of the India’s first environmental law firm, Enviro Legal Defence Firm. Sanjay has been practicing environment and development law since 1993. An India Visiting Fellow at the Boalt Hall School of Law, University of California, Berkeley (Fall 1996) and a legal intern to the Earth Justice Legal Defense Fund, San Francisco, a Global Fellow in Marine Policy at the Duke University, North Carolina, he started his professional career at the World Wide Fund for Nature–India at the Centre for Environmental Law. Sanjay has served as an environmental and development law expert to most well known International, Multilateral, national and state Institutions including the World Bank, ADB, IUCN, DFID, AFD, FAO, UNDP, IIED, ODI to name a few. He has been in the drafting Committees of several laws in India and abroad including Wildlife Act, Forest Rights Act, Nagaland Biodiversity Rules, Land Acquisition law of Afghanistan, Forest Sector Policy of Himachal Pradesh, Medicinal Plant Policies of Arunachal Pradesh and Uttarakhand among others. Sanjay practices in the Supreme Court of India and particularly in the National Green Tribunal.
Hon. Mr. Justice Adolfo Azcuna, Chancellor, Philippine Judicial Academy

Justice Adolfo S. Azcuna is a retired Philippine Supreme Court Justice and is now Chancellor of the Philippine Judicial Academy. He obtained his AB and law degrees from the Ateneo de Manila University. He helped draft the present (1987) Philippine Constitution and sponsored its provision on the right to a healthful environment.

Hon. Mr. Justice Ananda Mohan Bhattarai, Judge, Supreme Court of Nepal

Dr. Ananda Mohan Bhattarai, is currently a Judge at the Supreme Court of Nepal. He holds LL.M and JSD from National Law School of India, Bangalore. He is also a Hubert Humphrey Fellow at MIT, Cambridge, US (2002–2003) and Alexander von Humboldt Fellow to Max Planck Institute of Comparative and Public International Law, Heidelberg (2005–2006). His writings are focused on Environmental Law, Justice and Human Rights. He has authored four books and contributed dozens of articles to National and International Law Journals. His book titled “Protection of Himalayan Biodiversity” published by Sage (2010) received wide reviews in Nepali and international journals.
The Rt. Hon. Lord Robert Carnwath of Notting Hill, CVO

Lord Carnwath has been a Justice of the UK Supreme Court since April 2012, having been a judge of the High Court and Court of Appeal since 1994. He had previously practised as a barrister specializing in planning and environmental law, including a period as Attorney-General to HRH the Prince of Wales (for which he was made a Companion of the Victorian Order). From 1999 to 2002, he was Chairman of the Law Commission for England and Wales, and from 2004 to 2012 he was the first Senior President of Tribunals, responsible for reform of the specialist tribunal system. Since 2004, he has worked as an adviser to the United Nations Environment Programme (UNEP) on judicial training, and is currently a member of their International Advisory Council on Environmental Justice.

Hon. Mr. Justice Qazi Faez Isa, Judge, Supreme Court of Pakistan

Justice Qazi Faez Isa was called to the Bar of England and Wales (Middle Temple, 1982). He practiced law for over 27 years when he was directly elevated to the position of Chief Justice of the High Court of Balochistan. After serving as Chief Justice of Balochistan for over five years Justice Isa was elevated as a Judge of the Supreme Court of Pakistan on 5 September 2014. He also serves as Chairman of the Committee for Enhancing Environmental Justice (CEEJ) which comprises of a judge each from each of the five High Courts.
Hon. Mr. Justice Swatanter Kumar, Chairperson, National Green Tribunal, India

Justice Swatanter Kumar is the Chairperson of the National Green Tribunal (NGT), India and a former Judge of the Supreme Court of India. As a Judge of the Delhi High Court, Chief Justice of the Bombay High Court and Judge of the Supreme Court of India, he has disposed of highest number of cases in a day in all jurisdictions. He took over as the Chairperson of the National Green Tribunal as a sitting Judge of the Supreme Court of India and gave a number of landmark judgments in environmental jurisprudence, including in the field of International Law. He disposed of 209 cases in a day by 51 different judgments. He evolved a new technique for dispensation of environmental justice by invoking stakeholders’ consultative process in adjudication.

Hon. Mr. Justice Takdir Rahmadi, Judge, Supreme Court of Indonesia

He is a justice in the Civil Chamber of the Supreme Court of the Republic of Indonesia. He also holds the position as Deputy of Chief Justice in charge of Resource Development since 23 December 2014. Prior to his appointment as justice at the Supreme Court of Republic of Indonesia on 30 December 2008, he was professor in environmental law at Faculty of Law, Andalas University in Padang, West Sumatra, Indonesia. His First Degree in Law (1979) is from Faculty of Law, Andalas University, Padang, Indonesia, LL.M (1987) from Faculty of Law, Dalhousie University, Halifax Canada and Doctor in Law (1997) from Faculty of Law, Airlangga University, Surabaya, Indonesia. He was involved in a sery of environmental law trainings for judges from mid of 1990s to early of 2000s under the IASTP Project-Ausaid, the Supreme Court of Indonesia, ACEL-ICEL. He was also one of the founders and trainers of the Indonesian Center for Conflict Transformation (IICT). He was a member of the Working Group drafting the Supreme Court Rules concerning Court-Annexed
Mediation. Since his appointment as a justice, he has become Vice Coordinator of Judicial Reform Team at the Supreme Court. The Indonesian Chief Justice also assigned him as a member of the delegation of the Indonesian Supreme Court to do comparative studies in the field of mediation and court administration, June 2009 in Japan and October 2009 in France. He is also a member of the ASEAN Law Association (ALA) Committee of Indonesia from 2009 until now. A member of the International Association for Court Administration’s (IACA) Advisory Council since June 2013.

Hon. Mr. Justice Emmanuel Ugirashebuja, President, East Africa Court of Justice

Justice Ugirashebuja holds a PhD in Law, University of Edinburgh, LLM (University of Edinburgh), LLB., National University of Rwanda (Now, University of Rwanda), Draper Hills Summer Fellowship Program at the Stanford University. Member of the Chartered Institute of Arbitrators. Certified Mediator with the Centre for Effective Dispute Resolution. He has previously served as: Dean of the Law School, University of Rwanda (2009–2014); Member of the Superior Council of Judiciary (2009–2014); Member of the Supreme Council of prosecution (2009–2014); Senior Lecturer at the National University of Rwanda; Team of Experts in the East African Community on Fears, Challenges and Concerns towards the East African Political Federation (2010–2011); Legal Advisor at the Rwanda Environment Authority (2009); Legal Advisor at the Rwandan Constitution Commission (2001–2003). He has given lectures at the University of Edinburgh, the University of Dar es Salaam, Rwanda Senior Command and Staff, Rwanda National police College. He is an expert and arbitrator in both national and international arbitrations. He was appointed Judge of Appeal of the EACJ Appellate Division in November 2013. Subsequently appointed the President of the EACJ in June 2014.
Hon. Mr. Chief Justice Lyonpo Tshering Wangchuk, Supreme Court of Bhutan

Chief Justice of Bhutan, Tshering Wangchuk, graduated from George Washington University, Washington, DC, United States, with a LL.M (International & Comparative Law) degree. He was elevated as one of the Justices of the First Supreme Court of Bhutan on 21 February 2010 and was appointed as the Chief Justice of Bhutan by His Majesty the King, on 28 November 2014.

Hon. Mr. Chief Justice Tun Arifin Bin Zakaria, Supreme Court of Malaysia

Tun Arifin bin Zakaria holds a Bachelor of Law degree from the University of Sheffield, United Kingdom and LL.M degree from the University College, London. Prior to His Lordship’s elevation to the bench, His Lordship has held various judicial and legal positions in the ministries and government departments for 18 years. Tun Arifin bin Zakaria was appointed as the 13th Chief Justice of Malaysia in 2011. His Lordship is currently the Co-Chair of the World Congress on Justice, Governance and Law for Environmental Sustainability and a member of the International Advisory Council for Environmental Justice (IACEJ) under UNEP. Chief Justice Tun Arifin is also an Honorary Bencher of the Honourable Society of Lincoln’s Inn, London.
Irum Ahsan, Senior Counsel, Office of the General Counsel, ADB

Please see page 28.

Gregorio Rafael P. Bueta, Consultant (Legal and Policy Specialist), Office of the General Counsel, ADB

Grip has a Bachelor of Arts degree in Political Science from the Ateneo de Manila University. He earned his Juris Doctor Degree from the same institution and was the recipient of the St. Thomas More Most Distinguished Award for his graduating class. Grip is currently a Consultant with the Asian Development Bank as a Legal and Policy Specialist working on environmental justice with the judiciaries, as well as, legal and regulatory reforms in South Asia. Prior to joining ADB, he headed the Strategic Initiatives Management Office in the Office of the President of the Philippines focusing on environment and climate change related government policies and programs. As a private legal practitioner and independent consultant, Grip is an advocate for environmental rights and justice, protection of biodiversity, promotion of human rights, development of good governance, and integrity in the public service. He has written several published works on environment and natural resources law and human rights, among others. Grip has also worked with the United Nations Development Programme, the Philippine Judicial Academy, the Ateneo School of Government, and various NGOs and private companies.
Briony Eales, Consultant, OGC’s Law and Policy Reform Program, ADB

Briony Eales is a consultant attached to OGC’s Law and Policy Reform (LPR) program. Currently, Briony contributes to LPR’s work to build capacity for environmental prosecution, adjudication, dispute resolution, compliance, and enforcement in targeted Asian DMCs. In connection with LPR programs, Briony has worked on the ASEAN judicial working group to the Chief Justices’ Roundtable on Environment as well as on governance assessments for the energy and water sectors in the Pacific.

Atsuko Hirose, Advisor, Office of the General Counsel, ADB

Ms. Hirose has more than 20 years of professional legal experience in the private sector and at multilateral development banks. She joined ADB as Assistant General Counsel for the private sector legal group and was subsequently appointed as Advisor, OGC. In her role, Ms. Hirose oversees OGC’s Law and Policy Reform (LPR) program and has been actively involved in major projects under the LPR program, such as the ASEAN Chief Justices’ Roundtable on Environment, where the members of senior judiciaries from the ASEAN countries discuss various challenges faced in adjudicating and enforcing environmental law matters. She has spearheaded the OGC team for the Third Asian Judges Symposium on Law, Policy and Climate Change. Ms. Hirose is also extensively involved in commercial law projects to assist private sector development in Myanmar, such as its Companies Law and Insolvency Law reforms. Prior to joining ADB, Ms. Hirose was Senior Counsel in the Office of the General Counsel of the European Bank for Reconstruction and Development (EBRD), where she acted as Team Leader and lead counsel for numerous sovereign and nonsovereign projects. A graduate of Harvard Law School (Juris Doctor cum laude), Ms. Hirose is qualified as Attorney and Counsellor at Law in the State of New York and as Solicitor in England and Wales.
Andy Raine is posted in Bangkok and works with countries across the Asia Pacific region through UNEP’s Regional Office for Asia and the Pacific. Andy is an Australian lawyer by training and qualification. He was admitted to the Supreme Court of Victoria in 2003, and since then has worked as a legal advisor on environment and climate change law and governance issues in both the private sector (Linklaters LLP in London and Herbert Smith Freehills in Melbourne) and United Nations agencies (UNDP in New York and UNEP in Bangkok). He holds a Master of Laws (Environmental Law and Policy) with Distinction from University College London, as well as a Bachelor of Laws (Hons) and a Bachelor of Business (Management) from the University of Queensland. Andy is a member of the World Commission on Environmental Law.
The Ateneo Society of International Law

The Ateneo Society of International Law (ASIL) is the sole administrator of International Law moot court competitions representing the Ateneo de Manila University School of Law. For more than a decade, the organization has garnered several local and international awards for its members’ mooting excellence. Beyond these competitions, ASIL is a dedicated community of resident members and alumni who are passionate about International Law beyond what is taught in the four corners of the classroom.

UP Law Debate and Moot Court Union

The UP LDMU is the sole and official moot court and debate organization of the University of the Philippines College of Law. It is primarily tasked with organizing and fielding the College’s representatives to various moot court and debate competitions in the country and the world.

Through the years, UP LDMU has established the College and University’s position as a premier institution in moot court and debate—its teams have won top awards in various prestigious tilts. It also provides training to students in memorial-writing, public speaking, and other skills in written and oral advocacy.
INTERNATIONAL COURT OF JUSTICE

COMPROMIS

BETWEEN THE REPUBLIC OF ARRUDO (APPLICANT) AND THE FEDERAL STATES OF RESPINOS (RESPONDENT)
STATEMENT OF AGREED FACTS

jointly notified to the Court on 1 September 2016

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

ENTRE RÉPUBLIQUE D'ARRUDO (DEMANDERESSE) ET LA RÉPUBLIQUE FÉDÉRALE DE LES ÉTATS-RESPINOS (DÉFENDEUR)
SOUMIS À À LA COUR INTERNATIONALE DE JUSTICE
EXPOSÉ CONJOINT DES FAITS

notifié conjointement à la Cour le 1 septembre 2016
1. The Republic of Arrudo is a developing country situated in the middle of the Zurc Sea Region. It consists of 14 small islands and 2 major islands named Chelgo and Ralyu. It has a population of approximately 8 million people and its economy is primarily dependent on agriculture and fishing. Arrudo’s per capita GDP is $10,000.

2. Also located in the Zurc Sea Region is the Federal States of Respinos which is a developed nation with a population of approximately 150 million people. It has a highly industrialized economy with a per capita GDP of $45,000. Respinos is heavily reliant on mineral exploitation and coal-fired power.

3. Since time immemorial, Arrudo regularly experiences typhoons. On average, around 10–15 typhoons hit the territory of Arrudo every year. This is mainly attributed to the location of Arrudo being at the center of the vast waters of the Zurc Sea.

4. In 1992, both Respinos and Arrudo became a party to the United Nations Framework Convention on Climate Change (UNFCCC) and subsequently, to the 1997 Kyoto Protocol. Both countries also signed and ratified the Paris Agreement on 22 April 2016.

5. In 1994, Respinos authorities enacted the Environmental Impact Law, which required any power plant to obtain environmental permits before commencing operation within Respinos. This was part of its efforts to comply with its international obligations under the UNFCCC and Kyoto Protocol.

6. In 1995, Arrudan Parliament enacted the Greenhouse Gas Emissions Reduction Act otherwise known as the GHG Law. The central policy behind the law was to curtail the greenhouse gas emissions discharged by large industrialized companies in Arrudo. The GHG Law was widely considered to be a model law. The law and its implementing regulations (a) penalized non-compliant power plants in the form of fines and revocation of license, and (b) set carbon emission reduction targets of 20% below Arrudan’s 1990 levels.

7. Alba Zel Corporation is a corporation duly organized under the laws of Arrudo. Since the 1980s, it has been engaged in the production of energy through its coal-fired plants and distributes the energy to the national grids of Arrudo. It is now a major player in the small but growing energy sector of Arrudo.
8. In June 2006, an environmental organization in Arrudo published a scientific study demonstrating the trend in the typhoons entering Arrudo’s territory. According to the study, the typhoons were observed to have intensified in the last decade with the strongest wind recorded at 185 kph compared to 140 kph in the 1970s. The report concluded that stronger typhoons are expected in view of global warming. Prevalent greenhouse gas emissions are the suspected cause of this phenomenon.

9. In January 2007, alarmed by the scientific study and the developments in the energy sector, an environmental group in Arrudo called Society for Environment Appreciation by Netizens (SEAN) petitioned the Arrudan government to penalize Alba Zel Corporation due to reports of excessive emissions of carbon dioxide, sulphur dioxide, and nitrogen dioxide from its power plants.

10. In an interview in March 2007, the Prime Minister of Arrudo, Eian Delario, assured the public that the government would undertake all efforts to penalize corporations that do not comply with the carbon emissions restrictions under the GHG Law. However, despite this assurance, the government has never penalized Alba Zel Corporation for repeated excessive emissions.

11. In November 2013, a deadly typhoon named Cramedo struck the islands of Arrudo, leaving almost 1,000 people dead and 4,000 people homeless. Typhoon Cramedo was identified to be the most powerful tropical cyclone reported in the last 50 years with winds averaging at 220 kph. A storm surge also ravaged the island of Tiega nearly wiping out a coastal town. Lifeless bodies, toppled trees, and debris from wrecked houses were scattered all over the affected towns and provinces of Ralyu. The farm lands and plantations of Chelgo were likewise ruined by the typhoon.

12. Following Typhoon Cramedo, Prime Minister Delario sought relief assistance from the international community to aid the communities affected by the typhoon. He also called on developed nations to halt excessive GHG emissions contributing to the rise in global temperature but deeply affecting small island-States like Arrudo. He added that Arrudan Government would initiate coordination efforts with neighboring countries to constrain the phenomenon of global warming.
13. Arrudo and Respinos have a long standing history of cooperation and trade. Respinos’ former President was a proponent of reducing the country’s carbon emissions. In 2006, he introduced carbon taxation schemes in order to reduce the Respinos’ reliance on fossil fuel as well as a carbon emissions reduction target of 15% below 1990 levels by 2026. The carbon reduction targets were scaled in order to take into account the economy’s heavily reliance on carbon emissions.

14. In February 2014, Arrudo and Respinos concluded a free trade agreement, which included a carbon trading scheme under which the countries traded carbon credits. Respinos was aware that it would be difficult to meet its carbon emission targets in the short term, so requested a trading scheme in the interim, enabling it to meet it new targets while it continued to transition its energy sector to a green energy sector. Given the significant value of the carbon trading scheme to Respinos, it also committed to the following terms, contained in Annex B of the free trade agreement. Respinos committed to:

a. Provide $200 million dollars of funding to Arrudos to to support it with climate change mitigation and adaptation technologies.

b. Accept 100,000 migrants from Arrudo over 10 years given its vulnerability to climate warming impacts such as sea-level rise, increasing water salinity, and extreme weather events.

15. The additional commitments contained in Annx B were controversial. Therefore, Respinos and Arrudos agreed that Annex B would not commence until 30 July 2016.

16. On 1 June 2016, Respinos had a general election and the country elected a new President. The result was a landslide victory to a new President, who was elected due to her opposition to the new carbon taxes in Respinos and also due to her opposition to the free trade agreement between Respinos and Arrudos. For a number of years, Respinos had suffered high debts, limited GDP growth, high unemployment, and power shortages, which had occurred due to restrictions on the country’ power plants.
17. On 15 June 2016, the new President announced that her government would immediately:
   a. repeal the carbon tax schemes,
   b. issue new carbon emission targets,
   c. infuse more money into domestic power plants, and
   d. withdraw from its commitments under Annex B of the free trade agreement. The President stated that Annex B had not yet commenced and that the Annex B commitments were not in Respinos’ national interest, especially given that the former government did not give due consideration to how Respinos would absorb 100,000 migrants given growing unemployment rates in Respinos.

18. On 30 June, Respinos’ parliament passed new carbon emission targets, which are 15% above its 1990 levels by 2025.

19. On 7 July 2016, Arrudan Minister of Foreign Affairs, Alan Nozavill, sent a diplomatic note to Respinos. In the diplomatic note, the Government of Arrudo:
   a. demanded that Respinos commit to Annex B of the free trade agreement;
   b. expressed alarm over Respinos’ new carbon emission targets and its plans to approve a further 20 coal-fired power plants; and
   c. requested that Respinos discontinue issuing permits to these industries which have largely contributed to the concentration of GHGs in the atmosphere.

20. On 21 July 2016, Respinos’ Secretary of Foreign Relations, Flavia Kentwell, sent a diplomatic note to Arrudos extending warm greetings. Ms. Kentwell stated that Respinos’ Government is one with the international community in the battle against global warming. Ms. Kentwell noted that the requirement under the Environmental Impact Law for power plant operators to secure environmental permits is consistent with ensuring that domestic power plants’ emissions are not left unchecked. The note added that Respinos’ new carbon emission targets are more realistic and that it is fully committed to meeting those targets, which it believes are appropriate in view of its financial
economic woes. Ms. Kentwell concluded that Arrudo should also draw its attention to its own power plants whose discharges are over and beyond the standards set under international law.

21. On 1 August 2016, the Arrudan Government sent a further diplomatic note to Respinos. Arrudo noted that while a number of its local corporations may have exceeded their limits in GHG emissions, particularly Alba Zel Corporation, the Arrudan Government does not have adequate resources to rigorously enforce its laws. These lack of resources are the reasons why it agreed to carbon trading and sought assistance as outlined under Annex B of the free trade agreement. The Arrudan Government stated that due to its growing population and recent economic growth, boosted by the influx of foreign investment, Arrudos needs a larger supply of energy. The Arrudan Government further outlined its vulnerability to climate change effects and stated that Respinos must:

a. Financially assist Arrudos consistent with its obligations under the free trade agreement and the Paris Agreement, more specifically under Article 9 of the Paris Agreement.

b. Curb its carbon emissions to ensure compliance with the Paris Agreement and UNFCCC framework. Arrudo stated that by entering into the UNFCC and Paris Agreement, Respinos had accepted a national responsibility for the joint volume of national greenhouse gases. Arrudo further contended that it is the highly industrialized countries such as Respinos which should be held responsible for global warming and the adversities that fall upon developing nations like Arrudo. The long history of incessant carbon emission in Respinos that continues until today is in stark violation of its environmental obligations under international law.

22. On 8 August 2016, the Respinosi Government replied in a diplomatic note sent to Arrudo. According to Respinos, it has not violated any of its international environmental obligations. It has a regulatory mechanism in place in compliance with its international legal commitments. Additionally, it has donated $400 million to the Global Climate Change Fund. Respinos alleged that it is Arrudo which has violated its obligations in light of its failure to enforce its own domestic law to control local GHG emissions.
23. Consultations and negotiations failed to resolve the matter between Arrudo and Respinos. In late August 2016, both States agreed to submit the matter to the International Court of Justice.

24. Both Arrudo and Respinos are Members of the United Nations and are Parties to the Statute of the International Court of Justice. They are also signatories to the Rio Declaration, the Stockholm Declaration, and the Montreal Convention on Ozone Depleting Substances.

25. Arrudo prays that this Court adjudge and declare as follows:
   a. Respinos is obliged to implement Annex B of the trade agreement and provide funding to Arrudos and outline its plans to assist with resettlement of 100,000 Arrudan climate change refugees.
   b. Respinos has violated its international environmental obligation with respect to its new carbon emissions targets. In particular, Respinos:
      i. Is aware that all countries have an obligation to curb carbon emissions to ensure that global warming does not exceed 2°C, which is danger line to humanity and to Arrudos’ continued existence.
      ii. Is far exceeding reasonable allowances for a carbon budget.
   c. Arrudans have a right to a clean, healthy, and functional environment, which is integral to their human rights, including their rights to life, health, food, and an adequate standard of living. By setting reckless carbon emissions targets, Respinos is violating the Arrudans’ human rights and contributing to dangerous levels of carbon emissions, which is endangering the continued health and safety of Arrudans.
   d. Arrudo has not violated international law for its failure to rigorously enforce its laws on greenhouse gas emissions.

26. Respinos prays that this Court adjudge and declare as follows:
   a. Respinos has not violated the terms of its free trade agreement with Arrudos on the grounds that Annex B had not yet commenced and the commitments within Annex B required congressional ratification under its constitution, which was not granted. In the absence of a binding agreement, Respinos cannot be forced to provide funding to Arrudos, particularly in light of its economic restrictions.
b. Respinos has not violated its international environmental obligation with respect to its revised carbon emissions. The UNFCC and Paris Agreement do not set carbon budgets. Instead, these treaties ask parties to make efforts to reduce carbon emissions. Respinos believes its current targets are appropriate given its current economic issues and that it can revise those targets in the next 10 years subject to economic growth and receiving more evidence on appropriate carbon budgets.

c. Arrudo has violated international law for its failure to rigorously enforce its laws on greenhouse gas emissions.
The International Climate Change Regime and its 2015 Paris Agreement

Ms. Lavanya Rajamani, Research Professor, Centre for Policy Research, India

This presentation will provide an outline of the international climate change regime consisting of the 1992 Framework Convention on Climate Change, the 1997 Kyoto Protocol, and the 2015 Paris Agreement. It will discuss in particular the key pillars of the 2015 Paris Agreement including its long-term goal, core obligations and oversight system. It will consider the legal character of obligations in the Agreement, the hybrid architecture of the Agreement, and the nature of differentiation it contains between developed and developing countries. This presentation will also briefly discuss the agenda for the post-Paris negotiations and the prospects for entry into force of the Paris Agreement.

Will the Paris Climate Agreement Really Make a Difference?

Prof. Ralph Sims, Massey University, New Zealand

Together, the nationally determined contributions of the 195 parties that negotiated the agreement are inadequate to reach the pathway needed to stay below the 2°C average temperature rise above pre-industrial levels as internationally agreed. The carbon budget necessary to stay below 2°C will mean around 80% of known coal, oil and gas reserves will need to remain in the ground, but at the current rate of fossil fuel extraction and combustion the budget will be exceeded by around 2030. Climate mitigation solutions exist and disruptive technologies such as electric vehicles, smart-grids using renewable electricity, and battery storage are showing potential. National and state policies and legislation to accelerate deployment and help change behavior are lagging, with more encouraging progress coming from many cities that are taking the initiatives on both climate mitigation and adaptation and resilience, as evidenced in Paris at the numerous side-events.
**Climate Change Rights: Trends and Developments in Asia-Pacific**

**Prof. Ben Boer**, University of Sydney and Wuhan University Law School

The presentation explores current legal and policy approaches to climate change and human rights, with a focus on the Asia-Pacific region. It introduces the global debate on the right to a clean and healthy environment, and explores how this plays out through incorporation in national constitutions as well as interpretation by the courts. It argues that more adequate legal frameworks are required in the region to address the myriad threats posed by climate change, including threats related to human rights. Examples of various court cases in the region will be used to illustrate climate change and human rights issues, especially concerning environmental refugees.

**Descaling Climate Change and UNSDG 7: Case Study on Sino-Singapore Tianjin Eco-City**

**Emeritus Professor Koh Kheng-Lian**, Faculty of Law, National University of Singapore and Honorary Director, Asia-Pacific Centre for Environmental Law (APCEL)

In April 2007, Singapore and the People’s Republic of China entered into collaboration on the Tianjin Eco-City project. The project is expected to be complete by 2020 and the target is for 350,000 residents to live and work there.

The Tianjin-City concept is aligned with the Singapore Declaration on Climate Change, Energy and the Environment 2007, adopted by ASEAN, Australia, the People’s Republic of China, Republic of India, Japan, the Republic of Korea and New Zealand, on the occasion of the Third East Asia Summit (EAS) held in Singapore on 21 November 2007. Section 18 of the Declaration reads:

*Address the environmental challenges posed by rapidly growing urbanization in the region, by, among other measures:*

a. **Pooling our experiences, expertise and technology in areas such as urban planning including transportation, green building, water management, urban greenery and urban biodiversity conservation, sanitation and waste management, 3Rs (Reduce, Reuse and Recycle) and air, noise, water, and land pollution control;** …
The Declaration reaffirms “the need to take an effective approach to the interrelated challenges of climate change, energy security and other environmental and health issues, in the context of sustainable development”. ASEAN Member States are encouraged to promote synergies between initiatives, such as ‘Low Carbon Society’, ‘Compact Cities’, ‘Eco-Cities’, and ‘Environmentally Sustainable Transport’. The Network of East Asian Think-Tanks (NEAT) Working Group Meeting on the Environment views eco-cities as an important model of sustainable development and as low carbon cities that utilize fewer resources and reduce waste output (paragraphs 3 and 9).

Thus, there is emerging consensus in the region regarding the potential of eco-cities as an innovative and practical strategy for descaling climate change in mitigation and adaptation. This is the background and inspiration for Singapore (a member of ASEAN) to take a leadership role to enter into a Framework Agreement with China to jointly develop Tianjin Eco-city. It was signed by PM Lee Hsien Loong and PRC Premier Wen Jiabao in November 2007. The groundbreaking ceremony of the Sino-Singapore Tianjin Eco-city was held on 28 September 2008. Singapore Senior Minister Goh Chok Tong and Chinese Premier Wen Jiabao officiated at the event, signifying the beginning of construction works on the Eco-city.

The Tianjin project is aimed at making “a thriving City which is socially harmonious, environmentally friendly and resource efficient—a model for sustainable development.”

**Urbanization and Green City Development**

**Dr. Nilmini Silva-Send**, Assistant Director/Professor,
Energy Policy Initiatives Center, University of San Diego School of Law

Many cities in the United States and especially in California, are charging ahead with climate planning, creating bottom-up momentum, if properly implemented, to move towards a low carbon economy. This planning is at the intersection of California’s state and local energy, environmental, climate and planning laws and brings together multiple stakeholders. The implementation of the plans and enforcement at the urban level typically takes place through the environmental impact assessment process as required by the
California Environmental Quality Act (CEQA) by watchdog environmental NGOs acting as citizen enforcers. Not only citizen enforcement, but the California Attorney General’s office has also been involved in its role as protector of natural resources in the state.

One of the more impressive Climate Action Plans (CAPs) in the US, even covered by the New York Times, was adopted by California’s City of San Diego in December 2015. San Diego is the 7th largest city in the United States with a population of 1.3 million in a region of 3.2 million. This CAP has one specially aggressive goal to achieve 100% renewable electricity by 2035, far beyond state mandates, and may be the only city in the US with this particular policy. What regulatory and litigation drivers led to this plan will be presented using three significant recent cases in California. This will demonstrate the importance of litigation for climate planning at the local level.

Towards Water and Food Security Through Energy Efficiency: Addressing the Adaptation Gap

Assoc. Prof. Eva G. Abal, Global Change Institute, The University of Queensland

Global population growth and urbanization are dramatically increasing the demand for clean and reliable supplies of freshwater, land, energy and food with a corresponding significant increase in emissions and waste streams. Strategic planning is required to ensure long-term sustainability and efficiency of energy, water and land resources to respond to future shocks. However, the water-energy-food nexus is one of the most complex global public policy challenges.

This is because energy, water and land resources are regulated and managed separately in “siloes”. To create a “paradigm shift towards nexus thinking”, there is a need to create collaboration within the government departments and industries responsible for energy, water and land resource management, as well as integrated monitoring of resources to identify available efficiencies and co-benefits.

The recently released Sustainable Development Goals (SDGs) provide a good basis to consider the interdependencies of the water, energy and food sectors in
achieving the different goals. However, the capacity and needs to achieve these goals will vary from one country to another. In developing countries, adaptation needs are predicted to be the highest, while adaptive capacity is often the lowest.

The adaptive management framework facilitates an approach whereby research, development of decision support tools, novel community engagement and practical management strategy development are done in parallel to achieve an agreed vision, goals and targets. The framework recognizes the importance of:

- **Whole-of-System Adaptation gap assessment specifically from an end user perspective.** End users can be households, industry or any other users of water;
- **Innovative decision support tools** that managers can use to test scenarios on the links between water, energy and food;
- **Innovative monitoring tools** that managers can use to track effectiveness of management practices.
- **Cost-effective technology/ies and management interventions**
- **Financial mechanisms and governance to operationalize such management interventions**

**Role of Developing Countries in the Development of International Environmental Law**

Dr. Parvez Hassan

Against the backdrop of contentions after the decolonization of many African and Asian States in the middle of the last century that public international law, as it had then developed, represented the interests of only the developed North, this paper provides a “first hand account” of the universality of international environmental law in the participation, and many times, leadership of the newly-independent states, in its origins and development in Stockholm (1972), World Charter of Nature (1982), Rio Earth Summit (1992), WSSD Johannesburg (2002), and Rio plus 20 (2012). The active participation of the South is also noted in The Earth Charter (2000), and the launch of the IUCN Draft International Covenant on Environment and Development (1990).
Public Interest Litigation: Climate Change and the Environment

Hon. Justice Hima Kohli, High Court of New Delhi, India

The focus of this presentation is the role played by the Supreme Court of India and the State High Courts in redressing grievances related to environmental degradation and climate change, by entertaining Public Interest Litigations. Introduction of the concept of Public Interest Litigations in environmental jurisprudence is based on relaxation of the traditional rule of ‘locus standi’ in the courts and is aimed at entertaining petitions from all sections of the society, including the poor and disadvantaged, NGOs and public-spirited people. The underlying object is to ensure that the courts are easily accessible. The “Right to life” granted under Article 21 of the Constitution of India has been interpreted meaningfully and expanded by the Courts so as to take into its fold, the right of a citizen to a clean and healthy environment.

As an illustration, decisions of the Supreme Court have been cited in a case where it took suo moto action on the basis of a report in the newspaper that a motel built on the bank of a river in a Hill Station, had encroached on forest land and had turned the course of the river to avoid flooding. Another case is of a NGO that had directly approached the supreme Court bringing forth the woes of people living in the vicinity of chemical industrial plants in India, where applying the principles of “Absolute Liability” and “Polluters Pay”, substantial damages were imposed on the defaulting industries. In another case study, the focus is on the severity of air pollution, particularly vehicular pollution in Delhi and the innovative use of the tool of ‘continuous mandamus’ by the Supreme Court.

The State High Courts are not far behind. Two decisions, one delivered by the High Court of Himachal Pradesh and another by the High Court of Madras, have been highlighted to demonstrate the positive steps taken by the courts to bring to book large industrial houses that had in one case, attempted to circumvent the Environmental Impact Assessment Notifications when setting up a thermal plant on the village common land and in the other, set up a copper smelting plant in a coastal town, very close to Marine National Parks.
The presentation concludes with two recent decisions of the National Green Tribunal, one related to the damage to the ecosystem caused by an oil spill by a shipping vessel near the South Mumbai coast in the Arabian sea and the other spotlights the flooding of a huge river basin in Northern India, attributed to lack of precautionary measures on the part of a Hydroelectric Project established in that region, that had resulted in severe devastation and loss of several lives.

**Addressing Climate Change – Evolving Legal Jurisprudence in ASEAN Region and its Challenges**

**Hon. Justice Tan Sri Datuk Seri Panglima Richard Malanjum**, Chief Judge, High Court of Sabah and Sarawak, Malaysia

As a developing region, ASEAN faces two main challenges in the field of climate change. The first is the complexity of striking a balance between rapid economic progress and effective environmental protection with special interest in the rights and needs of the Indigenous Communities in the respective member states. The second is the difficulty of coordinating the policies of its member states with each other and with the rest of the globe.

Overcoming both challenges will largely rest on the legal jurisprudence in ASEAN countries and international treaties that govern the region. The past 20 years of legal jurisprudence in ASEAN is revealing. Domestically, Indonesia, Malaysia, the Philippines and Singapore have all enacted legislations governing issues including land use, renewable energy, and air pollution. Regionally, declarations and treaties such as the ASEAN Joint Statement on Climate Change in 2014 and the ASEAN Agreement on Transboundary Haze Pollution (ratified also in 2014) have, at the very least, shown a united front on the environment.

Other than that, part of the solutions lie without ASEAN, requiring the cooperation of Asian giants China and India, both of whom are at the top end of carbon dioxide emitting countries internationally. However, within the purview of ASEAN, it must not only look to evolve with the times, but to lead such evolution. Already, the Courts of Malaysia have revealed an increasing awareness of both the concepts of an environmental rule of law and environmental human rights.
Meanwhile, Singapore’s Transboundary Haze Pollution Act 2014 has been touted as a potential silver bullet to the haze problem which threatens to engulf the region annually (though only time will tell).

ASEAN must be on the cutting edge of legal solutions to the multi-faceted problem of climate change despite having its own set of concerns. With regional cooperation and legal sophistication, the goal of sustainable development for future generations will not be such a long shot.

**Mapping Climate Change Adjudication**

**Hon. Brian J. Preston**, Chief Judge, The Land and Environment Court of NSW, Australia

Climate change is a persistent, pervasive and pernicious problem. Climate change litigants have increasingly brought a variety of legal actions before courts and tribunals across the world seeking to compel governments and others to take effective action to grapple with this problem. Such litigation has led courts and tribunals to: compel the implementation of mitigation and adaptation measures, redress the inadequate assessment and consideration of climate change in decision-making, consider climate change issues in making de novo development approval decisions, refuse approval to activities or developments with unacceptable climate change consequences, redress climate change related human or constitutional rights violations and remedy the making of misleading commercial claims relating to climate change.

This presentation will focus on climate change litigation brought under the following causes of action: tort, public trust, trade practices, administrative law, constitutional law, human rights, international law and European Union (EU) law. Additionally, air pollution litigation from the Asia Pacific Region and the EU will be briefly considered as an important analogous body of case law. Prominent recent climate change cases that will be examined in the presentation include: *Urgenda Foundation v Netherlands, Foster v Washington Department of Ecology, Kain v Department of Environmental Protection and Ashgar Leghari v Federation of Pakistan*. 
Chinese Experience in Judicial Countermeasure to Climate Change

Hon. Bi Dongsheng, Senior Judge, Supreme People’s Court, PRC

Chapter One – Strengthening the Construction of Specialized Adjudication Institution: The Supreme Court of the People’s Republic of China founded the Environment and Resources Adjudication Tribunal in June, 2014, and at present there are in total 558 specialized environment and resources adjudication institutions established in people’s courts at all levels.

Chapter Two – Hearing Lawsuits Related to Climate Change Under Law: The Opinion on Giving Gull Play to the Functional Role of Adjudication and thus Providing Judicial Service and Protection for the Construction of Ecological Civilization and for Green Development issued this June explicitly incorporated “judicial countermeasure to climate change” as one of the important matters for Chinese environmental judicature.

Chapter Three – Promoting Actively Environment-related Public-interest Litigation: The Interpretation on Several Matters of Law Application in the Adjudication of Environment-related Civil Public-interest Litigation Cases was issued in January 2015. And till now courts all over the country have accepted 98 Environment-related Civil Public-interest Litigation cases filed by social organizations and 25 Environment-related Public-interest Litigation cases by procuratorial organs.

Chapter Four – Exploring the Improvement for Adjudication Mechanism: We should explore the way of establishing the jurisdiction system of environment and resources cases which is properly separate from administrative division, set up the coordinated interaction mechanism of environmental judicature and environmental administrative enforcement and pay attention to bringing into play the function of the diversified dispute settlement mechanism.
Impacts of Climate Change on Vulnerable Groups

Ms. Irum Ahsan, Senior Counsel, ADB

Climate change impacts will intensify over the coming century. Human societies and the natural world will face more frequent and forceful disasters and hazards. For vulnerable groups, these impacts will be a matter of survival. Children, women, the elderly, and people with disabilities are more exposed to impacts such as too much or too little water, insufficient food, and heightened risks to personal safety and security. This fight for survival reinforces vulnerability and impedes people’s ability to adapt to future climate change events. Disaster risk reduction frameworks need to be sensitive to the needs of vulnerable people—to reduce risk and improve resilience to climate impacts.

Climate Change: Mitigation and Adaptation Solutions and Success Stories

Ms. Sarah Khan, Founder/Film Maker, Jugnoo Foundation, Pakistan

It is well documented women and girls suffer disproportionately due to the impacts of climate change. This is especially prevalent in South Asia because of women’s traditional roles as fuel gatherers, cotton pickers, and so on. This presentation will identify these impacts, in addition to identifying potential solutions based on case studies.

The three case studies range from Pakistan’s northern mountain ecosystem, to the semi arid zone of Southern Punjab and coastal belt of Sindh.

Sarah will also give insight into the impact of her Jugnoo Project, a series of climate change workshops has had in the areas and the ways in which it equipped young women and girls with the knowledge and skills required to deal with the rising impacts of climate change.
Atsuko Hirose, Advisor, Office of the General Counsel, ADB

Please see page 44.

Irum Ahsan, Senior Counsel, Office of the General Counsel, ADB

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Ma. Celeste Grace A. Saniel-Gois, Legal Operations Officer, Office of the General Counsel, ADB

Ms. Saniel-Gois is currently holding the position of Legal Operations Officer at the Office of the General Counsel (OGC) of the Asian Development Bank (ADB). She provides technical, analytical, and coordination support for OGC’s operational work, particularly on the Law and Policy Reform Program of OGC.
Ms. Saniel-Gois has been with ADB for over 19 years. Before joining OGC, she was part of the urban sector team, administering regional TAs on urban infrastructure projects, and was the core Secretariat of ADB’s Urban Community of Practice. She also administered ADB’s Urban Financing Partnership Facility, which supported urban infrastructure projects. Prior to this, she was part of the gender and development (GAD) team of ADB, serving as the coordinator for the multidonor Gender and Development Cooperation Fund; which provided resources for developing member countries and regional TA projects aimed at building gender capacity and conducting research on emerging and critical gender issues.

Ms. Saniel-Gois holds a master’s degree in Social Services and Development from the Asian Social Institute, Manila; academic credits for master in Women and Development at the University of the Philippines, and a Bachelor’s degree in Communication Arts at St. Scholastica’s College, Manila.

Ms. Maria Cecilia T. Sicangco, Senior Legal Associate for Law and Policy Reform, Office of the General Counsel, ADB

Ms. Sicangco joined ADB as Legal Associate for Law, Justice and Development, and was subsequently appointed as Senior Legal Associate for Legal and Policy Reform. Prior to joining ADB, she was a Fellow at the International Development Law Organization headquartered in Rome, Italy. She holds a Bachelor of Laws degree (cum laude) from the University of the Philippines, and a Master of Laws degree from New York University where she was the Starr Foundation Global Scholar, Hauser Scholar, and Thomas M. Franck Scholar in International Law. She is qualified as an Attorney and Counsellor at Law in the State of New York (USA) and the Republic of the Philippines.
Gregorio Rafael P. Bueta, Consultant (Legal and Policy Specialist), Office of the General Counsel, ADB

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Briony Eales, Consultant, OGC’s Law and Policy Reform Program, ADB

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THIRD ASIAN JUDGES SYMPOSIUM ON LAW, POLICY AND CLIMATE CHANGE

26–27 September 2016 • Asian Development Bank, Manila, Philippines