

**Speech by Hon. Chief Justice Lyonpo Tshering Wangchuk  
At the Opening Ceremony of the Workshop on Environmental Adjudication**

*18-20<sup>th</sup> July 2018  
Le Meridien, Thimphu*

*Hon. Justices and Judges  
Delegates from ADB, UNEP and US EPA  
Eminent Resource Persons  
Distinguished Guests  
Ladies and Gentlemen*

It is a privilege to be amongst you this evening- for the opening ceremony of the Workshop on Environmental Adjudication organized jointly by the Judiciary of Bhutan, Asian Development Bank, UN Environment Program and the US Environmental Protection Agency. It gives me great pleasure to welcome all the eminent resource persons and delegates to our country. I would like to thank you all for taking out time from busy schedules and important responsibilities and traveling all the way to Thimphu - to be part of this important workshop for Bhutan. I hope you will find time amidst your busy schedule to explore and experience Bhutanese culture and lifestyle.

I would also like to take a moment to express my sincere gratitude and appreciation to ADB - Ms. Irum Ahsan and her efficient team, UN Environment Program, and the US Environmental Protection Agency, for stepping in to support the Judiciary of Bhutan in its endeavor to enhancing the capacities of its judges in environmental matters. Your support is indeed a testament of your friendship, goodwill and belief in our nation's commitment to protect and conserve the environment for our posterity.

## **Introduction:**

Ladies and Gentlemen, His Majesty the King eloquently decreed: *“We must always be one nation with One Vision in our convictions and efforts. When we hand over our country to our children, we should not only hand over a secure and sovereign country but an environmentally rich country.”* As a deeply spiritual Buddhist nation, Bhutan has always given primacy to development and happiness of our people in policy making and thus, has endeavored to raise the level of human contentment and well being with a holistic approach to change and development. Bhutan has always strived to achieve the goals of GNH by managing our limited resources prudently in consonance with the principles of intergenerational equity, doctrine of public trust and by remaining faithful to the core mission of GNH, which is *“development with values”*. The Constitution mandates that each generation has the right to inherit and have equitable access to the use and benefits of the same diversity and abundance of natural resources enjoyed by the previous generations, making the present generation – custodians for future generations. Therefore, our Constitution extends the scope of social justice into the future, ensuring a reasonable balance between satisfying present needs and setting aside enough to provide for needs of the future – giving equal consideration to immediate needs and the needs of future generations.

Bhutan with Buddhism as its spiritual heritage, its citizens constantly endeavor to coexist in harmony with its natural environment. The kingdom’s rich forest cover, high GHG (carbon) sequestration capacity and its abundant biodiversity in both flora and fauna - are the result of His Majesty the Fourth King’s enlightened policy on nature conservation. This profound concept emphasizes interdependence, not just among human communities but with all life forms, leading to a finely balanced relationship with nature, preserving our own existence and nurturing a deep

reverence for our natural environment – making conservation of environment being one of the key pillars of GNH. GNH however is not just about stewardship of our environmental inheritance - it's about actively contributing to the growth of this asset, just as in any other field of human endeavor.

### **Laws and Policies on Environment Protection:**

Ladies and Gentlemen, we live in an era where successful nation building is recognized not just as a matter of good governance, but also as an active collective imagination, sustained by progressive laws and result-oriented public policies and strategies. Our monarchs have always emphasized on good governance and initiated reforms and a policy promoting sustainable development for the wellbeing of our people and our environment - sustainable development depends upon good governance; good governance depends upon the rule of law; and rule of law relies upon effective compliance and respect for the laws, enforcement of laws and regulations.

Consequently, through the establishment of a robust environment agency – National Environment Commission, adoption of progressive laws and policies and efficient and effective regulation and enforcement of its environmental laws, Bhutan has been conscientiously fulfilling its constitutional mandates and international commitments on environmental protection. Article 5 of the constitution of Bhutan dedicated to Environment - enshrines the principles of inter-generational equity, doctrine of public trust, precautionary principle and above all it mandates that a minimum of 60% of Bhutan's total land shall be maintained under forest cover for all time. Fortunately, 51% of forest cover out of the existing 72.6% consists of a network of natural parks, protected areas and biological corridors – covering 16,396.4 sq kms (42.7% of the total land area). This is a

testimony of the Bhutanese people's dedication and commitment to environmental conservation.

### **Role of Judiciary in Environmental Protection:**

Simultaneously, a strong, independent, transparent and a well resourced judiciary- is an imperative for protecting our environment and upholding the rule of law. Judges and Courts have the capacity to direct and influence environment protection governance through effective oversight of development and enforcement of the regulatory regimes directly intersecting with environment protection considerations. The Judiciary must therefore, accept the responsibility to set excellent examples and lead in environmental jurisprudence, implementation and compliance – through judgments, orders and promotion of awareness.

### **Establishment of Green Bench and Acceptance of PIL:**

In view of the perennial quest and struggle to strike a balance between developmental requirements and environmental considerations, there is a possibility of increase in environmental litigations which needs to be dealt with effectively and efficiently. Consequently, the Judiciary of Bhutan has established a ***Green Bench at the High Court*** - with special procedures for the purpose of rendering speedy, fair and just adjudication in all environmental disputes. The Green Bench was established to commemorate the ***60<sup>th</sup> Birth anniversary of His Majesty the Fourth King*** (who is a recipient of the champion of the earth Award (2005), J. Paul Getty Conservation Leadership Award from WWF 2006 and inducted into the Kyoto Earth Hall of Fame in 2011) and to fulfill Bhutan's commitment to environmental conservation as enshrined in the Constitution. The reform is initiated with the belief and conviction that the Green Bench - specialized in the adjudication of environmental disputes will facilitate - rendering of speedy

justice in all environment and other closely related socio-economic issues that require significant specialized knowledge. The specialization is also aimed at bringing about uniformity, accuracy, precision and predictability in judgments and informed interpretation of environmental laws – which must invariably lead to greater credibility, transparency and integrity in the Environment Justice System. The establishment of the Green Bench is not a consequence of or reaction to increase in environmental cases in our courts. Nevertheless, we cannot afford to be complacent. As we would like to believe- *it is better to have the Green Bench and not need it than to need a Green Bench and not have one.*

The Judiciary with the objective to strengthen our environment justice system has considered allowing Public Interest Litigation in environmental matters. **Article 5 Section 1** states that “*Every Bhutanese is a trustee of the Kingdom’s natural resources and environment...*”; **Article 8, Section 2** imposes a fundamental duty upon *every Bhutanese citizen to have a duty to preserve, protect and respect the environment ...*”; and **Article 21 Section 18** provides that “*Every person has the right to approach the Courts in matters arising out of the Constitution or other laws ...*” Therefore, fulfillment in its true essence, of the principles enshrined in the Constitution related to environment is deemed not possible without liberalization of the traditional rule of *locus standi* - to facilitate access to justice in environmental matters. If one cannot maintain an action for redress of a public wrong or public injury, it would be disastrous for the rule of law. In the absence of such a liberal rule of *legal standing*, the State or a public authority could act with impunity beyond the scope of its powers or in breach of a public duty owed by it. Therefore, by reading **Article 5 Section 1** with **Article 8 Section 2**, and **21 Section 18** of the Constitution – the courts in a departure from the established principle of legal standing will allow “*Public Interest Litigation*” (PIL) in all environmental

matters. We are hopeful that PIL in environmental matters will serve as a tool to use law strategically to effect social change.

### **Conclusion:**

Ladies and Gentlemen, the Judiciary is committed to ensure that judges have the right values and attitudes in giving effect to constitutional rights and mandates, and that they are provided with the right tools and techniques to develop and propagate preventive jurisprudence to avert irreversible environmental damages. As we confront new issues and challenges, it is important to consider the needs of the future, while fulfilling the present requirements. It is our endeavor and aspiration that the Green Bench and the Judiciary will participate meaningfully in the realization of a sustainable future by: balancing environmental and developmental considerations in judicial decision-making; providing impetus to the incorporation of contemporary developments in the field of environmental law for promoting sustainable development, including access to justice, right to information and public participation; promoting the implementation of global and regional environmental conventions; and engaging in a leading role in promoting compliance and enforcement of environmental regulations.

Bhutan has always viewed its constitutional obligation to protect the environment as a privilege and not something extra we have to do (Prime Minister). The country is privileged to be a custodian of the world's natural heritage. As a small jurisdiction, we have always been open to learning and gaining guidance from other jurisdictions, which have substantial experience in dealing with environmental and climate change issues. As such, I urge the participants of the present workshop, to learn from the eminent Judges and resource persons who

have vast experience and knowledge on the subject. *“Fools learn from their own mistakes, the wise profit from the mistakes of others”* – Bismarck. I am confident that with the knowledge gained, our judges will be able to promote thoughtful in-depth analysis, with logic and consistency in their judgments, leading to greater credibility and transparency in environment justice system, and strive to ensure the fulfillment of Bhutan’s commitment to global environmental concerns, and strengthen our country’s environmental potential to meet the needs and aspirations of both present and future generations.

To conclude, I would like to convey my good wishes for the successful conduct of the workshop - with meaningful, stimulating and fruitful deliberations.

**Thank you and Tashi Delek!**