



ADB



South Asia Conference on Environmental Justice

Bhurban, 24–25 March 2012



Asian Development Bank



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Abbreviations

ADB	Asian Development Bank
ASEAN	Association of Southeast Asian Nations
EIA	environmental impact assessment
IUCN	International Union for Conservation of Nature
PEPA	Pakistan Environmental Protection Act, 1973
SAARC	South Asian Association for Regional Cooperation
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme

Foreword

Promoting environmental justice is one of the core themes of the Law, Justice and Development Program of the Asian Development Bank (ADB), and is consistent with the long-term strategic framework of ADB, Strategy 2020, which recognizes environmentally sustainable growth as one of three key development agendas in Asia and the Pacific.

On 28–29 July 2010, ADB hosted its first Asian Judges Symposium on Environmental Decision Making, the Rule of Law and Adjudication. The symposium was the largest gathering of judges and legal stakeholders dedicated to the strengthening of the rule of law and justice for the environment since the 2002 Global Judges Symposium in Johannesburg, South Africa. Building further on the outcomes of the symposium, ADB has provided further technical assistance to support the strengthening of governance, justice, and the rule of law on the environment in Asia and the Pacific. In addition to providing assistance on a national level, ADB is supporting two regional groups that have been formed by senior judges in South Asia and other stakeholders from the judiciary in the Association of Southeast Asian Nations (ASEAN) region to facilitate the exchange of information and ideas and share experiences on dealing with environmental cases and other issues related to environmental law and enforcement.

The first South Asia Conference on Environmental Justice was held at Bhurban, Pakistan, on 24–25 March 2012. The conference was hosted by the Supreme Court of Pakistan with the support of ADB and in collaboration with the International Union for Conservation of Nature (IUCN) Pakistan, and the United Nations Environmental Programme (UNEP). Participants included more than 30 senior members of the judiciaries of South Asia and other regions, including Afghanistan, Bangladesh, Brazil, Indonesia, Jordan, Nepal, Pakistan, and Sri Lanka; lawyers; members of academe; environmental activists; and legal stakeholders.

At the conference, participants were engaged in insightful discussions on environmental law and policy, adjudication, and education. Indeed, the conference was a forum for South Asian legal practitioners to share their experiences, highlighting various issues on environmental adjudication, with the aim of formulating practical recommendations for administering strong and effective environmental justice mechanisms.

As a result, the conference culminated in the adoption of the Bhurban Declaration 2012, consisting of 14 specific endeavors for strengthening environmental law adjudication and enforcement at the national and regional levels. These include, at a regional level, collaboration, knowledge sharing, dissemination of information, and mutual cooperation. At the national level, participants agreed on adoption of a collaborative and consultative process for environmental adjudication, training of judges and specialized environmental tribunals, implementation of laws by adopting flexible approaches to legal principles for

environmental justice, establishment of “green benches” within existing judicial structures, and a recommendation for the inclusion of the right to a healthy environment as a fundamental right in the Constitution.

This volume records the proceedings of the conference. I trust that readers will find this publication helpful in understanding the concept of environmental justice in the South Asian context.

Marie-Anne Birken

Deputy General Counsel

Office of the General Counsel

Asian Development Bank

26 April 2013

Acknowledgments

The South Asia Conference on Environmental Justice was an overwhelming success, and this success is attributed in no small part to the hard work and long nights at the office spent by the staff at the Asian Development Bank (ADB) and its collaborative partners. Given the logistical constraints, assembling members from the legal community to collectively meet the challenges of environmental justice appeared impossible. However, the efforts of ADB and its development partners made everything possible.

Firstly, appreciation must be given to the chief justice of Pakistan, the Honorable Justice Iftikhar Muhammad Chaudhry, for his generous offer to host the conference. Without his continuing support, this conference would not have been possible. The supreme court office, represented by the additional registrar, Sajid Mehmood Qazi, provided the vital institutional support needed to bridge the connection between the local administration and ADB. Further, the members of the Committee for Enhancing Environmental Justice—the honorable justices Qazi Faiz Isa, Syed Mansoor Ali Shah, Yahya Khan Afridi, Munib Akhtar, and Riaz Ahmad Khan—supported, guided, and motivated the organizers of the conference. Special appreciation is also given to the head of the Committee for Enhancing Environmental Justice, the Honorable Justice Anwar Zaheer Jamali, who not only provided his valuable support for and input into organizing the conference, but also facilitated setting the tone for the proceedings by providing the opening remarks, as well as summing up the invaluable contribution for regional integration provided by this conference at the closing session.

Shah Murad Aliani (country representative, International Union for Conservation of Nature [IUCN] Pakistan), Hamid Sarfraz (program coordinator, IUCN Pakistan), and their team provided immense support to ensure that the conference, consisting of almost 150 participants, was organized following the best international standards. Ensuring the attendance of participants from more than 10 countries, as well as from all provinces of Pakistan, could not have been an easy task, and yet the team at IUCN made this look effortless.

Gratitude is also given to Wanhua Yang, who brought in the support from the United Nations Environment Programme (UNEP) to help organize the conference.

Special appreciation goes to ADB's deputy general counsel, Marie-Anne Birken, for providing direction and guidance to her team at ADB in organizing the conference. She also shared ADB's role in ensuring environmentally sustainable growth in South Asia with the conference participants, and challenged them to reach a unanimous decision on ensuring regional cooperation for environmental justice.

Acknowledgments

Irum Ahsan, counsel at ADB and the team leader for the regional capacity development technical assistance,* together with her team in Pakistan and Manila, was responsible for convening the conference on behalf of ADB. ADB's resident mission in Pakistan, especially its country director, Werner Liepach, extended constant support in organizing the conference.

Irum Ahsan and Fahad Malik, associate consultants for Progressive Advocates and Legal Consultants, prepared and edited the record of these proceedings.

* ADB. 2010. *Building Capacity for Environmental Prosecution, Adjudication, Dispute Resolution, Compliance, and Enforcement in Asia*. (RETA 7735). 28 December.

Executive Summary

The Asian Development Bank (ADB) and the Supreme Court of Pakistan hosted the South Asia Conference on Environmental Justice, in collaboration with the International Union for Conservation of Nature (IUCN) Pakistan and the United Nations Environmental Programme (UNEP) at Bhurban on 24–25 March 2012. The conference was hosted as part of ADB's technical assistance for Building Capacity for Environmental Prosecution, Adjudication, Dispute Resolution, Compliance and Enforcement in Asia. It also complements ADB's long-term strategic framework, Strategy 2020, to introduce regional cooperation among the judicial systems in Asian countries to create a strong and streamlined legal and jurisprudential mechanism in each member state for delivering environmental justice.

The conference brought together more than 30 senior members of the judiciaries of South Asian countries (including the chief justices of the supreme courts from around the region, including Pakistan and Jordan; the chief justice of the Federal Shariat Court (Pakistan); judges from the supreme courts of Afghanistan, Bangladesh, Brazil, India, Indonesia, Jordan, Nepal, Pakistan, and Sri Lanka; judges from the high courts of Balochistan, Bhutan, Islamabad, Lahore, the Maldives, Peshawar, and Sindh); other participants from the legal community, such as the attorney-general for Pakistan as well as advocates general from all high courts of Pakistan; and environmental activists and various other stakeholders. About 150 national and 30 international participants gathered to discuss the problems faced by environmental adjudication and factors which hamper the judiciary from imparting environmental justice. The conference aimed to look at both the teaching of environmental law and jurisprudence at the university stage, as well as the training of judges and lawyers in their professional careers, along with the concept of environmental justice, its implementation, and the legal mechanisms available to ensure compliance with various policies. Specifically, the conference focused on highlighting (i) the methodology through which the superior judiciaries of various countries deliver environmental justice, (ii) the educational framework which aims to advance the jurisprudence surrounding environmental issues, and (iii) the various flaws and weaknesses of the current legal and regulatory framework delaying the cause of environmental justice.

The conference comprised six sessions:

1. **Inaugural Session:** Participants were introduced to the conference themes and agenda.
2. **Plenary Session:** The role of the judiciary in environmental adjudication was highlighted. An overview of environmental jurisprudence, together with common regional environmental challenges such as urbanization, biodiversity, loss of forestation, air and industrial pollution, and climate change and floods, were shared.

3. **Concurrent Thematic Session 1 (Environmental Law and Policy):** This session highlighted the legal framework within which environmental law operates in different countries, as well as its shortcomings.
4. **Concurrent Thematic Session 2 (Environmental Adjudication):** Participants from various countries shared their experiences with environmental adjudication in their respective courts and highlighted the positive and negative aspects of their experiences.
5. **Concurrent Thematic Session 3 (Environmental Education and Capacity Building):** Judges and members of academe shared their views on the need for educating civil society on the issue of climate change and environmental degradation. The session also focused on the necessity to educate judges of both subordinate and superior judiciary on the environment.
6. **Closing Ceremony:** The recommendations from the three concurrent thematic sessions were presented at the closing ceremony, and the culmination of all sessions led to the unanimous Bhurban Declaration 2012, which included a promise for an educated judiciary, specialized courts, and various other aspects of environmental justice, some of which are given below:
 - A promise of collaboration amongst participant judges and countries to improve the development, implementation, enforcement of, and compliance with environmental laws, as well as to make an action plan to achieve the same.
 - A declaration to strengthen the existing specialized environmental tribunals, as well as train judges and lawyers on environmental law.
 - A promise to encourage law schools to teach environmental law.
 - A resolve to hold an annual South Asia justices' conference on environmental issues to foster cooperation.
 - A vow to establish "green benches" in courts for dispensation of environmental justice and to make necessary amendments or adjustments to the legal and regulatory structures to foster environmental justice.
 - A statement to draft a memorandum of understanding amongst the South Asian judiciary to be sent to judiciaries of South Asia for the adoption of a South Asia convention on environmental justice.

Inaugural Session

Justice Anwar Zaheer Jamali (Supreme Court of Pakistan) delivered the welcome address to the participants of the conference. He stated that the conference was being held from the platform of the Supreme Court of Pakistan and had been made possible with the collaboration of the Asian Development Bank (ADB) and the International Union for Conservation of Nature (IUCN). He made special mention of the role of previous conferences in bringing about much-needed awareness among the people of the South Asian Association for Regional Cooperation (SAARC) region on the sensitive nature of environmental issues. He stated that the main purpose of organizing this conference was to broaden the perspective of judicial policy making to help deal with the environmental threats posed to the region as well as the planet in the wake of exploding population, unplanned industrialization, unprecedented urbanization, deforestation, damage to coastal areas, and the misuse of natural resources.

He emphasized that the time for facts and figures on environmental degradation had long passed. The unprecedented destruction caused in the region through floods and earthquakes in the past 5–8 years was more than enough proof. He highlighted that there is a plethora of environmental challenges confronting the region today on both the micro and macro level due to neglect on our part, as well as the exploitative practices of developed countries in treating underprivileged regions as dumping grounds for their hazardous and environmentally poisonous waste. He further pointed out that there are too many problems to tackle now; however, as a step forward there is a need for collaboration aimed at restricting further degradation and disaster. In this regard, the essential purpose of the conference would be not only to focus on the region's environmental concerns but also to provide strength for their solutions, inspire judicial activism, and develop foresight in judicial decision making. The role of adjudicators, lawyers, and environmentalists is to breathe new life into existing documents and treaties on environmental justice through their application, implementation, necessary amendments, and updates. Their role is also to update the concept of environmental justice by giving a pragmatic judicial interpretation to these issues in pursuit of high environmental standards, particularly in the SAARC region.

In this regard, Justice Jamali made reference to a recent conference in Pakistan at the national level on the subject of environmental law organized by the Balochistan High Court and the High Court Bar Association. On its conclusion, the conference provided a revealing insight into instances of inaction and lapses resulting in environmental degradation in various parts of the country. The report also provided very useful information and suggestions for implementation to avoid further environmental decay in different fields. He concluded with the words of Professor Bunyan Bryant, stating that, “environmental justice is served when people can realize their highest potential” and hopefully the outcome of the conference would be exactly that.

Marie-Anne Birken (deputy general counsel, ADB) highlighted the role of ADB in environmental matters. She stated that environmentally sustainable growth is a key strategy in ADB's mission to reduce poverty in Asia and the Pacific. ADB's long-term strategic framework, *Strategy 2020*, identifies environment and climate change as one core operational area.¹ It indicates that ADB will seek to "strengthen...the legal, regulatory, and enforcement capacities of public institutions in regard to environmental considerations." *Strategy 2020* also recognizes that good governance and capacity development is one driver of change that will improve the cost-effective delivery of public goods within core operational areas. Similarly, ADB's governance policy recognizes the importance of accountability, transparency, predictability, and participation with a national framework as components of good governance, and the importance of stable rule of law frameworks to ensure the same. She stated that ADB's Safeguard Policy Statement (2009) prioritizes the strengthening of local environmental safeguard systems in terms of both regulation and environmental enforcement.

She shared with the participants that to implement the new safeguards policy, ADB's Board of Directors has approved \$8 million for regional technical assistance that will strengthen these systems in ADB's developing member countries by (i) improving legal and regulatory frameworks for environmental assessment and (ii) strengthening institutions and their capacity for effective implementation and enforcement of and compliance with laws and regulations pertaining to environmental assessment.

She then highlighted the efforts of ADB in judicial capacity building with respect to environmental governance, an area of extreme importance. ADB published the compendium on capacity building for environmental law in Asia and the Pacific to be used in train-the-trainers workshops, provided support for a judicial forum on the environment in the Philippines, and supported establishment of a network of environmental ministries to strengthen enforcement and compliance with environmental law in Asia and the Pacific.

She stressed that the judiciary has a key role in enforcing the environmental framework, which is of utmost importance for the region to find a meaningful solution to the problem of environmental degradation. Her challenge to the conference participants was to find a common vision on the environment, which would see the senior judiciary of South Asia champion and lead the legal profession towards a credible rule of law system that promotes environmental sustainability.

Irum Ahsan (counsel and project team leader, ADB) presented the conference structure and themes. I. Ahsan started by apprising the participants of the background of the conference. She applauded the offers made by the chief justices of Indonesia and Pakistan (made at the Asian Judges Symposium on Environmental Decision Making, the Rule of Law and Environmental Governance 2010 held at ADB headquarters in Manila) to hold the conference in Indonesia, and the current conference. She stated that, in support of the judges' initiative, ADB initiated the project on Building Capacity for Environmental Prosecution, Adjudication, Dispute Resolution, Compliance and Enforcement in Asia, which aims to strengthen environmental adjudication and enforcement by establishing

¹ ADB. 2008. *Strategy 2020: The Long-Term Strategic Framework of the Asian Development Bank 2008–2020*. Manila.

a judges' network and holding capacity development conferences in the SAARC and Association of Southeast Asian Nations (ASEAN) regions. A roundtable for ASEAN judges on environmental laws was held in Jakarta in December 2011; this conference was the second leg of ADB's initiative.

She then moved on to an introduction of the conference itself. The conference would consist of three parts: (i) an inaugural session which would include the welcome notes, the keynote address, and special addresses by the participants; (ii) the plenary session, which would discuss environmental jurisprudence and the role of the judiciary in addressing environmental challenges, followed by an overview of regional environmental challenges; and (iii) three concurrent thematic sessions addressing the issues of environmental law and policy, environmental adjudication, and environmental education and capacity development. These three stages of the conference would culminate in a closing session which would share the recommendations and outcomes of the conference with the participants.

I. Ahsan highlighted the key role in environmental enforcement of the senior judiciary in Asia through both the direct approach (issuing rules and directions to lower courts through their environmental decisions) and the indirect approach (leading the legal profession towards a credible rule of law system that promotes environmental sustainability). She concluded that the conference was expected to culminate in identifying the common challenges faced by the region, as well as identifying the role of the judiciary in shaping environmental law and ensuring judicial cooperation in the region for strengthening the systems.

Adil Najam (vice-chancellor, Lahore University of Management Sciences) delivered the keynote address for the conference. He discussed the importance of environmental justice and its global relevance. For this, he used a reference to the concept of "globalness," its nature, and why it matters to environmental justice. His analysis involved the challenges posed to law and policy in developing countries, and how climate change transforms the discussion on environmental justice.

In this regard, he stated that there is a need to transform the way environmental issues are viewed. Rather than making change country-centric, the changing climate of environmental justice requires the planet to be treated as a single whole—"our planet: our country." He invited the participants to imagine the world as one country. The images that came to light were of a poor country divided on various grounds, degraded and insecure, governed poorly, and hence unsafe. In other words, this world appears to be a third-world planet.

He said that the need is to look at the realities. It is established how climate change happens, that it is happening, and what impacts it has. However, the specific impacts are unknown and there is a real fear that existing threats could multiply, with the general belief that the human impacts in South Asia will be particularly severe. He stated that this poses great challenges for law and policy in the search for environmental justice. He introduced the participants to his four propositions to resolve the threats.

The first proposition would see further increase in the role of international environmental law. International environmental policy would morph into international environmental law and, as a consequence, international law will give both international and well as domestic

responsibilities, with high costs to be set for inaction or being defensive against the international norm.

The second proposition stated that environmental justice would demand that the environmental focus should not be on limits but on rights. The dynamic nature of environmental science is in itself a challenge to regulations trying to limit the damage. Templates would have to be developed for global standards for domestic environmental law—a uniformity to be created in the one-country planet—where a focus on rights and responsibility would open up links to rich traditions in law and policy.

Propositions three and four would see climate change move the focus of environmental justice to human livelihood. This would further blur the policy–law distinction. Environmental justice would demand a pro-poor focus on livelihood and the human condition in the planet’s “poor” country.

All of this would shift the focus of methodology of environmental justice in extreme conditions to a much more subdued reversal of climate change.

In his address to the inaugural session of the conference, the **chief justice of Pakistan, Iftikhar Muhammad Chaudhry**, highlighted the legislative history in the field of environmental law in Pakistan. He stated that developed countries have made immense progress in the field of science and technology and have put in place mechanisms to prevent or limit degradation of the environment. It is important for these developed countries to facilitate development of the same level of science and technology mechanisms in developing countries, since they are obliged to provide assistance to developing nations under various treaties.

Narrating the legislative history and development of environmental law, the chief justice stated that the Environmental Protection Act of 1997 was first promulgated as an ordinance, and only in 1997 was it enacted as an act of Parliament in order to bring the law into line with the international commitments made by Pakistan under various international law treaties. The act provides for preservation, conservation, rehabilitation, and improvement of the environment. It also aims to prevent and control pollution and promote sustainable development. However, he pointed out that the law needs amendment and changes, along with development of implementation mechanisms because without such mechanisms no law can achieve its enacted purpose.

The chief justice observed that environmental issues—such as air pollution, water security, food security, and energy crises—are of utmost importance in the SAARC region and steps are needed to resolve these issues. He stated that we cannot allow mismanagement and exploitation of resources available to us; rather, we need to mitigate the damage being caused to the environment so that our future generations do not suffer from environmental hazards.

The chief justice stated that, while the Constitution of Pakistan does not provide for a particular provision on environmental protection or preservation, it does provide for right to life. The constitutional courts of Pakistan have interpreted this right over the years to include protection of the environment. He cited numerous cases where the local courts

have taken a wider meaning of the word “life” to set guidelines and a framework within which an organization is to work in order to mitigate environmental damage.

The chief justice concluded by saying that environmental law and environmental justice cover a wide range of subjects and ideas, and that in devising any mechanism, the realities of a particular country must be taken into consideration. He observed and recommended that

the role of courts in environmental justice is crucial for the reason that when the courts themselves are blind towards the science of ecology, they cannot administer fair justice in this field of law. Therefore, the role of courts throughout the SAARC region needs to be enhanced. Similarly, training workshops for concerned government and judicial officers and officials, teaching environmental law as a compulsory subject in the law schools, public awareness programs, and active participation of all the segments of society will prove to be effective steps towards the achievement of sustainable development in the SAARC region.

Plenary Session

From Pakistan

In his presentation, **Parvez Hassan (senior advocate of the Supreme Court of Pakistan, and environmental activist)**, an authority on environmental law in Pakistan, highlighted the fact that the South Asian Association for Regional Cooperation (SAARC) region as a whole has seen immense development in the field of environmental law ever since the Stockholm Declaration in 1972. In fact, all countries in the SAARC region, except Pakistan, have incorporated the right to a cleaner and healthier environment as a fundamental right in their respective constitutions. He noted that while no express provision exists in the Constitution of Pakistan with respect to clean environment, this has not stopped the courts from indulging in cases where people have been affected as a result of an unhealthy environment. He cited numerous cases on the subject, including the landmark case of Shehla Zia where the Supreme Court of Pakistan defined the right to life as including a right to have and live in a cleaner environment. These cases, stated P. Hassan, have assisted in developing environmental jurisprudence in Pakistan, even in the absence of an express constitutional provision granting citizens a fundamental right to a clean environment.

P. Hassan further emphasized the role of commissions in cases pertaining to the environment. He pointed out that this step was taken in the Shehla Zia case and has subsequently been followed in numerous other cases pertaining to environmental law. Commissions bring in expert opinion which the court otherwise might lack because of the technical nature of the subject. Hence, to come to a just conclusion, the commissions assist the court immensely as they bring the expert and technical knowledge that is essential and necessary to decide such cases.

He stated that while an immense amount of legislation has been carried out in the field of environmental law in Pakistan for preservation of the environment and nature, challenges still exist as the mechanisms currently in place to implement the same are poor. He noted that

the result, to generalize, is that we have a framework environmental protection legislation that is not enforced; we have a high-powered National Environmental Protection Council that does not meet; we have a Federal Pakistan Environmental Protection Agency, supported by provincial environmental protection agencies, all of whom do not act; we have environment-specific environmental tribunals that are not resourced; and we have National Environmental Quality Standards that are not implemented.

Hence, the biggest challenge in providing the people with a cleaner environment lay not with absence of laws but with lack of implementation of the laws in force.

He concluded by saying that

it is highlighted that the challenges to the environment do not end with drafting appropriate laws and policies. In fact, they begin with such laws and policies. To transform these laws and policies into effective implementation requires a massive commitment to the capacity building of the EPAs [environmental protection agencies]. Without this, any effort will have little chance of success. The support of the courts, media, women, youth, and civil society organizations should also be encouraged by the countries in the region.

Justice Mansoor Ali Shah presented on the development of environmental justice. He started off by stating that justice is done when a person is provided their due share under the law. However, in a sense, environmental justice requires “a little more;” environmental justice requires a fair understanding not only of the legal principles but also of environmental science and the environment itself to adjudicate on cases. He distinguished it from the concept of justice in the usual sense where the proceedings before the court are adversarial in nature; in cases pertaining to environment, the proceedings shift from adversarial to inquisitorial. Thus, environmental justice is “about social transformation directed towards meeting basic human needs and enhancing our quality of life, economic quality, health care, housing, human rights, environmental protection, and democracy.”

Justice Shah then elaborated on the difference between justice and environmental justice by sharing five stories pertaining to different cases on the subject of environmental law within Pakistan. The first story related to an aquifer and the use of underground water. He analyzed decisions of the Lahore High Court and Sind High Court, where the courts have shifted from merely delivering justice to delivering environmental justice.

His second story related to landfills. He elaborated his story by referring to a case from the Lahore High Court in which the court was attempting to deliver environmental justice by ensuring that a thorough study was undertaken before a landfill was set up. However, one of the judges from the bench was appointed to serve in the supreme court and his replacement in the high court was sadly not as enthusiastic. Eventually, the issue was resolved as per the law, and justice was served; however, the activist approach to environmental justice was ignored.

The third story related to parks. It was highlighted that parks contribute immensely to a better environment, in addition to providing recreational activity. Justice Shah relied on cases of various jurisdictions in Pakistan where the courts have shown their disdain for the space allocated for parks being used for other purposes, such as construction of buildings. According to Justice Shah, courts have done not only justice but also environmental justice on issues pertaining to conversion of parks for commercial purposes.

The fourth story related to air pollution. The court had constituted a commission and, relying on the report of the commission, instructed the government to take remedial measures to reduce the amount of air pollution. However, the decision of the court was not fully implemented. Justice Shah concluded that environmental justice was done by the court but doing the same is not within the exclusive domain of the judiciary. The executive branch

is equally obligated to have the concept of environmental justice entrenched in its policies and actions.

The fifth story related to the issue of high-rise buildings. Justice Shah relied on another case from Pakistani jurisdiction which dealt with the issue of construction of high-rise buildings in violation of existing laws. Though the case was still pending, the court observed during the course of hearings that high-rise buildings are being raised on residential plots which earlier housed a few family members only. The new multistorey building structures house hundreds of people, which have a severe impact on the existing infrastructure such as water supply, sanitation, sewage, car parking, and traffic.

Justice Shah observed that these cases demonstrate that there is a need for understanding the nature of the environment issue. Hence, special courts should be set up to deal with issues pertaining to the environment in order to provide both justice and environmental justice. He further said that there is a need to educate people on these issues, and for this purpose courses and curriculum should be designed in universities to address them. Furthermore, judges should also be provided training in this area of law as they need to understand that, in delivering environmental justice, the scheme of things changes and the issue has to be dealt with differently from the usual adversarial manner.

Ashiq A. Khan presented on biodiversity loss and deforestation in Pakistan. The focus of his talk was explaining biodiversity and the hidden dangers behind small offenses. He summed up his presentation by giving suggestions on how to resolve these issues.

He explained that biodiversity is the sum total of all living creatures on the surface of the earth, including the rivers and oceans, and the diversity of all ecosystems found throughout the world. Genetically, biodiversity can take various forms, such as the ecosystem diversity of various biological elements living in the sea, on the coast, or in snow-covered mountains. All of these elements are interrelated and changing a small variable would have a far-reaching impact.

He then moved on to highlight the effects of overgrazing on food scarcity and overfishing on marine life. He noted that this general greed for having more had resulted in many species going extinct, both on land and in water. He also emphasized the severity of challenges. Some challenges—such as corruption in society that provides a safe haven to the timber mafia, “very important person culture” for hunting rights for the rich, and lending of Pakistani soil to foreign dignitaries to hunt whatever they please—may dilute over time. Others are harder to cope with and may take much longer to solve.

Some of the solutions he recommended at the end of his presentation were the implementation of an appropriate policy framework related to settlements on fragile wastelands, incentives for communities to be custodians of biodiversity, strong vigilance over the use of chemicals and maintaining sanctity over the use of pesticides and other chemicals, as well as amendments to related laws focusing on larger consequences for apparently small offenses to act as deterrents.

From Brazil

Justice Antonio Benjamin (Supreme Court of Brazil) presented his paper on judges and environment. He emphasized that environmental degradation is a very serious issue as it affects our quality of life. In this context, judges have a very important role to play in issues relating to environmental degradation. Given this scenario, Justice Antonio's paper focused on analyzing (i) two different models of judicial participation of courts in environmental governance (spectator approach and protagonist judiciary), (ii) two concrete forms of judicial action in resolving environmental conflicts (decide questions of formal procedures of law, and substantive judicial environmental control of projects), (iii) the challenges to judicial practice in this area, and (iv) the prospects for the near future based on his experience in Brazil.

Justice Antonio pointed out that judges are often criticized for having a hands-off approach towards legal issues pertaining to environmental cases, as it is thought they are not well-equipped with the necessary knowledge and expertise to rule on the case and subsequently not decide on technical questions pertaining to environmental issues. However, he argued that judges have the power to call upon the views of experts when required and, through such assistance, can rule on these technical subjects. However, procedural glitches do not allow them to decide the matter in a speedy way, which is something that can be improved. In his opinion, we are gradually moving towards an era that can be referred to as a protagonist judiciary, which is different from judicial activism. This can be seen from the fact that the constitutions of numerous states are becoming "greener," as they have incorporated the right to environment as a fundamental right.

Justice Antonio further discussed the two types of judicial adjudication of environmental disputes. According to him, the more common function of the courts in environmental law is to decide questions of respect, in particular from the state, for the formal procedures provided by the law. This is what he refers to as environmental due process, and this is a way of *formal judicial control* on issues pertaining to ecology. The difficult function of the court is to undertake what he calls *substantive environmental judicial control* of development projects. In these projects, the function of the judge is to weigh options and internalize environmental costs within the context of the constitution and the law. Thus, essentially, the judge is called upon to intervene on matters where the decisions made by administrative authorities and private property owners overlap and interact. Justice Antonio cautioned that here "the danger is twofold: the judge must be careful, on one hand, not to step into territory reserved for elected officials; on the other, not to invade the fundamental core of private property rights."

Justice Antonio also suggested that the major challenge ahead for judges in providing environmental justice will be dealing with and handling the weight of vast amounts of complex legislation from various sources applicable to such a scenario. He concluded with the observation that

the courts, however, will not be able to protect the environment unless there is a strong cultural desire to do so as well. Changing the law is one thing, but transforming centuries-old, deeply rooted cultural traditions would be challenging for any judicial regime or nation.

From Bangladesh

In her presentation, **Syeda Rizwana Hasan** (chief executive, **Bangladesh Environmental Law Association**) shed light on the importance of water in human life. Relying upon statistics from various sources, she stated that oceans are a major source of oxygen for humans. She pointed out that 90% of the trade between countries is carried out through ships that are contaminating the oceans, resulting in damage to the ecology. Hence, there is a need to protect these oceans from such contamination to provide a better environment to the 60% of the global population living in such surroundings.

She narrated the case of ship breaking in Bangladesh, which has resulted in damage to the ecology through contamination of the ocean water. The case was taken to the Bangladesh supreme court on the grounds of violating the citizens' right to cleaner environment. The supreme court held that

the Ministry of Environment and the Department of Environment are directed to immediately take steps to ensure closure of all ship breaking yards which are operating without necessary environmental clearance as required by law.

The Supreme Court further held that

human life and property is much more precious than the immediate commercial benefits. The ship breakers have the right to do business but that is subject to compliance with applicable rules and regulation. We are of the view that if, despite all the negative reports about ship breaking, the government is determined to still allow it to continue, then it must find a place for the yards away from ecologically sensitive areas (like the sea shores or forests) and consider locating them in developed port areas that will have dry floors and facilities to contain and safely dispose of wastes.

S. Rizwana concluded by saying that there is a need to legislate at the international level regarding the usage of ocean waters, as large coastal areas have already been lost because of climate change. To mitigate the damage, water usage has to be regulated; otherwise the harm done to nature and the environment will be catastrophic.

From the United Nations Educational, Scientific and Cultural Organization

Shahbaz Khan (United Nations Educational, Scientific and Cultural Organization [UNESCO]) shared statistics regarding floods across the world and explained the reasons for changes in flood risk and vulnerability. He stated that these risks exist because of changes in the climate and atmosphere, as well as in the socioeconomic system, with expanding populations and the change in land use with people living closer to rivers, encroaching upon the land which once used to contain flood water. He stated that protection was the immediate need and emergency adaptive measures were required to deal with the problem of containing floods. In this regard, he introduced the participants to an integrated flood analysis system which would help prevent the damage and destruction caused by floods.

Concurrent Thematic Session 1: Environmental Law and Policy

From Pakistan

Parvez Hassan stated that the plenary session had given a good start to the themes of the conference. Rather than looking for new issues, he stated that the aim should be to look at what issues already exist. In this regard he shared two stories.

The first story was the concept of human rights. He started from 1945 when the United Nations was established and its charter recognized the protection of human rights on an international level. He forwarded to December 1948, when the United Nations passed the Universal Declaration of Human Rights. The international community moved forward to take this one declaratory instrument to form the basis of regional binding treaties such as the European Convention. These regional initiatives proved to be successful, as they included a mechanism to implement the directives of those treaties.

The second story he shared was about the internationalization of environmental protection, highlighting the United Nations Conference on the Human Environment of 1972, resulting in the Stockholm Declaration which, for the first time, recognized the need for environmental protection as a global phenomenon. Subsequent initiatives—such as the World Charter for Nature 1982, the Rio Declaration on Environment and Development of 1992, Agenda 21, the Convention on Climate Change, and the adoption of forestry principles—all proved to be gradual developments which not only created international awareness on environmental issues but also cemented the concept that it is the world as a global whole which needs to make efforts to ensure environmental protection. The second part of this story included institutional and regional initiatives on environment, such as the International Union for Conservation of Nature (IUCN) Draft Covenant on Environment and Development and the World Summit on Sustainable Development 2002. The closing chapter of his story was the eventual realization that judges needed to be involved in ensuring environmental protection.

He opined that these two stories can and should be used as the stepping stones for creating regional recognition of environmental protection and the importance of dealing with current threats. In conclusion, he recommended that the two stories should be synthesized to create a regional initiative in the SAARC region to

- (i) create a SAARC treaty on environment and development, setting binding responsibilities on member states;
- (ii) create a commission or court on environment to monitor those responsibilities;
- (iii) create a SAARC secretariat on environment with interstate cooperation;

- (iv) adopt the Malé Declaration on Transboundary Air Pollution Act of 1998 supplemented with technical assistance between member states and time-bound, legally binding air pollution reduction agreements;
- (v) develop SAARC biodiversity conservation agreements;
- (vi) undertake regional coordination on climate change; and
- (vii) create a SAARC environmental bar association to assist foreign counsels in environmental cases, especially those involving transboundary disputes.

Zahid Hamid (advocate, Supreme Court of Pakistan, and member of the National Assembly of Pakistan) explained the constitutional position of environment before and since the 18th Amendment (see following para.), and pointed out how the concept of environment was not mentioned in the federal, provincial, or concurrent legislative lists in the 1956 Constitution, nor in the legislative list in the 1962 Constitution. Therefore, environment was the exclusive jurisdiction of the provincial legislature under these constitutions. Both constitutions, however, empowered the central legislature to make laws for implementing decisions of international organizations and agreements with other countries. In the 1973 Constitution, “environmental pollution and ecology” was mentioned, empowering both Parliament and the provincial assemblies to make laws with respect to environmental matters. It was in the exercise of these powers that the Pakistan Environmental Protection Act (PEPA) was enacted by Parliament in 1997.

The Constitution Bill of 2010, referred to as the 18th Amendment, became an act of Parliament on 19 April 2010. The 18th Amendment fundamentally altered the division of legislative powers between Parliament and the provincial assemblies, resulting in a significant increase in provincial autonomy. Environmental pollution and ecology is one of the subjects which now falls under the exclusive legislative domain of the provincial assemblies, whereas responsibility to legislate and implement international treaties remains under the exclusive jurisdiction of the Parliament. This has far-reaching implications for environmental governance in the country, not only in terms of future law making but also for implementing existing environmental laws, rules, and regulations and Pakistan’s obligations under multinational environmental agreements.

He explained that, in accordance with Article 270AA(6) of the Constitution of the Islamic Republic of Pakistan, 1973, all rules and regulations made under the PEPA shall continue to remain in force until altered, repealed, or amended by the competent authority. In this connection, the PEPA empowers the federal government to make rules for implementing the provisions of the international environmental agreements specified in the schedule, a document which lists 14 environmental conventions and agreements to which Pakistan is a party. The federal government may amend the said schedule by adding to, or modifying or omitting, any entry in it. However, these powers have not been exercised; no such rules have been framed, nor has the schedule been amended subsequent to the 18th Amendment.

He stated that most environmental activists were still skeptical regarding the devolution; however, he opined that the success of the entire devolution process initiated by the 18th Amendment could only be judged after assessing the results achieved in terms of

the improvements and benefits accruing from policy making and implementation at the provincial level. This would be a huge challenge for the provincial governments, given the tremendous euphoria and high expectations of the general public of the increase in provincial autonomy, as well as likely political backlash should it cause administrative chaos. He concluded by stating that, in the circumstances, political will and resolve to show positive results will not be lacking in the provinces. What is required is building and enhancing capacity on a priority basis to enable the efficient and effective handling of the increased workload post-devolution.

Justice Yahya Afridi (Peshawar High Court) gave the audience informative insight on the forest laws currently prevailing in the province of Khyber-Pakhtunkhwa, as well as the historical development of the law. He then gave statistics on the amount of forest cover available to the provinces in Pakistan. He went on to explain the types of forests that make up the forest area of Khyber Pakhtunkhwa—the reserved forests, protected forests, *guzara* forests (private forests which are managed by the state for the owners), and others including village forests (such as plantations and trees on farmland).

He then summarized in detail the various forest policies of Pakistan as follows:

- (i) The Forest Policy of 1894 placed greater emphasis on government control over the forest areas rather than the needs of the local communities.
- (ii) The National Forest Policy of 1955 aimed to increase the forest cover of Pakistan.
- (iii) The 1962 policy enunciated the methods of managing public forests and the expansion of protected areas under forest cover.
- (iv) The National Forest Policy of 1975 aimed at conservation, emphasized public awareness, and recommended use of penal measures as a last resort to tackle illegal tree logging. The important aspect of this particular policy was that, whereas the drafting committees for the earlier policies comprised only government representatives, the drafting committee for this policy included both government and nongovernment representatives. The main theme of the policy surrounded the management of *guzara* forests and stated that these should be entrusted to owners themselves, with the state taking only supervisory responsibilities. The policy recommended the formation of owners' cooperative societies, but recommended that forest harvesting should be carried out entirely by public sector corporations.
- (v) This was followed by the National Policy on Forestry and Wildlife of 1980 which dealt with (a) planting fast-growing species and fuel wood plantations outside public forests; (b) involving people in tree plantations and nature conservation through motivation, coordinated development at provincial and national levels, and creation of national parks; (c) departmental forest harvesting along scientific lines; and (d) producing medicinal herbs on wild lands.
- (vi) The Pakistan Forest Policy of 1991 placed emphasis on government control of the forests and income generation from timber.
- (vii) The National Forest Policy of 2001 is currently at the draft stage awaiting formal approval.

Justice Riaz Ahmad Khan (Islamabad High Court) gave a presentation on the main environmental issues of the Islamabad Capital Territory region. The purpose of his presentation was to give a background on environmental issues in Islamabad and the methods used to resolve those issues.

He started his presentation with the legal framework surrounding environmental law, elucidating the PEPA of 1997 in this regard. He stated that, under this law, persons were barred from the following (among other things):

- (i) discharging waste and effluents or contravening the National Environmental Quality Standards;
- (ii) commencing a project, construction, and/or operation without an environmental impact assessment;
- (iii) disposing of waste on public property, including roads and highways, in contravention of the PEPA; and
- (iv) importing hazardous waste.

He explained that contravention of these provisions would warrant penal consequences. However, the issue with the Islamabad Capital Territory was that any complaint regarding the above was to be filed at Lahore, the appeals of which would go to the Islamabad High Court. Only five appeals were currently pending, which would make it seem as if Islamabad did not have environmental issues; this is not so.

The first environmental problem he highlighted in Islamabad was sanitation. He said that proper procedures were not being followed to dispose of waste and there was no direct law on the subject. The issue was far worse for hospital waste since none of the hospitals in Islamabad had any incineration facilities. Legislation on the topic has been pending since 1997. These sanitation issues were polluting the water table of the area.

The second problem highlighted was about Ghauri Town, a residential development in Islamabad constructed in violation of existing zoning laws. When the courts intervened, the relevant departments amended the rules to give legal cover to this development.

The third story was regarding the contamination of Margalla Hills, which were declared a natural park, by allowing restaurants to open right at their center. The consequences are increased accidents, increased vehicle pollution, increased solid waste on roadsides, migration of birds because of the added noise pollution, and depleted fauna.

The fourth story was regarding the Islamabad Industrial Estate. This estate was established away from residential areas; however, residential construction was allowed on the buffer zone between the industries and houses, leading to sanitation and industrial pollutant issues in the newly constructed houses.

Hence, he stated that there needs to be change in the legal mechanisms which govern environmental issues in Islamabad so that these threats can be addressed. Even though litigation statistics might not reflect this, Islamabad faces various environmental threats.

From India

Ritwick Dutta (Legal Initiative for Forest and Environment India) was called upon to highlight issues with the environmental impact assessment (EIA) process. His presentation was focused on highlighting some inherent issues with the process as well as identifying and resolving the problems hampering the effectiveness of the process. He started by stating that the EIA process derives its roots from certain provisions of the 1992 Rio Declaration—specifically Principle 10 and the precautionary principle enunciated therein—since the process aims to ensure participation from those affected, access to information, and access to justice.

Sharing his experience from India, he stated that, in India, people have a statutory right to raise concerns regarding projects which may harm the environment. This, in his modest estimates, has led to 15–20 public hearings taking place every day. He stated that as per law, every major project which may potentially harm the environment has to get an EIA clearance before groundwork can begin. Furthermore, all EIA and related documents are supposed to be made public and an appeal process has been provided against defective EIAs through the 1997 environmental legislation as well as the National Green Tribunals Act, 2010.

Having provided the audience with this background, R. Dutta highlighted the inherent problems with the EIA process. He stated that, since the consultant performing the EIA study is paid by the proponent of the project, inevitably all EIAs report that there will be no adverse environmental impacts. Another inherent problem is that EIAs are highly technical documents which usually cannot be deciphered by the affected people. He stated that, as per law, all EIAs are supposed to be translated into the local language as well. However, translations tend to misstate the problem, such as the translation of cyanide being written as *jhaag wala paani* (foamy water) in Hindi. There are also credibility issues surrounding EIAs in India. R. Dutta shared an example from Ratnagiri in Maharashtra where when an EIA, appraised and approved by the Ministry of Environment, was sent by him to the Environmental Alliance Worldwide. It was found that the EIA was copied—word for word—from an EIA performed in Russia. Another problem with the EIA process is the definition of affected persons. As an analogy, he stated that, when a dam is to be constructed, only the displaced persons are treated as affected persons and no rights are given to those who will be affected downstream—sometimes worse than those displaced.

Along with these issues, R. Dutta highlighted three main issues which also need to be addressed. He stated that a key problem was that the appeals before the “green tribunals” are usually decided on strategic economic grounds and not on the basis of environmental impact. Secondly, there was a need to reform the impact assessment process to make it cumulative. Currently, the system works on a project-by-project basis rather than linking the effects of a particular project to various other projects which may be proposed on the same issue. And thirdly, there has to be accountability in the form of criminal liability for consultants giving false information in their EIA reports.

Concurrent Thematic Session 2: Environmental Adjudication

From Sri Lanka

Justice Shiranee Tilakawardane (Supreme Court of Sri Lanka) emphasized the role of judges in environmental matters. According to her, the role of the judge should be as facilitator in issues involving environmental disputes, as the traditional approach to cases in disputes before the courts may not be suitable when environmental issues are involved. What is required is a balance between the needs of the environment and sustainable economic development. She was of the opinion that there exists a dichotomy between judicial decisions and the realities if the traditional approach to decision making is adopted. Judging environmental cases requires interpretation of environmental statutes while considering and keeping in mind scientific and economic considerations, taking into account the differing needs of the stakeholders, upholding the rule of law while balancing environmental economic and social and cultural factors, and developing innovative and appropriate remedies to meet the demands raised by environmental issues.

She emphasized that judicial sensitization to environmental issues is required at all levels, which will necessitate appropriate training of judges in relation to all aspects of environmental issues. This may include technical training or appropriate support for the judge to help him or her understand any technical issues that may be involved.

A new approach and perspective is also needed towards existing laws so that issues having a nexus with the environmental problem may be dealt with within the framework of existing laws, albeit with a novel outlook to preserve the environment as per the remedies provided by those laws. She highlighted the need for regional interaction or meetings at appropriate levels in the South Asian Association for Regional Cooperation (SAARC) group countries and exchange of data regarding developments taking place in the different jurisdictions. She concluded by stating that judge–nongovernment organization partnerships to address environmental issues should be encouraged.

From Nepal

The presentation by **Shiva Prasad Paudel (Pro Public, Nepal)** dealt with development of public interest litigation in Nepal in relation to forest ecosystem issues. The different ecosystems in Nepal were briefly touched on, and then a number of cases dealing with various environmental issues that had been taken to the supreme court were explained. These cases included a company allegedly landing a helicopter on Mount Everest, cleaning up of the garbage left on the mountains by hikers, the removal of stone and sand from

riverbeds, the defiling of the Godavari Village, and the rights of tribal groups to manage forest areas where they lived. The repeated attempts to justify environmental violations on the grounds that valuable revenue was being earned were exposed before the supreme court as hollow and false statements, and the action taken by the court in the various cases was explained. One aspect of the cases dealt with by the Nepal Supreme Court which was highlighted was the difference between the approach taken by the supreme court in dealing with environmental issues on the one hand, and other equally pressing problems such as discrimination against religious minorities and women on the other.

From India

Ritwick Dutta (Legal Initiative for Forest and Environment India) gave an insightful presentation on the “green” benches and tribunals operating in India. He explained that, although green benches were introduced in the 1990s in the high court and the supreme court in India, they subsequently ceased to exist as such. However, the supreme court did still have a special bench dealing with the specific environmental issue of forests. This bench assembles on a weekly basis and has made many detailed orders with regard to forest land all over India, and is assisted by a special technical committee called the Central Empowered Committee. As a result of this bench, all matters relating to forest land require clearance from the supreme court. The National Green Tribunal Act of 2010, recently enacted in India, was also highlighted. It was explained that this act led to establishment of the National Green Tribunal composed of a chair (who must be a retired supreme court judge) and judges (who must be retired high court judges) as well as technical members having expertise in different fields and disciplines. The tribunal has both original and appellate jurisdiction in the sense that it can be petitioned directly in relation to environmental issues and is also empowered to entertain appeals against executive orders involving the environment. The tribunal has a wide-ranging jurisdiction to deal with substantial questions relating to the environment. Appeals against its decisions go directly to the supreme court, thus bypassing the need to go through the high court. Although there is a standing requirement that only an aggrieved person can petition the tribunal, the tribunal has taken an expansive view of who can qualify in this regard. Relaxed standing requirements has led to a huge increase in the number of cases that have been filed before the tribunal.

He emphasized that the tribunal is not limited merely to a judicial review of executive action but can itself go into the merits of the decision and effectively substitute its own decision for the one complained against. He stated that, in view of the approach taken by the tribunal even in the short time that it has existed, and despite the fact that it is Parliament’s own creation, it is the state itself which is attempting to obstruct its functioning by, for example, not providing adequate accommodation to house the offices of the tribunal and residences for the tribunal members. The salary of the tribunal members is also much less than that given to members of other tribunals. These attempts appear to have backfired inasmuch as the Indian Supreme Court has directed that immediate remedial action be taken and has warned that, if this does not happen, the secretary and minister of the concerned ministry would be held liable and accountable.

From Pakistan

Justice Munib Akhtar (Sindh High Court) presented on the constitutional judicial powers of the courts in Pakistan in relation to addressing environmental issues and the limitations on those powers. He explained the relevant constitutional provisions—Articles 184(3) and 199 of the Constitution of the Islamic Republic of Pakistan, 1973—within the context of enforcement of fundamental rights. He also touched on case law that served to illustrate the view taken by the courts of environmental issues in the context of fundamental rights, especially the right to life enshrined in Article 9 and the dignity of man in Article 14. He went on to touch upon the inherent limitations contained in Articles 199 and 184(3), such as the issue of locus standi and the requirement that matters brought under these constitutional jurisdictions have to be matters of public importance. However, it was clarified that these procedural limitations were not obstacles to the courts while addressing environmental issues. The more practical limitations on the effective redressal of grievances arising from environmental issues were (i) the need to allocate limited judicial resources to serve the various demands on the courts, which prevented the setting up of dedicated benches to deal with environmental issues; and (ii) the need for proper mechanisms to address the problem of implementation of decisions rendered in environmental matters.

Other than the superior courts, the possibility of training magistrates to use the existing provisions of the Code of Criminal Procedure, 1898 to themselves take cognizance of offences under the general law (i.e., Act XLV of 1860 or the Pakistan Penal Code) which resulted from acts damaging the environment was also mooted, since this could address environmental issues at the purely local level, enabling people to seek a remedy directly and immediately available to them.

Ashraf Jahan (chair, Sindh Environmental Protection Tribunal) shared her experiences as the chair of the Sindh Environmental Protection Tribunal. She gave a detailed description of the functioning of environment tribunals in Pakistan and the jurisdiction that they exercised under the Pakistan Environmental Protection Act (PEPA). The role and importance of the Sindh Environmental Protection Agency (SEPA) as the executing or prosecuting agency was also highlighted. Her experience as chair was recounted, and the inability of the SEPA to adequately discharge its statutory duties was also mentioned. She shared that when she assumed charge of the tribunal, very few complaints had been filed; explanations for this reason were called for. This initial enthusiasm of the tribunal received positive media coverage and enhanced public awareness regarding the functions of the tribunal, but eventually, the public coverage slowly died down.

She took pride in the fact that great attention has been and is being paid to ensure implementation of decisions that are taken by the tribunal, and a number of cases have been kept under supervision and/or observation to ensure proper implementation and follow up. Various examples were given of the dividends paid by a proactive approach in ensuring proper implementation. These examples included construction of a flyover by the Karachi City district government without a proper environmental impact assessment (EIA), construction of a high-rise building without an EIA, operation of an ice factory in a residential area, and discharge of effluent by sugar mills without proper treatment. In one case in particular, not only was the respondent convicted but the business was also ordered

to be shut down, which resulted in the respondent showing his willingness to rectify the environmental damage at his own expense.

She then moved on with her presentation to specific proposals and suggestions for reforming the current legislative set up surrounding environmental protection. Her recommendations included (i) the grant of *suo motu* power to the tribunals (where a judge initiates his own motion/action without request by either party) under suitably controlled conditions; (ii) amendments to the PEPA to create a possibility of pretrial negotiations to enable the respondent itself to come up with, if possible, a mechanism for resolving the acts complained against, thus eliminating the environmental violation; and (iii) the removal of the requirement of “aggrieved person” in environmental cases. As an alternative to penal punishment, it was also recommended that the tribunal be able to direct performance of community services. Environmental audit of companies and strengthening of provincial environmental protection agencies along with specialized training programs for capacity building were also suggested. It was also proposed to enhance public awareness of environmental laws through appropriate publicity and general acceptance of the idea that pollution is a social crime.

From Bangladesh

Syeda Rizwana Hassan also spoke on the issue of environmental adjudication. Her presentation focused on public interest litigation and its importance, successes, and deficiencies. She stated that the promise of public interest litigation once included (i) access to justice and strengthening of democratic governments, bridging the gap between the law and the legal system on the one hand and common people on the other; and (ii) dispelling the culture of impunity that previously enabled many environmental violations to go and remain unaddressed. However, after having laid down and established parameters which would enable the judges to deliver justice in environmental issues, public interest litigation had become stagnant. This is not because of lack of initiative or development, but because of the inherent restrictions of judicial pronouncements in terms of their enforcement. For the proper implementation of decisions rendered in environmental matters, the judges will have to adopt innovative and robust methods and remedies and, where necessary, take the tough decisions of shutting down big corporations and the like because of the harm they may be causing to the environment with their actions. While generally satisfied with the development trends of public interest litigation, she nonetheless recognized that such litigation is not a perfect solution. At times, there have been decisions which have detracted from its effectiveness in addressing environmental issues. The judges, having laid the foundations, need to do more and display proper judicial leadership in this regard. They could, for example, take into account the models developed by international law for sustainable and environmentally friendly development approaches.

Concurrent Thematic Session 3: Environmental Education and Capacity Building

From Pakistan

In his presentation for the session on environmental education and capacity building, **Justice Mansoor Ali Shah (Lahore High Court)** recommended a curriculum be taught at the district judiciary level. Before introducing the participants to the course, he highlighted the background upon which he has based his course. He stated that our everyday life is affected by environmental issues ranging from climate change and global warming to soil erosion and sanitation. However, most of the time these issues do not arise within the paradigm of environmental law. Therefore, to help the district judiciary to identify these cloaked environmental issues and to provide sustainable solutions, there is a need to educate these judges on the differences between party-based justice and environmental justice, the latter being more urgent. He also provided a detailed course outline which can be followed by judicial academies when training judges.

To equip the judges with the tools necessary for a solution-based approach, the main themes that the course would cover would be to understand the environmental history of the world, the collapse of earlier civilizations, and a historical context as to how world resources have been appropriated, culminating in an understanding of environmental science. The second theme would focus on the evolution and foundations—economic, political, ethical, and scientific—of regulations leading to current national and international laws and policies. The third theme would be specific to Pakistan, teaching judges about resources, diversity, biodiversity, and nature. Within this theme, national laws and policies would be studied, and it would be seen which laws allow for a command and control mechanism and which laws have room for preservation and conservation. The last theme, which would actually run through the duration of the course, would be clinical exploration by the judges of the issues they will inevitably have to tackle. He emphasized that this methodology is crucial to this course. In this process (he remarked as a farewell), it might also help the judges to “go green” themselves and lead by example.

Huma Ikramullah (faculty member, Sindh Judicial Academy) started her presentation with a verse from the Quran to point out that the issue of environment is not new, as the West claims. Rather, it is an age-old concept enshrined in Islam and in all other religions as well. Hence, the concept of environmental protection is a sacred trust enshrined in all belief systems which needs to be upheld.

Having laid out the importance and vitality of preserving the environment, she stated that it is the duty of the *khalifa*, or the jurist, to provide environmental justice to society. She stated

that the legislature could not be expected to envision all instances where environmental protection is necessitated. Hence, it was the responsibility of the judiciary to build upon what little the legislature prescribed to ensure that environmental justice is observed in every case. There is a dire need for capacity building as the judiciary plays the important role of providing and delivering justice to society. She also pointed out that there is a need to familiarize the judges with this area of law in order to increase their competence in this area.

She emphasized the role of Sindh Judicial Academy as the education wing of the high court, providing institutionalized and specialized judicial education. The programs taught at the academy were also highlighted. She stated that there are number of challenges that face the region today in achieving the goal of educating people in this area which need to be overcome through institutional environmental education.

Justice Qazi Faez Isa (chief justice, Balochistan High Court) presented his paper on the topic of environmental awareness from an Islamic perspective. At the very outset of his presentation, he highlighted that global warming and environmental degradation are serious issues, not only in Western countries but also in our part of the world, and have to be tackled in order to overcome the environmental hazards that threaten us today. The issue now is how. Justice Isa suggested that the first step towards tackling the issue is creating awareness amongst people about the seriousness of the problem. In the Western states, awareness campaigns had been launched some time ago, relying on scientific research to elaborate on the nature of the problem. However, Justice Isa was of the opinion that a similar attempt in our part of the world would be in vain, as the majority of the population does not understand or appreciate scientific research as it is too technical for their comprehension. Hence, a more feasible way of creating awareness amongst the people would be to make them understand about the issue through religion, as religion is a key component of how people in our region structure their daily lives.

Illustrated through scripture and religious teachings, this method would attract the attention of the people towards the serious nature of this issue, and help in devising a solution to the environmental problem. Justice Isa relied on extracts from the Quran and Hadith to illustrate that religion does address the issue of environmental protection and preservation of nature. He suggested that if people are familiar with these teachings, they will understand that they are sinning and subsequently act in a way that will limit damage to the environment. He recommended that religious teachings relating to environment should be taught at the school and intermediate level so that awareness about the issue exists amongst the younger generation.

He concluded his presentation with the message that

we need to start working on environmental curricula that is anchored in faith for schools, colleges, and universities. We need to propagate the message that environmental degradation is also sinful. We need to remind and bring to the forefront the primary principle, there is no god but Allah, that the idol of perpetual material development is unsustainable, and false. We must resuscitate the religious view of nature, to live at peace with God, with ourselves and with His creation, with all of His creation both animate and inanimate, that by His mercy sustains and nourishes us even if in our

ignorance we are unworthy of all His blessings. The attainment of this peace alone can ameliorate the critical condition of the world about us.

Retired Justice Tanvir Ahmad Khan (director-general, Punjab Judicial Academy) opened with the argument that the role of an Islamic state is to protect the land and nature. In light of this, the Islamic state of Pakistan has failed in one of its fundamental responsibilities to its people. He gave references to various verses from the Quran to support his argument. As the director-general of the Punjab Judicial Academy, Tanvir Ahmed Khan shared his views on the training mechanisms which should be adopted for judges of the district judiciary to ensure environmental justice at the very onset. He highlighted the role of the Punjab Judicial Academy as the forum where both pre-service and in-service education and training of district judges is periodically held. He highlighted the need for dedicated and devoted trainees who can provide their services to help train the delegates of the district judiciary. In this regard, he criticized the lack of a specialized or uniform curriculum and stressed the need for same.

As a necessary complement to a specialized curriculum, he stated that environmental law is an issue which needs to be taught at all tiers of education in order to achieve the overall objective of environmental justice. He also said that policy makers should devise a strategy that gradually leads to a solution. He said immediate solutions cannot be expected and are not possible; thus, a plan of short-, medium-, and long-term strategies for educating people on this issue can bring about a gradual change in society and the environment. In his concluding remarks, he left the audience with a thought—that we need to clean the inner pollution (the one existing within us as human beings) before moving on to clean the outer pollution (i.e., the environment).

In his presentation, **Javed Jabbar (vice-president, International Union for Conservation of Nature [IUCN])** argued the need to engage religious clerics in order to educate the people about the issue of environment. He shared his experiences from 2010 when he worked on a project creating awareness on birth control measures so that the birth rate can be brought under control. He stated that the project turned out to be a success because of the input from religious clerics. He said that if religious clerics are engaged in educating people on environmental issues, people will respond and that a positive change will be visible in a few years' time.

However, he highlighted that civil society faces various challenges in taking up this task. He pointed out that security and safety are two of the most important issues. He related that, a few years ago, a few social workers in this field were killed for enhancing their agenda. He said those in the business of property and construction saw these members of civil society as a threat. Hence, civil society faces a huge threat and some measures need to be taken in this regard.

Another challenge he pointed out was the lack of funding available to this sector. He argued that people need to be educated to understand this issue; however, the issue has not caught the eyes of philanthropists as yet. He parted with the suggestion that civil society organizations need to participate in the capacity building measures.

From Indonesia

In his speech, **Justice Takdir Rahmadi (Supreme Court of Indonesia)** highlighted the court structure of Indonesia and the certificate program on environment. He explained that the Indonesian judiciary comprised four jurisdictions of courts—the general courts (criminal and civil matters, including civil and criminal cases related to the environment), sharia courts, administrative courts (administrative matters including environmental administration where government decisions can be challenged on environmental considerations), and military courts—where each type of court system consists of a court of first instance and a court of appeals. The supreme court sits as the final authority over these courts on the issues involving points of law only.

He explained that there is a need for a judicial certification program on environment given the environmental problems faced by Indonesia. In this regard, the courts and/or judges have the responsibility to protect the environment through their pronouncements. He presented on recommendations to improve and strengthen the existing certification program for judges, which was followed from 1998 through 2005. He stated that such a course was a necessity since many international conventions and declarations have to be taken into account while hearing arguments. Only judges possessing environmental certificates will be qualified to hear environmental cases at all levels. In this regard, he stated that a curriculum for environmental law courses had already been established under the auspices of the supreme court in collaboration with the Ministry of Environment as well as with the assistance of the United Nations Development Programme (UNDP), the Asian Environmental Compliance and Enforcement Network, and the United States Environment Protection Agency. A training center had also been set up which will conduct environmental law training for judges, recruit trainers, evaluate certified judges in performing their duties, and provide opportunities to participate in international seminars and workshops to those who have delivered good decisions.

Closing Session

Recommendations from Thematic Session 1

Justice Mian Shakirullah Jan (Supreme Court of Pakistan) was the chair for the concurrent thematic session on environmental law and policy. He presented the following recommendations from this session to the participants of the conference:

- (i) The right to a clean environment as a fundamental right should specifically be inserted into the Constitution of Pakistan.
- (ii) As a South Asian Association for Regional Cooperation (SAARC) judges' initiative, an interactive body should be formed to regularly meet to discuss and resolve environmental issues faced by the region.
- (iii) A SAARC environmental bar association should be created, enabling the appearance of lawyers in cases relating to environmental transboundary disputes with permission from their respective host bars.
- (iv) A regional commission should be established to address environmental transboundary issues after pursuing local remedies.
- (v) A SAARC initiative on cooperation for biodiversity conservation should be entered into.
- (vi) Rules for registering qualified consultants for environmental impact assessments (EIAs) should be framed.
- (vii) EIAs should be comprehensive and also take into account cumulative impact.
- (viii) Training and capacity building of forest force, staff, magistrates, and prosecutors should be undertaken.
- (ix) Environmental awareness of youth should be raised through the curriculum and media.
- (x) The chair of the environmental protection council should be a qualified person on full-time duty.
- (xi) Full-time environmental magistrates should be appointed and should also be empowered as forest magistrates.
- (xii) There should be uniform environmental quality standards for air, water, land, soil, and noise.
- (xiii) Directors-general of environmental agencies should be authorized in special cases to shut down projects emitting or discharging hazardous pollutants and/or effluents.
- (xiv) Alternative sources of energy should be provided to local communities that depend on forests.

Recommendations from Thematic Session 2

Justice Asif Saeed Khan Khosa (Supreme Court of Pakistan) was the chair for thematic session 2 on environmental adjudication. He presented the recommendations from this session:

- (i) Judges and the judiciary at all levels need to be sensitized to environmental issues. This is not to say that judges should be biased or partial in any particular direction when confronted with an environmental issue. What is required is that, while strictly adhering to the norms of judicial impartiality, judges recognize that the concept of delivering justice has undergone a major change. Justice, in the sense of what judges do, now encompasses social justice, and the resolution of environmental issues is an integral aspect of delivering social justice.
- (ii) For judges to deliver social justice in the framework of environmental law, they should be sensitive to the need to take an innovative approach to resolving environmental issues. Thus, they should not limit themselves or their vision to attempting to resolve environmental problems within the framework of traditional remedies. Rather, their approach should be flexible and open-minded. It should be recognized that the traditional adversarial approach may not be the most effective means of solving environmental problems; it may be necessary to take the inquisitorial approach.
- (iii) While fully recognizing that each SAARC country must in the end act on the basis of its own experience and needs, and that a “one size fits all” solution is neither possible nor desirable, it is generally to be accepted that some amount of judicial specialization may be necessary to adequately address environmental issues. This specialization may take the shape of “green benches” in the high courts and/or the supreme court, the setting up of environmental tribunals, or some combination of the two. If such specialist tribunals or benches are set up, they must be adequately resourced, i.e., supported by proper expert technical assistance, and also have their own procedures which are tailored to the peculiar requirements and needs of environmental adjudication.
- (iv) The jurisdiction of green benches and/or tribunals needs to be carefully determined so that it is broad enough to deal with environmental issues of all kinds and yet has adequate safeguards built in to eliminate, or at least minimize, the possibility of abuse. It is therefore suggested that while environmental tribunals in particular may be granted the *suo motu* power (where a judge initiates his own motion/action without request by either party) to take notice of, and action on, environmental law violations, such power must be carefully and properly controlled and conditioned. For example, the law may require that the tribunal give reasons for the exercise of such powers and simultaneously send copies of any notices issued by it to the high court.
- (v) The mechanisms of implementation of orders made need to be strengthened. Here again, the need to take an innovative approach is to be emphasized. It is suggested that the tribunals should have the jurisdiction to allow the offending party to rectify or resolve the environmental issue in an acceptable manner, whether by offering restitution or other compensation or taking other suitable actions, which may

include compulsory environmental audits and rehabilitative community services acceptable to the tribunal and the aggrieved party. The high courts can also take a similar approach in the exercise of constitutional jurisdiction, which in any case has an inherent flexibility in this regard.

Recommendations from Thematic Session 3

Justice Khilji Arif Hussain (Supreme Court of Pakistan) was the chair for thematic session 3 on environmental education and capacity building. He presented the recommendations from this session:

- (i) To create awareness amongst people about the issue of environmental hazards, and in order for them to cooperate on this issue, people should be given an Islamic perspective on the environment.
- (ii) Judicial environmental education should continue for all stakeholders.
- (iii) An environment curriculum should become part of the curriculum for all tiers of education.
- (iv) Training of trainers should be conducted for developing specialists and experts in different aspects of environmental law.
- (v) Judges should be trained in environmental law to enable them to render decisions in accordance with the idea of sustainable development.
- (vi) All judicial academies need to develop curriculum for environmental law training.
- (vii) Civil society should be involved in designing environmental law training.
- (viii) There is a need for sharing of experiences on the entire process of capacity building for environmental adjudication.

Bhurban Declaration 2012

Justice Anwar Zaheer Jamali welcomed the participants to the closing session of the conference. He stated that he has a strong feeling of satisfaction that the conference had met most of the objectives it set out to achieve only 24 hours earlier. He congratulated all the participants for being party to this auspicious occasion. He also thanked the organizers—the Asian Development Bank (ADB) and International Union for Conservation of Nature (IUCN)—as well as other stakeholders for their efforts. He then went on to share the **Bhurban Declaration 2012** with the participants.

IT WAS UNANIMOUSLY DECLARED THAT MEMBERS WOULD

- (i) **COLLABORATE** among themselves and, as appropriate, engage others in the environmental enforcement processes, to significantly improve the development, implementation, and enforcement of, and compliance with, environmental law and collaborate to make an action plan to achieve the same;

- (ii) **SHARE** information on South Asian countries' common environmental challenges and, as appropriate, among legal professionals, law schools, and the general public;
- (iii) **DISSEMINATE** information on environmental challenges, legal issues, and best practices in environmental adjudication among themselves, whilst acknowledging the differences among their respective legal systems, on the website of the Asian Judges Network on Environment;
- (iv) **STRENGTHEN** specialized environmental tribunals and provide environmental training for the judiciary and other members of the legal fraternity;
- (v) **INVITE** members of South Asian judiciaries to share their respective experiences and participate in training programs for judges from South Asia;
- (vi) **IMPLEMENT** existing rules of procedure for environmental cases and develop the same where they do not exist, which may include a flexible approach to legal standing, special rules of evidence for environmental cases, expeditious disposal of cases, special remedies, injunctive relief, and other innovative environmental processes;
- (vii) **ENSURE** that judicial decisions on environmental cases are shared within the Asian Judges' Network on Environment and made available to the public;
- (viii) **ENCOURAGE** law schools to include environmental law in their curriculum;
- (ix) **PROVIDE** environmental law training to judges through judicial academies, including making such training available for members of lawyers' professional associations;
- (x) **HOLD** a South Asia justices' conference on environment annually on a rotational basis to foster cooperation on the environment, as a subregional group of the Asian Judges Network on Environment;
- (xi) **DEVELOP** a system to recognize whenever exceptional contribution is made by judges and environmentalists to the cause of the environment;
- (xii) **DRAFT** a memorandum of understanding to foster cooperation amongst the South Asia judiciary and send the same for signature and adoption by the South Asian region judiciaries, which may lead to a South Asia convention on environmental justice;
- (xiii) **ESTABLISH** "green benches" in courts for dispensation of environmental justice; and
- (xiv) **RECOMMEND** that the right to clean and healthy environment be incorporated as a fundamental right in the constitution.

Closing Remarks

Justice Mohammad Almohamid (chief justice of Jordan) noted the intensity of national and international interest on the issue of environment as a result of the danger that threatens

life. He pointed out that environmental pollution, despite being a universal phenomenon of old, had not been raised until the industrial revolution and the issues of population and modern technology began to show their impacts. These impacts warranted a sensitive response, which came in the form of various international initiatives, such as the Stockholm Declaration in 1972, which approved the principle of the human right to live life in a healthy environment, and the United Nations Conference on Environment and Development (Rio Conference) held in 1992, which focused on sustainable development.

He then stated that, in the Hashemite Kingdom of Jordan, having a healthy environment had become the most important goal of King Abdullah. He stated that Jordan was amongst the first to adopt programs pertaining to the environment. He evidenced his claim by the Jordanian government's adoption of strategies for environmental action, and prevention of risks in the form of a special Ministry of Environment and Mineral Resources, as well legislation covering subjects such as forestry, overfishing, and chemical contamination. He highlighted the Davos Conference held in Jordan which recommended a line from the Red Sea to the Dead Sea, called the Al-Bahrain Canal, to deal with water scarcity. In this context, he highlighted that the judiciary is the competent authority in dispute resolution in connection with ensuring the human right to a clean, healthy environment free of pollutants.

Wanhua Yang (United Nations Environment Programme [UNEP]) gave the closing statements on behalf of UNEP. She thanked the chief justice of Pakistan, the Supreme Court of Pakistan, ADB, and IUCN Pakistan for organizing a successful conference. She stated that UNEP is a proud partner with these organizers. She highlighted that UNEP has long been actively engaging with the judiciary on the theme of environmental law, highlighting the 2002 Global Judges Symposium on Sustainable Development and the Role of Law. The future plans of UNEP included organizing a similar conference—the World Congress on Justice, Governance and Law for Environmental Sustainability—to be held in June 2012 on the eve of the United Nations Conference on Environment and Development (Rio+20). She illustrated the goals of the world congress to foster a common vision and principles among key stakeholders on how to transform discussions into action and how to use justice, law, and governance to promote sustainable development through the outcomes of Rio+20 and beyond. She said that the World Congress on Justice, Governance and Law for Environmental Sustainability is expected to promote the evolution of international and national environmental law, as well as national and international environmental governance, while strengthening the nexus between social justice and environmental sustainability. She stated that this South Asian conference on environment added momentum to the world congress. She applauded the judiciaries in South Asia for having an impressive record of promoting the implementation of environmental law and spearheading innovative perspectives on how law can promote sustainable development.

Irum Ahsan enunciated ADB's way forward with reference to building capacity for environmental prosecution, adjudication, dispute resolution, compliance, and enforcement in Asia. She reiterated that the Bhurban Conference was supported under this project for Association of Southeast Asian Nations (ASEAN) and South Asian Association for Regional Cooperation (SAARC) member countries. She complimented the regional partners, IUCN, and the ministries of environment in Pakistan and Indonesia. The completion date for the project was going to be 31 December 2013 and the following activities were to be carried

out in Pakistan: the South Asian Conference on Environmental Justice, development of a Pakistan-based website for resource and knowledge sharing amongst judges, facilitation of integrated environmental adjudication, and inclusion of environmental law as a subject in judicial academies for sustainable capacity development.

In this regard, she explained that the Committee for Enhancing Environmental Justice had already been constituted, and a web portal (www.ceej.pk), containing up-to-date environmental laws, rules, and case law and which can also feed into the proposed Asian Judges Network on the Environment (AJNE) portal, had already been set up. She also highlighted that work was already in progress for developing a curriculum on environmental law for judicial academies.

She also highlighted the progress of activities in Indonesia. In this regard, emphasis was laid on the Judges' Roundtable on Environment conducted, where the respective judges adopted a common vision on environment for ASEAN judiciaries including collaboration in improving environmental law enforcement and development of an action plan for justice, governance, and the rule of law and sustainable development in ASEAN countries. As a continuation of this roundtable, the chief justice of Malaysia agreed to host the next roundtable in Kuala Lumpur in December 2012. Accordingly, ADB's plans to host a second judges symposium in late September 2012, to be held at ADB headquarters in Manila, in which recommendations from the ASEAN roundtable and the SAARC conference would be brought forward, were shared with the participants. She concluded by revealing that ADB will support UNEP at the world congress.

In his closing remarks, the **chief justice of Pakistan, Justice Iftikhar Muhammad Chaudhry**, thanked all the participants of the conference for creating a rare occasion where the issues pertaining to the environment had been discussed in detail. He congratulated Justice Anwar Zaheer Jamali and his team who, with the assistance of ADB and IUCN, made the conference a success. The chief justice said that the gathering at the conference reminded him of the slogan "think globally, act locally." He was certain that the effort would make a valuable contribution to the ongoing process of protecting the environment. He stated that environmental concerns are the issues of every society and generation without any bounds of time and place, noting the adage "We do not inherit the earth from our ancestors; we borrow it from our children." The environmental hazards posed to the region due to rapid industrialization, urbanization, and agricultural development has led to common problems such as pollution of rivers; a rise in industrial waste and vehicle emissions; handling, storage, and transportation of dangerous goods; contamination of water, land, and coastal resources; air pollution; waterlogging; increase in the use of agrochemicals; and deforestation. All these threats to the environment call for an integrated approach. He was of the opinion that protection of the environment depends on national as well as international law. It was the growing awareness of the environmental problem which was causing developments in the law aimed at addressing these issues. He stated that it is the duty of every individual to protect the necessary and fundamental physical elements of flora and fauna required for the survival of humankind on this planet. He equated the destruction of these fundamental physical elements with the destruction of the human race itself. He quoted from the Quran and stated that God Almighty Allah and the Holy Prophet Muhammad conveyed a message of conserving the environment.

He was pleased with the extensive response from panelists and the audience in the thematic group discussions and, according to him, the fact that these discussions continued till late evidenced the commitment and resolve of all those concerned to make a real effort to meaningfully contribute to halting and reversing destruction of the planet's natural habitat. He went on to summarize the discussions which took place in the three concurrent thematic sessions and identified the major themes arising out of them. He stated that all religions of South Asia preached preservation of Mother Nature and, since the people of South Asia are firm believers in faith, they can set their own house in order by following their respective religious doctrines.

The chief justice declared that to lead by example, the senior judiciary of Pakistan was going to adopt recommendations advanced in the conference and, as a result, declared that it had been decided that dedicated “green benches” were to be set up in all high courts of Pakistan.

Shah Murad Aliani (country representative, IUCN Pakistan) delivered the vote of thanks for the conference at the closing session. He expressed his gratitude towards all participants for showing interest in the conference initiative under the auspices of the Supreme Court of Pakistan. He opined that this conference represented the willingness of all member states and other guests to share their experiences and ideas with each other, with the ultimate aim of improving the quality of court rulings on environment and natural resource cases, and to be able to achieve effective enforcement of environmental law in the region. He thanked the chief justice, the judges, and all guest speakers for sharing their experiences, wisdom, and thoughts with the participants of the conference.

He especially acknowledged the contributions of all those who had presented papers at the conference, and expressed his appreciation for advancing recommendations which would hopefully be the basis for refined environmental prosecution, adjudication, and enforcement systems in Pakistan.

He then moved on to acknowledge the efforts of the team responsible for planning and executing the conference, especially staff of the Supreme Court of Pakistan, ADB, and IUCN. He gave a special vote of thanks to Justice Anwar Zaheer Jamali and the guidance provided by him through the forum of the Committee for Enhancing Environmental Justice, and concluded with the statement that “under the patronage of the honorable chief justice of Pakistan, the committee will continue its efforts for the enhancement of environmental justice in Pakistan.”

Werner E. Liepach (country director, Pakistan Resident Mission, ADB) delivered the vote of thanks on behalf of ADB. He highlighted the fact that, even though economic development had led to increased living standards for many, this development has come at a heavy cost to the environment, quoting the 2010 floods in Pakistan, the threat to food and water security for 1.6 billion people in the SAARC region, and the exposure to rising sea levels faced by about 400 million people in South Asia. He stated that these and other pressing environmental challenges in the region have led to the realization that there is a need to protect South Asia's environment. The role of capacity building of the judiciary is critical in ensuring environmental enforcement.

Having stated this background, W. Liepach thanked the Supreme Court of Pakistan for hosting the conference and appreciated the support of the judiciary for ADB's work in environmental governance in Pakistan. He also thanked all the judges from South Asia who participated in the conference to share experiences with environmental law in their respective jurisdictions.

Lastly, he thanked all the speakers and guests who had traveled long distances to participate in this conference. He concluded with a wish that being part of the conference was a constructive experience for all, and for the possibility of future collaborations with all concerned on addressing the common environmental concerns.

Appendix

Conference Concept

South Asia Conference on Environmental
JusticeBhuban, 24–25 March 2012

Background

The South Asian Association for Regional Cooperation (SAARC) region comprises 3% of the world's land mass and is inhabited by 20% of the world's population. Its geographical expanse includes mountains, plateaus, deserts, river basins, and coastlines. It varies from the world's highest point, Mount Everest, to the world's lowest, the coastline. Population growth and various development initiatives have put immense pressure on the environment of the SAARC region, and the ecological diversity creates multiple issues.

The region's diverse ecosystems harbor a rich variety of fauna and flora. Most of these ecosystems are threatened today. The factors contributing to loss of biodiversity are habitat destruction, deforestation, loss of wetlands, population growth, and climate change.

Water scarcity and contamination is another important concern for most of the SAARC countries. The Hindu Kush–Himalaya region is one of the largest storehouses of freshwater in the world, and the mountains are the source of major river systems that serve millions of people in South Asia. However, access to clean water remains one of the major challenges for the region, even where water availability is high.

In South Asia, land is under immense pressure as agriculture, urban development, and wild areas all compete for the same physical resource. The demand for land has increased, along with intensity of land use, and this combination ends in environmental damage and the degradation of land quality—a major problem in all South Asian countries.

In addition to land degradation, urban growth and industrialization in South Asia have also caused serious air pollution, which is one of the major health hazards for major cities in the SAARC region. The ambient air quality in these cities is seriously below World Health Organization standards.

Effluent and waste management (including solid waste and hazardous waste) are issues of large cities and growing populations. The problems need urgent attention and require strict implementation.

Furthermore, climate change has started putting more pressure on the already vulnerable environment of the SAARC region. It is estimated that the lives and livelihoods of more than 1.6 billion people in the SAARC region are going to be adversely affected by these climatic changes. Further, coastlines of South Asia, the Himalaya region, and river basins are particularly vulnerable to these climatic variations. The effects of climate change have already been encountered in South Asia in the form of extreme weather events, i.e., drastic floods, droughts, and earthquakes leading to tsunamis. Already threatened food and water security in this region will face increased pressure because of climate change and changed weather patterns.

The last 3 decades have seen development of various environmental laws in the SAARC region. All the SAARC countries have enacted specific environmental protection and other laws which can be used for environmental enforcement. These environmental laws provide an institutional framework and mechanisms for monitoring, enforcement, and implementation.

In Afghanistan, the environmental law provides for the National Environment Protection Agency as its monitoring and enforcement authority. The agency may appoint and engage inspectors to carry out the purposes of the act. No specific and separate judicial forums have been provided under the act.

The Department of Environment has been established in Bangladesh for monitoring and enforcement, with the director-general having wide powers for enforcement of the Bangladesh Environment Conservation Act (1995). The law provides that the director-general will coordinate with other authorities to enforce the law; other authorities are bound to implement orders and directions issued by the director-general. In 2000 and 2010, separate environmental courts were also established for adjudication of environment cases. In 2010, joint district judges and special magistrate courts were given powers in each district for environmental cases under the new Environment Court Act.

In Bhutan, the National Environment Commission is mandated to look after all issues related to the environment. It has the authority to call for assistance from other government bodies. Under the law, the commission is deemed to be a civil court and proceedings before it will be judicial proceedings. The commission can designate government agencies and local authorities as “competent authorities” to enforce the environment act. The laws provide for establishment of an environment tribunal when the commission decides not to hear a dispute.

In India, the central government has constituted authorities to perform the functions of the Environment Protection Act (1986) and it can appoint required officers. The water and air pollution laws provide for central and state boards. The law also provides for establishment of the National Environment Appellate Authority and the National Environment Tribunal. India has two “green benches” at the supreme court sitting on Mondays and Fridays.

In the Maldives, the Ministry of Environment and Energy is responsible for formulating policies and regulations related to environment and natural resources, as well as implementing standards for environmental legislation. The ministry supervises the national

Environmental Protection Agency, the legal regulatory authority with expertise on regional issues, industries, environmental science, and environmental law.

Under the Environment Act in Nepal the law provides for a concerned agency and prescribed authority to implement the Environment Act. Further, the concerned agency has the power to appoint inspectors for monitoring. However, the law does not define the concerned agency, and to date no inspectors have been appointed.

In Pakistan, the Pakistan Environmental Protection Act, 1997 provides for federal and provincial environment protection agencies headed by directors-general to implement environmental regulations. For adjudication of environment cases, the law provides for separate environment tribunals and empowers magistrates of first class to deal with certain offenses.

Under the environment law in Sri Lanka, the Central Environmental Authority was created to implement the Environment Act. The law further provides for appointment of district environment agencies for each administrative district. These agencies are to perform such power and functions of the authority as may be delegated to them. The agency has the power to give directions to any local authority for safeguarding and protecting the environment. It can also delegate its powers and function to any government department or local authority.

All the environment laws in the SAARC countries, in addition to providing different intuitional enforcement mechanisms, provide for penalties for the offenses under these laws and other enforcement tools such as environmental impact assessments, licenses, closure of units, impounding, and restoration of the environment. However, even in the presence of various enforcement bodies under these laws, enforcement and implementation of laws remains ineffective in the SAARC region, and the most effective forums ironically are still the superior courts in the writ jurisdiction, i.e., public interest litigation, especially in India, Pakistan, Bangladesh, Sri Lanka, and Nepal. The other forums are bypassed as they are ineffective and superior courts are approached.

This conference is a joint initiative of the Supreme Court of Pakistan, the Asian Development Bank (ADB), and the International Union for Conservation of Nature (IUCN) for better enforcement of environmental laws under ADB's long-term strategic framework, Strategy 2020. The aim of the conference is to develop recommendations which make the administrative and judicial environmental institutions more efficient and effective.

Conference Themes

The areas for debate at the conference for better understanding and enforcement of environmental laws are as follows:

Identification of major environmental issues in the SAARC region

- Biodiversity
- Forest

- Fresh water
- Coastal and marine environment
- Urban development
- Land use
- Air quality
- Natural disasters

Environmental law and policy

- Analysis of existing environmental laws and policies in the SAARC region
- Efficiency and effectiveness of environmental impact assessments
- Environment and criminal law
- Review of the structure and working of environmental administrative and regulatory bodies
- Smart regulation

Environmental adjudication

- Structure of environmental adjudication
- Adjudication and enforcement of environmental laws
- Analysis of the existing environmental adjudication setup (“green benches” and tribunals)
- Role of public interest litigation
- Limitations of the judiciary

Environmental education and capacity building

- Environmental awareness through legal education and training
- Access to environmental justice
- Role of civil society

Further questions and issues that can be raised

- How have judicial responses reconciled development and environmental concerns through innovative decision making?
- How can we mainstream environmental concerns into development policy-making agendas?

Structure of the Conference

It will be a 2-day conference, to be held at the Pearl Continental Hotel, Bhurban (about 50 kilometers from Islamabad). While the tentative but detailed program of the conference is attached, a summary of the conference structure is as follows:

Day 1 (Saturday, 24 March 2012, 8.00 a.m. to 6.30 p.m.)

The inaugural session and a plenary session will be followed by three concurrent thematic sessions each addressing specific issues on environmental justice. Each thematic session will start with presentations by experts, followed by an open discussion. At the end of each thematic session the participants shall come up with a set of practical recommendations for improvement of that particular area.

Day 2 (Sunday, 25 March 2012, 9.30 a.m. to 3.00 p.m.)

A joint plenary and concluding session will share recommendations from the three thematic areas of Day 1.

Participants

Approximately 150 participants are expected to attend the conference. Selection of the participants will be made under the guidance of the Committee for Enhancing Environmental Justice. Major groups of participants will include

- the judiciary (superior and district judiciary), including the chief justice from SAARC countries,
- international and regional experts in environmental law and justice,
- advocates (including advocates-general),
- officers of environmental administration bodies,
- environment experts,
- selected nongovernment organizations, and
- members of academia and the media.

Expected Outputs

Practical recommendations will be formulated on issues in administering environment justice. The same will be considered by the supreme judicial policy-making body and other forums for further implementation.

South Asia Conference on Environmental Justice

This publication documents the proceedings of the South Asia Conference on Environmental Justice, held last 24–25 March 2012 at Bhurban, Pakistan. The conference brought together chief justices, senior members of the judiciary, and other legal stakeholders in South Asia, to highlight environmental challenges in the subregion, and devise ways to strengthen the implementation of environmental justice and ensure compliance with environmental laws. The recommendations from the conference led to the adoption of a 14-point Bhurban Declaration establishing green benches across Pakistan and calling for subregional collaboration for educated judiciaries, specialized courts, and cooperation to achieve environmental justice.

About the Asian Development Bank

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

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



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