

ASIA-PACIFIC JUDICIAL CONFERENCE ON CLIMATE CHANGE ADJUDICATION TRENDS AND IMPACTS

7–8 October 2019 • Nadi, Fiji



7 October 2019 9:00 A.M.
Golden Ballroom, Sheraton Fiji Resort Hotel

OPENING REMARKS OF CATHY MARSH, ASSISTANT GENERAL COUNSEL, ASIAN DEVELOPMENT BANK

Introduction

The Honorable Chief Justice Kamal Kumar, Supreme Court of Fiji; Mr. Aiyaz Sayed-Khaiyum, Attorney General and Minister for Economy, Civil Service and Communication of Fiji; Honorable Chief Justices and Justices; Mr. Andrew Raine from the United Nations Environment Programme; eminent speakers, respected guests; ladies and gentlemen:

*Yadra.*¹ Good morning.

It brings me great pleasure to welcome you all to the **Asia-Pacific Judicial Conference on Climate Change Adjudication: Trends and Impacts**. We are honoured to work with the Supreme Court of Fiji, the gracious host judiciary of this gathering, and the UN Environment Programme, which has been our partner in convening many of our annual judicial conferences on the environment.

Last year, senior justices from the Pacific states attended the Asia-Pacific Judicial Conference on Environmental and Climate Change Adjudication in Myanmar. We talked there about issues confronting the Pacific region—climate refugees, migration with dignity and protecting culture and heritage. That was the first time judges from the Pacific took part in an event organized under the auspices of the Asian Judges Network on Environment (AJNE)². In Myanmar, we all agreed that the next judicial gathering should be held in the Pacific. And now here we are in Fiji, a country that has demonstrated remarkable leadership in climate action.

¹ Good morning in Fijian.

² This network was created through yearly regional and sub-regional gatherings of judges under ADB's TA.

The Fijian government presided over the 23rd Conference of the Parties of the United Nations Framework Convention on Climate Change (UNFCCC) in 2017.³ In July 2019, the People of the Pacific Islands Development Forum endorsed the Nadi Bay Declaration on the Climate Change Crisis in the Pacific.⁴ And just last month, the proposed Fiji Climate Change Act, drafted with ADB's support following a legal assessment of the country's barriers to attracting climate finance and investments, was introduced in Parliament.⁵

The timing of this conference could not have been more perfect. As many of you will already know, exactly two weeks ago Greta Thunberg, a 16-year-old Swedish environmental activist, and 15 other children, aged 8 to 17, lodged a formal complaint, *Thunberg, et al. v. Argentina, et al.*, with the UN Committee on the Rights of the Child. The petitioners include children from two Pacific island countries – the Marshall Islands and Palau – as well as from Argentina, Brazil, France, Germany, India, Nigeria, South Africa, Sweden, Tunisia, and the United States. Their complaint centres on the inaction of the governments of Argentina, Brazil, France, Germany, and Turkey in tackling the climate change crisis, in violation of the petitioners' rights under the UN Convention on the Rights of the Child, the world's most ratified international convention.⁶

Greta first made international headlines on the 28th of August 2018, when she started a solitary "school strike for climate" outside the Swedish Parliament. She was then just 15. She continued that strike every Friday. Just over a year later, on the 20th of September 2019, immediately before the UN Climate Action Summit, she led the Global Climate Strike, involving 2,500 events in over 150 countries, calling out government and business inaction in the face of climate change.⁷

The formal complaint that has now been lodged shows that Greta's wake-up call does not stop on the streets. By filing this landmark complaint, Greta, and the other child petitioners, just taught us that we do not need a new international agreement or law to go to a court to seek redress for climate inaction – the mechanisms are already there; we just need to be creative in accessing those mechanisms. That in itself highlights the crucial role that the judiciary can play in this domain.

Children like Greta are game changers. They capture the imagination of adults and children alike – my 12 year old son quotes her when nagging us to turn off the lights, and my sister took my infant nephew on his first march when Greta came to Montreal last weekend. Greta is already, at just 16, building a legacy of climate change activism – which will not go away.

Your honors, when the Gretas of this world file cases before your courts, what should you do? What are the issues you need to consider, what orders may you issue, what relief may you grant, what penalties can you impose? These are just some of the questions we will seek to answer, both through this conference and also a series of working papers that ADB is developing to assist you in resolving the plethora of climate change issues that are heading your way.

³ UNFCCC. 2019. COP 23. <https://unfccc.int/process-and-meetings/conferences/un-climate-change-conference-november-2017/sessions-of-negotiating-bodies/cop-23>

⁴ UNFCCC COP23. 2019. *Nadi Bay Declaration on the Climate Change Crisis in the Pacific*. 31 July. <https://cop23.com.fj/nadi-bay-declaration-on-the-climate-change-crisis-in-the-pacific/>

⁵ Parliament of the Republic of Fiji. 2019. Parliamentary Debates. 7 August. p. 2623 <http://www.parliament.gov.fj/wp-content/uploads/2019/08/Upload-Wednesday-7th-August-2019.pdf>

⁶ UNICEF. 2019. 16 children, including Greta Thunberg, file landmark complaint to the United Nations Committee on the Rights of the Child. 23 September. <https://www.unicef.org/press-releases/16-children-including-greta-thunberg-file-landmark-complaint-united-nations>

⁷ U. Irfan. 2019. Greta Thunberg is leading kids and adults from 150 countries in a massive Friday climate strike. Vox. 20 September. <https://www.vox.com/2019/9/17/20864740/greta-thunberg-youth-climate-strike-fridays-future>

We all know the key role that judges can play in determining the future direction of our own individual countries – the sharp eyed amongst you may have noticed the spider brooch I'm wearing today, in homage to Lady Hale, the president of the UK Supreme Court, whose recent landmark judgment has changed British constitutional law and may yet change the course of British history. Imagine, though, having the ability to determine not just the future of your own country, but of the whole world – not just for the Gretas of today, not just for the millions of people already adversely affected by climate change, but also for their children and their childrens' children. That power lies in every potential decision you may be asked to make that touches on the global crisis of climate change.

Over the next 2 days, you will hear from our distinguished moderators and speakers about issues that are particularly important to the Pacific, from regional environmental and climate change issues and international legal frameworks, to the impacts of climate change on vulnerable groups. You will also hear about climate litigation trends and impacts. Maybe, just maybe, you will hear something that will give you the ability, if asked to adjudicate on a climate litigation brought by a Greta, to help change the course of our planet's history.

I wish you all many productive sessions ahead.

Thank you for coming. *Vinaka*.⁸

⁸ Thank you in Fijian.