

Sundarbans Delta at the border between India and Bangladesh. He will be describing some of what he has learned from that project in his testimonial this morning.

Then we will be hearing a testimonial from Gabriela Eslava on the climate change case in Colombia that she helped litigate. Gabriela holds an MPA in Development Practice from Columbia University. She worked as a researcher at the Center for the Study of Law, Justice, and Society (*Dejusticia*) in Bogotá, where she led the first climate change and future generations lawsuit that I just mentioned. She is currently a sustainability consultant at a multilateral organization working on issues that lie at the intersection of climate change, biodiversity, and open data.

Following the two testimonials by Krishnendu and Gabriela, the panel will have a brief discussion on the issues that the testimonials raise. Unfortunately, Krishnendu cannot be with us for the discussion today. We are just going to be hearing from him on video, but we are fortunate to be joined by Lisa Benjamin, who is an assistant professor at Lewis & Clark Law School. Lisa received her PhD from the University of Leicester. She is a member of the Facilitative Branch of the Kyoto Protocol Compliance Committee and was a legal advisor to the Bahamas during the Paris Agreement negotiations.

I am double hatted today. I am moderating and also a panelist. I teach at the Sandra O'Connor College of Law at Arizona State University, and I have been involved in the climate change negotiations now for more than three decades and coauthored *International Climate Change Law* with Lavanya Rajamani and Jutta Brunnée.

With that, we are going to start with Krishnendu Mukherjee's remarks.

REMARKS BY KRISHNENDU MUKHERJEE

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The Sundarbans is commonly known as the delta area which lies between West Bengal in India and Bangladesh, and it is not only famous for the deltas, which are there, but also for the largest mangrove forest in the world. Indeed, the word "Sundarbans" comes from the Sundar tree for conservation. It is a very interesting area in terms of biodiversity but also a very important carbon sink. I found out the other day that mangroves are, for instance, a much better sink than even rainforests.

The climate issue in the Sundarbans is a number of issues really. There has been this effect of islands that have been eroded and reformed over decades. It has been very well chronicled as a national phenomenon. Sea level rise caused by anthropogenic global warming has led to an acceleration of this effect of erosion of islands in that area. You have island erosion. You have flooding. You have saline water intrusion, which is destroying what was once a very fertile area into a much less fertile area, and of course, we are getting increasing cyclonic behavior.

What has happened over the past few decades is that because of saline intrusion, crops are failing. It is no longer easy to make a living. To sustain themselves, people are migrating not only to Kolkata, but also other parts of India. People are migrating from the Bangladesh side of the Sundarbans into the Indian side the Sundarbans. They are often working in exploitative jobs where they are not paid sufficiently and even into areas such as sex trafficking. Sex trafficking has increased in that area because, as we know, if you are not paid enough, you get into a cycle of debt, and if you get into a cycle of debt, then it ends up you fall victim to people who can exploit you. We have seen an increase in modern slavery—people working for poor wages in things like prawn farms—and we have also heard of the increase in things like child marriages. Again, these are a direct result of people getting into debt. What is very sad about their situation is they have absolutely no responsibility for global warming at all, and when I went there in 2008 for the first time, they did not even have electricity. Global warming is not just a question of carbon emissions.

On an aside, in Europe we have binding emission targets. People are buying electric cars, et cetera. But where are those cars being produced, for instance? Where are the carbon emissions happening? It is the same old story actually.

I have worked on the issue of asbestos. The asbestos industry here in Belgium was closed down because of the harmful effects but then relocated to other parts of the world where the laws are less strong, less well enforced, et cetera. That is happening with carbon.

The most carbon-pollutive industries, even the ones that are making cars that are electric and so on, are being relocated to countries like India. In effect, you are outsourcing the pollution. That is something that unless you do that on a global level, unless you have global monitoring and supervision, then you are not going to mitigate global warming properly, and I think that is where ultimately these things are a political decision but where international law can play its part. International law can play its part. Education can play its part. Obviously, as a lawyer, we come from what we can do as lawyers, and I think it is important to highlight the Sundarbans' example as an area in which international law has to date failed to provide any form of justice or access to justice for these people.

One of the things that we are looking at is the Rampal Power Station. The Rampal Power Station is a thermal power station only fourteen kilometers from the Bangladesh Sundarbans. It is said to have a direct impact in terms of people losing their land. It also affects the mangroves, the forest, and the environment. An indirect impact, obviously through carbon emissions but also through the fact that coal is being produced in states like Jharkhand and Chhattisgarh Indian states, where mines affect communities through pollution, through land acquisition and so on. That thermal power plant is directly or indirectly funded by a number of Western banks.

The UK is a country that has very binding carbon emission targets. We have a rhetorical commitment by our government, and yet we have banks based in the UK that are investing in a thermal power station in a country that is going to be the worst affected country on the planet in terms of global warming. The reality is that anxiety about something that may in the West reach a critical point in 2050 is a time scale luxury that people in places like the Sundarbans simply do not have. People look at their immediate needs, their immediate problems.

If you were to have a discourse in terms of global warming and the fact that it is due to carbon emissions and there are glacial effects in the Himalayas, which are causing the rivers to flood, which is causing the sea level to rise, I think all of this would be something that the local population would have difficulty in comprehending because their immediate problems are "I am unable to grow a crop this year. A cyclone has destroyed my house."

One of the project's objectives is to provide the knowledge and the understanding to the local population. They have a very good understanding of how to live in that area, but what they may not have an understanding of is the local, the national, and the transnational responsibility for their situations. I think that is something that we are very keen in the project to develop through the forms of legal literacy. One of the things that we are trying to do is to say, look, there is a pressing need for these people to have some form of mechanism by which their rights can be properly fulfilled.

Unless you look at those people through the focus of human rights, then you are not going to make any meaningful change to their lives but certainly not to the problem of global warming in general. That is what we are trying to do through the project. Whilst, as you know, there are plenty of barriers to filing legal cases in terms of jurisdiction, in terms of funding, and so on, we have a number of plans for cases that we want to file, but ultimately, the core of those complaints or cases will be to publicize the issue and to identify those people as human beings that have every right to a quality of life, notwithstanding the fact they live in some poor part of the world. I think unless we change our conceptualization of the world in which we live, which we have been given through a

history of colonialization and through an education system that continues to tell us that we are going to struggle to solve the problem of global warming. It is sometimes the examples of the lives that people live that illuminate an issue.

I have been following the issue of the Sundarbans for a long time, but it is only really since I started getting into the experiences of the people there through the project, through the surveys that we have done in the Sundarbans and in Kolkata on the people from the Sundarbans, that I have realized the real extent of the problem. We are only beginning to understand the full extent of what the problems are.

I think one thing that we have to realize is that we as lawyers sometimes have a certain arrogance where we think the law can solve these problems and what we realize very quickly is that actually in something as huge as global warming, that is not the case at all. You have to create a momentum of understanding, a momentum of resistance and resilience in order to try and mitigate global warming. We must gain a greater understanding of the types of lives that a large number of people are living in parts of the world that are being aggravated by global warming—which is being aggravated by the unsustainable consumer culture that many of us live in. We would hope that once we have that better understanding, people will think about what is required from them or a society to try and address those problems.

One of the things that we are trying to do in the Sundarbans example is look for these nuggets of information or experience that can link up to people's popular imagination in some way and maybe a motivational factor because we want people to understand climate change and the effects from climate change that are already happening. I think too much in the political discourse puts it as something in the future. It is not. It is something that has been happening and is continuing to happening today to large parts of the world. We must relate the current effects of global warming to people's normal comprehensions.

The very idea that people who are displaced by cyclones go back to their home every single year and rebuild is a beautiful example of what exactly it is that we need to do to combat global warming. It is a resilient, non-defeatist philosophy that says that we have something so important in this broken island of ours that we want to protect and we will struggle for it, and we will struggle for it by going back every year and rebuilding our homes and eking our existence from our land, despite the fact that we know the next year it will probably be the same. That, to me, is the core of what we need in order to survive, to stop climate change, to mitigate climate change.

DANIEL BODANSKY

Unfortunately, Krishnendu cannot be here so we cannot thank him in person for that very interesting testimonial. It is a very rich discussion, and he raises a lot of issues that we are going to try to come back to during the discussion. But one thing I just wanted to highlight, which I think leads into Gabriela's testimonial, is the importance of human rights as a vehicle that international law offers for individuals in the Sundarbans and other regions around the world—a vehicle they can use to try to get recognition of their rights.

I am going to turn it over now to Gabriela to describe the case with which she was involved in Colombia.

REMARKS BY GABRIELA ESLAVA BEJARANO

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Thanks, Dan. First, I want to start by thanking the organizers and all of you for being here and being interested in this subject. Before I start, I must say that I wear two hats in this case. I was one