Meeting for Senior Judicial Working Group of the
ASEAN Chief Justices' Roundtable on Environment
Concept Note:
15-16 September 2014
Hanoi, Viet Nam

Overview

The ASEAN Chief Justices' Roundtable on Environment operates at the subregional level, together with the Asian Judges Network on Environment (AJNE) operating at the pan-Asia regional level. The Third ASEAN Chief Justices' Roundtable on Environment was held in Bangkok, Thailand in November 2013. During that meeting, participants affirmed the Jakarta Common Vision and made a series of recommendations (Attachment 1) supporting further strengthening ASEAN judiciaries to decide environmental cases at the national level, and further recommending cooperation amongst ASEAN Judiciaries at the regional level.

Participants recommended that these proposals be presented to the ASEAN Chief Justices for consideration. One of these proposals was to formulate a Working Group to further cooperation such that implementation of the Jakarta Common Vision, and its recommendations and proposals would occur in between the annual Roundtable, and hence to maximize productivity of the Roundtable and further cooperation. Moreover, justices from ASEAN judiciaries participated in the Second Asian Judges Symposium on Environment in Manila, Philippines in December 2013. Participants made a series of similar recommendations and proposals (Attachment 2).

Objectives

This ASEAN Judiciaries Working Group Meeting seeks to:

- contribute to the ASEAN Chief Justices Roundtable on Environment, by further developing the recommendations made to Chief Justices in prior roundtable meetings, with a view towards moving towards implementation of such recommendations;
- consider the contribution of ASEAN judiciaries to the AJNE, by considering and providing feedback on the recommendations made; and
- prepare for the ASEAN Chief Justices' Roundtable on Environment, by sharing the issues that each Court considers most important for its agenda, taking into account prior roundtables, meetings, and symposia.

Background

AJNE is a network for judicial cooperation to champion the environmental rule of law and promote environmental justice. The AJNE fosters this cooperation at the regional, subregional, and national levels to build capacity in environmental decision-making and share developments in environmental law. The AJNE facilitates professional peer to peer communication among the judiciary face to face and electronically to: (i) follow up on national commitments; (ii) pursue definite actions; and (iii) strengthen the capacity of the judiciary and the entire legal profession on environmental law and its enforcement.
AJNE ensures that the network maintains judicial cooperation with a series of regularly held judicial conferences at both the regional and subregional levels. At the regional level, the AJNE operates through the Asian Judges Symposium on Environment. ADB, the Supreme Court of the Philippines, UNEP, and other partners hosted symposia held at the ADB Headquarters, Manila, Philippines in: (i) July 2010; and (ii) December 2013. At the subregional level, the AJNE operates through the ASEAN Chief Justices’ Roundtables and the South Asia Judicial Roundtables on the Environment. Notably, ADB and its partner judiciaries in Southeast Asia hosted the ASEAN Chief Justices’ Roundtables on the Environment in: (i) Jakarta, Indonesia (2011); (ii) Melaka, Malaysia (2012); and (iii) Bangkok, Thailand (2013). The next ASEAN Chief Justices’ Roundtable on the Environment will be held in Hanoi, Viet Nam in November 2014. ADB and its partner judiciaries in South Asia hosted the South Asia Judicial Roundtables on the Environment in: (i) Bhurban, Pakistan (2012); (ii) Thimpu, Bhutan (2013); and (iii) Colombo, Sri Lanka (2014).

On the national level, ADB has supported environmental initiatives of the judiciaries. Participating judiciaries have established specialized environmental courts and green benches, implemented environmental judicial certification programs, issued environmental rules of procedure, and made other commitments to improve the adjudication of environmental disputes. These accomplishments have generated interest from other branches of government to work towards the effective enforcement of an integrated, environmental legal and regulatory framework in their respective countries.

Participants

The Chief Justice of each ASEAN judiciary has assigned one or more representatives.

Approach

The Working Group Meeting will further the discussions on the AJNE’s recommendations to move forward with the network, particularly from the Third ASEAN Chief Justices’ Roundtable on Environment and the Second Asian Judges Symposium on Environment.

Output

ADB will consolidate and edit the papers submitted for the roundtable to form part of the record in the anticipated publication of the roundtable proceedings. The roundtable organizers will request the participants to provide papers and presentations well in advance of the conference in order to make these materials available as: (i) references for the anticipated publication of the roundtable proceedings; and (ii) resources to be uploaded on the AJNE website at www.asianjudges.org.

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I. PROPOSALS SUBMITTED TO THE ASEAN CHIEF JUSTICES

1. **Forming National Environmental Committees or National Working Groups on Environment.** Each ASEAN judiciary shall create an environmental committee within their respective jurisdictions (i) to work on the projects proposed at each ASEAN Chief Justices’ Roundtable on Environment; and (ii) to serve as focal points for regional coordination. These focal points can be the same persons who will attend each succeeding roundtable to guaranty continuity in the roundtable discussions.

2. **Forming the ASEAN Judiciaries Working Group on Environment.** The chairperson of each National Working Group or the persons appointed by the ASEAN chief justices shall comprise the ASEAN Judiciaries Working Group on Environment.

3. **Prioritizing the Attendance of ASEAN Chief Justices at the Annual Roundtable.** To ensure that ASEAN chief justices attend the annual Chief Justices’ Roundtable on Environment, the ASEAN Judiciaries Working Group on Environment shall ensure that priority issues are set out in the roundtable agenda.

4. **Holding Interim Virtual and Face-to-Face Meetings.** The participants suggested holding virtual meetings in between the roundtables. If possible, they would also like to have one face-to-face meeting with the support of ADB.

5. **Submitting Progress Reports on the Implementation of the Jakarta Common Vision.** Each ASEAN judiciary must have a report card or a benchmark of their accomplishments in dealing with environmental challenges in the form of a checklist of the Jakarta Common Vision’s goals against which its progress can be assessed. The participants must discuss these results at the start of each roundtable. The participants also considered submitting interim reports to the ASEAN Judiciaries Working Group.

6. **Conducting Environmental Twinning Programs.** The ASEAN judiciaries can request training from the judiciaries that have established expertise in particular areas (such as ADR). These judiciaries must also exchange current environmental legislation so that they can consider and adopt useful or exemplary provisions.

II. OTHER PROPOSALS MADE BY INDIVIDUAL JUSTICES

Specifically for the ASEAN Chief Justices’ Roundtable on Environment

1. **Harmonizing the Rules of Procedure for Environmental Cases.** The ASEAN judiciaries can have harmonized rules of procedure for environmental cases and a set of model rules that those without special rules can adopt. These model rules can also help international environmental law practitioners understand the rules applicable in other countries.

2. **Preparing a Record of Proceedings.** There must always be a record of the proceedings on which the roundtable participants can comment and agree to avoid repeatedly discussing the matters they already agreed on.
3. Including Mediators in Judicial Conferences. ADB and the host judiciary must invite mediators to attend conferences among the ASEAN justices in view of how people use mediation as a means of settling their environmental disputes.

4. Rotating the Head of the Roundtables every 3 Years. The ASEAN judiciaries can rotate the head of the annual ASEAN Chief Justices’ Roundtable on Environment every three years with the next head bearing the responsibility of hosting the next meeting.

5. Sharing Notes on Organizing the Roundtable. The organizing committee of the current host judiciary of the roundtable must share its experiences in convening the roundtable with the next host judiciary.

For the Asian Judges Network on Environment (AJNE)

1. Improving the Content of the AJNE Website. The network can use the website for the following purposes: (i) to share information amongst the justices and strengthen their capacity to appreciate scientific evidence; and (ii) to list scientists and technical experts who can render opinions in environmental cases and even train judges. The members must appoint focal persons to administer the website so that the ASEAN judiciaries can immediately upload their decisions and other information.
Attachment 2

Proposals from the Second Asian Judges Symposium on Environment

A. Asian Judges Network on Environment

1. **Steering Committee.** This proposal includes the creation of a steering committee or an advisory board to give advice on the formulation of resources, training, and other modes of capacity-building for the network members. The steering committee would have representatives to serve as a focal point for the participating judiciaries. The recommendation to create national working groups on the environment from the ASEAN Chief Justices’ Roundtable held in Bangkok, Thailand aligns with this proposal for the creation of a steering committee.

2. **Committee Representatives.** This proposal includes the chief justice or head of the judiciary to appoint or designate a judge or representative to serve as a member on the steering committee. The proposal also includes that the representatives should have the following tasks: (i) to design the agenda for the next conference; (ii) to take responsibility for the judiciary’s contributions to the AJNE website; (iii) to ensure the timely submission of these contributions; (iv) to report back to the judiciaries the committee discussions; and (v) to ensure that the AJNE’s development of a curriculum and other resources is appropriate to the context and culture of the jurisdiction concerned.

3. **Permanent Administrator.** This proposal includes the designation of a permanent administrator in ADB to coordinate and facilitate any submissions related to the judiciaries’ commitments. The proposal further includes that the administrator should have the following tasks: (i) to serve as the AJNE’s moderator; (ii) to ensure the network’s security and that the network facilitates interaction among its members; (iii) to monitor and send reminders regarding member input; (iv) to call a particular member’s attention to any unanswered queries addressed to him; and (v) to adopt a filtering process for the content published on the website (to ensure consistency in terms used, and if necessary, provide clarifications for the terms specific to a particular jurisdiction).

4. **Vision Statement.** This proposal includes that the members agree on a vision statement to outline the network’s functions, achievements, and objectives to collectively work towards enhancing environmental justice. The proposal further includes that participating judiciaries enter into a Memorandum of Understanding to take ownership of the AJNE by ensuring that the judiciaries regularly respond and contribute resources to the network.

B. Website

1. **Contents.** This proposal includes that the website have the following sources of law: (i) international laws; (ii) domestic laws; and (iii) landmark decisions on the environment. The website should include best practices and judicial innovations to resolve common concerns. The website should also have statistics, data, and other developments on the environment. In addition, the website should include various links to: (i) existing environmental databases such as the ECOLEX; (ii) judiciaries with a high level of transparency and which already provide a multitude of resources and other material online; and (iii) judicial academies.

2. **Tools.** This proposal includes that the website have a search engine with the capacity to generate a list of statutory and case laws after an initial topic search. The search engine should facilitate these searches according to: (i) issues; (ii) subject; (iii) technical or scientific information; and (iv) legal precedents. The search engine should avoid the practical difficulties of online research, such as having to access other websites that require a subscription. In addition, the website should include other tools to facilitate the storage and retrieval of information among its members.
3. **Green Judicial Forum.** This proposal suggests that the website include a discussion or interactive forum for participating judiciaries to represent a community practice network. The forum should allow members to post and respond to queries. The forum should also adopt measures to ensure security by setting stringent, ground rules for the actual operation of the community of practice, including: (i) prohibiting criticisms of individuals; (ii) excluding specific, pending cases in discussions; (iii) limiting questions to hypothetical queries; and (iii) avoiding the use of litigants’ names to ensure that the facts of a particular case remain confidential.

4. **Website Support.** This proposal reflects concerns on supporting the website, considering that maintaining the site requires a host, support, and long-term funding. The proposal points to the need for expert assistance to ensure that the website serves as a platform to share and exchange information.

C. **Other Resources**

1. **Benchbook.** This proposal includes the publication of a benchbook containing international and national laws and landmark jurisprudence organized according to region, sector, and issues. The proposal reflects the preference that a hard copy publication of the benchbook be made available due to limited internet access in some areas. The proposal suggests that ADB provide a soft copy of the benchbook to the various judiciaries for printing and local distribution.

2. **Translations.** This proposal recognizes the need for judiciaries to have access to translations for two types of materials: (i) resources for the judiciaries as a recipient of these materials; and (ii) resources from the judiciaries themselves.

3. **Registry of Experts.** This proposal includes the creation of a registry of experts, which is not equivalent to a registry of expert witnesses. The proposal recognizes the need for judges to stay clear of any suggestion of bias and avoid making any particular recommendation on an expert at the risk of excluding others. The proposal suggests that assistance for the selection of experts can come from the national academy of sciences of each country, such as the Commonwealth Scientific and Industrial Research Organization (CSIRO) in Australia. The proposal recognizes that the board of the academy can appoint the expert or provide a list of experts willing to give helpful advice.

D. **Training**

1. **Participants.** This proposal includes training for judges at all court levels, particularly because first level courts exercise jurisdiction over criminal actions and hear many other environmental cases at the first instance. The proposal suggests extending training to regulators, prosecutors, lawyers, and enforcement officials.

2. **Content of Training.** This proposal includes additional training to cover perspectives from resource persons in green economics, such as ecologists and accountants, to explain the ramifications of natural capital.

3. **Mode of Training.** This proposal includes training that can be undertaken through the following: (i) judicial academies; (ii) visiting professors; and (iii) predesigned educational tools such as videos and documentaries. The proposal recognizes that twinning systems facilitate the bilateral exchange of training between a judiciary with more expertise in environmental law and another judiciary.

4. **Agenda for Next Symposium.** This proposal directs interest in including the following issues for the agenda of the succeeding symposium: (i) whether there is a need to create an international tribunal to hear and decided cases on climate change; (ii) whether to consider crimes committed in the high seas as crimes against the law of nations; and (iii) how to assess damages on the environment.