

## **Sixth ASEAN Chief Justices' Roundtable on Environment**

Princesa Garden Island Resort and Spa, Puerto Princesa City, Palawan, Philippines

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### **SPEECH OF GENERAL COUNSEL CHRISTOPHER STEPHENS**

#### **Rule of Law in Development and the Role of the Judiciary in Environmental Adjudication**

##### **Introduction**

Good morning. I am pleased to welcome you all to the Sixth ASEAN Chief Justices' Roundtable on Environment. It is our pleasure to partner with the Supreme Court of the Philippines in convening this year's roundtable.

Today, I will give a brief overview of the Law and Policy Reform –LPR– Program run by our Legal Department (the Office of the General Counsel or OGC), and the key engagements we have with judiciaries in strengthening the rule of law and environmental governance in Asia and the Pacific.

##### **OGC's Law and Policy Reform Program**

Our legal department established the Law and Policy Reform –or LPR– Program in 1995 in order to support the role of legal systems in the region's economic development.

The central premise of the LPR Program is that a properly functioning legal system is essential to sustainable development. Such a system must be anchored on the Rule of Law and comprise a comprehensive legal framework with effective legislative, regulatory, administrative and judicial institutions that establish, implement, and enforce laws and regulations fairly, consistently, ethically and predictably.

This is legal infrastructure – and complements the basic premise of ADB's broader commitment to physical infrastructure development, such as power generation and transmission projects, roads, rail, ports and water facilities, and our overall development strategy over the last 50 years.

Legal infrastructure supports physical infrastructure objectives by creating and enforcing rules-of-the-game that encourage all essential elements of society – including gender – to engage and transact and to participate by investing in the physical infrastructure and using that infrastructure to maximum efficiency in the production and trading of goods and services.

The result will be to build the economy that will create jobs, drive incomes and reduce poverty, and create tax revenues that enable government to further invest to create more growth, higher incomes and still less poverty – a virtuous cycle.

But none of this works without capable and resourced judiciaries at the center of the legal framework. The judiciary is crucial to ensuring the fairness, certainty, predictability, integrity, and stability of the rule of law and good governance that is the foundation of financial investment and commerce, and indeed a civil society.

As you well know, there has been a spate of environmental treaties, national laws, agencies, and regulations that have come about seemingly constantly over the last 25 years, and all the countries in the region have signed the relevant treaties, passed environmental laws, created the agencies and issued regulations. Not all of them are well written or well understood, and in some cases there is no domestic precedent.

And now we are adding to a complex environmental area: climate change. With the Paris Agreement having entered into force last week, the Nationally Determined Contributions (NDCs) of state parties will directly affect countries' investment policies, plans and projects. New national laws now focused on climate-related commitments and policies will proliferate.

In short, the new laws, regulations and workloads headed for your honorable courts promise to test the limits of your capabilities as well as your good humor.

Judges play an ever-important role:

- Judges are adjudicating disputes, and thereby establishing precedents on environmental issues; many of these rulings themselves are part of the legal framework and will affect future legislation and regulation.
- Judges are also promulgating rules on environmental litigation and procedure, on matters such as evidence, impact assessment and allocation of responsibility– all of which are becoming part of the broader law on the environment and climate change; and
- Judges are organizing lower courts and sometimes establish green benches, as was done in several countries in this region over the last few years.

Your decisions are also having real economic consequences that affect policymaking, development priorities and the allocation of billions of dollars of investment capital across the region.

- For example, courts are construing treaty commitments or national laws to require climate impact assessments, and those impact assessments and your determination of their scope and adequacy inform the levels of CO<sup>2</sup> emissions permitted in specific projects.

- This then affects project design and engineering and the selection of equipment and contractors.
- Your decisions also affect project construction and the operations of project facilities for 20-30 years, including power generation and transmission, transportation, and urban planning across a range of industrial, agricultural and commercial sectors.

For these reasons, OGC views our engagement with judiciaries in Asia and the Pacific as an important part of our member countries' economic and social development.

### **OGC's Key Engagements with the Judiciary**

One key forum for that engagement is the **Asian Judges Network on the Environment (AJNE)**. As some of you may recall, the Asian Judges Network was established after the Inaugural Asian Judges' Symposium – which was also convened here in the Philippines in 2010. The Network is an informal organization of senior judges from 23 countries that serves as a platform for judicial capacity strengthening and multilateral exchanges on environmental adjudication. The AJNE website – [www.asianjudges.org](http://www.asianjudges.org) and [www.ajne.org](http://www.ajne.org) – has been revamped to provide more comprehensive content in a more user-friendly manner. We plan to post all notable environmental law decisions from Southeast Asia and South Asia on the website.

We are committed to improving the Asian Judges Network website and making it the “one-stop shop” for environmental law for Asia and the Pacific. We plan to expand the database to include inputs from countries like Australia, PRC, and New Zealand, and a number of Pacific small-island developing states.

ADB complements regional level support with sub-regional initiatives such as Chief Justices' roundtables devoted specifically to environmental justice and adjudication in the context of regional collaboration. This event is the sixth ASEAN roundtable, and in two weeks' time we will be having the fifth South Asian roundtable in Dhaka, Bangladesh. We are delighted that we have had tremendous and consistent support from Your Honors over the years. My colleague Atsuko will be talking in detail about the ASEAN roundtables and the progress we have made, collectively as a region and in the individual ASEAN countries. Suffice it to say, at this point, that we have gone a long way, and the ASEAN roundtables have borne fruit which will hopefully continue to cascade down to the grassroots.

### **Conclusion**

Lastly, I wish everyone many productive discussions over the next 2 days.

Thank you for coming and best wishes for the success of the roundtable.