

Third Asian Judges Symposium on Law, Policy, and Climate Change

Asian Development Bank

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

Introduction

The Honorable Maria Lourdes Sereno, Chief Justice of the Supreme Court of the Philippines; the Honorable Loren Legarda, Senator of the Republic of the Philippines; Honorable Chief Justices and judges; Dr. Arnold Kreilhuber from the United Nations Environment Program (UNEP); distinguished guests; ladies and gentlemen:

Good morning. I am pleased to welcome you to the Third Asian Judges Symposium on Law, Policy, and Climate Change. It is our pleasure to partner once again with the Supreme Court of the Philippines and UNEP in convening this triennial event.

We are particularly pleased by the theme of this year's Symposium. Following the momentous agreement on climate change reached in Paris in 2015, discussed earlier by ADB President Nakao, ADB's Office of General Counsel (OGC) set out to explore how these developments on climate change will affect Asia's judiciaries, and the role of our judiciaries in relation to the new climate change commitments. Ultimately, we want to determine how we can best support and assist the judiciaries of the Asia Pacific region in their role on environmental and climate change issues. So I will briefly discuss three things:

- First, a brief overview of how ADB and our Legal Department is involved with judiciaries in strengthening the rule of law and environmental governance in Asia and the Pacific;
- Second: I want to mention the trend and impact of forthcoming climate change cases.
- Third: I would like to explore further how we can do more to help you.

OGC's Law and Policy Reform Program

Our legal department – the Office of the General Counsel or OGC – established our Law and Policy Reform – or LPR – Program in 1995 in order to support the role of legal systems in the region's economic development. Through this program, we seek to facilitate

- the adoption of laws and regulations that foster economic development,
- the implementation of regulations by knowledgeable and competent regulatory agencies, and
- the interpretation, application and enforcement of those laws and regulations by capable and resourced judiciaries through capacity building and knowledge sharing.

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.

An economy with this sort of legal framework will respect property rights and contracts, engender confidence of businesses and investors, attract domestic and foreign investment and encourage growth, thereby creating jobs and rising incomes. If such a framework operates in an environment of inclusiveness with respect to gender and all segments and sectors of society, then it will maximize its potential and effectiveness, and growth will be faster, broader, more stable, and more sustainable.

This is legal infrastructure – and complements the basic premise of ADB’s broader commitment to physical infrastructure development and our overall development strategy over the last 50 years.

As you know, the original principles of ADB’s vision of a region free of poverty were based in large part on the role of infrastructure development in economic development.

The principle is that, if ADB facilitates the construction of basic physical infrastructure – power generation and transmission projects, roads, rail, ports and water facilities – together with systems for trade, finance, education, health care and other public goods – then the society will have essential building blocks on which commerce may be established, expanded and operated to create jobs and incomes and alleviate poverty.

Legal infrastructure supports these 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. Litigation is proliferating – and all of this is coming to the courts almost faster than judiciaries can absorb it.

And now we are adding to a complex environmental area: climate change. The multinational commitments of countries in the Paris Agreement are now to be translated into Intended Nationally Determined Contributions (INDCs), which 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 work loads headed for your honorable courts promises 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 for their and other courts to follow in subsequent cases; many of these rulings themselves are part of the legal framework on which environmental and climate considerations are informing the outcome of future disputes – and to that extent are part of the law – 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; Courts are assessing costs or damages and assigning liability – 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 policy making, 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 CO² emissions permitted in specific projects.
- As a result, those decisions are affecting 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.

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 First 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 and 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.

Help Us Help You

On a final note, we ask that you kindly let us know how ADB can best support the judiciaries moving forward. We take your ideas very seriously, and do our best to integrate them into our initiatives.

We will be circulating a simple survey among you to gathering your thoughts and ideas. With your input, we can tailor future symposia and roundtables to make them more relevant and effective to meet your interests and needs.

We know you all have many other high priority demands on your time, and the range of subjects on your desks is vast. For many of you, environmental cases comprise a small fraction of your caseload.

But many of you value highly the opportunity to meet with judges from other jurisdictions, and some of you would like to diversify the subject matter of these gatherings. If there are other topics around which we might convene members of the judiciary, we would welcome the opportunity to discuss them. These might include transnational subjects, such as:

- Emerging laws on cyber-security,
- anti-money laundering / counter-terrorism financing,
- new complexities on banking and capital markets,
- corporate governance,
- trade
- intellectual property – and more

If you think regional or sub-regional gatherings focused on any of these subjects would be useful, please let us know.

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 Symposium.