

# 3<sup>rd</sup> ASIAN JUDGES SYMPOSIUM ON LAW, POLICY AND CLIMATE CHANGE

26<sup>TH</sup> - 27<sup>TH</sup> SEPTEMBER 2016

ASIAN DEVELOPMENT BANK, MANILA, PHILIPPINES

TOPIC:

DAY 2

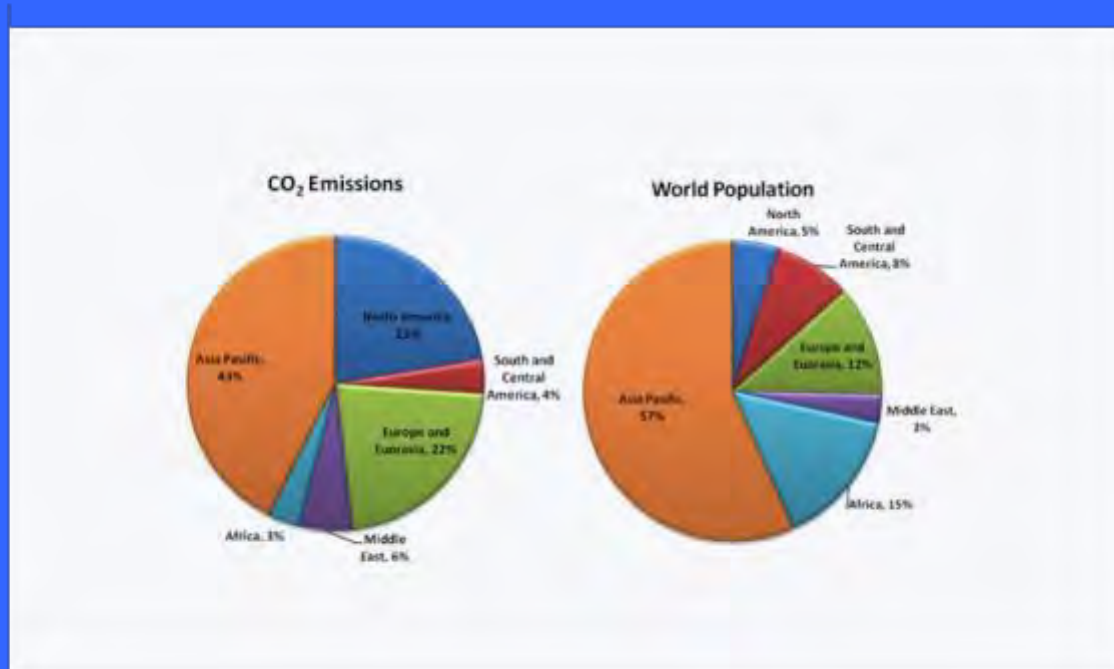
**ADDRESSING CLIMATE CHANGE - EVOLVING LEGAL JURISPRUDENCE IN ASEAN  
REGION AND ITS CHALLENGES**

**Speaker: Mr. Justice Richard Malanjum, Chief Judge of the High Court of Sabah and Sarawak, Malaysia and Justice of the Federal Court of Malaysia**

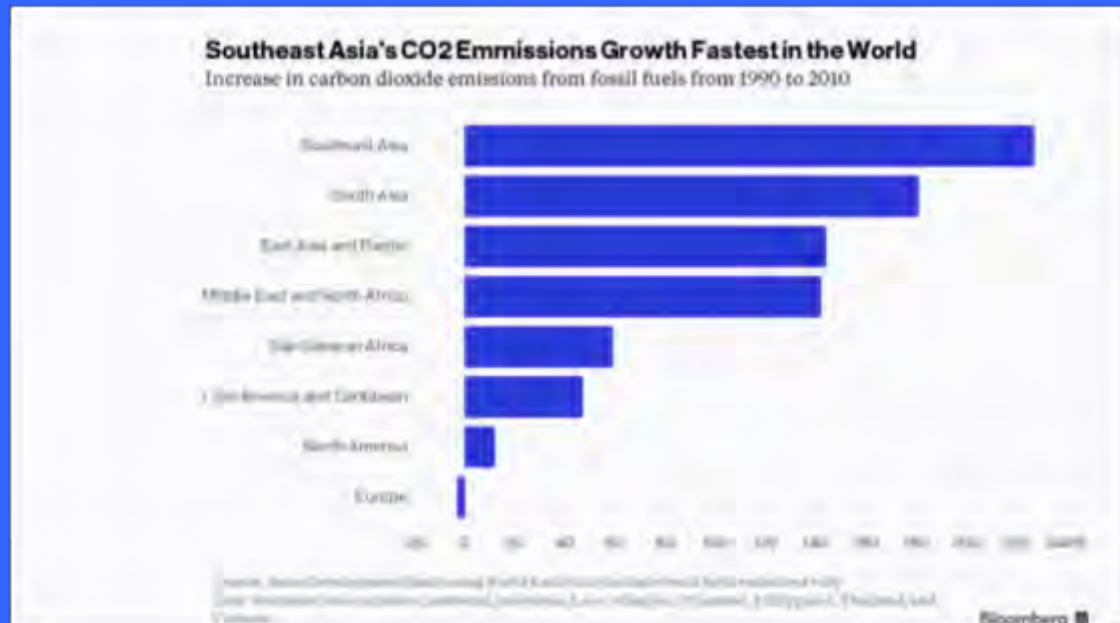
# Contents

- Reality of climate change
- Impacts on ASEAN region
- Legal jurisprudence
- Challenges
- Conclusion

# CO<sub>2</sub> Emissions vs World Population



# Southeast Asia CO<sub>2</sub> Emissions Growth Fastest in the World



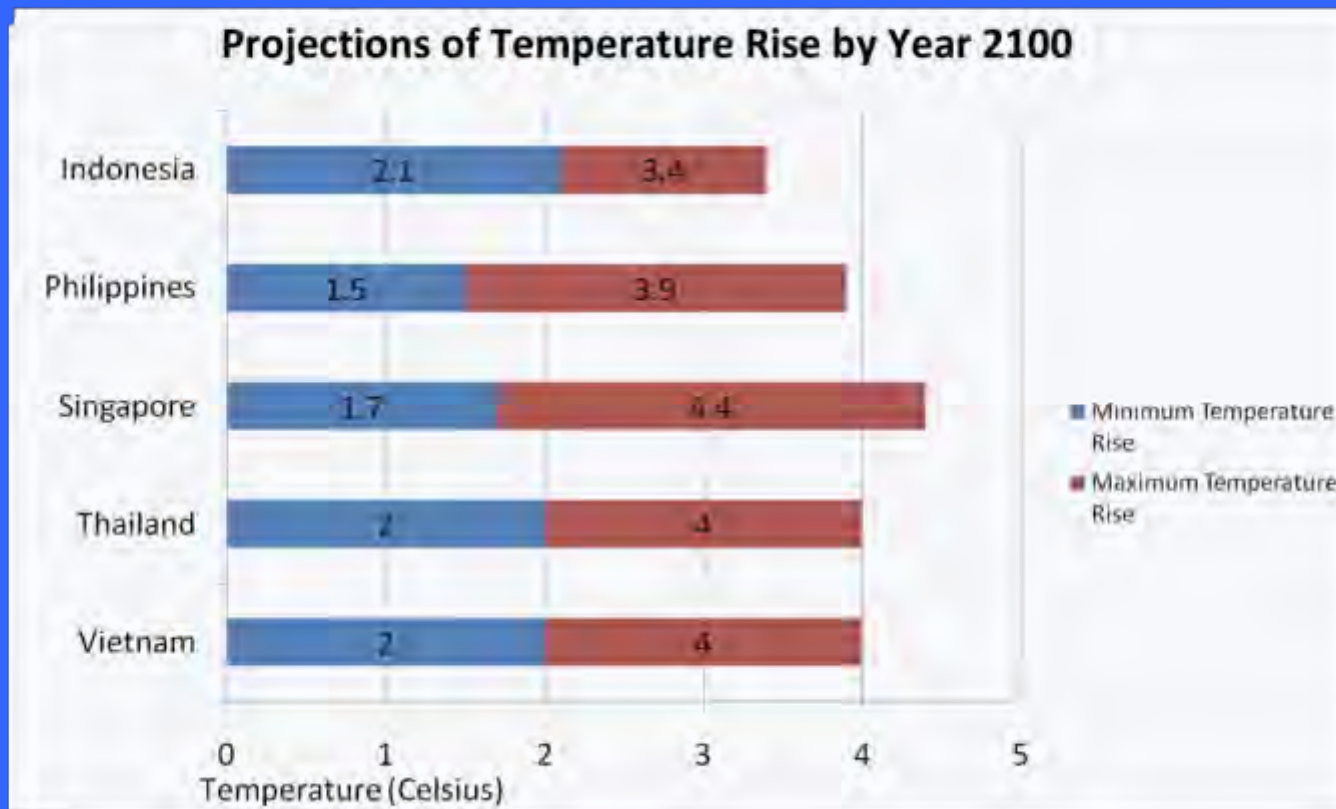
# CO<sub>2</sub> Emissions by ASEAN nations

- "The region has experienced rapid economic growth in recent years, and regional greenhouse gas emissions have rapidly increased, at nearly 5 percent per year over the last two decades," the ADB said this week. "In the absence of climate action, the region will be increasingly exposed to hotter temperatures, more destructive storms, greater flooding in some areas, and more droughts in others." – Bloomberg Market- 14<sup>th</sup> January 2016

Climate change does not respect national boundaries- need to regulate the causes



# Projected Temperature Rise in five ASEAN nations



## Temperature increase and Sea Level acceptable

“Durban Platform for Enhanced Action” that sets the agreed target limit of carbon emission by 2020 to not more than 2° C above the pre-industrial levels. It is generally accepted that life can still be sustained without irreversible damage at that level of temperature increase

Worse case scenario with a temperature increase by 4.0° C the sea level could increase up to 59cm

ASEAN cities like Bangkok, Thailand and Jakarta, Indonesia would likely be partly submerged

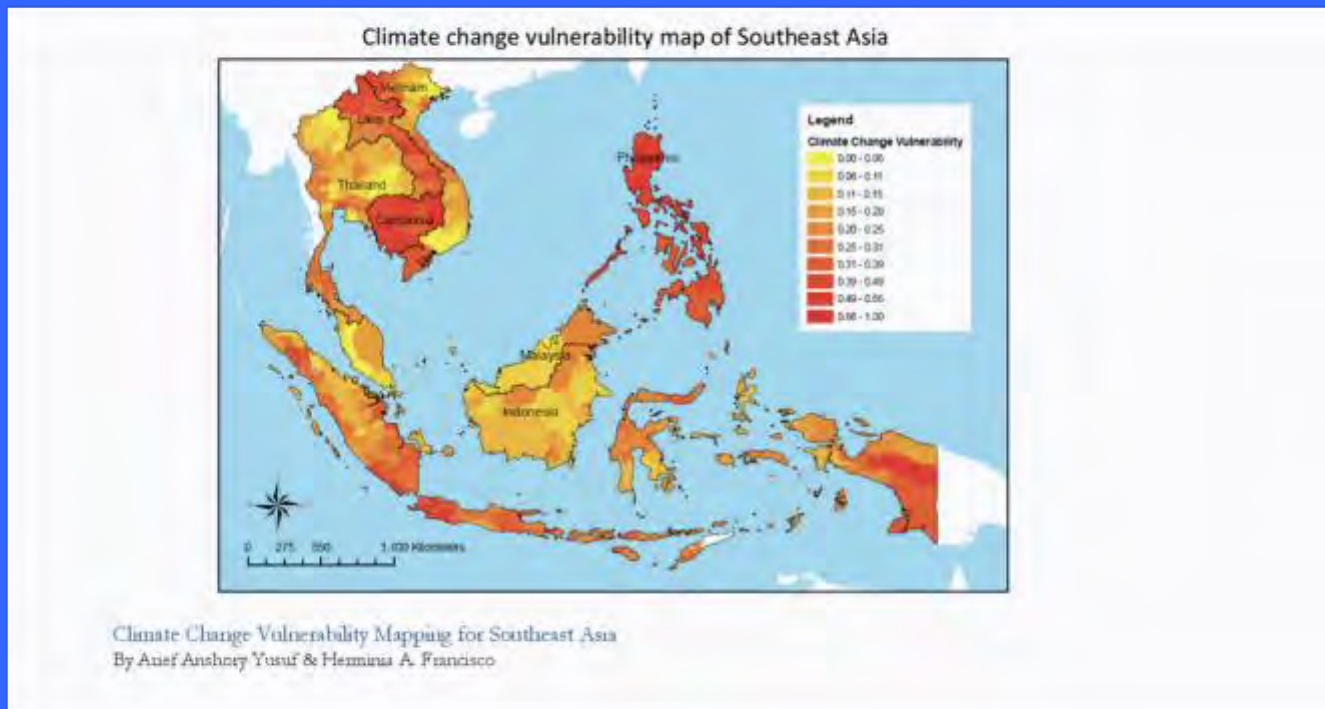


# Climate Change Vulnerability Mapping for South East Asia

Adversely exposed to sea level rise:

- All regions of the Philippines
- The Mekong Delta region of Vietnam
- The Bangkok region
- All of Cambodia
- North and East Lao PDR
- West and south Sumatra
- Western and eastern Java

# Climate Change Vulnerability Mapping for South East Asia



# Sea level Rise-impact by climate change



# Images on impacts of climate change Bangkok 2016



# Images on impacts of climate change Jakarta 2016



# Images on Impacts of climate change Kuala Lumpur 2016



# Climate Change 2014: Impacts, Adaptation and Vulnerability

As a result of global warming, people in Asia would experience:

- heat stress
- extreme precipitation
- inland and coastal flooding
- drought and water scarcity
- risks amplified for those lacking essential infrastructure and services or living in exposed areas

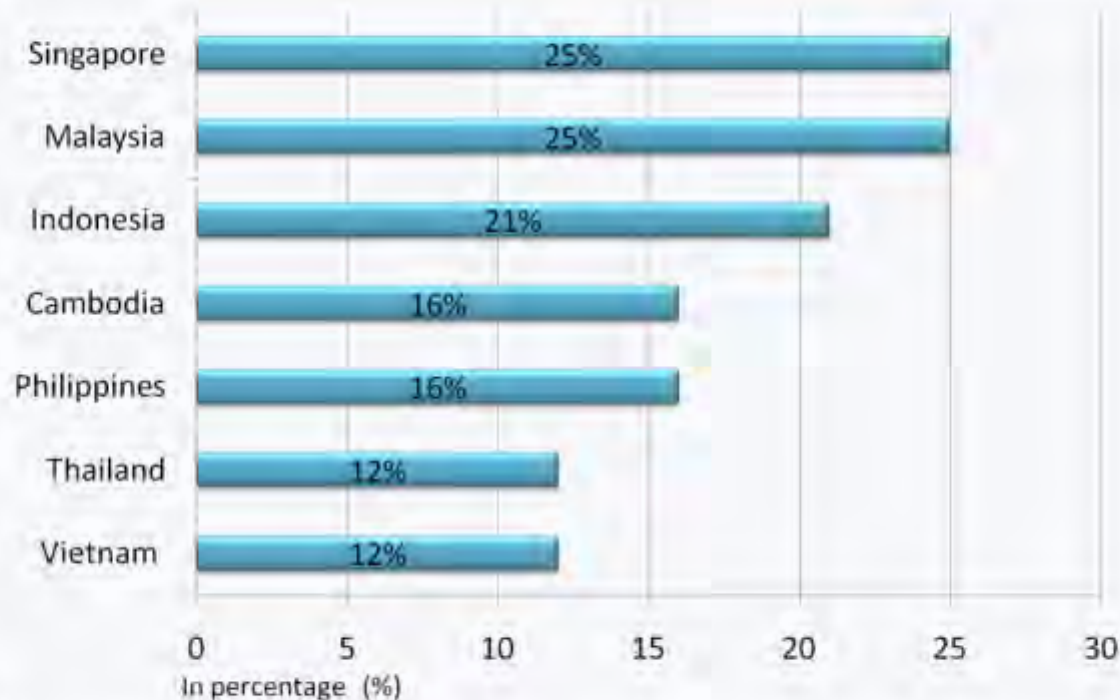
# Climate change hits the poor hardest

Climate change hits the poor hardest. Poor people living in tropical countries are more exposed to storms and extreme weather, their housing and infrastructure is weaker, and they have less savings or insurance to fall back on when disaster strikes. Source: Social cost of carbon by region, 2015 (RICE-2015).





# Impact of Heat Stress – decrease in productivity



Source:

<http://www.todayonline.com/world/asia/global-warming-increase-heat-decrease-productivity-south-east-asia-report>

# Impact on Health

Global warming - Vector-borne diseases such as Zika, dengue and malaria will likely to flourish because:

- **Rising global temperatures** can lengthen the season and increase the geographic range of disease-carrying insects. As temperatures warm up, mosquitoes and other warm-weather vectors can move into higher altitudes and new regions farther from the Equator
- **Increased rainfall, flooding and humidity** creates more viable areas for vector breeding and allows breeding to occur more quickly as eggs hatch faster in hotter climates
- **Human migration** exposes people to viruses to which they are not immune. As populations migrate in response to climate change they bring diseases to new regions and urban areas. Infectious diseases spread more quickly in overcrowded urban areas

# Causes of Climate Change

- Human activities - major role either in triggering or accelerating climate change
- Major cause in the rise of global temperature is human-caused greenhouse gas (GHG) emissions by the burning of fossil fuels for rapid industrialization and deforestation
- ASEAN Member States addressing climate change not only on control of GHG emissions but also through the prism of deforestation and the methods employed

# Causes of Climate Change



# Sources of World's CO<sub>2</sub> Emissions



[https://sites.duke.edu/tge\\_sss29/carbon-dioxide-emissions/carbon-dioxide/](https://sites.duke.edu/tge_sss29/carbon-dioxide-emissions/carbon-dioxide/)  
Image Credit: <http://www.pbs.org/wgbh/pages/frontline/real/art/graph3.jpg>

# Deforestation in ASEAN Region

- Southeast Asia region is losing at about 1.2% of its remaining forest area each year
- Cambodia, Indonesia and the Philippines reporting annual losses of up to 2% over the last five years
- Malaysia has lost an estimated 14.4% (4.5 million ha) of its forests and tree cover from 2000-2012
- The culprits are the logging, legal and illegal and land clearing, including the practice of open burning on large scale for the planting of oil palm and other crops
- Uncontrollable wild fires degrade vast areas, especially in the peatland areas especially during dry seasons
- Loggings cause the loss of the forests while the open burning for oil palm and other crops and wild fires cause the loss of forests and biodiversity

# Loss of forests

**Deforestation causes 15% of global  
Greenhouse gas emissions**

**It is estimated that about 50 to 100  
Species of animals being lost each  
day as a result of deforestation**



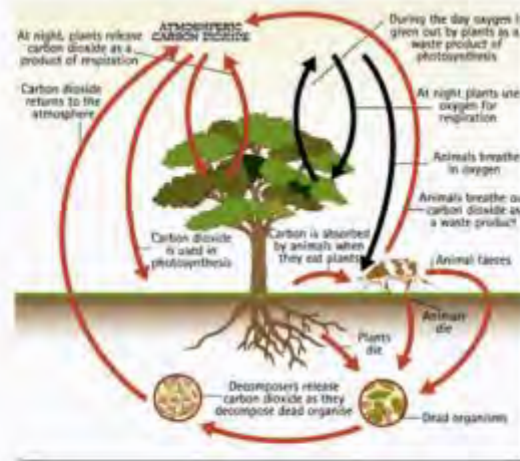
# CO<sub>2</sub> Emissions and Deforestation Twin impact on climate change





# Importance of trees

Cycle of Carbon Dioxide during the Process of Photo Synthesis



[https://sites.duke.edu/tge\\_sss29/carbon-dioxide-emissions/carbon-dioxide/](https://sites.duke.edu/tge_sss29/carbon-dioxide-emissions/carbon-dioxide/)  
Image Credit: [http://farm4.static.flickr.com/3217/3081218761\\_d8d4aa2f72\\_o.gif](http://farm4.static.flickr.com/3217/3081218761_d8d4aa2f72_o.gif)

# Evolving Legal Jurisprudence ASEAN Region on climate change

## Points to note

- Developing countries except Singapore
- Diverse political, administration and legal and judicial systems
- On judicial system some adopted the common law system while the others took the civil law system
- Judicial activism – passive as compared in developed nations
- Climate change litigations based on US model- attempting to advance policy – yet to conceive
- More on Europe and Australia climate change -focused almost exclusively on enforcing existing domestic environmental legislations, including by challenging governmental failures at enforcement

Evolving Legal Jurisprudence  
ASEAN Region on climate change  
ASEAN Nations Approach

- More on Legislative- Executive approach with the courts as interpreters/enforcers of those written laws and regulations
- Reasons:
  - political systems
  - Public awareness
  - Compliance of international obligations

# Domestic legislations on climate change in ASEAN Region

- The ASEAN Way - premised on consensual decision-making is based on the principles of sovereignty and non-intervention, has also to a certain extent restricted ASEAN in implementing measures at the national level
- While there are declarations indicating common approach in reality it is absence due to focus on domestic matters over the regional interests, e.g. Singapore Trans-boundary Haze Pollution Act 2014 ; The Climate Change Act 2009 (Philippines)
- The conflicts at times

# Some landmark cases on climate change in ASEAN nations

- Indonesian courts have recognized strict liability for actions that cause a 'serious threat to the environment'
- The Mandalawangi Landslide Case – applied the precautionary principle – strict liability (Indonesia)
- The Bangkinang Forest Fires Case (2001) - applied the principle of corporate liability (Indonesia)

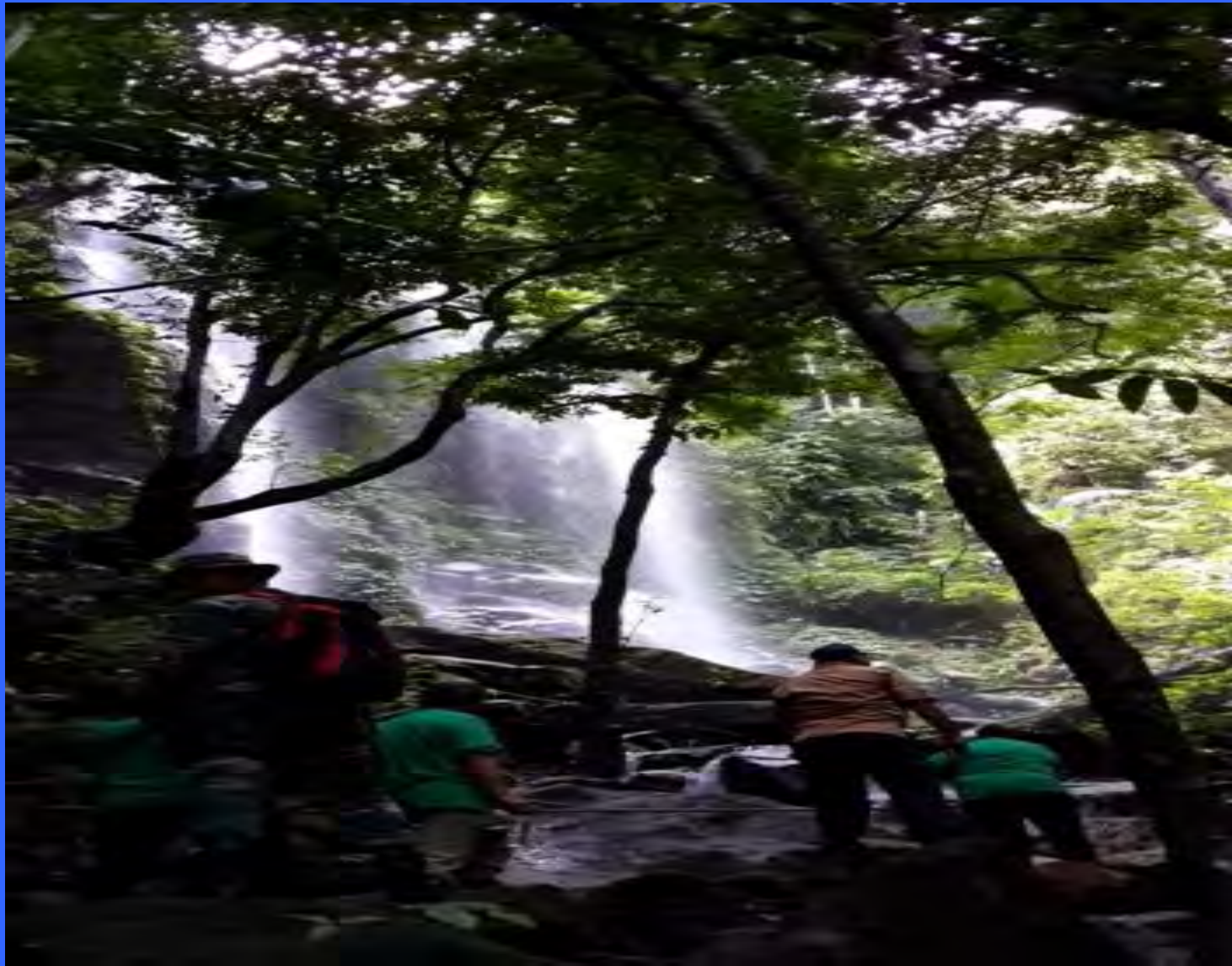
# Some landmark cases on climate change in ASEAN nations

- The expression 'life' includes the right to live in a reasonably healthy and pollution free environment - Tan Teck Seng v Suruhanjaya Perkhidmatan Pendidikan [1996] 1 MLJ 261 (Malaysia)
- The importance of EIA - Kajing Tubek & Ors (Malaysia)
- Recognition of native lands – preservation of forests – The Aman case (Indonesia) and the Madeli Bin Salleh case (Malaysia)
- Sensitized Judges and judicial officers – marked increase of sentences imposed for deforestation- ASEAN Chief Justices' Roundtable on Environment coordinated by ADB

# Judges back to Nature



# Judges back to Nature

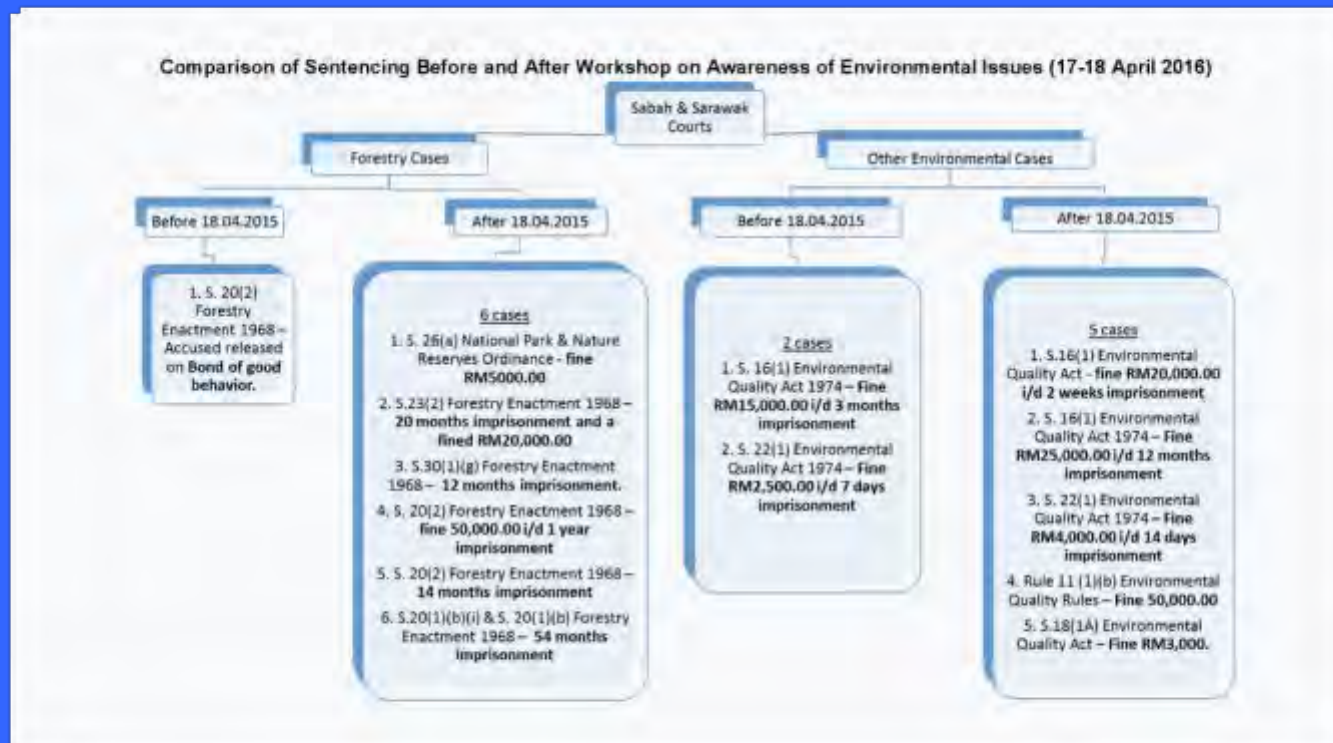




# Judges back to Nature



# Comparison of penalties imposed



# Some landmark cases on climate change in ASEAN nations

- Imported the principle of intergenerational equity into its procedural doctrine, an essential principle for effective climate change governance – The Aposa case (Philippines)
- Philippines is one of the pioneers when it comes to climate change adaptation – The Climate Change Act 2009

# Challenges to evolving legal jurisprudence

- Locus standi – ASEAN Member States -two groups – liberal approach (Philippines and Thailand) and restrictive approach (Malaysia)
- The different judicial systems itself – absence of uniformity
- Awareness – attitude and circumstances of the countries –developing nations
- Education of environmental laws – optional subject in law schools
- The conflicts at times on the approaches – regionally and internationally
- ASEAN Judiciary?

# Slow Public Awareness



**Community  
resilience  
requires public  
awareness about  
climate change  
and its impact on  
extreme weather**

# Potential conflicts

**Nation** Home News Malaysia

Thursday, September 24, 2015 11:12 AM

## Open burning ban vital to fight haze, says Wan Junaidi

FACEBOOK TWITTER GOOGLE+ LINKEDIN



**Popular Now in News**

- Carry Ong's husband targeted
- Double monthly salary to boost

PUTRAJAYA: Malaysia's effort to fight haze will become more difficult if Indonesia does not fully enforce the ban on open burning in the country.

Michael Dwyer, Deputy Editor

**Bonanza 45@45**  
Great Getaways & Divine Dining  
ENTER CONTEST

**THE STAR ONLINE**  
The Daily Alert

Stay updated daily with our FREE email alerts

Your e-mail address

By clicking on the subscribe button, I will consent that you may contact me via email.

**Latest News**

- Six in the running to be next World Health Organization leader
- More than 1,000 bodies recovered from migrant boat capsized off Egypt
- Oklahoma police officer sues herself to end Cruzian death charges
- Turkey's Erdogan says U.S. sent weapons to Kurdish fighters in Syria

# Potential conflicts

Climate talks  
Environment

## Philippines won't honour UN climate deal, says president

Duterte says Paris climate pact seeks to dictate to developing countries and limit economic growth, [reports Climate Home](#)

Climate Home,  
Guardian  
Network

6 12.22 BST



Comments



“You are trying to stifle us ... you who have reached your peak and spewed a lot of emissions,” said president Rodrigo Duterte of the Philippines. Photograph: Toto Lozano / Handout/EPA

The Philippines will not honour commitments it made under the Paris climate change deal, president Rodrigo Duterte has said in a speech

# Conclusion

Legal Jurisprudence in ASEAN region is evolving notwithstanding the challenges

It may be slowly but surely