



# IMPACTS OF ENVIRONMENT AND JUSTICE FOR ALL

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Asian Development Bank

Asian Judges Network  
on Environment





## BACKGROUND

The underprivileged, the vulnerable, and the poor suffer the most from the impacts of environmental degradation and climate change. Concerned citizens have rushed to the courts to protect their rights, and to hold governments, individuals, and businesses accountable. The **Impacts of Environment and Justice for All** project addresses environmental justice and climate justice issues by developing the capacity of first instance, appellate, and Supreme Court judges in Asia to handle such cases. It also assists country judiciaries in enhancing access mechanisms through establishment of 'green courts', development of rules of procedure for environmental cases, and building a strong regional network for environmental governance.

This project is a flagship initiative under the Law and Policy Reform (LPR) Program of the Asian Development Bank (ADB). The central premise of the LPR Program is that a functioning legal system is essential to sustainable development. Such a system is anchored on the rule of law, and comprises a comprehensive legal framework and effective judicial, regulatory, and administrative institutions that establish, implement, and enforce laws and regulations fairly, consistently, ethically, and predictably.



World Conference on Environment - India (2017)



Strengthening Capacity for Environmental Law in Malaysia's Judiciary: Train-the-Judges Program (2017)



Workshop on Environmental Adjudication for the Judiciary of Bhutan (2018)

# WHY WE DO WHAT WE DO: JUDGES AS DRIVERS OF CHANGE

As litigation increased, the need for judges to have the capacity to handle cases – with an environment and climate lens – has become imperative. Challenges faced both by judges and litigants include:

- science and technology on environment and climate change develop much faster than laws, regulations, and judicial capacity;
- environment and climate change law were not taught when current sitting judges were in law school;
- judges who handle mainstream areas of law (e.g., civil, criminal, and commercial law) are now asked to hear environmental cases;
- executive commitments on environment and climate change are not made aware to judges; and
- courts are now called upon to fix social problems due to weak environmental laws and poor enforcement.



“Although courts do not design, build or administer cities, that does not mean they cannot do anything for them. No judge, no matter how great her interest in, knowledge of, or ability in the art of urban planning, architecture and landscape, will take upon herself anything beyond the simple role of engineering the legal discourse. And, as we know, cities will not rise or evolve with words alone. But words spoken by judges can indeed encourage destruction or **legitimize conservation**, endorse speculation or **guarantee urban environmental quality**, consolidate the errors of the past, repeat them in the present, or **enable a sustainable future**.”

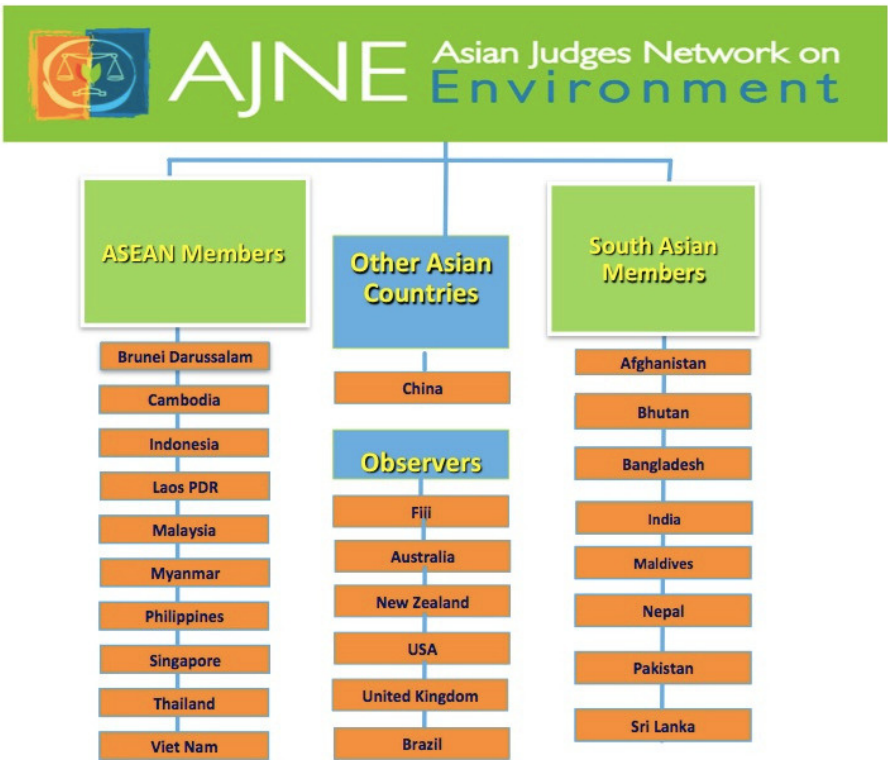
Superior Court of Justice of Brazil, REsp  
302.906/SP (2d Panel).

Relator: Min. Antonio Herman Benjamin,  
an AJNE champion judge



# PROJECT IMPACTS AT A GLANCE

The project has led to the creation of the Asian Judges Network on Environment (AJNE), an informal trans-governmental network that aims to foster closer ties among member judiciaries over shared issues and challenges. Ultimately, it seeks to facilitate judicial capacity-building through sustained multilateral exchanges. AJNE links judges from 25 countries, and is supported by hundreds of "champion green judges" across Asia and around the world.



Working with Supreme Courts, High Courts, district courts, legal professionals, and multi-disciplinary stakeholders across Asia, ADB and AJNE have accomplished the following in 8 years:



## PILLAR 1: STRENGTHENING CAPACITY

Under the banner of AJNE, ADB holds **annual regional / sub-regional judicial gatherings** where judges from different jurisdictions can interact and share ideas with fellow judges, legal professionals, and multidisciplinary experts. These gatherings also serve as capacity-building events where innovative and ground-breaking concepts are introduced to members of the bench, e.g., gender sensitization and women's rights and their nexus with environmental and climate justice, climate refugees and migration with dignity, and sustainable tourism.

ADB also develops **customized national programs** in coordination with the judges and local stakeholders. The judges themselves identify gaps that need to be addressed, resulting in a more impactful program on the ground. ADB then delivers these national programs with sustainability in mind. For instance:

- In **Pakistan**, judges undergo continuous mandatory trainings based on a curriculum on environmental law tailor-made by ADB.
- In **Sri Lanka**, ADB held a workshop on writ and environmental laws for all appellate and Supreme Court judges. A training center, focusing on sustainable green development, was also established under the judges' institute with assistance from ADB.
- In **Cambodia**, ADB and the Supreme Court held a series of training workshops on climate change and national environmental laws for district and appellate court judges from all provinces of the country.



## PILLAR 2: ENHANCING ACCESS TO JUSTICE

ADB and AJNE have also undertaken other activities that help enhance access to environment and climate justice across the region. More than six **green benches / courts** have so far been created in various member countries, including Pakistan, Malaysia, and Bhutan. These are chaired by trained judges that specialize on environmental matters to enhance effective application consistent with international

practice. One pioneering initiative is Indonesia's **judicial certification program** on environmental law, where judges intending to sit in green benches are required to undergo training and eventual certification.

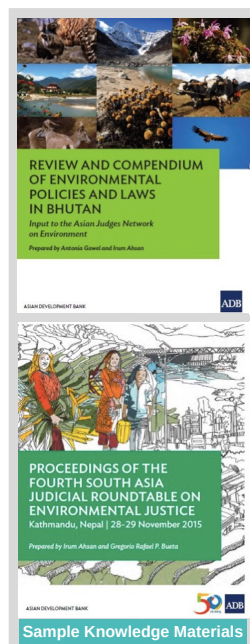
The project also assists judiciaries in developing **special rules of procedures for environmental cases**. Expert review was provided for the rules of the Philippines and Bhutan, while an outline has been provided to the Supreme Court of Cambodia for its own version of the rules.

ADB also conducts **needs assessments** to identify and address gaps in the legal and regulatory frameworks on environmental law, such as those held in Viet Nam and Myanmar.

## PILLAR 3: PUBLISHING KNOWLEDGE MATERIALS

To complement capacity building events and national programs, ADB and AJNE have also developed knowledge materials. These include reports on the proceedings of the regional and sub-regional capacity-building events, a compendium on Bhutanese environmental laws and policies, and a book tracking the development of environmental laws and jurisprudence in Pakistan.

In response to judges' request for more information on climate change, ADB is currently preparing a **working paper series (à la benchbook) on climate change adjudication**. This series will discuss international and domestic environment and climate change legal frameworks, jurisprudence from Asia and around the world, court procedures and remedies, and best practices and international principles. These tools will help make judges ready for any climate litigation that comes their way.



## PILLAR 4: CONNECTING ASIAN JUDICIARIES TO THE REST OF THE WORLD

Through ADB and AJNE, Asian judges are now **connected to global institutions**, such as the Global Judicial Institute on the Environment, **and other development partners**, such as UN Environment, the International Union for Conservation of Nature, the US Environmental Protection Agency, LAWAsia, and LexisNexis..

# PROJECT HIGHLIGHT: SEMINAL JURISPRUDENCE FROM ASIAN COURTS

AJNE champion judges have come up with decisions demonstrating a deep understanding of environmental and climate change law and its nexus with (i) other fields of law, such as constitutional law and tort law, and (ii) policy goals, such as sustainable development and inclusive growth. The cases below constitute a sampling of this growing body of Asian jurisprudence.

## **ASGHAR LEGHARI V. FEDERATION OF PAKISTAN**

Decided by the Lahore High Court, sitting as a green bench (2015)



The court held that the Pakistan government's failure to implement the National Climate Change Policy (the Policy), as well as its inaction in addressing the country's climate change vulnerabilities, violated the plaintiff-farmer's constitutional rights, i.e., his fundamental rights to life, to a healthy and clean environment, and to human dignity. The right to life ruling was in turn anchored on the effects of climate change on Pakistan's water, food and energy security. In addition, the court created a Climate Change Commission, which has the authority to cause implementation of the Policy. Maintaining jurisdiction via continuing mandamus, the court also ordered relevant ministries and departments to each nominate a climate change focal person who is answerable to the court.



## **HANUMAN LAXMAN AROSKAR V. UNION OF INDIA**

Decided by the Supreme Court of India (2019)

The petitioners in this case challenged the grant of an environmental clearance for the construction of an international airport in Goa, India. The Supreme Court ruled for the petitioners and held that the Expert Appraisal Committee failed to consider relevant circumstances bearing on the environmental impact of the project. The court clarified that the Committee is not bound by the analysis conducted in the environmental impact assessment report, and is in fact required to analyze it through a "detailed scrutiny". Arguably, if no representation was received, or if a representation submitted by an individual objector is found to be incorrect, that by itself is no ground to recommend an environmental clearance.

A healthy environment is a prerequisite and foundation for economic prosperity, human health and well-being. In the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision.

## **PT. KALLISTA ALAM V. MINISTRY OF ENVIRONMENT**

Decided by the Supreme Court of Indonesia (2015)



The Supreme Court determined that the defendant had conducted land clearing through controlled fires from 2009 until 2012. As such, the court found the defendant liable based on the unlawful act rule, and ordered the defendant to pay compensation. In ascertaining the amount of compensation, the court (i) considered the damage brought about by the emission of greenhouse gases associated with the fires, and (ii) pegged the defendant's liability for carbon emissions on the amount of restoration cost.

# MOVING FORWARD: THE PACIFIC

The continuing demand from judiciaries, along with the dedication and commitment that judges have shown, encourages ADB and AJNE to move forward with this important work. The project aspires to continue and scale up its work by:

- expanding AJNE to include judiciaries from **Pacific small-island developing states**;
- engaging in the capacity development of Pacific judiciaries in specific issues that concern them, such as **climate-induced migration, statelessness, and loss of culture and identity**, among others;
- **connecting Asian and Pacific judiciaries to the global network of judges**, and to the international discourse on environment and climate change; and,
- **showcasing Asia and Pacific jurisprudence** on environment and climate change to the global audience.



Samoa



Kiribati



Marshall Islands



Fiji



Solomon Islands



Tonga

“In cases concerning environmental governance, it is a duty of courts to assess the case on its merits based on the materials present before it. Matters concerning environmental governance concern not just the living, but generations to come. The protection of the environment, as an essential facet of human development, ensures sustainable development for today and tomorrow.”

Hanuman Laxman Aroskar v. Union of India  
Superior Court of India.

Decision penned by Justice Dhananjaya Y. Chandrachud,  
an AJNE champion judge

## Contact Us:



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