



**Third Asian Judges Symposium on
Law, Policy and Climate Change
26-27 September 2016
Asian Development Bank
Manila, Philippines**



CONCEPT PAPER

Introduction

The Third Asian Judges Symposium (Symposium) focuses on the central theme of Law, Policy, and Climate Change. The Asian Development Bank (ADB) sincerely thanks our partners—the Supreme Court of the Philippines and the United Nations Environment Programme—for their joint support in organizing this Symposium.

The Symposium aims to bring together senior judges, legal professionals, experts on climate change, and other participants to focus on the core theme and to explore the role that the rule of law can play in responding to climate change. The Symposium provides participants with a platform to discuss the fundamental principles underpinning climate change issues, as well as international best practices in climate change adaptation and mitigation, specifically from the perspective of judicial decision-making. It also includes special sessions featuring various adjudicatory methods used in environmental cases, such as the inquisitorial and adversarial models of dispute resolution. After considering the latest climate change statistics, the Symposium will explore the sub-themes of (i) Food and Water Security and Urbanization, (ii) Global Legal Jurisprudence's Role in Climate Change, and (iii) Climate Change: Its Social Impact and Success Stories.

We hope to inspire powerful thoughts and discussions on how judiciaries in Asia and the Pacific can work with their governments and people on climate change mitigation and adaptation. We look forward to welcoming participants to the 2016 Third Asian Symposium on Environment.

Background

Climate Change Science

In a 2014 summary report for policymakers, the Intergovernmental Panel on Climate Change (IPCC) reported that over the period of 1880 to 2012, the earth's combined land and ocean surface temperature warmed 0.85 degrees Celsius (°C).¹ Climate warming means a warmer atmosphere and ocean, melting snow and polar ice sheets, intense and frequent extreme weather events, rising sea levels, and warmer and more acidic oceans.² Rates of warming since the 1950s have been unprecedented compared to temperature records for previous decades and temperature models for millennia. 2016 is predicted to be the hottest year on record, with the first half of the year indicating an average temperature that is 1.05°C above the entire 20th-century average.³ July

¹ IPCC. 2013. 2013: Summary for Policymakers. In: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group 1 to the 5th Assessment Report of the Intergovernmental Panel on Climate Change*. Geneva. p. 5.

² IPCC. 2014. *Climate Change 2014: Synthesis Report: Summary for Policy Makers*. Geneva. p.151.

³ National Oceanic and Atmospheric Administration. 2016. *June Marks 14 Consecutive Months of Record Heat for the*

2016 was also the 15th consecutive month that a monthly global temperature record was broken.⁴

Over half of the recorded increase in the global average surface temperature stems from increased atmospheric concentrations of carbon dioxide (CO₂), methane, and nitrous oxide (greenhouse gases [GHG]).⁵ Current atmospheric concentrations of GHG are unprecedented and exceed atmospheric concentrations over the past 800,000 years. If GHG emissions continue to increase, average global temperatures for the period 2081–2100 are likely to increase between 2.8°C and 4.3°C above pre-industrial temperatures.⁶ IPCC has determined that in order to keep the global mean temperature to less than 2°C above pre-industrial temperatures, we must limit the cumulative amount of CO₂ to 2,900 gigatonnes (the carbon budget). Total emissions to date are approximately 2,000 gigatonnes of CO₂.

What are the Significant Climate Change Challenges for Asia and Pacific?

Home to over 4 billion people, Asia and the Pacific are some of the world's most vulnerable regions to climate change due to water scarcity, sea level rise, and an increase in extreme weather events. In 2016, Germanwatch listed Myanmar, the Philippines, Bangladesh, Viet Nam, Pakistan, and Thailand among the top ten countries affected by climate change in the period from 1995 to 2014.⁷

Asia's population is heavily reliant upon agriculture, with over half of the region's population living in rural areas.⁸ Eighty-one percent of Asia's rural population relies on agriculture for their living.⁹ The region's large agricultural sector relies heavily on water from rain, river run-off, and groundwater. Asia's expanding population and improved living standards also places heavy demands on existing water sources, making water scarcity a significant challenge. Half of Asia's urban population lives in low-lying coastal zones and flood plains, which are at risk of flooding and inundation from rising sea levels. Ninety percent of the world's population that is exposed to tropical cyclones lives in Asia.¹⁰ Asia's staple food will also be impacted. IPCC has reported that higher temperatures will lead to lower rice yields due to shorter growing periods.¹¹ Climate warming and habitat fragmentation will also lead to an increased risk of extinction for many plant and animal species in Asia.¹²

Small islands within the Pacific are particularly vulnerable to rising sea levels, tropical and extra tropical cyclones, increasing air and sea surface temperatures, and changing rainfall patterns.¹³

Globe. 8 August. <http://www.noaa.gov/june-marks-14-consecutive-months-record-heat-globe>

⁴ National Oceanic and Atmospheric Administration. *Global Analysis - July 2016*.

<https://www.ncdc.noaa.gov/sotc/global/201607>

⁵ IPCC. 2013. 2013: Summary for Policymakers. In: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group 1 to the 5th Assessment Report of the Intergovernmental Panel on Climate Change*. Geneva.

⁶ IPCC. 2013. 2013: Summary for Policymakers. In: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group 1 to the 5th Assessment Report of the Intergovernmental Panel on Climate Change*. Geneva.

⁷ Germanwatch. 2015. *Global Climate Risk Index 2016*. Berlin. www.germanwatch.org/en/cr

⁸ World Bank. Rural population (% of total population) dataset. <http://data.worldbank.org/indicator/SP.RUR.TOTL.ZS>

⁹ IPCC. 2014. *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects*. Cambridge and New York. p. 1347.

¹⁰ IPCC. 2014. *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects*. Cambridge and New York. p. 1346.

¹¹ IPCC. 2014. *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects*. Cambridge and New York. p. 1330.

¹² IPCC. 2014. *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects*. Cambridge and New York. p. 1332.

¹³ IPCC. 2014. *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects*. Cambridge and New York. p. 1616.

IPCC estimates on global mean sea level rise vary subject to atmospheric GHG concentrations. However, estimates range between an average of 0.4m to 0.63m for the period 2081 to 2100.¹⁴ IPCC predicts that global mean sea levels will continue to rise beyond 2100. These estimates demonstrate the burning urgency of responding to threat of global warming and GHG concentrations.

Climate change is also predicted to increase displacement and forced migration of people,¹⁵ with developing countries being disproportionately affected.¹⁶ Displacement occurs not only as a direct result of climate change-related disasters, such as desertification and floods, but also due to indirect climate change-related factors.¹⁷ Overall socio-economic patterns—including population growth; urbanization rate; and food, water, and energy insecurity—likewise impact the manner by which climate change affects displacement.¹⁸ Climate change impacts may further result in or aggravate tension, conflict, and violence in affected communities, resulting in even further displacement.¹⁹ This contagion effect indicates the far-reaching implications of climate change policy and adjudication, as climate change is also an impact multiplier and accelerator in the broader scheme.²⁰

Paris Agreement

The United Nations Framework Convention on Climate Change (UNFCCC) took effect on 21 March 1994. The UNFCCC seeks to stabilize atmospheric GHG concentrations to prevent dangerous interference with the climate system. UNFCCC parties (conference of parties) meet annually to discuss progress with efforts on responding to climate change. The 1997 conference of parties resulted in the Kyoto Protocol. In 2010, the Cancún agreements declared that future global warming should be limited to below 2.0°C relative to the pre-industrial level.

In late 2015, over 180 countries gathered in Paris at the 2015 Climate Change Conference. Parties negotiated commitments on controlling GHG emissions and adapting to climate change. As of 20 September 2016, 28 of the 197 parties to the Paris Agreement had ratified the agreement.²¹ The Paris Agreement represents one of the most significant global efforts to respond to climate change.

Adopted on 12 December 2015, the Paris Agreement aims for a low GHG emissions future in order to respond to the threat of climate change. Parties agreed on “holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.”²² To achieve the emission targets, parties agreed that global GHG emissions must peak as soon as possible and reduce thereafter. Recognizing the importance of forests in tackling climate change, the agreement also calls for the

¹⁴ IPCC. 2013. 2013: Sea Level Change. In: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge. p. 1180.

¹⁵ IPCC. 2014. 2014: Climate Change 2014: Synthesis Report. Geneva. p.73.

¹⁶ Brookings Institution. 2014. *Climate Change and Internal Displacement*. Washington, D.C. p. 1.

¹⁷ Brookings Institution. 2014. *Climate Change and Internal Displacement*. Washington, D.C. p. 5.

¹⁸ Brookings Institution. 2014. *Climate Change and Internal Displacement*. Washington, D.C. p. 3.

¹⁹ UNHCR. 2011. *Summary of deliberations on climate change and displacement, resulting from the expert round table on climate change and displacement held in Bellagio, Italy. 22 to 25 February*, p. 2. Quoted in Brookings Institution. 2014. *Climate Change and Internal Displacement*. Washington, D.C. p. 3.

²⁰ Government of the United Kingdom, Government Office for Science. 2011. *Migration and Global Environmental Change*. London. Quoted in Brookings Institution. 2014. *Climate Change and Internal Displacement*. Washington, D.C. p. 4.

²¹ UNFCCC. 2016. *Paris Agreement - Status of Ratification*. http://unfccc.int/paris_agreement/items/9444.php

²² Paris Agreement, art. 2, 12 December 2015.

preservation of forests.²³

The Paris Agreement provides for parties to meet every 5 years to review emissions targets and to report on their progress in implementing targets. The parties agreed to strengthen societies' ability to respond to climate change impacts via enhancing adaptive capacity, strengthening resilience, and reducing vulnerability to climate change. The agreement recognizes the importance of minimizing and addressing loss and damage resulting from climate change.

United Nations Secretary-General Ban Ki-moon has invited global leaders to deposit their instruments of ratification, acceptance, approval or accession to the Paris Agreement on 21 September 2016. Additionally, UNFCCC parties have invited IPCC to deliver a report in 2018 on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways.

Parties to the Paris Agreement also agreed to support developing countries with climate change mitigation and adaptation. Mitigation policies include (i) reducing emissions from power plants, cars, and landfill sites; (ii) increasing access to clean energy; and (iii) improving energy efficiency within industry and in households. Given that climate warming has occurred, adaptation policies are also needed. In Asia and the Pacific, adaptation policies will likely focus on (i) disaster risk prevention, particularly for extreme weather events; (ii) coastal zone management and flood defense; (iii) water management, particularly for agriculture; (iv) resilience in agriculture; and (v) building code adaptation, to ensure buildings are more disaster resilient and sustainable.

Judicial Initiatives

The world's judiciaries have demonstrated their commitment to the principles of ensuring environmental sustainability by engaging in discussion and sharing best practices through participation in conferences such as (i) World Congress of Justice, Governance, and Law for Environmental Sustainability in 2012, (ii) Rule of Law and Climate Change Symposium in 2015, (iii) Rule of Law for Supporting the 2030 Sustainable Development Agenda 2016, and (iv) World Environmental Law Congress in 2016, which lead to the establishment of the Global Judicial Institute for the Environment.

ADB's Role

ADB has made a strategic commitment to environmental sustainability and combating climate change. In its Midterm Review of Strategy 2020, ADB reiterated its focus on environment and climate change by scaling up its support for climate change adaptation and maintaining its assistance for mitigation through clean energy and energy efficiency projects and sustainable transport. ADB's Environmental Operational Directions 2013-2020 noted that many of ADB's developing member countries recognize the unique and distinct leadership role that the judiciary plays in the environmental enforcement chain.

By 2020 ADB will spend \$6 billion annually on climate financing, amounting to approximately 30% of total operations from its own resources. ADB will invest \$4 billion in mitigation with advanced technologies such as sustainable transport, renewable energy, and energy efficiency. ADB will invest the remaining \$2 billion in adaptation measures focused on enabling more resilient urban

²³ Paris Agreement, art. 5, 12 December 2015.

infrastructure, climate-smart agriculture, and better preparation for climate-related disasters.

The Office of the General Counsel (OGC) complements ADB's overall climate change strategy through its Law and Policy Reform (LPR) Program, which focuses on legal development through strengthened policy, legal, judicial, and regulatory systems. The key premise is that a credible rule of law system is necessary to foster inclusive and sustainable development. Judiciaries are thus uniquely positioned to enhance environmental and socio-economic governance; directly, by shaping environmental jurisprudence and, indirectly, by leading stakeholders to credible rule of law systems that effectively respond to environmental and other climate change issues.

The Symposium will build upon and consolidate past and ongoing work under OGC's LPR Program, particularly its work to establish and strengthen the Asian Judges Network on Environment (AJNE). AJNE is an informal trans-governmental network of senior judges from 23 countries that serves as a platform for judicial capacity strengthening and multilateral exchanges on environmental adjudication. OGC's other environment-related projects include an environmental law champions program, innovative train-the-trainers modules implemented to enhance the capacity of environmental law professors and public interest lawyers to pass along their knowledge in their home countries. This Symposium follows the inaugural Asian Judges Symposium on Environment in 2010 on Environmental Decision Making, the Rule of Law, and Environmental Justice and the Second Asian Judges Symposium on Environment in 2013 on Natural Capital and the Rule of Law.

During the 2010 symposium, participants requested the establishment of AJNE to enable collaboration among Asian judiciaries and the legal community on environmental law. ADB facilitated AJNE's creation and has continued to support regular meetings of judges across the Association of Southeast Asian Nations (ASEAN) and South Asia. In connection with AJNE, ADB has supported annual Chief Justices' Roundtable meetings in ASEAN and Judicial Roundtable meetings in South Asia since 2011. Roundtable meetings have been held in Cambodia, Indonesia, Malaysia, Thailand, and Viet Nam in ASEAN and in Bhutan, Nepal, Pakistan, and Sri Lanka in South Asia. During the 2013 symposium participants discussed challenges in climate change litigation, such as (i) attributing responsibility for local impacts while considering climate change as a global phenomenon; (ii) identifying responsible parties; and (iii) determining whether national legal frameworks are available for the courts to assess responsibility and liability in the future.

In order to holistically respond to the threat of climate change, we must give consideration to the many facets of human existence that will be impacted on the road ahead. By fully considering these issues, judiciaries in Asia and the Pacific can contribute to:

Saving our planet, lifting people out of poverty, advancing economic growth ... these are one and the same fight. We must connect the dots between climate change, water scarcity, energy shortages, global health, food security and women's empowerment. Solutions to one problem must be solutions for all.²⁴

Climate Change Disputes

The judiciary will play an important role in climate change governance, particularly regarding mitigation and adaptation policies and plans. The courts will naturally be called upon to interpret

²⁴ Secretary-General Ban Ki-moon. 2011. *Address to the 66th General Assembly*. New York. 21 September.

new environmental, climate change, and disaster risk reduction laws and determine rights. Judges across Asia and the Pacific will likely have to manage matters relating to:

- legal commitments, responsibilities, and rights flowing from international environmental agreements like the Paris Agreement;
- loss and damage due to floods and rising sea levels;
- actions against the state for failing to adequately regulate GHG emission reduction, actions against polluters for failing to meet emission reduction requirements, and actions on climate change in general;
- review of government administrative decisions on matters such as environmental permitting. Consideration of such actions includes consideration rules of standing, including the ability of indirectly affected citizens to seek review of administrative decisions;
- trans boundary litigation on climate change, climate displacement, evidentiary burdens, and climate change science; and
- international environmental dispute resolution, through litigation or alternative modes.

Output

The papers submitted for the Symposium will be compiled and edited as part of the proceedings that will be published by ADB. The papers and presentations submitted for the Symposium will also be uploaded to the AJNE website.

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