



**Second Asian Judges Symposium on Environment and
Formal Launch of the Asian Judges Network on Environment
“Natural Capital and the Rule of Law “
3 – 5 December 2013
ADB Headquarters, Manila, Philippines**

Background

The First Asian Judges Symposium on Environment was held in 2010 at ADB Headquarters in Manila, co-hosted by ADB, the Supreme Court of the Philippines, and the United Nation’s Environment Program (UNEP). At the symposium, the Chief Justice of Indonesia and the Chief Justice of the Philippines, together with about 110 senior justices and other participants, called for an Asian Judges Network on Environment to generate knowledge on environmental challenges among judiciaries and the legal community in the region, strengthen the capacity of judges to decide environmental cases, and share experiences in dealing with those challenges through laws and cases.

In response, ADB has since then supported the senior judiciary across the Asia Pacific region, including by hosting sub-regional roundtables: the ASEAN Chief Justices’ Roundtable on Environment in Jakarta, Indonesia (2011), Melaka, Malaysia (2012), and Bangkok, Thailand (2013), and the South Asian Justices’ Roundtable in Bhurban, Pakistan (2012) and Thimpu, Bhutan (2013). It will support the sub-regional roundtables in Viet Nam and Sri Lanka in 2014. In 2012, ADB also supported the participation of delegations of Asian Judges to the World Congress on Justice, Governance and Law for Sustainability in Rio de Janeiro, and the Global Forum for Law, Justice and Development in Washington D.C.; and co-hosted the Judicial Colloquium on Biodiversity in Hyderabad, India, and in 2013 led in hosting the Symposium on Combating Wildlife Crime in Bangkok, Thailand.

ADB has also worked on programs with national judiciaries in Indonesia, Pakistan, the Philippines, Malaysia, Thailand and Viet Nam. These events led to the Jakarta Common Vision for ASEAN Judiciaries, the Bhurban Declaration, a draft ASEAN Memorandum of Understanding, and the Bhutan Declaration. The experiences shared across the region has been collected in several publications as well as consolidated to be made available online ([url](#)), together with an initial collection of the environmental laws of Asian jurisdictions. With this progress, the Asian Judges Network on Environment will be formally launched at the Second Asian Judges Symposium (“Symposium”).

Objectives

The Symposium aims to bring together senior judges, environment ministry officials, prosecutors, legal professionals, and civil society participants to:

- share updates on the Asian Judges Network on Environment (AJNE), and judicial innovations in cases relevant to environment and Natural Capital since the First Asian Judges Symposium;

- share information on the concept of Natural Capital and consider the state of Asia and the Pacific's key ecosystems and ecosystems services that form its Natural Capital and their economic value;
- consider the laws, and the law enforcement challenges, affecting the Asia Pacific's Natural Capital, and the role of judges in the Asia Pacific in deciding cases affecting Natural Capital; and
- consider how the Asian Judges Network on Environment can promote a wider understanding among the judiciary of Natural Capital as a relevant concept for informing decision-making and how it can best serve the needs of Asian judiciaries.

Natural Capital and the Rule of Law

"Natural Capital" is the "stock of natural assets and resources," such as tropical forests, oceans, and mangroves, that provide ecosystem services, such as food, water, timber, pollination of crops," flood control, and "absorption of human waste products like carbon dioxide" (ADB & WWF 2012). It is a way of understanding nature, as Natural Capital is essential to all human life and lies at the foundation of the entire economy.

Asia and the Pacific countries have the significant challenge of managing natural capital sustainably for long-term development. However, the voracious global and regional appetite for the Asia Pacific's Natural Capital has vastly exceeded the natural environment's ability to regenerate. Overwhelming degradation of the Asia Pacific's Natural Capital has occurred over the past few decades, as has its ability to absorb human wastes. Some scientists claim that globally, we have crossed over the planet's boundaries for regeneration for both climate change and the degradation of ecosystem services (Steffen et. al.)

Most economists view the environment "as subset of the economy." In contrast, ecologists view the economy as a "subset of the environment." Economists understand three classic factors of production in producing goods and services: land, labor and (financial) capital. Yet, the missing piece here is ecosystems, and the services healthy ecosystems provide, form much of the foundation for this economy and have economic value. In short, living on a planet of fixed size and capacity, an environmentally sustainable economy calls for the earth and its ecological systems to set the framework for economic activity. (L.R. Brown 2001).

Natural Capital provides trillions of dollars (US\$ 33 trillion) worth of services annually in equivalent terms and constitute food, fiber, water, health, energy, climate security and other essential services. Both the services and stock of Natural Capital are not adequately valued in terms comparable to manufactured and financial capital (Natural Capital Declaration 2012) and this provides a real challenge for government decision-makers and the judiciary interpreting and analyzing their decisions.

Effective environmental governance plays a key role in ensuring that Natural Capital is maintained or recovered. It is a function of the effectiveness of the executive, legislature, administration, and judiciary. However, while the value of Natural Capital has been reflected in some laws across the Asia-Pacific it has been insufficiently reflected in others. Existing environmental and natural resource laws need to do more to adequately protect Natural Capital, while that is mostly a role for policy-makers



and law-makers, interpretations by judges have some impact on the development of laws. Moreover, the effective enforcement of existing laws relating to Natural Capital could do much to improve existing preservation of Natural Capital.

As participants in the Asian Judges Network on Environment have previously observed, the judiciary plays a critical role in environmental governance and the enforcement of environmental and natural resource laws as it directly acts as interpreter of laws, arbiter of claims, and determiner of rights. It also plays an indirect influence in leading the legal profession and law enforcement community toward greater recognition of the importance of effective law enforcement for these issues. Effective enforcement of laws relating to Natural Capital could be improved if law enforcement officers and the region's judiciary have a more widespread understanding of the economic value of Natural Capital and its contributions to development.

At the core of many disputes and conflicts over natural resources, land, water, minerals, flora and fauna, including tensions that end up in the courts, are fundamental tensions between economic development and environmental protection. This tension lies at the core of the ideological conflict between economists and environment and the concept of Natural Capital. Natural Capital provides a framework that recognizes the economic value of ecosystem services over and above any mere aesthetic value. It is a helpful concept for judges to frame what they know about existing ecosystems and reference point from which to determine cases affecting Natural Capital. Legal issues arising include:

- transboundary issues involved in the exploitation of Natural Capital and the impairment or damage to ecosystem services or Natural Capital in adjacent jurisdictions;
- legal and evidentiary principles and doctrines, such as the precautionary principle, the doctrine of public trust, and the law of nuisance affecting decision-making on legal cases concerning forests; mountains and uplands; freshwater; coastal and marine ecosystems and biodiversity;
- how the public nature of the benefits derived from Natural Capital (*Res Communis Omnium*) impacts standing to sue, *res judicata* and the statute of limitations;
- how the recognition of the "Concept of Natural Capital" might affect property rights issues; and
- how Natural Capital valuation assessments may allow a more accurate assessment of damages occurring to entire ecosystems.

Participants:

Representatives from courts, environment ministries, prosecutors offices, the legal profession, and civil society from across Asia and the Pacific and beyond, including Afghanistan, Australia, Bangladesh, Bhutan, Brazil, Fiji, India, Indonesia, Pakistan, Sri Lanka, Lao PDR, Malaysia, Mongolia, Myanmar, the People's Republic of China, the Philippines, Singapore, Thailand, the United States, and Vietnam will share experiences on Natural Capital and its relevance to the rule of law.

Approach:

This three-day Symposium will build upon and consolidate past and ongoing work of ADB under its Environmental Law, Justice, and Development Program, particularly its work to establish and strengthen an Asian Judges Network on Environment. The Symposium's overall theme is Natural Capital and the Rule of Law.

Output

The papers submitted for the Symposium will be compiled and edited as a volume for publication by ADB. Participants will be requested to provide papers and presentations well prior to the Symposium. The papers and presentations submitted for the Symposium will also be uploaded to the AJNE website. The Symposium will also provide an opportunity for the consideration and adoption of an AJNE Statement on Environmental Justice from the reports from break-out groups, together with prior statements and declarations.

Partners

United Nations Environment Program, the Freeland Foundation, The United States Agency for International Development {others}

Contacts

Dr. Kala Mulqueeny, Principal Counsel, Office of the General Counsel, Asian Development Bank: kmulqueeny@adb.org.

Logistics

Ma. Celeste Grace Saniel-Gois, Associate Legal Operations Officer, Office of the General Counsel, ADB: mcsanielgois@adb.org

Kristine Melanie Rada, Legal Operations Assistant, Asian Development Bank: kmrada@adb.org
Ma. Imelda Alcala, LJD Operations Analyst Asian Development Bank: mialcala.consultant@adb.org.