

Community Action. In August 2016, the Council of the CEC launched the fourth Call for Proposals for community projects focusing on Innovation and Partnerships for Green Growth, attracting more than 300 applications. In early November, the Council announced nine new grant recipients. Projects span different North American eco-regions and support grassroots environmental efforts, from communities around Lake Winnipeg to remote areas in Quebec, schools in Florida, and the Mayan forests and Lake Pátzcuaro in Mexico (more information about the CEC can be found at <<http://www.cec.org>>).

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## 12. Regional Development Banks

### A. Asian Development Bank (ADB)

The ADB is a multilateral financial institution established in 1966 to promote economic and social development in Asia and the Pacific. The ADB has sixty-seven member countries, forty-seven of which are classified as ‘developing member countries’ (DMCs). These DMCs benefit from ADB initiatives intended to achieve the three inter-dependent objectives of environmentally sustainable growth, inclusive economic development, and regional integration. The Office of the General Counsel’s Law and Policy Reform (LPR) Programme promotes these objectives by supporting the role of legal systems in the region’s economic development. The central premise of the LPR Programme is that of the rule of law—that is, a properly functioning legal system is essential to inclusive and sustainable development. It broadly covers five different pillars: (i) environmental law and sustainable development; (ii) infrastructure law and regulation; (iii) financial law and regulation; (iv) private sector development; and (v) inclusive growth and access to justice.

The environmental law pillar of the LPR Programme accomplished significant milestones in 2017, particularly in its engagement with judiciaries, legislators, academics, and policy-makers.

#### (1) Engagement with Judiciaries

The ADB strengthened its core engagement with judiciaries in the Asia Pacific region, the cornerstone of its environmental law work. In March, it sponsored the World Conference on Environment, along with the United Nations Environment Programme (UN Environment), the National Green Tribunal of India, and various concerned ministries of the government of India. The conference’s venue of New Delhi was not merely a fortuitous accident, brought by convenience and ease of logistics. On the contrary, it was a symbolic gesture to

honour one of the most environmentally progressive and innovative legal jurisdictions of the world. Approximately 1,200 local and international delegates coming from Africa, Europe, Asia, North America, South America, and Oceania attended the two-day conference, which covered a wide spectrum of environmental issues. The topics covered included forest, wildlife, and biodiversity; municipal solid waste; environment and public health; air and water pollution; climate change; public health and the environment; and innovative approaches to environmental remediation and restoration. The ADB gave well-regarded presentations on climate change finance and the nexus between international obligations and national environmental goals as well as global and regional developments insofar as vulnerable people are impacted by climate change.

In May, the ADB supported the second Meeting of the Global Judicial Institute for the Environment (GJIE), held in Brasilia, Brazil in collaboration with John Knox, the United Nations Special Rapporteur on Human Rights and the Environment, the International Union for Conservation of Nature World Commission on Environmental Law, the International Association of Judges, the European Union Forum of Judges for the Environment, the UN Environment, the Organization of American States, and several Brazilian judicial and academic institutions. Directed by judges and for judges, the GJIE is an international organization with a mission 'to support the role of judges, courts, and tribunals in applying and enforcing environmental laws and in promoting the environmental rule of law' (GJIE, *Re: Summary of GJIE Brasília Meetings and Next Steps* <<https://www.ajne.org/sites/default/files/event/7111/session-materials/1-wcel-gjie-letter-summary-of-meetings-brasilia.pdf>>). Judges from eighteen countries attended and participated in the second meeting. The ADB ensured that Asian judges were well represented at this important gathering.

The participant judges approved the Statute of the Global Judicial Institute on the Environment, pursuant to the Charter approved at the Inaugural Meeting, held in April 2016. The Statute establishes the GJIE as an international association of judges and judicial institutions under Articles 60 and 79 of the Swiss Civil Code (Article 1 <<https://www.ajne.org/sites/default/files/event/7111/session-materials/attachment-2-wcel-gjie-statute-signed-annex.pdf>>). It also delineates the 'provisional organizational structure comprised of an Interim Governing Committee (IGC) with fourteen members to serve for two years, and other key membership and governance provisions, which allow the Institute to proceed with the filing of the appropriate papers for legal personality in Geneva, Switzerland' (GJIE, *Re: Summary of GJIE Brasília Meetings and Next Steps* <<https://www.ajne.org/sites/default/files/event/7111/session-materials/1-wcel-gjie-letter-summary-of-meetings-brasilia.pdf>>). The members of the IGC had their first meeting in March 2018, where they formally established a Secretariat, decided on the membership process for judges, and established a two-year agenda (Agenda of the first Meeting of the Interim Governing Committee of the Global Judicial Institute on the Environment <[https://www.iucn.org/sites/dev/files/content/documents/2018/1\\_agenda\\_1st\\_meeting\\_of\\_the\\_gjie-igc\\_-\\_16mar18\\_version1.pdf](https://www.iucn.org/sites/dev/files/content/documents/2018/1_agenda_1st_meeting_of_the_gjie-igc_-_16mar18_version1.pdf)>).

The ADB also engaged in national capacity-building initiatives. In July, the ADB provided a four-day, customized training program in Bangi, Malaysia, for first-level session court judges hearing environmental law cases. Held in collaboration with the National University of Malaysia (Universiti Kebangsaan Malaysia), the Environment Institute of Malaysia, and the Malaysian Judicial and Legal Training Institute, the training program was conducted by local professors who were, themselves, trained extensively under the ADB's Train-the-Trainers (TTT) Environmental Law Champions technical assistance project. The participant judges were carefully chosen on the basis of their potential to become environmental law 'judicial champions' who will make impactful contributions to Malaysia's environmental law corpus (Hanim Kamaruddin, *Introduction to the Course: Strengthening Capacity For Environmental Law in Malaysia's Judiciary: Train-The-Judges Programme (TTJ)* <<https://www.ajne.org/sites/default/files/event/7112/session-materials/session-1-introduction-to-the-course-malaysia.pdf>>).

The intensive training program covered substantive and procedural matters, such as: (i) federal and state jurisdictions in the most common environmental cases (for example, cases involving land (including indigenous land rights), water, forests, minerals and petroleum, and fisheries); (ii) access to justice and public participation issues; (iii) environmental protection laws and institutional arrangements; (iv) enforcement mechanisms and tools (for example, standards, approvals, licenses, and orders); (v) judicial remedies; and (vi) alternative approaches to environmental dispute resolution. The program also aimed to provide a holistic approach to environmental litigation; there were dedicated sessions on the perspectives of a legal practitioner (an advocate lawyer), of academic professors and specialists, and of appellate level adjudicators in the persons of the Honourable Azizah Binti Haji Nawawi, Judge of the Kuala Lumpur High Court, and the Honourable Richard Malanjum, concurrently the chief judge of Sabah and Sarawak and judge of the Federal Court. Justice Malanjum is also one of the ADB's champion judges in environmental law.

Likewise, upon the request of the Supreme Court of Cambodia, in August, the ADB designed and delivered a customized, two-day, interactive workshop for the entire Cambodian judiciary, including first-level judges, appellate judges, and Supreme Court justices. The Workshop on Mainstreaming Legal Knowledge of Environmental Issues was held both in Phnom Penh and Siem Reap. The workshop covered the role of environmental courts and tribunals (ECTs) in other jurisdictions, including the rationale for their creation, the varying institutional frameworks in the forty-four countries in which ECTs exist, and key issues and recommendations in relation to the effectiveness of ECTs. The trainers also discussed Cambodian environmental laws, particularly in light of the draft New Environmental Code, which is anticipated to take effect in 2018.

Notably, two of the trainers for this workshop were judges from the United States Environmental Protection Agency's Environmental Appeals Board. The ADB drew from their highly specialized backgrounds and requested that they

discuss technical environmental litigation issues, such as dealing with scientific evidence in, and developing special court rules for, environmental cases. Other trainers also discussed environmental impact assessments (EIAs) and development planning as well as general principles and best practices in climate change law, especially as they relate to Cambodia's international obligations under the Paris Agreement and its nationally determined contributions (NDCs).

Each of the substantive sessions had a hypothetical case to be discussed and resolved by the participants in a group activity. This approach allowed the participant judges to benchmark their understanding of the issues and learn from their colleagues. At the end of both the Phnom Penh and Siem Reap workshops, the trainers and facilitators asked the participants for their suggestions with respect to environmental adjudication in Cambodia. The participants came up with various recommendations, such as the promulgation of special rules for environmental cases and the creation of a green court. His Excellency Chiv Keng, vice president of the Supreme Court of Cambodia, committed to a further study of these recommendations in pursuit of the Supreme Court's reform initiatives.

The ADB is mindful that it is the sole regional, multilateral development bank that convenes and provides institutional, programmatic, and financial support to judiciaries on environmental law matters. As such, it is committed to further strengthening its engagements with judiciaries in the Asia Pacific region. Various activities are already in the 2018 pipeline. Considering the ADB's significant work in the field of environmental and climate rights in Asia and Pacific, in February 2018, the ADB was approached by John Knox, the UN special rapporteur on human rights and the environment, to assist him in carrying out his global mandate of assessing the role of constitutions in establishing environmental rights. The ADB responded to his call by co-organizing the Asia Pacific Judicial Colloquium on Climate Change: Using Constitutions to Advance Environmental Rights and Achieve Climate Justice in collaboration with the UN Environment, the Raoul Wallenberg Institute, the World Commission on Environmental Law, the Widener University Delaware Law School, the GJIE, the Lahore High Court, and the Punjab Judicial Academy. The objective of the colloquium was to 'assist and build capacity of judges in Asia Pacific in applying environmental constitutionalism to achieve climate justice and advance human dignity' (*Background Paper of the Asia Pacific Judicial Colloquium on Climate Change: Using Constitutions to Advance Environmental Rights and Achieve Climate Justice* <<https://www.ajne.org/event/asia-pacific-judicial-colloquium-climate-change>>). It covered a broad swath of issues, such as:

- trends in global environmental constitutionalism and climate litigation;
- the link between constitutionalism, climate change, and human rights;
- the role of judges in recognizing environmental rights and advancing climate justice, considering such issues as separation of powers, standing to sue, environmental rule of law, and the relationship between environmental and other rights;

- interpretation and application of environmental rights provisions in international, regional, and constitutional law, with attention to how the various layers inter-relate with and complement one another; and
- remedies and enforcement including, *inter alia*, the judicial role in coordinating with other branches of government (*ibid*).

The ADB will also hold national capacity-building activities in 2018, such as targeted trainings for the judges of Bhutan's green courts (July 2018). Furthermore, the ADB, in partnership with the Union Supreme Court of Myanmar and the UN Environment, will organize an Asia Pacific conference on environmental and climate change adjudication in Nay Pyi Taw, Myanmar, in November 2018. The significance of this conference cannot be overstated; the ADB, for the first time, is merging the annual judicial roundtables of the Southeast Asian and South Asian judiciaries, and is likewise expanding the conference to include judiciaries from Pacific small island developing states (SIDS). SIDS are universally recognized as some of the most vulnerable countries to climate change, as they face not just severe impacts on livelihood, infrastructure, and industry but also actual, existential threat. It is, thus, hoped that the Myanmar conference would contribute to strengthened environmental adjudication in the Pacific region and would assist Pacific countries in highlighting the urgency of their situation in the global arena.

## (2) Engagement with the Academe

The ADB's engagement with the academe constitutes another critical component of its work on environmental law. The TTT Environmental Law Champions technical assistance project aims to strengthen the capacity of environmental law professors in the Asia Pacific region because of their critical role in educating the environmental law profession and creating the next pipeline of teachers, judges, public interest lawyers, civil servants, and other environmental law practitioners (*ADB Environmental Law Champions Information Sheet* at 1 <<https://www.iucnael.org/en>>). The technical assistance is implemented jointly with the International Union for Conservation of Nature Academy of Environmental Law, which is a global network of over 200 law schools from more than fifty-nine countries that share a commitment to the teaching of, and research in, environmental law (*ibid*).

The ADB's environmental law champions network now includes nearly 270 professors, lecturers, and practitioners from various disciplines, representing 180 institutions from fourteen countries in Asia, as well as trainers and associates from Australia, the United States, Canada, and various countries in Europe. They are now connected by a database—the first of its kind that details their background and specific areas of expertise.

June saw the launch of [teachenvirolaw.asia](http://teachenvirolaw.asia), a regional knowledge platform focused on facilitating knowledge sharing, collaboration, and networking among environmental law teachers and practitioners in the Asia Pacific region

(<https://www.teachenvirolaw.asia>). In addition to a public section featuring the training programs, teaching resources, and a database, a secure log-in section allows graduates ongoing access to all course and reference materials from previous in-country programs. Analytics show participants actively using the secure site for resources and reference materials.

Eight in-country TTT programs have so far been delivered since April 2016: Malaysia (National University of Malaysia), Vietnam (Hanoi Law University), the Philippines (University of Cebu College of Law), China (Peking University Law School), Thailand (Chiang Mai University Law School), Lao People's Democratic Republic (Lao PDR), Cambodia (Faculty of Law and Public Affairs, Paññāsāstra University of Cambodia), and Myanmar (Department of Law, University of Yangon). These intensive, five-day workshops cover core substantive environmental issues, demonstrate innovative teaching methodologies that range beyond traditional lecturing, and provide participants with new skills and tools for more effective teaching. Every program is tailored specifically for the relevant needs and situation of each country. However, across the board most comprise presentations, small group breakout sessions, role playing, and case studies, all designed to strengthen participant capacity to teach environmental law in their universities. Focus areas include analysis of the foundations of environmental law, course structuring and planning, teaching methodologies, dispute resolution, and the role of the judiciary, each discussed in the context of key environmental issues facing the country and the domestic legislative framework. The TTT workshops also include focused, half-day field trips.

Every TTT in-country program has a specific highlight/outcome. The Myanmar TTT, for example, was one of the first occasions that brought the Ministry of Natural Resources and Environmental Conservation, the judiciary, and academics together in formal dialogue on environmental governance in the country as well as the EIA process. It was also one of the first occasions the director general of the Environmental Conservation Department presented the country's emerging environmental framework and developments in natural resource law, policy, and regulations, and discussed the immediate need for increased recruitment capacity in his legal division for environmental law expertise.

The success of the program has been largely due to the efforts of an initial cohort of country champions—environmental law professors selected during the early stages of the technical assistance in 2015. These champions and other TTT graduates continue to strive to make environmental law compulsory in the law program of their respective institutions or integrate environmental law into other courses. A highly significant outcome has been the emergence of national and regional networks that bring together environmental law teachers to share knowledge, network, collaborate, and solve problems. Networks have been established and continue to grow in Malaysia, Vietnam, the Philippines, China, Thailand, Cambodia, and Lao PDR. For example, after the TTT program at the Peking University Law School, the TTT graduates established a WeChat

discussion group around environmental law issues. This discussion group comprises not only environmental law professors and students, but also practitioners in environmental administration and justice, as well as some government officials who are actively engaging in discussions regarding environmental laws, compliance, and enforcement. The WeChat network has grown to over 750 active members, including environmental protection agency agents who use this channel to consult professors on environmental law issues.

Solid camaraderie among country champions has likewise been established, with a number of research planning, collaboration, and conferences together. Other knowledge products are forthcoming, including a documentary video to be used as tool to inspire law students to pursue environmental law and a report on the status of environmental law teaching in Asia (covering fourteen DMCs) (*ADB Environmental Law Champions Information Sheet* at 1 <<https://www.iucnael.org/en>>).

Furthermore, in December, the ADB's LPR Program launched the second phase of the TTT Environmental Law Champions technical assistance project. Phase Two builds on the success of Phase One by expanding its coverage to include climate change law and policy. It aims to (i) improve the quality of teaching of environmental and emerging climate change laws through TTT programs; (ii) expand national, sub-regional, and regional networks; and (iii) enhance knowledge platforms to increase national and regional expertise (*Strengthening the Capacity for Environmental and Climate Change Laws in Asia and the Pacific Technical Assistance Report* <<https://www.adb.org/projects/51310-001/main>>). South Asia is the focus of the next TTT trainings. In May 2018, participants from Sri Lanka and South India will be trained in Colombo (Open University of Sri Lanka), and, in October 2018, Nepal and Bangladesh will be covered.

### (3) Engagement with Policy-Makers

In response to the Paris Agreement, there is an increased focus on legal readiness for climate finance. Each country needs to have a legal and regulatory framework that is 'ready' to receive and quickly disburse funds for projects involving climate mitigation and adaptation. The ADB's ongoing regional technical assistance project thus aims to identify and address developing member countries' legal and regulatory barriers to (i) accessing international climate finance and (ii) implementing their NDCs under the Paris Agreement (*Overview of the Legal Readiness for Climate Finance and Climate Investments Technical Assistance* <<https://www.adb.org/projects/50178-001/main#project-overview>>). Lao PDR and Fiji have been selected as pilot countries.

In 2017, the ADB assisted Lao PDR in preparing its first-ever consolidated form of legislation on climate change. Coming in the form of a 'climate change decree,' it is scheduled to be considered by the prime minister in 2018. The decree delineates the institutional arrangements in relation to climate change activities, with the Ministry of Natural Resources and Environment as the lead

ministry coordinator. Likewise, it mandates reporting and monitoring of climate change mitigation and adaptation activities as well as sharing of climate change data (T. Morita and C. Pak, 'Legal Readiness to Attract Climate Finance: Towards a Low-Carbon Asia and the Pacific' (2018) 1 Carbon and Climate L Rev). It also ensures, among other things, that the needs of the vulnerable groups—including the elderly, women, and children—are considered in all climate-related activities in the country. The decree also introduces a climate change fund that is intended to channel domestic and international resources into climate change-related activities in the country. This is a significant reform initiative considering that Lao PDR currently does not have an accredited entity or national implementing entity that can directly access international funds such as the Green Climate Fund and the Adaptation Fund (*ibid*). The ADB is committed to supporting the Lao PDR government in finalizing the climate change decree and any other legal instruments needed to effectuate and implement it.

In Fiji, the ADB conducted detailed assessments for the energy and transport sectors, which are the two priority sectors identified in Fiji's NDCs. The ADB is currently finalizing an assessment report that identifies legal barriers to accessing climate finance and to implementing NDCs in Fiji. This will be followed by a further consultation with the government and various stakeholders to validate the assessment results and discuss recommended legal and regulatory recommendations, including a legal roadmap to inform the government, policy-makers, the private sector, and donor organizations as to the scope and kind of assistance needed to achieve Fiji's NDCs (*ibid*).

In the future, the technical assistance may expand to more countries in the Asia Pacific region, subject to demand and funding. With this work, the Office of the General Counsel assisted the ADB's DMCs in addressing environmental and climate rule-of-law challenges, and demonstrated the ADB's strong commitment to sustainable, resilient, ecological, and inclusive development in the Asia Pacific region.

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## 14. United Nations Environment Program (UNEP)

### (1) Introduction

UNEP has been regarded as the premier global environment authority that sets out the agenda, goals, and targets for environment protection and sustainable development. It is a catalyst program of the United Nations (UN) system in addressing environmental challenges through scientific assessment, early warning, policy advice, and law making at the international level. Guided by the



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