



ENVIRONMENTAL COURTS AND TRIBUNALS IN ASIA-PACIFIC ZOOM WEBINAR: 10 AUGUST 2022 (2:00-5.30 PM)

On 10 August 2022, the **Asia Pacific Centre for Environmental Law (APCEL)** Singapore hosted a Zoom webinar in collaboration with the **Asian Development Bank (ADB)** and the **Asian Research Institute for Environmental Law (ARIEL)**. As part of APCEL's wider research project on Environmental Courts and Tribunals (ECTs) in the Asia Pacific region, this webinar brought together experts and stakeholders to have a broad-ranging discussion on trends, best practices and challenges related to ECTs in this region.

In their introductory remarks, Jolene Lin (Director, APCEL), Matthew Baird (Director, ARIEL) and Briony Eales (Climate Law and Policy Specialist, ADB) emphasised the importance of ECTs as well as the unique challenges and opportunities in the Asia Pacific region. The webinar itself comprised of three sessions: sessions 1 and 3 were plenary, while session 2 was split into two parallel panels.

Session 1

Session 1, which was moderated by Linda Yanti Sulistiawati (Senior Research Fellow, APCEL; and Associate Professor, Universitas Gadjah Mada), started with Brian Preston (Chief Judge, Land and Environment Court of New South Wales) speaking about '*The Role of ECTs in Delivering Environmental Justice: Theory and Practice*'. He discussed how ECTs play a critical role in delivering environmental justice and must ensure that they have qualities including equity, efficiency, and engagement of public discourse. ECTs must also have the competences they need to adjudicate effectively and protect environmental justice.

Matthew Baird then delivered a presentation about his research on '*Rules of Procedures in Environmental Courts and Tribunals in Asia Pacific*', which was jointly conducted with Rocky Guzman (Deputy Director, ARIEL). In addition to emphasising the importance of ECTs generally and certain challenges to the development of ECTs which are specific to the Asia Pacific region, he also examined best practices from various jurisdictions including the Philippines, China, Pakistan, and Australia.

Briony Eales completed the panel with her presentation on '*Training and Networking for Environmental Courts and Tribunals in Asia Pacific*', focusing on how ADB has supported and will continue to support judicial education and training regarding the climate crisis. She emphasised that judges play a crucial role in making decisions that influence the application of national laws and the protection of citizen's rights,

which are especially relevant for strengthening environmental rule of law. ADB, therefore, will continue to build judicial capacities and collaborate with other development partners to enhance this process.

Session 1 concluded with an engaging Q&A session, during which panellists addressed questions on matters such as whether climate change is too contentious as a political issue for ECTs to deal with directly, and how ECT mechanisms in Pacific island jurisdictions can be improved to protect indigenous rights in the face of development.

Session 2: Panel A

There were two panels running concurrently during Session 2.

Panel A was moderated by Briony Eales. First, Linda Yanti Sulistiawati presented her research on *'Asia-Pacific's Regional Perspective on ECTs: The Way Forward'*, which included an overview of ECTs in China, India, Pakistan, Indonesia, and Thailand. In particular, she highlighted the unique phenomenon of 'travelling ECTs' that have emerged in these jurisdictions, whereby judges travel in mobile courthouses to increase access to environmental justice to people who may not be living in areas with established courthouses. She emphasized that moving forward, four factors would influence the success of ECTs: (1) government and stakeholder support, (2) sufficient IT infrastructure, (3) guarantee/evidence of environmental legislation enforcement, and (4) being sensitive to the global environmental landscape.

Next, Noriko Okubo (Professor, Osaka University) delved into a *'Legal Analysis of Japan's National Environmental Dispute Coordinate Commission'*. She focused on the growing popularity of resolving environmental disputes through alternative dispute resolution (ADR) processes, which go through an independent body, the Environmental Dispute Coordination Commission (EDCC). While ADR in Japan is effective and has unique practices, there is still room for improvement: the EDCC's jurisdiction needs to be expanded; the involvement of more experts needs to be secured; and a closer linkage between administrative ADR and judicial review needs to be established.

The third speaker was Yuhong Zhao (Associate Professor, Chinese University of Hong Kong), who explained the *'Judicial Response to Environmental Crisis: A Study of ECTs in China'*. Firstly, she explained how the development of ECTs in China is motivated by the overarching aim of building China's environmental governance and enhancing the efficiency of court systems in dealing with environmental disputes. She ended by recognising the need to continue filling in the gaps in environmental legislation, expressing confidence that the continued development of ECTs in China would have a great impact on environmental adjudication.

Finally, Alan Webb (Barrister, Quay Chambers) spoke about *'Environmental Adjudication in New Zealand: Past, Present, and Future'*, explaining how New Zealand's environmental court was established and structured. While it delivers the benefit of environmental specialisation in terms of issues adjudicated, procedures and rules of evidence, there is room for improvement, especially when it comes to efficiency.

During the Q&A segment, Panel A took questions on issues including what indicators can be used to qualify specialist ECT courts and for suggestions on how ECT rules can be improved to enhance access to justice.

Session 2: Panel B

Panel B was moderated by Sroyon Mukherjee. First, Gitanjali Gill (Professor, Northumbria University Law School) presented her research on ‘*National Green Tribunal of India: Quo Vadis?*’, which included an overview of the establishment of India’s National Green Tribunal (NGT) in 2010 to address certain limitations of the Supreme Court and other generalist courts when it came to adjudicating environmental matters. She charted the NGT’s development in three phases: teething problems and hesitance (2010-12), the golden phase (2012-18) and the current phase (2018-present) where the focus has been on enforcement of orders. She noted that as an environmental tribunal, the NGT is seen as a kind of ‘role model’ with an international reputation, but it still faces significant challenges including a limited bench, quality and reasoning of orders and questions around its exercise of *suo motu* powers.

Next, Peixuan Shang (PhD Candidate, Tsinghua University) spoke about ‘*ECTs in Trans-Regional Environmental Governance: China’s Experiences and Lessons*’. She drew attention to the complex nature of trans-regional environmental disputes in a country as large as China, and the tension between administrative and regional divisions versus the interconnectedness of environmental impacts and issues. She gave an overview of the landmark 2014 amendment of China’s Environmental Protection Law, and ended by discussing lessons for transboundary environmental governance which can be drawn from the Chinese experience thus far.

The third speaker was Grizelda Mayo-Anda (Director, Environmental Legal Assistance Center), who presented on ‘*ECTs in the Philippines: Legal Analysis*’. Firstly, she gave an overview of the opportunities in the Philippines for ECTs and environmental law in general, including a progressive constitution which incorporates the right to a healthy and balanced ecology, and a proactive network of public interest law groups and human rights organisations. She also discussed developments such as citizen suits and the writ of nature (*kalikasan*), and two case studies: the *Boracay Foundation* case (2012) and *Resident Marine Mammals* case (2015).

Finally, Kokila Konasinghe (Professor, University of Colombo) spoke about ‘*South Asian Perspectives on ECTs: Prospects and Challenges*’, explaining the potential benefits from ECTs (such as environmental justice, equity in the distribution of environmental risk and commitments, and recognition of the diversity of the participants and experiences in affected communities) and certain challenges which are specific to (or particularly acute in case of) South Asia. She outlined a tentative research agenda focusing on a comparative analysis of ECTs in South Asian jurisdictions, specifically Pakistan, Bangladesh and Nepal.

During the Q&A segment, Panel A took questions on issues including about the writ of nature *kalikasan* and separation of powers, and the extent to which the lessons drawn from the Chinese experience can be generalised for other countries.

Session 3

Session 3 was the concluding plenary session. It was moderated by Matthew Baird, and started with summaries of the just-concluded Panels A and B (Session 2) by Briony Eales and Sroyon Mukherjee, the

respective moderators of the two panels. Session 3 concluded with a Q&A session where the panellists took questions on questions and comments ranging from the possibility of regional or multinational cooperation to deal with environmental disputes, the important of the structure, powers and processes of ECTs in different legal systems, and the pros and cons of private arbitration versus adjudication by courts.



**(From top left: Brian PRESTON, Briony EALES, Mathew BAIRD, Peixuan SHANG
From middle left: Grizelda MAYO-ANDA, Jolene LIN, Rocky GUZMAN, Yuhong ZHAO
From bottom left: Linda Yanti SULISTIAWATI, Sroyon MUKHERJEE, Kokila KONASINGHE,
Gitanjali Nain GILL)**