Asian Development Bank Administrative Tribunal
Annual Report 2022

PUBLIC. This information is being disclosed to the public in accordance with ADB’s Access to Information Policy.
Message from Chis de Cooker  
President of the Asian Development Bank Administrative Tribunal

The year 2022 marked the end of the terms of Judge Shin-ichi Ago and Judge Anne Trebilcock, and the resignation of Judge Silvia Cartwright. I developed a strong bond with these colleagues that contributed to rich discussions on the cases. We all benefited from our good working relationship which improved team-building among all of the Judges.

I am grateful to Judges Ago, Anne and Silvia for their contributions to the Tribunal. I wish them all the best in their future endeavors.

I welcome Judge John R. Murphy and Judge Catherine Meier as the newest members of the Tribunal. They bring a wealth of experience from their careers—Judge John from his long career as Judge at the High Court in South Africa and as a Judge of Appeal of the United Nations Appeal Tribunal in New York; Judge Catherine from her career at the International Organization for Migration and the Food and Agriculture Organization. I look forward to working with them.

To our Executive Secretary Cesar Villanueva, and Senior Attorney Christine Griffiths, and all the assistants assigned by the Office of the Secretary, thank you for your support to the Tribunal.
I. Introduction

This is the 2022 Annual Report of the Asian Development Bank Administrative Tribunal (the Tribunal) following the amendment in its Rules of Procedure which was adopted by the Tribunal members on 10 February 2021. Under Rule 3 (Duties of President and Vice-President), “the President shall prepare an annual report on the activities of the Tribunal, which shall be published.”

Established in 1991, the Tribunal is an independent judicial body created to hear and pass judgment upon any application by which an individual member of the staff of the Bank alleges non-observance of the contract of employment or terms of appointment. It is composed of five members (or judges), all of whom are nationals of ADB Members but no two of whom shall be nationals of the same member country. They must be of high moral character, learned in the law relevant to the field of employment law, dispute resolution, staff management or other areas, and possess qualifications suitable for appointment in high judicial office.

II. Tribunal Members Appointed and Resignation of a Member in 2022

The Asian Development Bank (ADB) Board of Directors appointed Judge John R. Murphy and Judge Catherine Meier to the Tribunal to fill the vacancies created by the completion on 30 September 2022 of the third and final terms of service of Judge Shin-ichi Ago and Judge Anne Trebilcock.

In November 2022, Judge Silvia Cartwright submitted a letter of resignation. She notes that her resignation is owing to personal considerations.

The Tribunal conducted an online organizational meeting on 09 November 2022 to confirm the election of Judge Chris de Cooker and Judge Raul Pangalangan, as President and Vice-President, respectively of the Tribunal.

The following comprises the incumbent members of the Tribunal as of 31 December 2022:

Judge de Cooker is a national of the Netherlands. He was first appointed in October 2015 and was reappointed in October 2021 to his third and final term until September 2024. Judge de Cooker is a retired international civil servant (European Space Agency). He is currently the President of the North Atlantic Treaty Organization Administrative Tribunal, of the European Bank for Reconstruction and Development Administrative Tribunal, and of the Administrative Tribunal of the International Centre for Migration Policy Development, as well as a Judge of the Organization for Economic Cooperation and Development Administrative Tribunal, of the GAVI Appeals Tribunal, and of the SKAO Independent Employment Tribunal. He is Chairman of the Appeal Board of the International Bureau of Weights and Measures; Mediator at the ITER Organization and former Chairman of the Global Fund Appeal Board.

Chris de Cooker
Judge Pangalangan is a national of the Philippines. He was first appointed in April 2019. Judge Pangalangan is a former Judge at the International Criminal Court (The Hague); is a Professor of Law and former Law Dean, University of the Philippines; has held visiting appointments or lectureships, inter alia, at Harvard Law School, the Hague Academy of International Law, Melbourne University, and Salzburg Seminar on International Criminal Law; is a Membre Associé, Institut de Droit International; a Member of the Permanent Court of Arbitration; and member of the Executive Council, Asian Society of International Law.

Judge Murphy is a national of the United Kingdom and South Africa. He was appointed in October 2022. He is a Judge of Appeal at the United Nations Appeals Tribunal in New York. He is also a Judge of the High Court of South Africa (Gauteng Division at Pretoria), released from active service in 2018 to perform duties at the United Nations Appeal Tribunal and as Chairman of the Sanctions Board of the World Bank. He continues to serve as a judge performing different judicial tasks as required. From late 2020 until June 2022, he was a designated judge in the Judicial Commission of Inquiry into Allegations of State Capture, in South Africa which was appointed by the President of South Africa to investigate allegations of corruption, racketeering, money laundering and capture of SOE’s in South Africa.

Judge Meier is a national of the United States and Italy. She was appointed in October 2022. Ms. Meier is Deputy Inspector General at the International Organization for Migration in Geneva, Switzerland. She was also the former Chief of the Administrative Law Branch at the Food and Agriculture Organization of the United Nations in Rome, Italy. Prior to that, she was the General Counsel, Vectrix Corporation and Managing Director of Vectrix Europa Srl.; Counsel, Lathan & Watkins, LLP; Dirigente, Ente Nazionale Idrocarburi (ENI).
Secretariat

Mr. Cesar Villanueva is a national of the Philippines. He is the Executive Secretary of the Tribunal since 2011. Mr. Villanueva is the Founding Partner of Villanueva Gabionza & Dy law firm; the former Chairman of Governance Commission for Government-Owned or -Controlled Corporations; a Professor and former Dean of the Ateneo de Manila Law School; the former Chairman, Commercial Law Department of the Philippine Judicial Academy of the Supreme Court; a former Member of the Governing Board of the Mandatory Continuing Legal Education; and author of legal books and articles, mainly on corporate law and governance, and commercial law.

Cesar Villanueva

Ms. Griffiths is a national of Australia. She has been the Senior Attorney to the Tribunal since 2003. Ms. Griffiths spent several years in practice as a commercial litigation lawyer with Gadens Ridgeway Solicitors and as a lawyer advising the Australian Government on international law issues. She also served as the Senior Attorney to the IMF Administrative Tribunal from 2017 to 2019.

Christine Griffiths

The Tribunal Members and Secretariat met in November 2022 by video conference to (i) welcome the new members of the Tribunal, Judges John Murphy and Catherine Meier; (ii) officially designate Judge Chris de Cooker as the President, and Judge Raul Pangalangan as the Vice-President of the Tribunal; and, (iii) hold a planning session on the status of the Applications, and (iv) schedule the 50th Session on 9-12 May 2023.

III. Appeals to the Tribunal

The Tribunal received six (6) Applications in 2022. Brief descriptions of the Applications have been posted on the Tribunal website under Notice of Filing of Applications. Under the Rules of Procedure, Rule 7, para. 15, “Shortly after notifying the Bank of the application, the Executive Secretary shall publicly announce the date of its filing, its number and a summary of the relief sought, without disclosing the identity of the applicant or any other person.”
**ADBAT Application No. 2022-01**

On 05 July 2022, the ADB Administrative Tribunal received electronically through its email address an Application with Annexes 1 to 8, which, after verification of their compliance with the filing requirements under the ADBAT Rules of Procedure, were formally transmitted under date 21 July 2022 to the Respondent Bank the filing of its Answer.

The Application seeks rescission and/or reversal and setting aside of Respondent’s decision to dismiss the Applicant for serious inappropriate conduct and the reinstatement of the Applicant into service with the release and/or payment of all arrears which ought to have accrued in favor of the Applicant on account of compensation, benefits, perks privileges; or in the alternative, the release and/or payment of Applicant’s salary and benefit which may accrue from the date of Applicant’s dismissal up until the date of Applicant’s mandatory retirement, including payment into the pension fund and the capacity to make contributions thereto as may be provide under the rules, as well as damages for injuries suffered and mental anguish, for Respondent to pay the costs incurred by Applicant in pursuing the case.

**ADBAT Application No. 2022-02**

On 05 July 2022, the ADB Administrative Tribunal received electronically through its email address an Application with Annexes 1 to 5, which, after verification of their compliance with the filing requirements under the ADBAT Rules of Procedure, were formally transmitted under date 21 July 2022, to the Respondent Bank for the filing of its Answer.

The Application seeks rescission and/or reversal and setting aside of the Respondent’s decision to impose disciplinary measures against Applicant for serious inappropriate conduct, and to recover from the Respondent damages/compensation for injuries suffered due to the irreparable damage to the Applicant’s reputation among the ADB staff/colleagues and in the Applicant’s social circle in view of the nature of the allegations levelled against the Applicant, damages/compensation for undue mental anguish suffered by the Applicant and the Applicant’s family, as well as the legal costs incurred by the Applicant.

**ADBAT Application No. 2022-03**

On 10 August July 2022, the ADB Administrative Tribunal received electronically through its email address an Application with Annexes 1 to 44, inclusive of submarkings, which, after verification of their compliance with the filing requirements under the ADBAT Rules of Procedure, was formally transmitted under date 19 August 2022 to the Respondent Bank for the filing of its Answer.

Apart from the plea for any preliminary or provisional measures, such as production of additional documents and the hearing of witnesses, the Application seeks the rescission of the Respondent’s decision which “dismissed as ‘without merit’” Applicant’s objections regarding the appointment to the position of Auditor General, as well as recovery from the Respondent Bank damages allegedly sustained by the Applicant for significant loss of career opportunity and future earning capacity, emotional distress and physical/mental stress, breach of dignity, reputational harm and moral injury and inconvenience cause to the Application, including recovery of the costs in pursuing the appeal with the Tribunal.
**ADBAT Application No. 2022-04**

On 10 August 2022, the ADB Administrative Tribunal received electronically through its email address an Application with Annexes 1 to 16, inclusive of submarkings, which, after verification of their compliance with the filing requirements under the ADBAT Rules of Procedure, were formally transmitted under date 19 August 2022 to the Respondent Bank for the filing of its Answer. Apart from the plea for any preliminary or provisional measures, such as production of additional documents and the hearing of witnesses, the Application seeks (a) that the "Appeal 1 item ‘2’ Deputy Treasurer be reinstated to a status quo ante"; for the Administrative Tribunal to rescind President’s decision on the Appeals Committee’s recommendation to uphold the Respondent’s objection to the Appeals Committee’s competence, and that after reinstatement to a status quo ante the Applicant seeks to be allowed to furnish an application to the Administrative Tribunal directly and for the Tribunal to deliberate and decide upon the merits of the Applicant’s case without any further requirement for Administrative Review and Appeal; and (b) the recovery of damages allegedly sustained by the Applicant for significant loss of career opportunity and future earning capacity, emotional distress and physical/mental stress, breach of dignity, reputational harm and moral injury and inconvenience cause to the Applicant, including recovery of the costs in pursuing the appeal with the Tribunal.

**ADBAT Application No. 2022-05**

On 10 August 2022, the ADB Administrative Tribunal received electronically through its email address an Application with Annexes 1 to 37, inclusive of submarkings, which, after verification of their compliance with the filing requirements under the ADBAT Rules of Procedure, were formally transmitted under date 19 August 2022 to the Respondent Bank for the filing of its Answer.

Apart from the plea for any preliminary or provisional measures, such as production of additional documents and the hearing of witnesses, the Application seeks the expungement of the Applicant’s 2020 Annual Performance Review, as well as recovery from the Respondent Bank damages allegedly suffered by the Applicant “from the Respondent’s behavior resulting in the aggravation of underlying medical conditions and due to the prolonged effort required to preserve the [Applicant’s] credibility in his request for administrative review, the [Applicant] endured an inordinate amount of stress and distress whilst fulfilling his professional responsibilities,” including recovery of the costs in pursuing the appeal with the Tribunal.

**ADBAT Application No. 2022-06**

On 08 October 2022, the ADB Administrative Tribunal received electronically through its email address an Application with Annexes 1 to 22, inclusive of submarkings, which, after verification of their compliance with the filing requirements under the ADBAT Rules of Procedure, were formally transmitted under date 14 October 2022 to the Respondent Bank for the filing of its Answer.

Apart from the plea for any preliminary or provisional measures, such request for anonymity, the Application seeks correction of performance ratings given to the Applicant which allegedly “were incorrect and made in breach of the requirements of the Administrative orders (AO) of the ADB, in breach of the terms of [Applicant’s] contract of employment and in breach of the precepts of administrative law, as applicable to the ADB,” seeking the adjustment of Applicant’s salary rates and ADB’s contribution to the pension,
and moral damages for mental suffering, humiliation and health impact, as well as compensation “for time at nights and weekends in preparing all documents for Administrative Review, Appeal, and Tribunal.”

Eventually, three (3) of the Applications were withdrawn, and notice thereof was also posted on the Tribunal website.

The Tribunal will render its decision on the remaining three Applications at the 50th Session of the Tribunal scheduled in May 2023.

IV. Tribunal Judgment

Under the Rules of Procedure, Rule 13, para. 1, “When the President considers the documentation of a case to be complete, he or she shall instruct the Executive Secretary to place the case on the list for decision, and the Executive Secretary shall inform the parties as soon as the case is listed.” There was one decision rendered by the Tribunal in 2022. The full version of Decision No. 124 is available on the Tribunal website.

V. eFiling Project for Tribunal Pleadings

The Office of The Secretary, who provides administrative support to the Tribunal, together with the Office of the General Counsel, has been in constant coordination with ADB’s Information and Technology Department regarding the creation of a platform or system that will allow online filing of pleadings to the Tribunal in an efficient manner and will guarantee its confidentiality. The target implementation of the project is still being finalized.