

ADVANCING JUSTICE, GOVERNANCE AND LAW FOR ENVIRONMENTAL SUSTAINABILITY



Rio+20 and the World Congress of Chief Justices,
Attorneys General and Auditors General

"Environmental law is essential for the protection of natural
resources and ecosystems and reflects our best hope for the future."



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Advancing Justice, Governance and Law for Environmental Sustainability

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The image shows a grand, circular conference room. The ceiling is a striking feature, composed of several concentric, glowing rings of light that create a sense of depth and scale. The walls are clad in large, rectangular wooden panels. In the center of the far wall, the letters 'IYVS' are prominently displayed in a large, metallic font. The room is filled with people seated at long tables, suggesting a formal meeting or conference. The overall atmosphere is one of modern elegance and professional setting.

Preface

High level opening of the World Congress on Justice, Governance and Law for Environmental Sustainability, Supreme Court of Justice of the State of Rio de Janeiro, Brazil, 17 – 20 June 2012
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In facing ever increasing complexities regarding our planet, people everywhere view environmental rights, environmental law and jurisprudence and environmental governance as becoming increasingly central to resolving problems of environmental justice. The judiciary is predominantly relied upon to provide this justice and implement the framework of principles and laws that provide its foundation. The auditing community too has a key role in its ability to monitor environmental policies, transparency and accountability through independent processes.

In connection with the United Nations Conference on Sustainable Development, Rio+20, UNEP organized the World Congress on Justice, Governance and Law for Environmental Sustainability. Through the World Congress, over 250 of the world's Chief Justices, Attorneys General and Auditors General seized a generational opportunity to contribute to the debates on the environment and declare that any diplomatic outcomes related to the environment and sustainable development, including from Rio+20, will remain unimplemented without adherence to the rule of law, without open, just and dependable legal orders. For the first time in history these three key groups of national stakeholders have declared their unified commitment to cooperate to build and support the capacity of courts and tribunals as well as prosecutors, auditors and other related stakeholders at national, sub-regional and regional levels to implement environmental law, and to facilitate exchanges of best practices in order to achieve environmental sustainability.

The World Congress sent important messages to World Leaders on the role of environmental law and adopted a set of guiding principles for the Advancement of Justice, Governance and Law

for Environmental Sustainability, which provide a useful reference for all those committed to environmental sustainability. The Congress also called upon UNEP to lead the establishment of an international institutional network for (a) continued engagement of Chief Justices, Attorneys General, Heads of Jurisdiction, Chief Prosecutors and Auditors General, the institutions they represent and other components of the legal and enforcement chain, including through networks at the international and regional levels; (b) quality information and data exchange and discussion among the legal and auditing communities at large; (c) continued development and implementation of environmental law at all levels, and encouraging the further expansion of environmental jurisprudence; (d) improved education, capacity building, technology transfer and technical assistance, including with the aim of strengthening effective national environmental governance; and (e) adequate engagement by respective national governments for the set objectives.

The World Congress has affirmed and strengthened the role of law as an indispensable tool on the path towards sustainable development and greener economies. Some reviews have even called it the most encouraging and progressive work of Rio+20 from a legal perspective¹.

In connection with the World Congress, which closed its doors just as the high-level debates at Rio+20 began, also the outcome document of the Rio+20 Conference itself (The Future We Want) states in paragraph 10 that good governance and the rule of law "are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and

1. Transnational Environmental Law / Volume 1 / Issue 02 / October 2012, p. 412




Speakers at the World Congress on Justice, Governance and Law for Environmental Sustainability

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hunger.” This statement is repeated in paragraph 252 under ‘means of implementation’, highlighting the essential role accorded to law, governance and implicitly the pursuit of just societies in the implementation of the Rio+20 outcomes and the pursuit of sustainable development overall. Therefore, the UNEP World Congress and Rio+20 have together infused new life into debates about environmental justice and the role of law in the pursuit of sustainable development, including greener economies. In the months and years ahead, it is crucial to capitalize on this reaffirmation of the importance of just and dependable legal orders and the rule of law to realize the full potential of the positive transformational changes possible through environmental law and its implementation.

The following pages are comprised of key contributions to the Congress. Speeches, articles, the Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability and other documents that encase the critical importance behind the World Congress’ themes and paint a vivid picture of the future *we need* to attain sustainable development.



Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability

Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability

We, the Chief Justices, Heads of Jurisdiction, Attorneys General, Auditors General, Chief Prosecutors, and other high-ranking representatives of the judicial, legal and auditing professions gathered here in Rio de Janeiro, Brazil, from 17 to 20 June 2012 for the World Congress on Justice, Governance and Law for Environmental Sustainability,¹

Expressing our concern for the continuing and unprecedented degradation of the natural environment, which adversely affects the achievement of the goal of sustainable development and therefore the prosperity of present and future generations,

Noting the observations recorded in the Global Environmental Outlook 5 concerning the extent of environmental degradation in each of the world regions;

Recalling the principles enshrined in the 1972 Stockholm Declaration on the Human Environment, and in the 1992 Rio Declaration on Environment and Development, and Agenda 21,

Recognizing the important contribution made by the legal and auditing community worldwide to the enforcement of standards and safeguards for environmental sustainability, and noting that the Judiciary in particular, has been the guarantor of the rule of law in the field of the environment worldwide and that judicial independence is indispensable for the dispensation of environmental justice,

Recalling the importance of the first Global Judges Symposium convened by the United Nations

Environment Programme (UNEP) in 2002, in conjunction with the World Summit on Sustainable Development in Johannesburg, South Africa, and noting that since then, the importance of the Judiciary in environmental matters has further increased and resulted in a rich corpus of decisions, as well as in the creation of a considerable number of specialized courts and green benches, and a lasting effect on improving social justice, environmental governance and the further development of environmental law, especially in developing countries,

Emphasizing the importance of societies based on the rule of law and standards of transparency and accountability,

Affirming the Kuala Lumpur and the Buenos Aires statements from the two preparatory meetings for this Congress attended by Chief Justices, Heads of Jurisdiction, Attorneys General, Auditors General and other high-ranking representatives of the legal and auditing professions for this Congress, held in Kuala Lumpur, Malaysia, on 12 and 13 October 2011, and Buenos Aires, Argentina, on 23 and 24 April 2012, respectively,

Mindful of the historic opportunity for the legal and auditing communities to express themselves on advancing justice, governance and law for environmental sustainability provided by the proximity of the World Congress with the 2012 United Nations Conference on Sustainable Development 2012 (Rio+20),

1. This declaration attempts to capture the wide range of views of participants at the World Congress on Justice, Governance and Law for Environmental Sustainability. It does not represent a formally negotiated outcome nor does it necessarily capture all individual views or represent country or institutional positions, or consensus on all issues.

Appreciating the important role played by United Nations Environmental Programme and its partner organizations and co-hosts² in the convening of this Congress,

Declare that:

I. Messages to Heads of State and Government, other high-level representatives, and the world community at large

Without adherence to the rule of law, without open, just and dependable legal orders the outcomes of Rio+20 will remain unimplemented.

An independent judiciary and judicial process are vital for the implementation, development and enforcement of environmental law, and members of the judiciary, as well as those contributing to the judicial process at the national, regional and global levels, are crucial partners for promoting compliance with, and the implementation and enforcement of, international and national environmental law.

Environmental law is essential for the protection of natural resources and ecosystems and reflects our best hope for the future of our planet.

Environmental litigation often transcends national jurisdictions. We need more effective national and international dispute settlement systems for resolving conflicts.

Environmental sustainability cannot be achieved without good quality data, monitoring, auditing and accounting for performance.

Environmental and sustainability auditing ensures transparency, access to information, accountability, and efficient use of public finances, while protecting the environment for future generations.

Judges, public prosecutors and auditors have the responsibility to emphasize the necessity of law to achieve sustainable development and can help make institutions effective.

Scientific information and knowledge constitute a central foundation of effective compliance with and enforcement of environmental obligations.

States should cooperate to build and support the capacity of courts and tribunals as well as prosecutors, auditors and other related stakeholders at the national, sub-regional and regional levels to implement environmental law, and to facilitate exchanges of best practices in order to achieve environmental sustainability by encouraging relevant institutions, such as judicial institutes, to provide continuing education.

Existing international governance institutions to protect the global environment should be strengthened. We must create modern institutional structures capable of building networks and improved sharing of decision-making. There is an urgent need to give consideration to transforming United Nations Environmental Programme to effectively lead and advance the global policy and law-making agenda for the environment within the framework of sustainable development.

II. Principles for the Advancement of Justice, Governance and Law for Environmental Sustainability

Meeting environmental objectives is part of a dynamic and integrated process in which economic, social and environmental objectives are closely intertwined.

We recognize that environmental laws and policies adopted to achieve those objectives should be non-regressive.

2. The World Congress on Justice, Governance and Law for Environmental Sustainability was co-hosted by: Associação of Magistrates and Judges in the State of Rio de Janeiro (Associação dos Magistrados do Estado do Rio de Janeiro - AMAERJ); Fundação Getúlio Vargas; and Ministério Público do Estado do Rio de Janeiro. It was organized with the following partners: Asian Development Bank (ADB); Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); International Criminal Police Organization (Interpol); International Organization of Supreme Audit Institutions – Working Group on Environmental Auditing (INTOSAI - WGEA); Organization of American States (OAS); South Pacific Regional Environment Program (SPREP); World Bank; International Network for Environmental Compliance and Enforcement (INECE); Environmental Law Commission of the International Union for the Conservation of Nature (IUCN); and Law for a Green Planet Institute.

Environmental sustainability can only be achieved in the context of fair, effective and transparent national governance arrangements and the rule of law, predicated on:

- (a) Fair, clear and implementable environmental laws;
- (b) Public participation in decision-making, and access to justice and information, in accordance with Principle 10 of the Rio Declaration, including exploring the potential value of borrowing provisions from the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) in this regard;
- (c) Accountability and integrity of institutions and decision-makers, including through the active engagement of environmental auditing and enforcement institutions;
- (d) Clear and coordinated mandates and roles;
- (e) Accessible, fair, impartial, timely and responsive dispute resolution mechanisms, including developing specialized expertise in environmental adjudication, and innovative environmental procedures and remedies;
- (f) Recognition of the relationship between human rights and the environment; and
- (g) Specific criteria for the interpretation of environmental law.

Environmental sustainability can only be achieved if there exist effective legal regimes, coupled with effective implementation and accessible legal procedures, including with regard to locus standi and collective access to justice, and a supporting legal and institutional framework and applicable principles from all world legal traditions.

Justice, including participatory decision-making and the protection of vulnerable groups from disproportionate negative environmental impacts must be seen as an intrinsic element of environmental sustainability.

Only through the active engagement of all parts of society, especially national and sub-national institutions and officials responsible for addressing justice, governance and law issues, including judges, prosecutors, auditing institutions and other key functionaries, can meaningful progress be achieved that is

sustained and responsive to the needs of the peoples of the world and protective of human rights.

III. Institutional Framework for the Advancement of Justice, Governance and Law for Environmental Sustainability in the twenty-first century


With the leadership of the United Nations Environment Programme, an international institutional network should be established, with the engagement of the World Congress partners and other relevant organizations, and under the guidance of selected Chief Justices, Heads of Jurisdiction, Attorneys General, Chief Prosecutors, Auditors General, eminent legal scholars and other eminent members of the law and enforcement community.

This international institutional network may promote the achievement of:

- (a) Continued engagement of Chief Justices, Attorneys General, Heads of Jurisdiction, Chief Prosecutors and Auditors General, the institutions they represent and other components of the legal and enforcement chain, including through networks at the international and regional levels;
- (b) Quality information and data exchange and discussion among the legal and auditing communities at large;
- (c) Continued development and implementation of environmental law at all levels, and encouragement of the further expansion of environmental jurisprudence;
- (d) Improved education, capacity building, technology transfer and technical assistance, including with the aim of strengthening effective national environmental governance; and
- (e) Adequate engagement by respective national governments for the set objectives.

The United Nations Environment Programme may contribute to ensuring necessary funding for capacity building and information exchange for strengthened capacities.

Rio de Janeiro, Brazil, 20 June 2012

A photograph of a person's hands using a yellow measuring tape to measure the diameter of a tree trunk in a peat swamp forest. The forest is dense with tall, thin trees and large green leaves. The scene is brightly lit, suggesting daylight.

On a Sustainability Path with the Support of Justice, Governance and Law

Mr. Achim Steiner, Executive Director of UNEP



*On a Sustainability Path with the Support of Justice, Governance and Law**

The evidence pertaining to the state of the environment does not bode well for the future of the Earth. After four decades of international efforts to protect the environment and two decades subsequent to the first Earth Summit – almost every major indicator of environmental sustainability is pointed in the wrong direction.

On the 6th of June 2012, UNEP released the fifth report in the Global Environment Outlook series (GEO-5). According to this report, little progress has been made on the environmental objectives defined in 1992. The report also depicted that there has been progress at all levels of government and that there have been extraordinary innovations, new policies, groundbreaking technologies and new governance and policy frameworks that might begin to turn the situation around. Further, there were many achievements inspired and enabled by Agenda 21 and the policies that had emerged in 1992.

Nevertheless, a dramatic transformation is now needed in order to bridge the significant gap between humanity's efforts and the reality of its impact on Earth. One more incremental step will not suffice. Seven billion people have already transcended planetary boundaries in areas such as carbon emissions and ozone depletion, and millions of people are currently unable to feed themselves while a billion live in conditions unworthy of societies that are today richer than ever before. Humanity had achieved an extraordinary growth in prosperity around the world, including through exponential growth in food production, yet it had done so in ways that are destroying not only the environment but also the very arable land needed

for food production at unprecedented rates. It is illogical and irresponsible, and it is therefore not surprising that the discourse on sustainable development faces such widespread skepticism.

The World Congress is therefore extremely timely. The first United Nations Conference on the Human Environment, held in Stockholm in 1972, had been the first milestone in the development of environmental policy and a body of international environmental law. More than 500 multilateral environmental agreements have since then committed States to jointly implementing responsible sustainable development governance at the national level, thus creating the right conditions for the achievement of environmental justice. In one notable expression of this, at the Stockholm+40 Partnership Forum for Sustainable Development, held in April 2012, China's Premier Wen Jiabao said that the time has come to see environmental rights as an integral part of sustainable development.

In the current system of governance legislators, the executive branch and the judiciary are jointly relied upon to provide a framework for principles and rights that provide the foundations for environmental justice. Additionally, the auditing community has a key role to play, as the ability to monitor environmental policies requires transparency and accountability through independent processes. There is doubt, however, that environmental justice has kept pace with the complexities the planet is facing, and that law and jurisprudence are becoming increasingly central in resolving problems of environmental justice. In nearly every country the debate is currently under way and pioneering steps are being taken to create the

**Summary of the contribution made at the World Congress on Justice, Governance and Law for Environmental Sustainability on 17 June 2012 in Rio de Janeiro, Brazil*

conditions for effective environmental governance. Therefore, the World Congress can draw upon an extraordinary wealth of experience.

In order to respond effectively to unprecedented realities such as climate change and biodiversity loss, humanity must define environmental governance and justice. We must also recognize that humans have reached the point where they could in one generation eliminate the choices and rights of future generations by changing entire life support systems.

Approximately 70 per cent of the oceans for instance, have already been overexploited, leading to the collapse of fish stocks. To do so, and as reflected by the prominence of the green economy as a theme of the Conference on Sustainable Development, humanity must act in recognition of the interplay between economic policies and activity, social equality and environmental sustainability and can no longer develop and implement them in isolation from one another. Thus, while forests have been viewed strictly in terms of the value of their timber; they are now regarded as vital ecosystems with far reaching implications. Amazonia, for example, is not just standing timber or potential farmland, but rather the basis for the entire hydrological system of South America, vital to the survival of millions of people. Policies that recognize this reality are critical.

Markets alone cannot be relied upon for an environmentally sound outcome. When a single bluefin tuna can fetch up to \$400,000 on world markets there can be no doubt that someone would be willing to hunt down the last bluefin tuna in the world for profit. Despite appeals to Governments, species and whole ecosystems are being pushed to collapse in full public view.

However, the debate should not simply be reduced to the role of the state versus that of the market. Indeed there should be an end to such polarized thinking. A pragmatic approach is needed now more than ever. There are many policies that have the

potential to correct market failures and shape the marketplace in ways that enable economic growth while assuring social equality and environmental sustainability. For example, green economy measures could include fiscal policies or legislation to limit the use of asbestos and pollutants or to protect children from chemical toxicity, which in the world's richest nations has reached record levels.

An important question to ask in regards to recourse is where can citizens find environmental justice when their own governments fail to implement the laws they adopt? There is a crucial need to increase public accountability for environmental protection due to the fact that in environmental cases judges and attorneys deal not solely with carbon emissions or pollution but also with the very roots of constitutional democracy.

The 2012 United Nations Conference on Sustainable Development is not just another conference but rather a turningpoint for the world. It goes far beyond the text of the outcome document being discussed and represents a true milestone for those participating. It also is an opportunity to engage in a discourse on environmental justice as a matter of fundamental human rights. For the World Congress participants the matter is not one of abstract advocacy but a harsh reality they face daily as they carry out their functions. International environmental governance has two aims of particular relevance: the first is to improve the institutional framework for addressing environmental issues in the international arena and the second is to achieve accountability at the national level. At a time like the present accountability at the national level is of paramount importance as the baseline of good governance and the roles played by legal and auditing professionals are critical.



The Role of Judges in the Decision-making Process Pertaining to Environmental Sustainability, Justice, Governance and Law

Justice Antonio Herman Benjamin, National High Court of Brazil



The Role of Judges in the Decision-making Process Pertaining to Environmental Sustainability, Justice, Governance and Law

In June 2012 at the World Congress on Justice, Governance and Law for Environmental Sustainability held in Rio de Janeiro, Supreme Court judges, Attorneys General and senior representatives of the auditing profession met as part of the Rio +20 Conference. This marked the first time that these three constituencies have been involved together in the decision-making process pertaining to the Earth's future. Since the United Nations Conference on the Human Environment held in Stockholm in 1972 and the Earth Summit held in Rio de Janeiro in 1992, significant progress has been made in the environmental front. Judges and citizens of Brazil, for example, can today speak their minds in a way that was not possible four decades ago when the country was under a military dictatorship. Currently, the Brazilian Constitution and the judiciary uphold citizens' rights to participation and information and ensure strong protection of Nature.

However, there remains much to be achieved in the adjudication of environmental cases. Thus, new concepts and approaches are required. Currently, judges are limited to operating within the frameworks of their countries' constitutions, legislation and case law. Environmental law, however, calls for a new ethic that takes science into account and goes beyond traditional boundaries and local contexts to encompass the needs of all living organisms and the Earth as a whole. Environmental challenges transcend historical and legal contexts and require judges to balance not only the views of the parties in specific disputes, but also the interests of the larger community and future generations. Moreover, judges should reject the notion that economic growth must be attained at the environment's expense.

Consequently, property law must be reinterpreted to incorporate concepts of environmental stewardship and sustainability. At present, this "ecological function" to property rights has been enshrined in constitutions of several South American countries, including Brazil. Likewise, environmental protection must not overlook the issue of poverty. No country can maintain its ecological richness if its citizens are kept poor and do not enjoy the most fundamental rights associated with human dignity. In addition, in respect to environmental litigation, judges should consider applying new legal concepts like shifting or reversing the burden of proof. This is especially important in dealing with questions of causation, in which the principle *in dubio pro natura* should be applied in some circumstances. This means that in case of doubt, matters should be resolved in the way most likely to favor the environment. Considering that environmental harm could be regional or global in scope, it might also be reasonable to consider some very serious environmental violations to be a crime against humanity. Further, judges should incorporate risk, in addition to the traditional touchstone of damages, and decide in light of the precautionary principle. Finally, the non-regression principle, which would prohibit the frivolous or unwarranted overturning of settled environmental laws, should be developed.

Though it may be perceived as utopian to expect judges to solve the global environmental crisis by themselves, hope for the Earth's future will be dimmer if judges are not on its side—or remain silent.



Human Rights, Environment and Sustainable Development

Ms. Navathenem Pillay, United Nations High Commissioner for Human Rights

Local people's fishing boat, Anakao, South-West Madagascar, 2011
© Peter Prokosch/UNEP Grid Arendal



*Human Rights, Environment and Sustainable Development**

It is a great pleasure to address this distinguished group of jurists today in the context of the World Congress on Justice, Governance and Law for Environmental Sustainability.

In my remarks today, I would like to underline the importance of human rights as an essential component of legal strategies for sustainable development, and to highlight specific human rights that are directly related to economic development, social protection and environmental protection.

The 1992 Rio Declaration states in its very first Principle that “human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.” The pursuit of inclusive, equitable and sustainable development can only take place when human beings are the central concern. Therefore, sustainable development is a process that takes place where human beings, and therefore human rights are of fundamental importance.

Another important document that frames this important Conference is the UN General Assembly’s resolution on Rio + 20 that envisages an outcome document that should balance three interdependent and mutually reinforcing pillars of sustainable development: economic development, social development and environmental protection. Finally, I note that in the latest report of the Secretary-General on the Rule of Law to the General Assembly in 2012, he addressed the issue of sustainable development and emphasised that,

“Sustainable human development is facilitated by a strong rule of law. The United Nations supports the development of a holistic

sustainable human development agenda that addresses the challenges related to inclusive growth, social protection and the environment. In such an agenda, the rule of law must play a critical role in ensuring equal protection and access to opportunities.” Protection of human rights, therefore, is an essential element of sustainable development. If human rights are not observed in issues relating to sustainable development, then its component parts including economic development, social protection and environmental protection will all encounter serious obstacles and setbacks.

And, as I will attempt to illustrate, human rights strategies are a vital element of any successful legal strategy for environmental protection. People, after all, have standing, even in jurisdictions where the natural environment does not.

Perhaps no human right is closer to an essential component of sustainable development than the right to health and a healthy environment. The right to health is a human right recognized and protected by the International Covenant on Economic, Social and Cultural Rights. It also has been recognized in the jurisprudence of a number of national courts.

In a case in Argentina concerning environmental harm to fisheries and wildlife in a lagoon, the court concluded that, “The right to live in a healthy and balanced environment is a fundamental attribute of people.” In Costa Rica, the Supreme Court noted in a case before it that a healthy environment “constitutes a right that all citizens possess to live in an environment free of contamination. This is the basis of a just and productive society.”

**Speech made at the World Congress on Justice, Governance and Law for Environmental Sustainability on 20 June 2012 in Rio de Janeiro, Brazil*

A human right closely related to the right to health is the right to life. The right to life is protected by the International Covenant on Civil and Political Rights, as well as in national laws and constitutions. In India, the Supreme Court observed that the right to life “includes the right of enjoyment of pollution-free water and air for full enjoyment of life.” In Bangladesh, the court found that the right to life “encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water.” In Argentina, the court determined that “pollution arising from a coal burning industry, and particularly as a result of the cancerous substances that emanated from it, constituted a violation of the right to life.” And in Costa Rica, the court said that “without recognition of the right to health and to the environment the right to life would be severely limited.”

The right to life may also be thought of more broadly to encompass the right to life of communities and peoples, protected by the International Covenant on Economic, Social and Cultural Rights; and the UN Declaration on the Rights of Indigenous Peoples provides a number of important protections to the native lands and culturally specific way of life of indigenous peoples.

In national jurisprudence, the rights of communities and indigenous peoples have often found protection. In a case in Colombia that involved logging on the territory of indigenous peoples, the court found that “the devastation of forests alters their relation with the environment and endangers their lives since with the reduction or disappearance of the forest, the main source of animal protein, is also reduced or extinguished.” Similarly, in Costa Rica, the court concluded that “the devastation of the forest endangers indigenous peoples’ cultural and ethnic integrity and that these communities were likely to suffer future damages due to their cultural dependence on the tropical forest in which they dwell.”

The rights of communities other than indigenous peoples may also be protected by the courts. In a case in Ecuador involving the requested suspension of mining operations and road building in a national park, the court found that environmental degradation in national parks was “a threat to the environmental human rights of

the inhabitants of the provinces of Loja and Zamora Chinchipe to have an area which ensures the natural and continuous provision of water; air; humidity, oxygenation and recreation.”

The right to privacy may also be infringed by an environmental nuisance. In a case involving Spain, the European Court of Human Rights found a breach of the right to private life when the plaintiff and her daughter suffered serious health problems from the fumes of a tannery waste treatment plant which operated alongside the apartment building where they lived. The court added that severe environmental pollution may be an infringement of private life, without, however, seriously endangering health.

In Colombia, a local community sued an animal food industry because of the highly disagreeable fumes it emitted. The court concluded that the foul odours amounted to “an arbitrary intrusion in the privacy rights of the plaintiffs”, and ordered the company to suspend its emissions. At the international level, the right to privacy is protected by the International Covenant on Civil and Political Rights.

The right to development is highlighted as the third Principle in the Rio Declaration of 1992, which states that “the right to development must be fulfilled so as to equitably meet the developmental and environmental needs of present and future generations.” The right to development in terms of inter-generational equity was addressed at the World Conference on Human Rights held in Vienna in 1993. The Vienna Declaration states that “the right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.”

At the national level, there is also jurisprudence to support this inter-generational approach. In Peru, the Supreme Court decided to protect a mangrove area from coastal shrimp farming, reasoning that it was more profitable for the present and future development of the region to preserve and sustainably manage the mangroves rather than risk their depletion. In a case before the Constitutional Court of Guatemala, the court explained that the objective of environmental measures was to guarantee the

right to health and the achievement of a standard of living that guarantees the survival of future generations.

Court decisions have also addressed the right to development more broadly in terms of limitations on property rights. In Nigeria, the court decision held that environmental degradation can give rise to a violation of human rights. There have been numerous cases in Nigeria concerning environmental degradation and human rights involving claims of destruction of agricultural land and pollution by divers. In Chile, the court upheld a ban on logging and indicated that property rights were limited by the owners' obligations that emanated from the forest's "social function". And the European Court of Human Rights has upheld an Irish court's refusal to allow a property owner to build an industrial warehouse and office development in a zoned green belt, reasoning that the refusal was for a legitimate governmental aim- the protection of the environment.

I would now like to turn to human rights issues relating to sustainable development that concern process. Issues of human rights concerning process are often as important as the actual substance of what is decided. Consultative processes and decision-making must be inclusive, transparent and fair if they are to be perceived as credible.

Issues of sustainable development often involve decisions having important public policy considerations. The Covenant on Civil and Political Rights protects the right to freely participate in public affairs, either directly or through freely elected representatives; and related human rights including the rights to free speech, freedom of association and freedom of assembly are also protected by the Covenant.

However, inclusive also has a larger meaning and relates in particular to the right to equality and non- discrimination in participatory processes. The rights of minorities, indigenous peoples, women, small farmers, those living in poverty, and vulnerable groups should all be respected in participatory processes. The State should endeavour to have these groups included in participatory processes, and to take steps to facilitate their participation.

There may be some limitations to rights of participation, particularly in terms of standing to make judicial challenges. In a case before the European Court of Human Rights, where Swiss authorities had renewed an operating permit for a nuclear power plant, the court found that plaintiffs had not established a direct link between operating conditions of the plant and their physical integrity because they had failed to show that the plant's operations exposed them personally to a danger that was serious, specific and imminent.

Transparency means that the processes for consultations and decision-making should be open to the public and well publicized, in particular to specific groups who are directly or indirectly concerned. A transparent process also means transparency in terms of available information. In a case in Peru, the plaintiff relied on a provision of the Peruvian Constitution called habeas data which allows citizens to seek relief against any acts or omissions by any administrative officer or person who violates or threatens their rights. The plaintiff's action against the Peruvian mining authorities requesting information regarding technical aspects of the mining process was upheld by the court.

Consultations and decision-making processes that are fair mean essentially notice and an opportunity to be heard, to have the opportunity to present views and evidence relevant to the outcome of the decision-making process, and to have decisions based on the merits of the case as presented during the process and which are in the public interest.

Of course, there will sometimes be tensions between claims for sustainable development and property rights. It is a fundamental principle of human rights law that limitations on human rights start when the exercise of those rights adversely affect other human rights. Although the national cases that I have cited indicate that owners of property can only use and develop their property when it is deemed to be compatible with the public interest, what are the limitations to such action? And how can competing claims be resolved – including between individuals on the one hand, and the perceived public interest on the other?

How should the courts respond when the State takes measures, deemed to be in the public interest, to advance the interests of environmental protection, but such measures in practice adversely affect local communities or indigenous peoples?

In litigation before the courts concerning specific cases, what are the limitations on standing to bring such actions, given the broad impact decisions of private developers or public bodies may have?

The balancing of interests will often be dependent on the factual and legal circumstances of individual cases. Nevertheless I would like to underline that these issues will need to be addressed within the framework of respect for human rights and a strong commitment to the rule of law.

In the end, the answer will often lie in a determination of whether sufficient due diligence was exercised, fair process assured, and internationally guaranteed human rights respected. This is often a difficult task – falling squarely in the hands of legal professionals, as guardians of the rule of law. In this, and in all you do, I wish you well, and I thank you.



Ms. Navathenem Pillay, United Nations High Commissioner for Human Rights delivering her speech at the closing session of the World Congress on Justice, Governance and Law for Environmental Sustainability on 20 June 2012

A photograph of a flock of Lesser Crested Terns (Sterna bengalensis) in flight against a clear, light blue sky. The birds are white with black caps and bright orange beaks. They are captured in various stages of flight, with wings spread, moving across the frame from left to right. A semi-transparent white rectangular box is overlaid on the right side of the image, containing the title and author information.

The Role of Supreme Audit Institutions in Environmental Sustainability

Mr. Terence Nombembe, Auditor General of South Africa



*The Role of Supreme Audit Institutions in Environmental Sustainability**


It is a great pleasure for INTOSAI to be part of the family of law professionals active in the field of sustainable environment. Far more can be achieved, if we work in conjunction, pooling the knowledge of our various disciplines and jurisdictions. INTOSAI's main focus is geared towards making a difference in people's lives. In 2013, the INTOSAI Congress will take place in Beijing, where participants will discuss how auditors can bring into effect meaningful environmental change. That was also a theme at the 2010 INTOSAI Congress in Johannesburg, South Africa after which a working group was mandated to develop ways to make tangible differences to people's lives in terms of sustainable development.

The role of Supreme Audit Institutions (SAIs) in environmental sustainability is an important one and lays the foundation for the support of the national democratic system and the enhancement of public sector performance. In order to successfully achieve this, it is paramount that participants agree on the fundamental principles of accountability, integrity, transparency and, above all, independence. The values and benefits that come with SAIs role in justice, governance and law for environmental sustainability directly result in the strengthening of accountability, integrity and transparency of government and public entities; demonstrate the ongoing relevance to legal stakeholders and are able to be a model organization through SAIs leading by example.

The Working Group on Environmental Auditing (WGEA) which is part of the Knowledge Sharing Committee of INTOSAI did a survey in 2011 on SAI findings and found there to be four main fields that needed improvement; policy and planning, coordination, data and monitoring. To this end we developed several strategies to tackle the issues at hand and to improve efficiency. These strategies include coordinating the development of policies and strategies to align planning with long-term goals, defining processes and responsibilities to coordinate government levels, the quality and usage of data and defining accountability and reporting systems to enable governance and oversight.

Everyone has brought to the World Congress those tried and tested principles but strong leadership is now needed to make a difference. Like aircrafts that must take off against the wind, participants will act as co-pilots of an airplane flying through a storm. However, thanks to the strength of their collective technical expertise, they will rise above the ground. I hope that the World Congress will take heart from those African birds that deliberately seek out thunderstorms as the high thermals enable them to glide effortlessly. Finally, I would like to thank UNEP for involving INTOSAI in the Congress and pledge our support for making environmental sustainability a reality for the people of the world.

**Speech made at the World Congress on Justice, Governance and Law for Environmental Sustainability on 17 June 2012 in Rio de Janeiro, Brazil*

A large, ancient tree trunk with thick, buttressed roots in a lush tropical forest. The tree trunk is covered in moss and lichen, and the roots are thick and gnarled. The background is filled with dense green foliage and other trees.

Foundations of Sustainability

Mr. Scott Fulton, General Counsel, United States Environmental Protection Agency
and Justice Antonio Herman Benjamin, High Court of Brazil



Foundations of Sustainability*

In her seminal 1962 work *Silent Spring*, Rachel Carson presented a key question to the present generation: How can the benefits of modern society be enjoyed in a manner that avoids endangering public health and the natural resources upon which humanity's future depends? In the years since, countries around the world, with different legal systems and different levels of development, have refined and expanded this concept. The U.N. Conference on Sustainable Development in June 2012 marks the 40th anniversary of the 1972 Stockholm Conference, the first major U.N. environmental conference, the 20th anniversary of the Rio de Janeiro Conference on Environment and Development, and the 10th anniversary of the Johannesburg World Summit on Sustainable Development. The 2012 event offers a propitious moment to take stock of that progress and to ask: What are the ingredients that have made for success in sustainable development in the past several decades, and how can we reinforce these factors in a world of rapid change?

The U.N. Conference on Sustainable Development will have two themes: a green economy in the context of poverty eradication and sustainable development; and the institutional framework for sustainable development. Since the 1992 Earth Summit, effective national and local environmental governance has increasingly been recognized as key to the second theme and to fulfilling sustainability aspirations. Likewise, while green economy discussions have focused on a range of issues including renewable energy, efficiency, and ecosystem services, implementation will depend on effective national and subnational environmental governance. Without good governance, neither global nor domestic aspirations can be realized.

Increasing international recognition of the importance of national and local environmental governance to sustainable development has been reflected in a variety of international instruments, including the 1992 Rio Declaration and the Plan of Implementation from the 2002 World Summit on Sustainable Development. Here, we seek to reanimate this thinking by giving greater context and detail to the precepts of national environmental governance and by pointing to the central role of such precepts to the environmental pillar of sustainable development.

There have been many efforts to address individual features of environmental governance, for example, by training environmental inspectors, prosecutors, and judges. These efforts, while quite valuable, are often isolated and can miss the importance of addressing environmental governance as a system comprising a number of inter-related and reinforcing parts. This system includes environmental laws, implementation mechanisms, accountability regimes, and institutional arrangements. Together, these elements, if appropriately resourced, provide the foundation for environmental protection and conservation of natural resources, in support of sustainable development. They are also key to the emergence of the rule of law in the environmental arena — a state of being in which there is the presence of, respect for, and observance of environmental norms. Indeed, the ingredients of environmental rule of law and effective environmental governance are virtually coterminous.

Effective national environmental governance complements efforts to improve international environmental protection mechanisms. For example, multilateral environmental agreements are typically implemented through corresponding national laws

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and institutions. Effective national environmental governance helps ensure that parties to international environmental agreements actually achieve the benefits those agreements are designed to provide, and it provides mechanisms for addressing national and subnational problems that do not receive the same degree of global attention. Further, effective environmental governance contributes to a level playing field for businesses operating globally and helps avoid the emergence of pollution havens, while promoting regulatory coherence conducive to investment needed for development.

Environmental laws and regulatory frameworks around the world continue to evolve in response to changing conditions. While countries differ in terms of their most acute environmental problems, their cultural context, and their governmental structure, there is significant commonality both in the challenges they face and in the governance precepts to which they have turned to address those challenges. We identify below some of the key common precepts that have emerged. These precepts should not be viewed in isolation, but as interrelated and mutually reinforcing.

Seven core precepts form a basis for effective national (and subnational) environmental governance. They apply both to efforts to protect human health and to protect and conserve natural resources. Our hope is that identifying and reinforcing these core precepts can help countries strengthen their environmental governance systems and thereby make sound, science-based decisions. Improved international coordination to strengthen national environmental governance will help forge a path toward global sustainability.

Environmental laws should be clear, even-handed, implementable, and enforceable

For governance systems to be effective, laws should provide a clear roadmap for translating general legal mandates to facility-specific requirements through such tools as implementing regulations and permits. The use of clear, enforceable language, often with reference to science-based reference points, is critical. This provides clarity to the regulated community regarding requirements and reporting protocols, facilitating compliance.

Laws and regulations should also be even-handed in their design and application, ensuring consideration of the vital interests and views of all stakeholders. This may be achieved in part through mechanisms for stakeholder input into regulatory processes before final decisions are made. In many countries, environmental law (sometimes including constitutional provisions) is increasingly constructed to reflect sensitivity to human rights and related notions of justice, equity, and poverty eradication.

A central premise of many environmental laws is that prevention is superior to remediation because some harm is irreparable, and because cleanup is more costly than prevention. A combination of technology requirements and ambient norms are used in many systems to achieve such goals. Where governmental capacity is limited, technology-based requirements can serve as a relatively straightforward first step, with ease of application and proven effectiveness. Today there are technology reference points available for most types of polluting activities. Clearinghouses to match available technologies with facility operations can aid implementation. In imposing technology requirements, care should be taken to avoid inhibition of innovation. Many laws contemplate that as programs mature, requirements should be based on ambient environmental goals, with individual interventions increasingly geared toward aligning incentives with desired environmental outcomes, often using monitoring data and other scientific information as reference points for decision making and performance assessment.

Environmental laws often provide for review and renewal of standards, to provide a means of updating requirements based on new knowledge. Anti-backsliding mechanisms may also be included to promote continual improvement or at least guard against regression. Laws commonly use measures to make accountability mechanisms more efficient, such as requiring polluters to self-monitor and report violations, limiting defenses that can be raised in enforcement cases, and curbing opportunities to challenge regulatory agency decisions beyond a set timeframe. The laws must also be designed to resonate with and advance the other core environmental governance precepts discussed below. Thus, environmental laws should include clear articulation of mechanisms that ensure accountability, specify

reporting and information disclosure requirements, establish procedures for stakeholder involvement, address institutional structure for program implementation, reduce the possibility of corruption, and provide for dispute resolution. Finally, it bears note that proper drafting is only the beginning. Laws that are enacted but not implemented or enforced will fail to achieve desired environmental results.

Environmental information should be collected, assessed, and disclosed to the public

Routinely making environmental information available to the public enables civil society to take an active role in ensuring accountability, reinforcing and expanding upon government accountability efforts. It also fosters community engagement and development of an environmental ethic throughout civil society, industry, and government. This precept is of course only meaningful to the extent that an active government effort is underway to monitor and assess environmental conditions and polluting activities. Systematic information collection and assessment can support review of environmental program and policy effectiveness and thereby improve performance.

Many countries have freedom of information laws requiring government disclosure of a wide range of information and limiting exceptions to promote transparency. But the mere existence of a disclosure law is only part of the dynamic; public demand, governmental readiness and capacity to manage and provide information, and procedures for resolving disclosure disputes are also needed.

In recent years, the idea of a publicly available Pollutant Release and Transfer Registry (an example being the Toxics Release Inventory in the United States) has emerged as an important tool for creating pressure to reduce pollution. PRTR systems require public disclosure of pollutant release information, often via the internet. Because of public accessibility to this information, company managers who have the power to prioritize actions to reduce pollution tend to pay more attention. Accounting for pollutant releases also exposes waste in production processes, encouraging adjustments towards more efficient materials management.

Public access to environmental compliance data reported by the regulated community or amassed by government serves many of the same goals. Generally, reported information can inform public debate and consumer behavior; and leverage competitive pressure and reputational risk as motivators. It also provides vital information to communities on pollution that may directly affect them.

Stakeholders should be afforded an opportunity to participate in environmental decisionmaking

Regulated entities and civil society should have an opportunity to engage regulators regarding rules that affect them before decisions are made as well as the opportunity to challenge government decisionmaking not grounded in science and law. A range of public engagement processes may be appropriate, depending on the type of action, timing considerations, and other factors. Communication and education efforts can enhance public awareness and understanding needed for effective public participation, and can also nurture development of an environmental ethic that can serve to further intensify public engagement.

Countries increasingly pay particular attention to ensuring the poor and disadvantaged are not excluded from meaningful environmental decisionmaking, often under the label “environmental justice,” which contemplates the fair treatment and meaningful involvement of all people regardless of race, color, religion, national origin, or income in the development and implementation of environmental laws and policies. It might take special efforts to reach out and engage such communities because of language, cultural differences, or economic disparities. An empowered citizenry is more apt to channel its concerns through legal mechanisms rather than through civil disobedience or other extra-legal means, and is more likely to understand and be accepting of outcomes, while noninvolvement breeds suspicion and disaffection.

Environmental decisionmakers, both public and private, should be accountable for their decisions

Effective environmental governance systems hold government decisionmakers accountable for making decisions grounded in

science and law, thereby ensuring confidence in the impartiality and public purpose of their actions. Effective environmental governance systems also hold polluters accountable for compliance with environmental requirements and for remediating environmental damage. As a general rule, the polluter pays: the costs of environmental remediation should be borne by the entity that produced those costs through their polluting activities, rather than by the public at large.

Robust government enforcement mechanisms are necessarily the leading edge of the effort to deter violations and level the regulatory playing field. Compliance assistance, reporting requirements, inspections, monitoring, and administrative, civil, and criminal enforcement authorities can all play important roles in an enforcement system. Enforcement remedies include halting the violation, requiring remediation, through injunctive relief or related tools, and assessing financial sanctions. Financial sanctions must be sufficient to deter noncompliance. Unless a penalty exceeding the economic benefit of noncompliance is recovered, violators can obtain an unfair advantage over their competitors who comply.

Enforcement actions should endeavor to treat like violations in like fashion, providing a level playing field of expectation and response. Equivalent and non-discriminatory treatment should be also afforded to national and foreign actors, and governments should ensure transparency such that improper influences are exposed to public scrutiny.

Direct citizen legal action against polluters has become an important feature in some countries. Such citizen actions can reinforce the backbone of government enforcers and complement their efforts. Direct citizen legal action can also enhance the system of checks and balances on government behavior that lacks vigilance or is not grounded in science and law.

Roles and lines of authority for environmental protection should be clear and coordinated. Roles within government should be defined and coordination mechanisms established to foster efficiency and prevent conflicting expectations. Rules

and protocols are often needed to direct traffic and achieve both horizontal and vertical coherence in the division of labor between and within different institutions. This is the case whether a government system is centralized or decentralized.

Laws should specify whether environmental programs will be administered by an agency independent of other governmental programs. In some instances, regulatory functions can be compromised if they are housed together with business-enabling functions. It is important that laws define implementing agency structure to ensure that regulated community self-interest does not predominate over the implementing agency's public interest mission.

Formally structured inter-agency relationships (rather than those created on an ad hoc basis) can enhance effectiveness. Roles can be set out in laws, regulations, or other instruments (e.g., memoranda of understanding) to minimize competition and prevent conflict. Ministries with overlapping authorities in the environmental arena often develop memoranda of understanding to promote cooperation and efficiency. When multiple levels of government are involved, effective governance necessitates a clear division of labor between national, provincial, and local levels. Which level of government has implementation primacy — for example, which level will issue pollution permits — should be clearly specified, and mechanisms should be created to address contingencies such as implementation failure by provincial or local governments.

Affected stakeholders should have access to environmental dispute resolution mechanisms that are fair and responsive

The judiciary (including, in some countries, administrative courts) plays a vital role as the guarantor of the protective benefits of environmental law. Moreover, what judges treat as important, a society comes to judge as important. Thus, the courts' response to environmental problems can have a powerful transforming effect across society, with the seriousness of judicial attention and response projecting to the regulated community and the public at large the importance of environmental quality and the unacceptability of behaviors that jeopardize the environment. The judicial response can serve as a powerful catalyst toward

the solidification of the environmental rule of law and the development of an environmental ethic — an ethic that, once it takes hold, can engender a sense of responsibility in all sectors of society, inspire citizens to think green and buy green, and encourage businesses to respond to green consumer demand and to their own emergent corporate environmental conscience.

Fair and responsive dispute resolution requires impartiality, independence, and timely review by the reviewing tribunal. In light of the irreversibility of some health impacts and environmental harms, justice delayed can be justice denied. Transparency in the dispute resolution process promotes a sense of fairness and furthers development of the environmental rule of law. These goals and faith in the even-handedness of the system are also advanced when affected persons are accorded a forum to present their claims on the public record with written resolutions that articulate the basis for a decision and are made public. Such written resolutions can also serve to educate the regulated community and affected citizens about environmental requirements and the importance of environmental protection.

Courts in different countries utilize a variety of mechanisms for dealing with the complexity of environmental cases, including special masters and other court appointed experts, strict liability standards, shifting burdens of proof to the polluter on some issues, and environmental courts. Traditional judicial prerogatives, such as invocation of the courts' coercive power to enforce judgments and their ability to maintain jurisdiction to effectuate a remedy, remain of central importance as well.

The principled and even-handed administration of justice includes producing consistent, predictable results in like cases and a financial sanction baseline that eliminates the economic benefit of noncompliance. Doing so promotes cost internalization, incentivizes compliance and eliminates market disparities between compliers and non-compliers.

Public integrity in environmental program delivery is essential to achieving environmental protection

Corrupt and unprincipled environmental decisionmaking frustrates program implementation, distorts environmental

results, and erodes public confidence in the environmental rule of law. Although the health and other dividends of environmental protection generally far exceed in value the private cost of compliance, and a strong regulatory regime can encourage innovation and foster economic growth, the cost of compliance can be significant to individuals. Thus, implementing anti-corruption measures is vital to reduce the potential for graft and bribery of officials such as inspectors, enforcers, and permitting officers. Standards of ethical conduct and strong, independent review or audit mechanisms are essential, and whistleblower protections, which encourage employees to report employers' misdeeds by creating protection from reprisal, can offer a further check against improper behaviors.

Judicial professionalism, independence, and impartiality can likewise be enhanced via a code of conduct that provides for financial disclosure and, when there is a conflict of interest, disqualification. Provision for judges' financial security and protection from political retaliation can help as well in ensuring integrity.

While there have been laudable efforts in the past to enhance environmental governance, such efforts have been isolated and sporadic. What constitutes effective environmental governance has not to date been reduced to a commonly accepted set of ideas around which the world community might more meaningfully organize and mobilize. Recognition of the common precepts of an effective governance system built on the rule of law can, we believe, offer both a meaningful step in this direction and a pivotal move in the direction of sustainable development. The lessons of the past decades illuminate these precepts, which we have attempted to describe briefly in this article. Our hope is that this articulation can help catalyze an international dialogue on this topic, with the 2012 United Nations Conference on Sustainable Development perhaps serving as a watershed moment both for elevating the importance of effective national and subnational environmental governance as a key building block for sustainable development and for enhancing international engagement in the effort to build environmental governance capacity.

The authors wish to express their appreciation to Tseming Yang and Steve Wolfson for their assistance on this article.



The Fundamental Right to the Protection of a Healthy Environment

Prof. Dr. Luc Lavrysen, Judge at the Belgian Constitutional Court

President, EU Forum of Judges for the Environment



*The Fundamental Right to the Protection of a Healthy Environment**

I. A Comparative Perspective

The incorporation of a right to (the protection of) a healthy environment in the Constitution or an obligation for the government to protect the environment or to make careful use of the country's natural resources has become a very popular notion over the last few decades. The constitutions of over a hundred countries presently contain such a provision in some form or other. Some authors hold the view that states which have not yet incorporated such a provision in their Constitution should do so as soon as possible. Even more important than the inclusion of a clause in the Constitution is of course the question how such a clause can be enforced in practice.

In some countries this constitutional right is treated as a subjective right. In the Compendium of Summaries of Judicial Decisions in Environment-Related Cases, published by UNEP in 2005, case-law from Argentina, Colombia, Chile, Uganda and the Philippines illustrate this approach. Attempts to derive a right to a healthy environment from other constitutional rights have been more successful in certain countries than in others. Examples of such a case-law from Bangladesh, India, Pakistan, Kenya and Costa Rica can be found in the said Compendium.

II. What the Belgian Constitution Says

The right to the protection of a healthy environment forms part of the economic, social and cultural rights which have been enshrined in the Belgian Constitution since 1994. Article 23 of the Constitution was extensively debated by the constitutional legislator. What is certain is that the term "healthy environment" should be broadly interpreted. As appears from the parliamentary preparations, every person has "the right to a decent, healthy and ecologically balanced environment", and "The government

has a special responsibility to ensure that future generations still have a livable environment. Its task in this respect is a very broad one. It not only covers conservation, but also the controlling of water, air and soil pollution, a proper planning of the available space and of farming and stockbreeding activities, and the promotion of environmentally-friendly technologies in industry and communications".

So although "healthy environment" is a broad concept, the most pressing question for the citizen, and especially for the practicing lawyer, concerns the enforceability – and therefore the practicability – of the right to the protection of a healthy environment. During the parliamentary preparation, it was repeatedly emphasized that since the rights mentioned in that article have no direct effect, no subjective rights can be derived from them. They are primarily meant to serve as guiding principles for government policy and to instruct the legislature. But some legal consequence of the Article were nevertheless recognized. Firstly, the parliamentary preparation of Article 23 of the Constitution suggests that the fundamental economic, social and cultural rights are supposed to produce a standstill effect. Environmental policy should pursue not only a healthy environment, but also an environment with a standard of health not lower than the existing one. The standstill protection is an intrinsic element of fundamental social rights. The government has a wide margin of appreciation, though only in a certain direction. An impairment of the existing level of protection can be penalized by the courts. A second meaning in positive law, to a certain extent similar to the standstill effect, lies in a combination of the economic, social and cultural rights with the principles of equality and non-discrimination, which are guaranteed by Articles 10 and 11 of the Constitution. Under

* Prof. Dr. Lavrysen's contribution to the World Congress has meanwhile also been published in book form (LAP Lambert Academic Publishing, ISBN: 978-3-659-16589-4).

those articles, the recognition of socioeconomic rights must be ensured without discrimination. According to the parliamentary preparation, an infringement of these provisions by a legislative rule qualifies for review by the Constitutional Court. A third legal meaning of the economic, social and cultural rights, according to the parliamentary preparation, lies in a Constitution-compliant interpretation of laws, decrees and other rules. Where they are open to several interpretations, a court of law is obliged to follow the interpretation that is compatible with the Constitution. That means that, in case of doubt, an environmentally-friendly interpretation is recommended in principle: *in dubio pro natura*.

What is left in the case-law, of the constitutional legislator's intentions, and how practicable is the constitutional right to the protection of a healthy environment at this moment? By the Special Act of 9 March 2003, the legislator extended the powers of review of the Constitutional Court. As a result, Article 23 has become one of the constitutional provisions against which the Constitutional Court can review legislative acts. The review by the Constitutional Court is chiefly carried out on the basis of the standstill obligation. Initially, the Court refused to expressly rule on the question whether Article 23, third paragraph, 4^o of the Constitution implies a standstill obligation, but in a number of more recent judgments it has expressly acknowledged this obligation¹. What is usually meant by the standstill effect is that the level of protection of the guaranteed rights as acquired in the legal system must not be reduced; in practice, however, this definition did not solve all the problems. Certain questions soon came up. The first question was whether the prohibition of impairing the existing protection is absolute, in other words, whether the Constitutional Court needs to nullify the slightest weakening of a legislative act for infringement of Article 23 of the Constitution. In the light of the case-law of the Court, the answer to this question clearly has to be no. A non-significant weakening is permitted. In connection with the protection of

a healthy environment, even a significant weakening does not automatically result in an infringement of Article 23 of the Constitution; this is only the case in the absence of reasons connected with the public interest.

The second question that arose was: What is the "existing" level of protection? Does this mean the level of protection that was in effect in 1994, when Article 23 was incorporated in the Constitution, or does it mean the most recent level of protection? The Court takes as its point of reference the level of protection offered by the "applicable legislation", in other words, the level of protection in effect before the last change in the law. This means that we have a moving reference point instead of a fixed reference point. Consequently, the progress that has been made in the meantime is protected. However, it also means that there is room for stealthy decline: after all, a step backwards from time to time is still in keeping with the standstill obligation.

In the same year that Article 23 of the Constitution came into effect, at a time when the constitutional legislator had only just finished its work, the European Court of Human Rights delivered a judgment which plainly says that, in certain circumstances, every person has a subjective right to a healthy environment. The European Convention on Human Rights (ECHR) does not as such contain a right to a healthy environment. Nevertheless, the environment can influence the interpretation of the traditional rights and freedoms. The government can invoke considerations of environmental protection to justify the restriction of a conventional right, while conversely considerations of environmental protection can also influence the judgment of a court of law, more particularly when an impairment of the environment also means an impairment of a right that is protected by the ECHR. In the Lopez Ostra judgment of the European Court of Human Rights, environmental pollution was involved in the interpretation of Article 8 of the ECHR.

1. Constitutional Court, n° 135/2006, 14 September 2006, B.10; Constitutional Court, n° 137/2006, 14 September 2006, B.7.1; Constitutional Court, n° 145/2006, 28 September 2006, B.5.1; Constitutional Court, n° 67/2007, 20 June 2007, B.5; Constitutional Court, n° 114/2008, 31 July 2008, B.3; Constitutional Court, n° 114/2009, 9 July 2009, B.5.2; Constitutional Court, n° 90/2010, 29 July 2010, B.6.2; Constitutional Court, n° 113/2010, 14 October 2010, B.3.2; Constitutional Court, n° 133/2010, 25 November 2010, B.7.1; Constitutional Court, n° 2/2011, 13 January 2011, B.6.2; Constitutional Court, n° 22/2011, 3 February 2011, B.3.2; Constitutional Court, n° 75/2011, 18 May 2011, B.3.1; Constitutional Court, n° 102/2011, 31 May 2011, B.3.2; Constitutional Court, n° 58/2012, 3 May 2012, B.2.2.

In a judgment of 9 December 1994, the European Court of Human Rights decided that the Spanish government had not succeeded in striking a fair balance “between the interest of the town’s economic well-being - that of having a waste-treatment plant - and the applicant’s effective enjoyment of her right to respect for her home and her private and family life”. In this case, given the seriousness of the circumstances, the government had failed to respect the balance between the public interest and the effective enjoyment by Mrs Lopez Ostra of her home and of her private and family life. Along a similar line of reasoning, the government’s failure to provide information about the polluting activities of a factory was found in the Guerra judgment to be contrary to Article 8 ECHR. The best known example from the case-law of the European Court of Human Rights is probably the Hatton case, which addressed the issue of the noise from night flights around London-Heathrow. In the first judgment delivered by the ordinary chamber of 7 judges on 2 October 2001, the European Court ruled that Article 8 of the ECHR had been infringed. Although in the second and final judgment by the Grand Chamber of 17 judges on 8 July 2003 the Grand Chamber took more elements into consideration and, unlike the ordinary chamber, eventually tipped the balance in favor of the public (economic) interest. A wide margin of appreciation is left to the public authorities. Meanwhile this case-law has been conformed many times. In different environmental cases the ECtHR found a violation of Article 8 or Article 2 of the ECHR.

The case-law of the European Court of Human Rights is also echoed in the Belgian case-law, primarily in that of the Constitutional Court. In a number of judgments concerning the noise standards around airports implicit or explicit reference is made to the Hatton case. According to the Constitutional Court, it appears indeed from the parliamentary preparation of Article 22 of the Constitution, which guarantees the right to respect for private and family life, that the constitutional legislator sought the greatest possible concordance with Article 8 of the European Convention on Human Rights. Since the argument derived from a breach of Article 22 of the Constitution was considered well-founded in some cases, the argument, insofar as it is also derived from a breach of Article 23 of the Constitution, needs no further examination.

The (constitutional) right to (the protection of) a healthy environment also featured prominently in a number of judgments and rulings of the ordinary courts and tribunals.

Finally, we must not lose sight of the fact that the actual circumstances play an important part in the assessment, and that an infringement of a fundamental right can only be pronounced in the case of an excessive interference with an individual fundamental right or of a shortcoming in an obligation of best intents on the part of the public authorities. The European theory of fair balance is essentially an application of the proportionality principle and as such is similar to what in Germany is called the Sozialadäquanz. This means that certain polluting activities must be tolerated because otherwise a proper functioning of society would be impossible. Only when a particular threat becomes so great that it is no longer acceptable does the protective effect of the fundamental rights come into play”. Thus the fear of the existence of a subjective right to (the protection of) a healthy environment and the commensurate fear of an excessive control of the judiciary over (environmental) policy can be removed by regarding the judiciary’s supervision as a marginal review.

III. The Aarhus Convention: Between Environmental Protection and Human Rights

International environmental law and international human rights law have to a great extent developed separately. On the international level there is recognition in non-binding declarations that there is a clear link between human rights and the protection of the environment. In a few more recent International Human Rights Instruments there is some attention to environmental protection. The International Covenant on Economic, Social and Cultural Rights contains a right to health in article 12 that expressly calls on states parties to take steps “for the improvement of all aspects of environmental and industrial hygiene”. The Convention on the Rights of the Child refers to aspects of environmental protection in Article 24, which provides that States Parties shall take appropriate measures to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking water; taking into consideration the dangers and risks of environmental pollution”. The United Nations has, so far, not

approved any general normative instrument on environmental rights. Some regional human rights treaties contain specific provisions on the right to a healthy environment. That is the case with the African Charter on Human and Peoples' Rights and the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights. As far as Europe is concerned, there is no explicit recognition in the European Convention on Human Rights of a right to a healthy environment, but, as has been explained above, serious harm to the environment, may according to the case law of the European Court of Human Rights constitute a violation of Article 8 (right to respect for private and family life) and, in particular circumstances, of Article 2 (right to life). A particular link between the protection of human rights and environmental protection is, as far as the UNECE Region² is concerned, laid down in the so-called Aarhus Convention. The origin of the Aarhus Convention goes back to Principle 10 of the Rio Declaration on Environment and Development. This principle was further developed for the UNECE Region³ in the so-called Sofia Guidelines. After two years of negotiations, final agreement on the text of the Aarhus Convention could be reached.

The Aarhus Convention

The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was adopted on 25th June 1998 in the Danish city of Aarhus. The Convention, which entered into force on 30 October 2001, has now been ratified by 44 Parties, including the European Union and, with the exception of Ireland, all Member States of the European Union. The Aarhus Convention links environmental rights and human rights. It acknowledges that we owe an obligation to future generations. It establishes that sustainable development can be achieved only through

the involvement of all stakeholders. It focuses on interactions between the public and public authorities in a democratic context and is forging a new process for public participation in the negotiation and implementation of international agreements. The subject of the Aarhus Convention goes to the heart of the relationship between people and governments. The Convention is therefore not only an environmental agreement; it is also a Convention about government accountability, transparency and responsiveness. The Aarhus Convention grants the public rights and imposes on Parties and public authorities obligations regarding access to information and public participation and access to justice. As the Convention has been ratified by the European Union it has taken some implementing measures that complement the Aarhus Convention within the European Union. For the member states of the EU, the Convention and the related EU legislation constitutes a complex whole.

The Substance of the Aarhus Convention and related EU law

As its title suggests, the Convention contains three broad themes or 'pillars': access to information, public participation and access to justice in environmental matters. These three pillars are discussed below. However, the Convention also contains a number of important general features that should be addressed first.

General Features

The preamble to the Aarhus Convention connects the concept that adequate protection of the environment is essential to the enjoyment of basic human rights with the concept that every person has the right to live in a healthy environment and the obligation to protect the environment. It then concludes that to assert this right and meet this obligation, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters. The first three articles of the Convention comprise the objective, the

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2. The UNECE (United Nations Economic Commission for Europe) region covers more than 47 million square kilometers. Its member States include the countries of Europe, but also countries in North America (Canada and United States), Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) and Western Asia (Israel). Today, UNECE has 56 member States.
 3. On the global level the UNEP Secretariat recently developed "Draft guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters" (UNEP/GC/SS.CI/8 – 3 December 2009), which were presented to the Eleventh special session of the Governing Council/Global Ministerial Environment Forum (Bali, Indonesia, 26-26 February 2010).

definitions and the general provisions. The Convention adopts a rights-based approach. Article 1, setting out the objective of the Convention, requires Parties to guarantee rights of access to information, public participation in decision-making and access to justice in environmental matters. It also refers to the goal of protecting the right of every person of present and future generations to live in an environment adequate to health and well-being. These rights underlie the various procedural requirements in the Convention.

The Convention establishes minimum standards to be achieved but does not prevent any Party from adopting measures which go further in the direction of providing access to information, public participation or access to justice (Art. 3.5 and 3.6). The Convention prohibits discrimination on the basis of citizenship, nationality, domicile, registered seat or effective centre of its activities against natural or legal persons seeking to exercise their rights under the Convention (Art. 3.9).

The First Pillar: Access to Information

The information pillar – Articles 4 and 5 of the Convention – covers both the ‘passive’ or reactive aspect of access to information, i.e. the obligation on public authorities to respond to public requests for information, and the ‘active’ aspect dealing with other obligations relating to providing environmental information, such as collection, updating, public dissemination and so on. Environmental information is defined in a broad sense. The reactive aspect is addressed in Article 4, which contains the main essential elements of a system for securing the public’s right to obtain information on request from public authorities. There is a presumption in favour of access. Any environmental information held by a public authority must be provided when requested by a member of the public, unless it can be shown to fall within a finite list of exempt categories. The right of access extends to any person, without his or her having to prove or state an interest or a reason for requesting the information. There are exemptions to the rule that environmental information must be provided. To prevent abuse of the exemptions by over-secretive public authorities, the Convention stipulates that the exemptions are to be interpreted in a restrictive way, and in all cases may only be applied when the public interest served by disclosure has

been taken into account. Refusals, and the reasons for them, are to be issued in writing where requested. The Convention also imposes active information duties on Parties (Article 5). As far as the European Union is concerned, the original Directive 90/313/EEC on the subject was replaced by Directive 2003/4/EC, to bring EU law into line with the requirements of the Aarhus Convention.

The Second Pillar: Public Participation in Environmental Decision-making

The Aarhus Convention sets out minimum requirements for public participation in various categories of environmental decision-making (Articles 6 to 8).

Article 6 of the Convention establishes certain public participation requirements for decision-making on whether to license or permit certain types of activity which may have a significant effect on the environment. Article 6, paragraph 1 (a) requires in the first place that each Party shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I. Secondly (Article 6, paragraph 1 (b)), each party shall also apply, in accordance with its national law, the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. The public participation requirements include timely and effective notification of the public concerned, reasonable timeframes for participation, including provision for participation at an early stage, a right for the public concerned to inspect information which is relevant to the decision-making free of charge, an obligation on the decision-making body to take due account of the outcome of the public participation, and prompt public notification of the decision, with the text of the decision and the reasons and considerations on which it is based being made publicly accessible. Article 7 requires Parties to make “appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment”. Though the Convention is less prescriptive with respect to public participation in decision-making on plans or programmes than in the case of projects or activities, the provisions of Article 6 relating to reasonable timeframes for participation, opportunities for early

participation (while options are still open) and the obligation to ensure that “due account” is taken of the outcome of the participation are to be applied in respect of such plans and programmes. Article 7 also applies, in more recommendatory form, to decision-making on policies relating to the environment. Article 8 applies to public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. Although the Convention does not apply to bodies acting in a legislative capacity, this article clearly would apply to the executive stage of preparing rules and regulations even if they are later to be adopted by parliament.

The Third Pillar: Access to Justice

The third pillar of the Convention (Article 9) aims to provide access to justice in three different contexts: a) review procedures with respect to information requests, b) review procedures with respect to specific (project-type) decisions which are subject to public participation requirements, and c) challenges to breaches of environmental law in general. Thus the inclusion of an ‘access to justice’ pillar not only underpins the first two pillars; it also points the way to empowering citizens and NGOs to assist in the enforcement of the law.

Access to Justice in Relation to Access to Environmental Information

Article 9.1 of the Aarhus Convention deals with Access to Justice concerning information appeals. A person whose request for information has not been dealt with to his satisfaction must be provided with access to a review procedure before a court of law or another independent and impartial body established by law. The Convention attempts to ensure a low threshold for such appeals by requiring that where review before a court of law is provided for (which can involve high costs), there should be also, before it comes to a court case, access to an expeditious review procedure “for reconsideration by a public authority or review by an independent and impartial body other than a court of law” which is free of charge or inexpensive. Final decisions must, as has been said, be binding on the public authority holding the information, and the reasons must be stated in writing where information is refused. Standing must, under this provision, be

granted to “any person who considers that his or her request for information under Article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with under the provisions of that article”. No additional standing requirements may be imposed. A very similar provision is contained in Article 6 of Directive 2003/4/EC. Art. 6.2 adds that Member States may furthermore provide that third parties incriminated by the disclosure of information may also have access to legal recourse.

Access to Justice in Relation to Environmental Permitting Decisions

Article 9.2 of the Aarhus Convention deals with Access to Justice concerning environmental decision-making with regard to activities that may have a significant effect on the environment. The Convention provides for a right to seek a review in connection with decision-making on projects or activities covered by Article 6. The review procedure should be organized before a court of law and/or another independent and impartial body established by law and make it possible “to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6”. So, the review procedure should not be restricted to the question whether the public participation requirements of Article 6 were observed in preparation of permits for activities that fall under that provision, but should extend to all questions of legality, both of substance and of procedure. The decisions may be reviewed against all binding law, be it international, European or domestic law. The review procedure should be open to “members of the public”, that is to say “the public affected or likely to be affected, or having an interest in the environmental decision making”, including environmental NGOs “meeting any requirements under national law” (Art. 2.5) in so far as they have “a sufficient interest” (notion often used in the legal systems inspired by those of France) or “maintain impairment of a right, where administrative procedural law of a Party requires this as a precondition” (concept used in the legal systems inspired by German law). So, State Parties may impose certain standing requirements for members of the public and environmental NGOs, but their room for manoeuvre in this respect is not unlimited. Article 9.2, subparagraph 2, states: “[w]hat constitutes a sufficient interest

and impairment of a right shall be determined in accordance with the requirements of national law and consistent with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end the interest of any non-governmental organization meeting the requirements referred to in Article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above". While it is clear that State Parties are not obliged to introduce the *actio popularis*, they may not introduce strict standing requirements for natural or legal persons who may be affected or likely to be affected by decisions, acts or omissions concerning such activities, and, as the case may be, plans, programmes, policies and regulations.

Finally, according to Article 9.2, third subparagraph, this provision on access to justice shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law. The administrative appeal system is not intended to replace the opportunity of appeal to the courts, but it may in many cases resolve the matter expeditiously and avoid the need to go to court.

Very similar provisions were laid down in Article 10a of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC, as regards public and private projects that are subject to environmental impact assessment in view of that Directive, and in Article 15a of Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (the present Art. 16 of Directive 2008/1/EC concerning integrated pollution prevention and control), as regards installations that fall within the scope of that Directive.

Access to Justice and Breaches of Environmental Law

Article 9.3 concerns violations of environmental law in general. The Convention requires Parties to provide access to administrative or judicial procedures to challenge acts and

omissions by private persons and public authorities which breach laws relating to the environment. Such access is to be provided to members of the public 'where they meet the criteria, if any, laid down in national law' - in other words, the issue of standing is primarily to be determined at the national level, as is the question of whether the procedures are judicial or administrative. Members of the public include natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups (Art. 2.4).

Minimum Requirements Concerning Access to Justice

Art. 9.4 and 9.5 set minimum requirements concerning access to justice which should be provided for under Art. 9.1, 9.2 and 9.3 of the Aarhus Convention. Article 9.4 stipulates that these procedures should provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible. Injunctive relief is a remedy to prevent or remedy injury. The Convention requires injunctive relief and other remedies to be "adequate and effective". Adequacy requires the relief to fully compensate past damage, prevent future damage, and may require it to provide restoration. The requirement that the remedies should be effective means that they should be capable of efficient enforcement. Article 9.5 prescribes that in order to further the effectiveness of the provisions of Article 9, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.

IV. The Aarhus Convention and National Judiciaries

Art. 9 of the Aarhus Convention is of particular relevance for the national judiciaries. In the vast majority of the EU member states a dual judicial structure has been put in place, with on the one hand ordinary courts and tribunals, which have jurisdiction in civil and criminal cases, and on the other hand administrative courts and tribunals. This means that the ordinary courts and tribunals are empowered to settle civil and criminal matters, whereas the

administrative courts and tribunals are empowered to settle administrative disputes. It is observed that Administrative courts are confronted in the first place with Aarhus-related cases as the decisions and acts referred to in Article 9.1 and 9.2 and, as far as acts of public authorities are concerned, Article 9.3, will normally fall under the jurisdiction of administrative courts. It should be pointed out, however, that the powers of the administrative courts might differ from Member State to Member State. Due to the different legal history and legal culture, the various legal systems of Member States have taken different approaches to legal standing. They range from an extensive approach where standing is broadly recognised by way of an “*actio popularis*”, to a very restrictive approach allowing standing only in cases where the impairment of an individual legally granted right can be shown. In most of the countries the legislation uses a rather vague formula in describing the conditions to have standing. E.g. in Belgium a natural or legal person who requests suspension or annulment of an administrative act or a regulation by the Council of State must declare a justifiable interest. This means that those persons must demonstrate in their application to the Court that they are liable to be directly and unfavourably affected by the challenged act or regulation. This concept can however be interpreted broadly or narrowly. As we look at the Belgian situation, more or less the same criterion applies for the Council of State as for the Constitutional Court. So far, the Constitutional Court has almost never declined an environmental NGO for lack of standing. As far as the Supreme Administrative Court is concerned, there are some variations in time and even between the different Chambers. Where the Council of State developed a broad view on standing for NGOs in the eighties, there was a tendency later on to become stricter, maybe in view of an ever growing case load.

As we have seen, according to Article 9.3 of the Aarhus Convention, Member States must also ensure that members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons which contravene provisions of its national law relating to the environment. If one opts for judicial procedures, such procedures will in most Member States be the competence of the ordinary judiciary. Here we face similar problems of standing and the views taken by ordinary courts are often even narrower than those of the

administrative courts. In some of our jurisdictions there is a wide access to civil courts, while in others (e.g. the Netherlands, Belgium and France) the legislator introduced special provisions to allow Environmental NGOs to ask for injunctions or even damages. But the impression remains that in the majority of the Member States the situation is far from satisfactory and that a legislative intervention is necessary if the courts cannot or are not willing to review their jurisprudence on standing.

Finally, there is Article 9.4 and 9.5 which sets particular quality standards for the different procedures provided for in the other paragraphs of that article. These procedures shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. These requirements are perhaps the most difficult of all to fulfil. In many Member States the judiciary faces a large backlog of cases. Waiting a long time for a final decision, in some cases more than 5 years, is an everyday reality in more than one jurisdiction. In such circumstances only interim relief is an adequate solution, but unfortunately the conditions under which one can obtain interim measures are often very severe and not in accordance with the Treaty requirements. In other countries judicial procedures and lawyer's fees are very costly. These issues are difficult to solve by the courts themselves and raise more general questions of judicial management, state investment in the judiciary and appropriate legal aid schemes. A long-term work program seems necessary to solve these problems in an acceptable way. And of course these are cross-cutting issues that go far beyond the environmental sector.



Judges for the Environment: We have a Crucial Role to Play

The Right Hon. Lord Robert Carnwath of Notting Hill, CVO,
Justice of the Supreme Court of the United Kingdom,



*Judges for the Environment: We have a Crucial Role to Play**

While politicians may have failed to agree any headline-grabbing commitments in the main event at Rio this week, a sister conference quietly showed how judges in courts and tribunals across the world are adapting to give practical effect to laws for the protection of the environment. It also pointed the way to strengthening them nationally and internationally in the future .

The World Congress on Justice, Governance and Law for Environmental Sustainability was a gathering in Rio of more than 150 judges, prosecutors, public auditors and enforcement agencies from some 60 countries, hosted by the UN Environment Programme (UNEP). The event marked a decade of progress since the Global Judges' Symposium in Johannesburg in 2002, which spelled out for the first time in unequivocal terms the crucial role that judges have to play in interpreting and enforcing environmental law, nationally and internationally.

One of the purposes of this week's Rio Congress was to review progress and to learn from our successes and failures. There is now widespread acknowledgement of an international "common law" of the environment based on principles such as sustainability, and inter-generational equity. There is now greatly expanded awareness of environmental issues among the judiciary, and the development of specialist courts and tribunals in many countries. A recent study¹ identified over 360 specialist environmental courts or tribunals in forty-two countries. Brazil itself has an impressive record of specialist judges developing

flexible and effective approaches to environmental crimes. In the Amazon area, an Environmental Court Judge has developed new remedies. The judge regularly orders offenders to attend an environmental night school he has created; makes community service directly relate to the offense (e.g., sentencing waste dumpers to work in a recycling plant, illegal foresters to plant trees, wildlife poachers to work for wildlife recovery groups); and provides community education through billboards on buses and environmental comic books.

Since 2002, a judicial taskforce, of which I was part, has developed a programme of work to improve the understanding and practice of environmental issues among judges across the world. Our initiatives included the preparation of accessible information for judges, such as a Manual on Environmental Law, and organisation of a series of regional training events. For example, in 2007 I took part in a training event in Nairobi for African judges, co-hosted by the Commonwealth Magistrates and Judges Association. In Europe, we established the EU Forum of Judges for the Environment (EUFJE), through which judges exchange information and ideas.

There has been progress also on public involvement, information and access to justice under Rio Principle 10. In Europe, the Aarhus Convention² (in effect from 2001) applies across over 45 European countries. This provides a legally-binding framework for access to information, the right to participate in environmental

**This contribution first appeared in The Guardian, on Friday 22 June 2012.*

1. George and Catherine Catherine Pring, Greening Justice: Creating And Improving Environmental Courts And Tribunals (The Access Initiative 2009). <http://www.accessinitiative.org/resource/greening-justice>
2. UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters: signed on June 25, 1998 in the Danish city of Aarhus. It entered into force on 30 October 2001.



Participants at the World Congress on Justice, Governance and Law for Environmental Sustainability
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decision-making, and access to justice to challenge the legality of environmental decisions. Kofi Annan (former UN Secretary-General) described the Convention as “by far the most impressive elaboration of principle 10 of the Rio Declaration... (and) the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations”. In February 2009 the UNEP Governing Council proposed the extension of similar principles internationally.

However; among the judges at the Rio Congress there was disappointment that the draft “Common Vision” document at the main event did not contain a more explicit commitment to extending these principles of how people, through the courts, can help effect real change, worldwide. It appeared to us to be something of a missed opportunity. The Congress adopted a declaration re-emphasising the importance of judicial capacity-building, and calling on governments to strengthen UNEP’s role, and to develop more effective institutions for dealing with trans-border crime and international environmental disputes.

The Congress included a series of workshops on different themes. The involvement of public auditors gave us a new perspective, emphasising the need for effective monitoring of the work of governments and enforcement agencies. I chaired a lively session on “new and emerging environmental sustainability issues”, in which we heard powerful presentations from two specialist judges, from Pakistan and India, and from representatives of Interpol and CITES (Convention on International Trade in Endangered Species).

The Johannesburg Global Symposium was an important step forward. Fundamental was the recognition that laws are nothing without judges and courts familiar with the issues, with the power to enforce them, and able to provide accessible justice to individuals and representative agencies. The Rio Congress was a reaffirmation of that commitment.

A white rhinoceros is the central focus of the image, standing in a grassy savanna. Three birds are perched on its back, one near the head, one in the middle, and one towards the rear. The rhinoceros's head is turned slightly to the right, showing its large horn and thick, wrinkled skin. The background is a vast, open plain with tall, dry grass under a bright sky.

CITES: From Stockholm in '72 to Rio+20 – Back to the Future

Mr. John E. Scanlon, Secretary-General, Convention on International Trade in
Endangered Species of Wild Fauna and Flora (CITES)



CITES: From Stockholm in '72 to Rio+20 – Back to the Future*

Travelling from the Odeon Cinema in downtown Rio de Janeiro – where we launched our film *Rhinos under threat*, to Riocentro in Barra de Tijuca – where the Rio+20 negotiations took place, can be a long trip. Several hours in a bus gives one a lot of time to think about a longer journey: the one that the international community has made from Stockholm in 1972 to Rio in 2012.

For a small Secretariat of a global convention with a focused mandate, and with an externally funded delegation of two, we had modest but well defined ambitions.¹ And while our experience of Rio+20 took us from one end of Rio to the other one thing was constant – and that was our focus on the importance of national level implementation.

UN Secretary-General Ban Ki-moon describes *The Future We Want*² as having provided “a firm foundation for building a sustainable future” with “many highlights.”³

The early foundations for building a sustainable future can be traced back to Stockholm in 1972, which, amongst the 109 recommendations found in the Action Plan for the Human Environment, included a call for the preparation and adoption of an international treaty to regulate international trade in certain species of wild plants and animals⁴ CITES was adopted the following year.

And 40 years later in Rio de Janeiro, CITES reappeared amongst the 283 paragraphs of *The Future We Want*, raising little controversy and remaining “under the radar” for most commentators.⁵ Paragraph 203 reads:

“We recognize the important role of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, an international agreement that stands at the intersection between trade, the environment and development, promotes the conservation and sustainable use of biodiversity, should contribute to tangible benefits for local people, and ensures that no species entering into international trade is threatened with extinction. We recognize the economic, social and environmental impacts of illicit trafficking in wildlife, where firm and strengthened action needs to be taken on both the supply and demand sides. In this regard, we emphasize the importance of effective international cooperation among relevant multilateral environmental agreements and international organizations. We further stress the importance of basing the listing of species on agreed criteria.”

This is a ground-breaking acknowledgment by the more than 100 Heads of State or Government who were represented at Rio+20 of the importance of CITES to achieving sustainable development. Such recognition of CITES, as a “pre-Rio convention”, reinforces its contribution towards the conservation

*First published by the International Institute for Sustainable Development on Friday, July 6th, 2012 as Guest Article #13.

1. See CITES press release

2. The Future We Want (A/CONF.216/L.1)

3. See remarks to the UN General Assembly

4. Not a direct quote - see recommendation 99. Negotiations commenced in the early 1960s with significant impetus being provided by an International Union for Conservation of Nature (IUCN) resolution adopted in 1963.

5. But it was not missed by everyone. See the Rio+20 blog of Frank Vorhies

and sustainable use of biodiversity and demonstrates that CITES is as relevant today, if not more relevant, than when it was adopted in March 1973 in Washington, DC – at a time when the world's human population was just four billion.⁶ And it shows the value of one of our earliest multilateral environmental agreements (MEAs) for taking us into the future.

“...an international agreement that stands at the intersection between trade, the environment and development...We further stress the importance of basing the listing of species on agreed criteria”

CITES is an action-oriented convention that sets clear rules of the game to ensure that international trade in CITES-listed wildlife – close to 35,000 species of plants and animals, both terrestrial and aquatic⁷ – is legal, sustainable and traceable. It marries law and science in the pursuit of sustainability, with proposals to list species under CITES being based on agreed biological and trade criteria, the importance of which has been further reinforced at Rio+20. And CITES has harmoniously worked alongside the World Trade Organization (WTO) (and its predecessor) since coming into force on 1 July 1975.

“...promotes the conservation and sustainable use of biodiversity, should contribute to tangible benefits for local people”

Through its key-requirement that international trade in wild fauna and flora only take place when it is not detrimental to the species concerned, CITES has been at the cutting edge of the debate on the sustainable use of biodiversity. It has put the concept into practice on the ground, such as with the vicuña in South America, with significant benefits for local communities

and the global environment, and continues to promote scientifically sound, sustainable management of wild species by its Parties. CITES implementation is also critical to achieving the Aichi Biodiversity Targets, the importance of which was further reinforced in paragraph 198 of “The Future We Want.”

The CITES primary trade data, currently holding details of 12,000,000 trade transactions and growing by over 850,000 records a year; provides the basis for monitoring the effective implementation of CITES, including through the Review of Significant Trade process. E-permitting is being rolled out through a wonderful example of south-south cooperation in partnership with the Amazon Cooperation Treaty Organization (ACTO)⁸ and others, utilizing Brazilian technology – with the CITES e-permitting toolkit now being included into the World Customs Organization (WCO) data model. This is a first for a MEA, which the WCO has said “paves the way for other multilateral environmental agreements to make use of the framework provided by the WCO data model.”⁹

“We recognize the economic, social and environmental impacts of illicit trafficking in wildlife, where firm and strengthened action needs to be taken on both the supply and demand sides”

Today we are also confronting organized criminals who are involved in the illegal trade in wildlife, estimated by some to be worth anywhere between US\$ 5 billion and US\$ 20 billion per year¹⁰ - and Rio+20 provides the first recognition at the highest political level of the threat it poses to people and wildlife.

This illegal trade is: driving some species towards extinction, such as the rhino and the tigers; depriving local people of legitimate

6. Not to mention changes in consumption and production patterns, global and regional trade, and the technology that is now available to harvest from nature. And the world population now stands at seven billion – that is seven billion people consuming biodiversity every day, including in the form of medicines, food, clothes, furniture, perfumes and luxury goods.

7. With international commercial trade generally prohibited for 3% of these species, and with international commercial trade for the remaining 97% regulated to ensure the trade is legal, sustainable and traceable.

8. See CITES press release

9. See CITES press release

10. Excluding marine and timber species.

development choices, and governments of potential revenue; corrupting local officials; and injuring and killing enforcement officers in the field. It is robbing States of their natural resources and cultural heritage, and undermining good governance and the rule of law – it must be stopped. And paragraph 266 on combating corruption addresses one important aspect of related law enforcement efforts.

The “economic, social and environmental impacts of illicit trafficking in wildlife” were very graphically portrayed in the film, *Rhinos under threat*, released in Rio de Janeiro on 18 June as a part of the GoodPlanet Film Festival. This film moves from the massive parks in South Africa and Swaziland, to the crowded streets of Hanoi in Viet Nam, and shows the brutality of the current spike in illegal killing of rhinos and the impact it is having on local communities. The film also investigates what is driving the demand for rhino horn in Asia and the powerful measures being taken by national authorities to fight this crime – and it can be viewed on the CITES YouTube site.¹¹

“...we emphasize the importance of effective international cooperation among relevant multilateral environmental agreements and international organizations”

Efforts to tackle these serious crimes have been significantly enhanced internationally through the International Consortium on Combating Wildlife Crime (ICWWC), a consortium of the CITES Secretariat, INTERPOL, the UN Office on Drugs and Crime (UNODC), the World Bank and the WCO, established in late 2010 to provide support to national enforcement authorities and regional bodies to combat illicit trade in wildlife. While still in

its infancy, ICCWC is ushering in a new era where perpetrators of serious wildlife crimes are facing a more formidable and coordinated response with strong high-level political impetus to this collective effort being provided by Rio+20.¹²

The encouragement made in paragraph 265 in relation to the GEF “to take additional steps within its mandate to make resources more accessible to meet country needs for the national implementation of their international environmental commitments” is also seen as promising as CITES explores the possibility of requesting the GEF to serve as a financial mechanism. And GEF has recently approved its first CITES-related enforcement project.¹³

“We have the tools. Let us use them to make this world sustainable for all.” Secretary-General Ban Ki-moon.¹⁴

Sustainability is not achieved through one action but through the accumulation of multiple actions. International agreements take an enormous amount of time, effort and resources to negotiate and adhere to, not to mention putting into place the national measures for implementation.¹⁵ If we can make best use of the very good instruments we have, with a stronger focus on national implementation than on international negotiations, we may help pave a path to the future we want one stone at a time.

And as we departed the beautiful City of Rio de Janeiro a colleague reminded us of Nick Cave’s lyric, “in the end it’s only beauty that will save the world now”,¹⁶ which opened up another rich debate as we made the long trip home.

11. See YouTube viewing site; CITES Press Release

12. See Information Note on ICCWC

13. See CITES’ praise for recent GEF project

14. See remarks to the UN General Assembly

15. The UNEP World Congress on Justice, Governance and Law for Environmental Sustainability, held from 17-20 June, in partnership with the CITES Secretariat and others, served to highlight the indispensable role of judges, Attorneys General and prosecutors in tackling the illegal trade in wildlife at the national level; see IISD summary

16. Nature Boy - the line first coming from the 19th Century Russian author Fyodor Mikhailovich Dostoyevsky in *The Idiot*

A wide-angle photograph of a large, modern conference hall. The ceiling is a prominent feature, with several concentric, glowing circular recessed light fixtures. The walls are clad in light-colored wood panels. In the foreground, rows of black office chairs with microphones are arranged in a semi-circle, facing a stage. A large projection screen at the front of the room displays a man in a suit speaking. The overall atmosphere is professional and high-tech.

World Congress Highlights

World Congress participants, at the opening in the Supreme Court of Rio de Janeiro, 2012
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World Congress Highlights

Opening

The World Congress was held in Rio de Janeiro, Brazil, on 17-20 June 2012. It was presided by the Hon. YAATan Sri Arifin Bin Zakaria, Chief Justice of Malaysia and Hon. Mr. Ricardo Luis Lorenzetti, Chief Justice of Argentina. Hon. Mr. Antonio Herman Benjamin, Judge at the High Court of Brazil (STJ), acted as Secretary General.

The Congress began with a ceremonial opening on 17 June 2012, hosted by Hon. Mr. Manoel Alberto Rebêlo dos Santos, Chief Justice, Supreme Court of Rio de Janeiro, at the Supreme Court premises, during which statements were made by members of a high-level panel composed of members of the judiciary, partners and United Nations officials.

Following welcoming messages by Mr. Manoel Alberto Rebêlo dos Santos and Mr. Achim Steiner, Executive Director of UNEP, on behalf of United Nations Secretary-General Mr. Ban Ki-Moon, statements were made by the World Congress co-presidents, Hon. Mr. Tun Arifin bin Zakaria and Hon. Mr. Ricardo



High level opening of the World Congress on Justice, Governance and Law for Environmental Sustainability, Supreme Court of Justice of the State of Rio de Janeiro, Brazil, 17 – 20 June 2012. From left: Mr. Terence Nombembe, Hon. Mr. Tun Arifin bin Zakaria, Ms. Amina Mohamed, Mr. Achim Steiner, Hon. Mr. Cláudio Soares Lopes, Hon. Mr. Antonio Herman Benjamin, Hon. Mr. Manoel Alberto Rebêlo dos Santos, Hon. Mr. Ricardo Luis Lorenzetti, Ambassador Mr. Albert Ramdin
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Luis Lorenzetti; Hon. Mr. Cláudio Soares Lopes, Attorney General, State of Rio de Janeiro, representing Hon. Mr. Roberto Monteiro Gurgel Santos, Prosecutor-General of Brazil; Mr. Terence Nombembe, Auditor General of South Africa and President of INTOSAI; HE Mr. Kwon Jae-Jin, Minister of Justice, Republic of Korea; and Ambassador Mr. Albert Ramdin, Assistant Secretary-General of the Organization of American States.

The Congress was then formally opened by Ms. Isabella Teixeira, Minister for the Environment of Brazil, following which keynote addresses were delivered by Mr. Achim Steiner, Executive



H.E. Ms. Isabella Teixeira, Minister for the Environment of Brazil
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Director of UNEP, and Mr. Antonio Herman Benjamin. A well-known Brazilian soprano performed the Brazilian national anthem. The High-level opening was attended by a high number of Brazilian dignitaries in addition to the World Congress participants.

Theme I. Social justice and environmental sustainability: new approaches

The World Congress participants discussed this theme in two parallel sessions, each focusing on a subset of themes. Parallel session 1.1 focused on “a rights-based approach: the nexus between human rights and the environment and the emergence of environmental rights”¹ and parallel session 1.2 focused on “promoting access to information, public participation and access to justice in environmental matters, as well as equitable access to natural resources and ecosystem services, non discrimination and social protection”.² Each parallel session included presentations by selected panellists, which were followed by a discussion involving all participants attending the session, moderated by the chair, who then reported to the World Congress in plenary session on the main messages emerging from the discussion.

The following is a consolidated summary of the main messages developed in both parallel sessions and covers the entire theme of “social justice and environmental sustainability: new approaches”.

- The nexus between human rights and the environment is at the core of social justice and sustainable development. Ecosystems are the foundation of human life and civilization. Environmental degradation negatively affects human rights, starting with the very right to life, and constrains equal access to natural resources for those whose livelihoods directly depend on the environment.

“ Like a hummingbird tirelessly releasing water droplets to extinguish a forest fire, under my leadership the Supreme Court of Rio de Janeiro has taken small initial steps to reduce waste and save natural resources. I’d like to welcome the Congress participants to Brazil, and urge you to emulate the hummingbird to ensure that economic progress is globally sustainable and that nature is saved from destruction. ”

Hon. Mr. Manoel Alberto Rebêlo dos Santos, Chief Justice of the Supreme Court of Rio de Janeiro

- Ecosystems are part of an interconnected web that transcends national borders. Joint efforts focused on fully realizing the synergies between human rights and the environment are therefore needed at the national, regional and international levels.
- At all these levels, advancing human rights, social justice and environmental sustainability requires appropriate legal and institutional frameworks, which provide not only clear and measurable rules and standards but also mechanisms for effective implementation, compliance and enforcement.
- Procedural rights are a central aspect of effective legal frameworks and include rights of access to information, public participation and access to justice, as embodied in

1. This parallel session was chaired by Hon. Mr. Khil Raj Regmi, Chief Justice of Nepal, and the panellists included Hon. Mr. Jerome Kimpere Kitiko, President, Supreme Court, Democratic Republic of the Congo; Hon. Mr. Luc Lavrysen, Justice, Constitutional Court of Belgium; Justice Nabil Sari, Judge, Cour de Cassation, Lebanon; and Prof. Zakri Abdul Hamid, Chair of the High-level International Advisory Committee, Science Advisor to the Prime Minister of Malaysia.

2. This parallel session was chaired by Justice Winston Anderson, Caribbean Court of Justice, and the panellists included Hon. Mr. Fredrick Egonda Ntende, Chief Justice of Seychelles; Ms. Mija Sakslin, Deputy Ombudsman, Finland; Dr. Hans Corell, Former Under-Secretary-General for Legal Affairs and Legal Counsel of the United Nations; and Mr. Simon Upton, Director, Environment Directorate, Organization for Economic Cooperation and Development.

Rio Principle 10. They are imperative to an inclusive vision of sustainable development in which citizens and communities can engage in decisions that affect them. Legally binding instruments implementing Rio Principle 10, possibly using the model of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), represent important legal means of furthering environmental goals and implementation. Advancing environmental law through procedural law to protect public interests also means broadening legal standing and allowing for collective access to justice, exemptions from legal fees, shifting of the burden of proof innovative legal remedies and accessible, fair, impartial, timely and responsive dispute settlement mechanisms. Appropriate rules also need to be developed to ensure that these objectives are achieved.



Ms. Mija Sakslin, Deputy Ombudsman, Finland
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- Enforcement of environmental law and prompt execution of judicial judgments are also fundamental. An independent judiciary and judicial processes, with the support of those contributing to the judicial process at the national, regional and global levels, have a central role to play in the implementation, development and enforcement of environmental law. The Judiciary has a central role towards that end. Expedious investigation and hearing of causes related to violations of environmental laws, with a focus on prevention, and the doctrine of continuing mandamus will be effective tools in this regard. Similarly, auditing institutions play an important role in the implementation of environmental law, including multilateral environmental agreements

through the monitoring of national implementation efforts, with the aim of ensuring the accountability and integrity of institutions and decision-makers.

- Efforts at strengthening the judiciary and other related institutions will contribute to increasing responsibility, accountability and respect for the rule of law. In terms of governance, environmental law enforcement would be greatly advanced if specialized environmental tribunals or benches were established at the national and international levels. Further, these efforts would benefit from securing otherwise specialized expertise, and institutions such as an ombudsperson on environmental issues in the relevant contexts.
- Capacity-building for the judiciary, prosecutors, public auditors and other stakeholders is also fundamental to fully realize and make operative the nexus between the environment and human rights. Environmental education must be improved at all levels, including in schools of general education, law schools and the training of professional Judges, prosecutors, and auditing officers.
- An important aspect of learning is the creation of networks for the exchange of information and best practices, in particular regarding judicial decisions. In this regard, a rich jurisprudence on fundamental environmental rights is

“ Participants can proudly tell their families that the World Congress had expressed a universal desire to protect the planet for future generations. ”

Mr. Charles Di Leva, Chief Counsel for Environment, Sustainable Development and International Law, World Bank

available for the judiciary and other legal professionals to make use of and can be further developed.

- UNEP, jointly with its partners and with the involvement of the judiciary and legal stakeholders, should develop initiatives in capacity building, including training in environmental law, facilitation of quality information exchange and data collection and dissemination, and institutional strengthening, among others

Theme II. The challenges of environmental governance at the national, regional and global levels: improving effectiveness

The World Congress participants discussed this theme in two parallel sessions, each focusing on a subset of themes. Parallel session 2.1 focused on “precepts and enabling conditions for effective governance at the national level”³ and parallel



Panellists and participants in a parallel thematic session at the World Congress © UNEP

“ *Effective justice, good governance and the rule of law are prerequisites for economic development and environmental sustainability.* ”

*Mr. Rajat N. Nag, Managing Director General,
Asian Development Bank*

session 2.2 focused on “effective governance at the regional and international levels, including the role of cross-border cooperation in environmental matters”⁴. Each parallel session included presentations by selected panellists, which were followed by a discussion involving all participants attending the session, moderated by the chair, who then reported to the World Congress in plenary session on the main messages emerging from the discussion.

The following is a consolidated summary of the main messages developed in both parallel sessions and covers the entire theme “challenges of environmental governance at the national, regional and global levels: improving effectiveness”.

- Precepts that form the basis for effective national environmental governance include, among others, effective laws, public disclosure of environmental information, public participation, accountability, clear and coordinated mandates and roles, and accessible, fair, impartial, timely and responsive dispute resolution mechanisms.
- While national laws may be perfectly formulated, there remain challenges regarding their enforcement by the

3. This parallel session was chaired by Mr. Scott Vaughan, Commissioner of the Environment and Sustainable Development, Canada, and panellists included Ms. Anna O. Chifungula, Auditor General, Zambia; Mr. Gopal Krishna Pandey, Green Tribunal, India; Mr. Scott Fulton, Legal Counsel, USEPA; Mr. Tonis Saar, Working Group on Environmental Auditing, INTOSAI; Mr. Aroldo Cedraz de Oliveira, Minister, Brazilian Court of Audit; and Mr. Edward O. Ouko, Auditor General of Kenya.

4. This parallel session was chaired by Hon. Mr. Adel Omar Sherif, Deputy Chief Justice of Egypt, and panellists included Mr. Leandro Despuy, President, Supreme Audit Institution of Argentina; Mr. James Cameron, Executive Director and Vice Chairman, Climate Change Capital; Mr. Cletus Springer, Director, Department of Sustainable Development, Organization of American States (OAS); and Mr. Mohan Pieris, Advisor to Cabinet of Ministers, Sri Lanka.

relevant national institutions, which often result in gaps to be addressed by the courts. There is a striking similarity in the challenges related to the implementation of environmental law in the various jurisdictions around the world. From the perspective of national auditing offices, these include ill-defined roles and responsibilities, insufficiently clear and otherwise inadequate environmental policies and standards, enforcement gaps and a lack of environmental data.

- The public is the most important asset in ensuring effective environmental governance because of its potential to demand the dissemination of information and access to, and the independence of the judiciary and other institutions. Consequently, provisions for public participation are an essential component in the formulation of environmental laws.
- Ten years after the Global Judges Symposium on Sustainable Development and the Role of Law, convened by UNEP in conjunction with the World Summit on Sustainable Development in Johannesburg, South Africa, in 2002, remarkable progress has been made both in the design and application of new models for facilitating access

to environmental justice. This includes the establishment of 350 “green” courts and tribunals around the world. Furthermore, it has been stressed that any new approaches to promoting environmental justice will necessarily depend on the national context, including existing national institutional mechanisms, laws and traditions, and that it is therefore important to strengthen existing international governance institutions to protect the global environment.

- Regarding international governance, the current international institutional framework is inadequate to address the environmental challenges of the twenty-first century, and there is an urgent need to give consideration to transforming UNEP to enable it effectively to lead and advance the global policy and law-making agenda for the environment within the framework of sustainable development. UNEP should therefore be empowered to effectively address environmental matters, in particular by improving the development and implementation of environmental law by contributing to the effort to ensure the necessary funding for capacity building, information exchange and technical assistance.
- The international environmental governance framework should include open environmental data systems, transparent and available to all, to facilitate cooperation and promote the exercise of environmental citizenship. International mechanisms to fund technology transfer are also needed to assist developing countries in achieving sustainable development.
- While we should strive to establish and further develop specialized international and national environmental courts, other more immediate tools and instruments are available to judicial courts and tribunals, such as the lowering of procedural hurdles and the use of specialized expertise.
- An area for special attention and future development is the protection of ecosystems and natural resources in the global commons, or areas beyond national jurisdictions, and the improved management of transboundary resources, including transboundary water resources, for which a proper governance architecture has yet to be put in place.
- The World Congress presented a historic opportunity for the legal and auditing communities to express themselves



Left: Mr. Tonis Saar; Working Group on Environmental Auditing, INTOSAI, right: Hon. Ms. Rachel Pepper, Judge, Land and Environment Court of New South Wales, Australia, during a thematic parallel session at the World Congress © UNEP

on advancing justice, governance and law for environmental sustainability. In this regard the judiciary, prosecutors and auditors have a key role in taking the initiative to promote the implementation of international environmental legal obligations assumed by national Governments, where applicable.

- The judiciary could play a role in accelerating the process of translating International environmental law into national environmental law, through implementation of international environmental law principles and provisions. Supreme audit institutions can greatly contribute to promoting sustainable development, for example through the auditing of national compliance with multilateral environmental agreements implemented through national regulations and other measures. Reports of auditing institutions and public consultations are important tools for promoting access to environmental information.
- Collaboration at the international level is essential to prevent and resolve environmental conflicts. In this regard there have been interesting examples of collaboration among supreme audit institutions in the conduct of bilateral and regional environmental audits, which could provide the foundation for further cooperation. UNEP should work closely with auditing institutions to develop suitable guidelines and recommendations. Similarly, existing collaboration between among the judiciary and other stakeholders need to be strengthened. Various networks already exist, with great potential for exchange and cooperation, including south-south cooperation. Further, there is a need to establish an international institutional network to support the work of chief justices and judges, Attorneys General, Heads of Jurisdiction, Chief Prosecutors and Auditors General, the institutions they represent and other components of the legal and enforcement chain and promote their continued engagement.

- Overall, there is a need for Judges, Attorneys General, Prosecutors, national auditing offices and other related national stakeholders to have more awareness and knowledge of environmental issues and to have ready access to relevant information.
- As a follow up to the World Congress, permanent platforms for exchange and engagement between members of the judiciary, prosecutors and auditors should be established to enable them to share experiences with a view to enhancing their capacity to deal with environmental matters.

Theme III. The challenges of environmental governance at the national, regional and global levels: improving effectiveness

The World Congress participants discussed this theme in two parallel sessions, each focusing on a subset of themes. Parallel session 3.1 focused on “emerging developments and principles in environmental law: procedural challenges and opportunities”⁵

“ With regard to the possible tension between, for example, sustainable development and property rights, it is a fundamental principle of human rights law that limitations on human rights start when the exercise of those rights adversely affected other human rights. ”

*Ms. Navathenem Pillay,
United Nations High Commissioner for Human Rights*

5. This parallel session was chaired by Hon. Ms. Ragnhild Noer, Justice, Supreme Court of Norway, and panellists included Hon. Mr. Gonzalo Hurtado Zamorano, President of the Supreme Court of Bolivia; Hon. Mr. Winai Ruangsri, Justice, Supreme Court of Thailand; Mr. Charles Di Leva, Chief Counsel for Environment, Sustainable Development and International Law, World Bank; and Mr. Presbitero Velasco, Justice, Supreme Court of the Philippines

6. This parallel session was chaired by Hon. Lord Robert Carnwath JSC, Supreme Court, United Kingdom, and panellists included Hon. Justice Syed Mansoor Ali Shah, High Court of Pakistan; Hon. Mr. Francisco Javier Díaz Verón, Prosecutor General, Paraguay; Mr. John Scanlon, Secretary General, CITES; and Mr. David Higgins, Interpol.



Panellists and participants in a parallel thematic session at the World Congress

and parallel session 3.2 focused on “the role of law in addressing new and emerging environmental sustainability issues: substantive challenges and opportunities”.⁶ Each parallel session included presentations by selected panellists, which were followed by a discussion involving all participants attending the session, moderated by the chair, who then reported to the World Congress in plenary session on the main messages emerging from the discussion.

The following is a consolidated summary of the main messages developed in both parallel sessions and covers the entire theme “future of environmental law: opportunities and emerging issues”.

- To address continuing environmental degradation and emerging environmental challenges and conflicts affecting transboundary and national resources requires not only effective environmental law, adequate institutional arrangements, financial resources and appropriate mechanisms, including broad environmental and social impact assessments, but also the support of judges, public prosecutors and auditors to ensure effective implementation, compliance, enforcement and access to justice.
- As already affirmed at the Global Judges Symposium on Sustainable Development and the Role of Law, held in

Johannesburg, South Africa in 2002, an independent judiciary and judicial process are vital for the implementation, development and enforcement of environmental law. Progress has been achieved since 2002 in terms of improved effectiveness of the judiciary in environmental adjudication, auditing, enforcement of environmental law and access to justice in many countries. There is a need to continue to build on these achievements.

- It is necessary to reinforce and strengthen existing principles enshrined in the 1992 Rio Declaration on Environment and Development and the recommendations set out in Agenda 21, in particular, principle 10, on access to information, public participation and access to justice; principle 15, on the precautionary approach, principle 16, the polluter pays principle, and principle 17, on environmental impact assessment, to name a few. Another focus should be the further development and implementation of emerging principles. These include the principle of non regression in respect of environmental laws and policies and the principle in dubio pro natura, which calls for an environment-friendly interpretation of a rule to prevail over any conflicting interpretations. The polluter pays principle should be interpreted to require the restoration of the environment by those who cause damages, rather than mere compensation.
- The free flow of information and the implementation of Rio principle 10 at all levels are fundamental for adequately responding to environmental challenges. The principle encompasses access to information held by Governments

“ We have been so fortunate to visit such a beautiful country and city as Brazil and Rio de Janeiro. In the words of the Australian musician, Nick Cave, in the end only beauty can save the world. ”

Mr. John Scanlon, Secretary General, CITES

as well as, where appropriate, national courts. The judiciary and other legal stakeholders (including public prosecutors, Attorneys General, Auditors General, environment agency enforcement officials and other key functionaries) have a crucial role to play in promoting the full participation and continued engagement of all stakeholders in procedures concerning environmental matters. Efforts should be made to ensure fair, credible and open processes in cases where decisions regarding the environment might adversely affect people, safeguarding the right of those affected to participate in the process, with the aim of ensuring a degree of ownership in the final decision.

- Various experiences were shared with regard to viable procedural opportunities for effective environmental adjudication, and the following were proposed in respect of environmental litigations:
 - Liberalized standing (*locus standi*) and collective access to justice to secure for every citizen the right of access to courts;
 - Reduced litigation costs;
 - Speedy and simplified litigation processes and adjudication;
 - Easing – or shifting – the burden of proof;
 - Use of specialized expertise
 - Enhanced remedies and procedures, including restoration, writs of continuing mandamus; writs of nature (*Kalikasan*) and other innovative environmental remedies and procedures.
- Capacity building to support judges and enforcement officers is crucial. States should cooperate to build and support the capacity of courts and tribunals as well as prosecutors, auditors and other related stakeholders at the national, subregional and regional levels to facilitate the implementation of environmental laws and should facilitate exchanges of best practices to achieve environmental sustainability, inter alia, by encouraging relevant institutions, such as judicial institutes, to provide and facilitate continuing education programmes. This should be complemented by an international network for the exchange of information and data, allowing the exchange of best practices and judicial decisions on environmental cases between jurisdictions.



Panellists and participants in a parallel thematic session at the World Congress

- At the national level, efforts to establish specialized courts, green benches and tribunals or promote specialized expertise within the judiciary on the environment should be continued in order to address the particular exigencies of environmental cases. Procedural law must be improved, including through the adoption of liberalized rules of access to courts and standing, liberal, flexible and timely remedies, improved access by courts to scientific expertise and the possibility of ordering scientific investigations.
- Environmental crimes should be recognized in all jurisdictions as serious and priority crimes punishable by law due to their environmental and national security implications. An acute challenge is the rise of organized wildlife crime, with devastating effects not only on biodiversity but also security, as revenues are frequently used to finance conflicts. The Judiciary has an essential role in ensuring that such environmental crimes are treated as serious crimes, and that effective and adequate sanctions to counteract the high revenues generated from these crimes are applied. The support of the judiciary is also necessary in enabling the enforcement branch to track down perpetrators.
- At the international level, there is still a gap in effective dispute resolution dealing with transboundary environmental

issues. It has been suggested that the goal should be to establish an international environmental court, possibly to be developed through collaboration between networks of national and regional courts.

- The application of international criminal law to environmental protection must be further explored, taking into account the special nature of environmental cases. Efforts should be made to harmonize laws across borders in this respect.

Closing

The ninth and final session of the World Congress was held on the morning of Wednesday, 20 June 2012. The session featured closing remarks, the consideration of the World Congress outcome document and the formal closure of the Congress.

Closing statements were made by Ms. Amina Mohamed, Deputy Executive Director, UNEP; Ms. Navathenem Pillay, United Nations High Commissioner for Human Rights; Mr. Charles Di Leva, Chief Counsel for Environment, Sustainable Development and International Law, World Bank; Mr. Rajat N. Nag, Managing Director General, Asian Development Bank; Mr. John Scanlon, Secretary General, CITES; and Mr. Cesar Cunha Campos, Director, FGV.

Following the customary exchange of courtesies, the Chair declared the World Congress closed at 1 p.m. on Wednesday, 20 June 2012



Dr. Bindu Lohani, Vice President, Asian Development Bank



Statements from Preparatory Meetings

Preparatory Meetings Statements

Preparatory meetings in different parts of the world preceded the World Congress on Justice, Governance, and Law for Environmental Sustainability. Significantly, an Executive Steering Committee as well as a High Level International Advisory Committee were established to provide advice, guidance and support to UNEP in the preparations for a successful World Congress.

The First Preparatory Meeting of the World Congress on Justice, Governance and Law for Environmental Sustainability, took place in Kuala Lumpur, Malaysia on 12 and 13 October 2011. This Meeting was designed to initiate discussions on the themes of justice, governance and law in preparation towards formulating an outcome document of the World Congress for submission to the Rio+20 Conference.

The Second Preparatory Meeting of the World Congress on Justice, Governance and Law for Environmental Sustainability took place in Buenos Aires, Argentina, on 23 and 24 April 2012. Based on the First Preparatory Meeting –specifically its outcome document, ‘The Kuala Lumpur Statement’ – participants discussed elements for suggested action by the World Congress on the themes of justice, governance and law for environmental sustainability. As a result of their discussions, participants adopted ‘The Buenos Aires Statement’ which covers both substantive elements as well as a proposed follow-up process beyond the World Congress and Rio+20.

Kuala Lumpur Statement (First Preparatory Meeting, Kuala Lumpur, 12-13 October 2011)

Introduction

1. Chief Justices and senior judges, Attorneys General and Chief Prosecutors, Auditors General, senior legal advisers and other representatives of the legal community from

countries worldwide met in Kuala Lumpur on 12 and 13 October 2011 at the first preparatory meeting for the World Congress on Justice, Governance and Law for Environmental Sustainability, to be held in Rio de Janeiro, Brazil, from 1 to 3 June 2012 on the eve of the United Nations Conference on Sustainable Development.

2. Mr. Sri Mohd Najib bin Tun Haji Abdul Razak, Prime Minister of Malaysia, delivered an opening statement in which he expressed appreciation to the United Nations Environment Programme for convening the meeting. He suggested that it might be appropriate to consider the creation of a world environment organization to anchor global efforts for the environment.
3. The meeting was an important preparatory step in the process to devise a final outcome to be submitted to the United Nations Conference on Sustainable Development. The World Congress would bring together representatives of national judiciaries and other legal stakeholders to discuss perspectives on the importance of law, justice and accountability within the framework of countries’ duties and responsibilities.
4. The Kuala Lumpur Statement sets out the insights and views expressed at the first preparatory meeting by the participants on the themes of justice, governance and law for environmental sustainability and forms an initial contribution to the World Congress. It is not a negotiated document but rather a reflection of the broad perspectives and thinking of the participants that does not necessarily represent country positions or consensus on all issues.

1. Key Messages

5. The participants devised a number of key messages. In terms of social justice for environmental sustainability, the participants said that:

- (a) The representatives of the legal community at large had a key role to play in advancing national and international efforts to attain environmental sustainability goals and could take a more active role to further their contribution in that respect;
 - (b) There had been important progress that had enhanced the development and wider application of principles of international environmental law over the past decades;
 - (c) There was a need to further strengthen the operational linkages between social justice and environment in areas such as environmental impact assessment, procedural principles, including principles regarding access to information, public participation and access to justice, balancing environmental and development considerations in judicial decision-making and public prosecution and wider use of environmental audits as a means of promoting social justice;
 - (d) Environmental justice required attention to the disproportionate distribution of environmental impacts at the national level, a wider recognition that the poor were the most affected by environmental degradation and the equitable sharing of the burden of mitigating climate change and environmental degradation;
 - (e) It was crucial to strengthen the capacity of all stakeholders engaged in securing social justice and environmental sustainability, such as judges, prosecutors, lawyers, auditors, ombudsmen, parliamentarians and policymakers, in addition to civil society at large, including the private sector, through appropriate and targeted capacity-building programmes;
 - (f) Legal foundations for the advancement of environmental sustainability must be strengthened through the mutual supportiveness of efforts to safeguard the environment and human rights;
 - (g) Poverty alleviation and social justice were fundamental objectives for any new institutional framework for sustainable development and for any measures to reform the existing institutional framework;
 - (h) Urgent consideration must be given to reforming the process by which multilateral environmental agreements were formulated to ensure the widest possible participation by civil society partners and actors;
6. In terms of governance for environmental sustainability, the participant said that:
- (a) The international environmental governance system was a complex web of multiple entities, which, after 40 years in the making, had come to be viewed as incoherent, dysfunctional, inefficient, in need of urgent attention, owing to its complexity, disenfranchising in particular for developing countries, who could not fully participate to represent and defend their interests, meaning that governance must be directed at outcomes that served the public interest;
 - (b) Any consideration of reforms to strengthen international environmental governance should begin with an understanding of needs at the country level and an assessment of whether such reforms respond to those needs and contribute to sustainability at the national level. Key considerations in reforming international environmental governance included:
 - (i) Need for an effective system for collating, storing and distributing information on environmental sustainability issues that would allow institutions and individuals worldwide to act, including on the interlinkages between global challenges such as food security, energy, health, agriculture, water and poverty reduction;
 - (ii) Need for an integrated, consolidated and simplified system for reporting under multilateral environmental agreements;
 - (iii) Need for input by countries to be reviewed by a single international environment authority making use of the best available technology: such a review mechanism would provide a general understanding of a country's sustainability, its sustainability competitiveness and its implementation performance and would identify the gaps and challenges being faced, enabling

- donors, organizations and others to assist it to address its implementation challenges;
 - (iv) Potential need to develop stronger linkages at the national level between environmental reporting and national audit offices and parliaments so as to improve accountability for and compliance with obligations assumed by countries;
 - (v) Need for a stronger environmental authority and a more universal voice to speak across the United Nations system on environmental sustainability issues, as energy, water and food security were of paramount importance in the maintenance of peace and security and required permanent, dedicated and competent stewardship;
 - (vi) Need to link the function of keeping the environment under review, including monitoring, assessment and policymaking, with that of financing for the environment, as those responsible for policy, technology and finance must be in constant communication to achieve sustainability on targets;
 - (vii) Need to enhance cooperation and collaboration for capacity-building and implementation support for developing countries at the national level, particularly for with regard to the implementation of multilateral environmental agreements;
- (c) A fundamental principle of reform was that it was necessary to avoid duplication and create a more cost-effective international environmental governance system: advances in technology offered the possibility of new forms of networked institutions, and approaches to institution-building using distributive powers, social networking and other examples of information and communications technology made it substantially less expensive to invest in new institutions compared to traditional brick-and-mortar institutions, making such investments potentially better suited to the complex system of environmental governance;
- (d) The Prime Minister of Malaysia called for a new world environmental organization that would be facilitative, would promote cooperation and, in contrast to the World Trade Organization, would not be regulatory in nature;
- (e) There was general support for the establishment of a world environment organization based on the United Nations Environment Programme but with an expanded role, while the precise form of the organization required further development.
7. In terms of law for environmental sustainability, the participants said that:
- (a) There had been encouraging trends over the past several decades, such as the progressive development of environmental law and the integration of environment and sustainable development into national constitutions, greater environmental awareness and national environmental law-making; such progress should be accelerated in order to keep pace with the rapidly developing environmental challenges facing the globe;
 - (b) There was a need further to enhance cooperation and coordination between multilateral environmental agreements based on thematic clustering with the aim of strengthening implementation at the national, regional and global levels, including sharing of responsibilities within the framework of the principle of common but differentiated responsibilities, and to promote collaboration between national institutions to enhance synergies in the implementation of environmental law;
 - (c) To promote common understanding, coherence and reduced fragmentation of international environmental law, there was a need further to elaborate, clarify and codify principles of international environmental law and customary and treaty law, including through the International Law Commission and an anchor organization for the environment;
 - (d) There was a need to recognize the importance of national-level institutions, implementation mechanisms

and accountability processes for the effective implementation of environmental law;

- (e) It would be valuable to establish a mechanism for coordinating, facilitating and supporting capacity-building and technical assistance the judiciary and other actors in the legal system and to share best practices: formal articulation of core concepts regarding effective legal institutions, implementation and accountability common across jurisdictions could be valuable as a catalyst;
- (f) While it was important to promote collaborative mechanisms, including to tackle transnational environmental crime, the implementation of international environmental law should be supported by persuasive complementary mechanisms (or incentives and disincentives) and by compliance and implementation mechanisms;
- (g) Consideration should be given to the establishment of specialist courts to deal with cases involving environmental issues to allow for their more efficient and effective handling.

II. Next Steps

8. The official launch of the World Congress on Justice, Governance and Law for Environmental Sustainability will be held in New York on 14 December 2011, ahead of the second intersessional meeting for the United Nations Conference on Sustainable Development. The Congress will be launched by the Executive Director of the United Nations Environment Programme, the Minister of Environment of Brazil, the Federal Attorney General of Brazil and the co-chairs of the high-level international advisory committee to the World Congress.
9. The second preparatory meeting for the World Congress will take place in Buenos Aires in April 2012. The Kuala Lumpur Statement will feed into those deliberations.
10. The World Congress will take place from 1 to 3 June 2012 in Rio de Janeiro and will bring together Attorneys General, Chief Prosecutors, Auditors General, Chief Justices and senior judges from around the world, in addition to parliamentarians.

III. Acknowledgements

11. The partners of and participants at the first preparatory meeting for the World Congress on Justice, Governance and Law for Environmental Sustainability express their sincere thanks to the Prime Minister and Government of Malaysia for hosting the meeting.

Buenos Aires Statement (Second Preparatory Meeting, Buenos Aires, Argentina, 23 – 24 April 2012)

This Statement sets out the insights and views expressed at the second preparatory meeting by the participants on the themes of justice, governance and law for environmental sustainability and forms an additional contribution to the World Congress. It is not a negotiated document but rather a reflection of the broad perspectives and thinking of the participants that does not necessarily represent country positions or consensus on all issues.

Chief Justices, Attorneys General, Auditors General and other experts of high standing gathered in Buenos Aires, Argentina, from 23-24 April, for the 2nd Preparatory Meeting for the World Congress on Justice, Governance and Law for Environmental Sustainability, to be held in Rio de Janeiro, Brazil, on the eve of the United Nations Rio +20 Conference on Sustainable Development from 17 – 20 June 2012. In plenary and focused parallel sessions, they discussed elements for suggested action by the World Congress on the themes of justice, governance and law for environmental sustainability. The Meeting was hosted by the Chief Justice of Argentina, Hon. Mr. Ricardo Lorenzetti and held in conjunction with the Ibero-American Judicial Summit.

At the end of the Preparatory Meeting the participants developed the following statement and suggested elements for attention by the World Congress.

I. Introduction and General Remarks

We, the Chief Justices, Attorneys General, Auditors General and experts gathered in Buenos Aires, Argentina, for the 2nd Preparatory Meeting for the World Congress on Justice,

Governance and Law for Environmental Sustainability, express our common concern regarding the continuing degradation of the natural environment, in particular, of vital natural resources, ecosystems and their services.

We recognize the important contribution made by the legal and auditing community worldwide to the enforcement of standards and safeguards for environmental sustainability. The judiciary in particular, has been the guarantor of the rule of law in the field of the environment worldwide and judicial independence is indispensable for the dispensation of environmental justice.

We recall with appreciation the first Global Judges Symposium convened by UNEP in 2002, in conjunction with the Johannesburg Summit on Sustainable Development, and note with much satisfaction that since then, the importance of the judiciary in environmental matters has further increased and resulted in a rich corpus of decisions as well as in the creation of a considerable number of specialized courts and benches. We recognize that this has had a lasting effect on improving social justice, environmental governance and the further development of environmental law, especially in developing countries.

We warmly welcome the World Congress being convened by UNEP and its partners on the eve of the Rio +20 Conference on Sustainable Development, as a generational opportunity to advance justice, governance and law for environmental sustainability and as an opportunity to make a valuable contribution to the Rio +20 Conference.

We also recall the 1st Preparatory Meeting for the World Congress held in Kuala Lumpur, Malaysia, in October 2011. The 'Kuala Lumpur Statement' formed an excellent basis for our deliberations.

We recognize the overall importance of societies based on the rule of law, appropriate standards of transparency and accountability, the protection and promotion of human rights, and commitment to equity as imperative to the achievement of sustainable development and more environmentally sustainable economies. In this regard, we wish to underscore the role of Law

as a valuable tool in shaping the behavioral changes that enable good governance advance sustainability in all corners of the Earth. It is our opinion that important future legal developments will likely occur in the area of procedural rights and related innovations.

Furthermore, we are convinced that promoting social justice requires greater attention to be paid to a.) access to information and justice, given the often disproportionate distribution of environmental impacts across societies at the national level, b.) a wider recognition that the poor and vulnerable communities were the most affected by environmental degradation, and c.) the equitable sharing of the burden of environmental mitigation and degradation overall.

We also express our serious concern that forty years on from the Stockholm Conference on the Human Environment and the creation of the United Nations Environment Programme (UNEP), twenty years after the first Rio Conference on Environment and Development and several hundred multilateral and bilateral environmental treaties, as well as widespread national environmental legal and regulatory regimes, the current environmental governance framework has not delivered its full potential. Lack of implementation of sustainable development policies and laws in many countries have continued to be a major challenge to environmental justice and sustainability.

We are firmly of the view that improving the effectiveness of environmental governance is crucial for the pursuit of sustainable development and social justice and the advancement of the rule of law in general, and environmental law, in particular. In this connection we express our concern that while the international community had long recognized the importance of environmental governance, a clear articulation of what that entails had not yet emerged, nor has an effective framework for coordination and collaboration to strengthen environmental governance.

We see it as self-evident that global environmental challenges call into question the adequacy of international institutions for environmental governance created decades ago and that

these institutions, in particular UNEP, should therefore be strengthened to better support effective national, regional and global environmental governance.

We acknowledge that advances in environmental law, governance and social justice will require concrete allocation of adequate resources and commitment to raising awareness and strengthening capacity, including through educational institutions, particularly in developing countries, for the development and implementation of such legal regimes, at all levels.

We express our sincere appreciation and gratitude to the Chief Justice of Argentina, Hon. Mr. Ricardo Luis Lorenzetti, for hosting the 2nd Preparatory Meeting for the World Congress on Justice, Governance and Law for Environmental Sustainability as well as for the leadership in advancing the roles of justice, governance and law for environmental sustainability demonstrated through his chairmanship.

II. Suggested Elements for Action by the World Congress:

Following our deliberations, we suggest to the World Congress and its participants, the following themes for consideration and discussion: (1) Social Justice and Environmental Sustainability: New Approaches; (2) The Challenge of Environmental Governance at National, Regional and Global Levels: Improving Effectiveness and (3) The Future of Environmental Law: Emerging Issues and Opportunities.

Furthermore, we encourage the World Congress to consider the potential value of creating a process or mechanism that would provide continuity for several years beyond the World Congress and Rio +20 in order to enable continued discussion, coordination, facilitation and implementation of World Congress recommendations.

In addition, we recommend carrying forward to world leaders at the Rio +20 Summit the environmental law, governance and social justice recommendations that emanate from the World Congress. To facilitate the World Congress discussion, we suggest that the World Congress consider the value of efforts to:

Theme I – Social justice and environmental sustainability: new approaches

- Further develop and share legal instruments for the effective implementation of principles of environmental law including those contained in the Stockholm and Rio Declarations that are aimed at environmental and social justice, and consider the extent to which emerging concepts such as the public trust doctrine and corporate social responsibility can promote social justice in the context of environmental sustainability.
- Further explore the development and adoption of a global or regional Rio Principle 10 Convention, the potential value of borrowing provisions from the Aarhus Convention in this regard, as well as mechanisms for the effective implementation of Principle 10, including through development of new national legislation or implementation approaches, and capacity building, as appropriate.
- Establish a results and priority-based programme of action for prosecuting offices, with a special focus on ensuring social justice and the prevention of significant environmental harm, and encourage the prosecution of cases with the potential for serving as a deterrent to other potential offenders, based on defined criteria.
- Establish training and exchange programmes for judges, prosecutors and relevant legal stakeholders as well as a network for exchange of information on best practices and comparative environmental law, and strengthen cooperation among such legal stakeholders, to better address legal and institutional issues arising in the area of environment, building on existing efforts where appropriate.
- Promote well-informed public participation in the development and implementation of national and international environmental law, through the creation of an integrated network at the national and international levels, using as appropriate, electronic channels of communication, for providing access to environmental information held by governments, the judiciary, public officers, prosecution offices, ombudsman institutions and other relevant legal stakeholders.
- Promote the adoption of appropriate technology that efficiently addresses impacts of pollution, particularly when

- pollution disproportionately affects vulnerable groups.
- Encourage judicial cooperation in sharing information relevant to adjudicating environmental cases with transnational or cross-border environmental implications, particularly when social justice issues are present.
- Ensure greater correspondence between rights based approaches to a clean, healthy environment, human rights and international environmental health standards provided by, for example, the World Health Organization.
- Consider the concept of an international ombudsperson (possibly within the framework of UNEP) to represent the rights of future generations, particularly in relation to ecosystem integrity.

Theme 2 – The challenge of environmental governance at national, regional and global levels: improving effectiveness

- Promote the precepts of effective national environmental governance, which include, among others, fair, clear and implementable environmental laws; availability and accessibility of environmental information; public participation in decision-making; accountability and integrity of decision-makers; clear and coordinated mandates; and accessible, fair and responsive dispute resolution mechanisms as well as the positive links between effective national governance systems and effective international environmental governance.
- Strengthen international environmental governance with an enhanced capability to assist the judiciary and other legal stakeholders in the implementation of environmental law at the national level through capacity building, information exchange and knowledge sharing.
- Promote the further development of a knowledge sharing platform to foster improved coordination and collaboration at regional and national level, to contribute to building and maintaining capacities for auditors and other important stakeholders at the national level.
- Promote and increase accountability and transparency in environmental governance by including a broad set of

actors in the decision making processes and strengthening institutional frameworks and procedures.

- Explore the potential contribution of dedicated and specialized environmental tribunals, at all levels.
- Assess the effectiveness of Multilateral Environmental Agreements and the implications for the further development of international environmental law, increased collaboration, coordination and coherent national implementation of policies and legislation.
- Enhance the role of UNEP within a strengthened system of international environmental governance to more effectively contribute to the further development and implementation of environmental law.
- Enhance the role of UNEP in disseminating information on environmental law through publications, guidance documents, training and related initiatives.
- Promote the role of environmental auditing to improve good governance with adequate control measures, as a guarantee of public integrity.

Theme 3 – The Future of Environmental Law: Emerging Issues and Opportunities

- Emphasize the importance of compliance with existing law and the need for further law development, including in the areas outlined by the participants in their discussions of this theme.
- Urge alignment of UNEPs and other World Congress partners programmes of work in a manner consistent with these objectives, including provision of support in implementation of environmental law and compliance assurance mechanisms, and provision for a comprehensive review of gaps in implementing the Rio Declaration and applicable environmental law, with the aim of enabling progressive development of international and national environmental law in furtherance of sustainable development.
- Encourage intensified bi-lateral and regional cooperation and initiatives among Judges, Attorneys General, Auditors General and other legal officials, directed towards enhancing sustainable development, effective environmental law and

institutions, environmental justice, and prevention and resolution of transboundary disputes.

- Call for the establishment of a standing network or networks of Chief Justices, Attorneys General, and Auditors General, to support the implementation of the outcome of the World Congress with the ability to work at regional and sub-regional levels and exchange information and data in support of these objectives, building on existing efforts as appropriate.

24 April 2012, Buenos Aires, Argentina

A full summary of discussions can be found on the World Congress Website (www.unep.org/delc/worldcongress)



Reflections on the Outcome of the World Congress on Justice, Governance and Law for Environmental Sustainability

Dr. Hans Corell, Former Under-Secretary-General for Legal Affairs and Legal Counsel of the United Nations

Ms. Amina Mohamed, Deputy Executive Director, UNEP



Reflections on the Outcome of the World Congress on Justice, Governance and Law for Environmental Sustainability*

On June 17-20 2012, the World Congress on Justice, Governance and Law for Environmental Sustainability was held in Brazil. The Congress was organized by the Secretariat of the United Nations Environmental Programme (UNEP) under the guidance of its Executive Director, Mr. Achim Steiner, and Mr. Bakary Kante, Director of the Division of Environmental Law and Conventions, with the support of local co-hosts. A High Level International Advisory Committee and an Executive Steering Committee were also part of the governance structure.

One of the purposes of the Congress, which hosted well over 200 participants, was to contribute to the Rio+20 Conference on the role of environmental laws within the themes of the “Institutional Framework for Sustainable Development” and “Green Economy”.

Another important task was to outline the future actions required by national and international legal stakeholders in order to promote the pursuit of sustainable development in the 21st century founded on the rule of law and effective governance.

The Congress should be seen as a follow-up to the Global Judges Symposium, held in Johannesburg, South Africa on August 18-20 2002. At the end of this Symposium, the judges adopted the Johannesburg Principles on the Role of Law and Sustainable Development.

As in Johannesburg, Chief Justices and Heads of Jurisdiction attended the World Congress; in Brazil Attorneys General, Auditors General, Chief Prosecutors, and other high-ranking

representatives of the judicial, legal and auditing professions also participated. This composition resulted in interesting discussions both at the plenary meetings and in parallel sessions on specific topics.

The purposes of the World Congress were to contribute to the principles of sustainable development and to assess the progress made in implementing the outcomes of the key global summits in sustainable development: the Rio Earth Summit in 1992 and the World Summit on Sustainable Development in Johannesburg in 2002. These were accomplished by identifying and comparing experiences in strengthening compliance and enforcement of national and international environmental laws.

Further purposes were to convene actors to negotiate recommended actions for meeting sustainability priorities at national and regional levels; to garner broader and deeper support for more effective environmental governance at the national and international levels with the aim of enhancing national implementation and compliance; to provide technical and political input on the legal dimensions of environmental sustainability and the outcome of Rio+20; and to propose outcomes on social justice and equity, including a possible declaration on human rights and sustainable development.

Two preparatory meetings for the Congress were held, the first in Kuala Lumpur, Malaysia, on October 12-13 2011, and the second in Buenos Aires, Argentina, on April 23-24, 2012. The statements from these meetings provided important foundations for the Congress.

*This contribution by Dr. Hans Corell was first published in the International Judicial Monitor Summer 2012 Issue (<http://www.judicialmonitor.org/current/specialreport2.html>)

The Congress met at Portobello, a small fishing village in Mangaratiba municipality west of Rio de Janeiro and at the Supreme Court of the State of Rio de Janeiro. The plenary working sessions were chaired by Ricardo Luis Lorenzetti, Chief Justice of the Supreme Court of Argentina, assisted by Antonio Herman Benjamin, Justice of the High Court of Brazil and the Secretary General of the Congress.

On June 20, 2012 the Congress adopted the Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability. The Declaration was presented to the President of Rio+20 and to the Heads of State and other high level representatives at the Rio+20 Conference.

The Declaration contains three main elements:

- Messages to heads of state and government, other high-level representatives, and the world community at large.
- Principles for the advancement of justice, governance and law for environmental sustainability.
- Institutional framework for the advancement of justice, governance and law for environmental sustainability in the 21st Century.

In the Declaration, the participants recall the importance of the first Global Judges Symposium in 2002. They note among other things that since then, the importance of the judiciary in environmental matters has further increased and resulted in a rich corpus of decisions and the further development of environmental law, especially in developing countries.

The several messages include statements that an independent judiciary and judicial process are vital for the implementation, development and enforcement of environmental law; that environmental law is essential for the protection of natural resources and ecosystems and reflects our best hope for the future of our planet; and that environmental sustainability cannot be achieved without good quality data, monitoring, auditing and accounting for performance.

The participants emphasized that environmental and sustainability auditing ensures transparency, access to information, accountability, and efficient use of public finances, while protecting the environment for future generations. In that context they highlight the responsibility of judges, public prosecutors and auditors. At the same time they stress the need to strengthen existing international governance institutions to protect the global environment.

The principles expressed in the Declaration are summarized by statements declaring that only through the active engagement of all parts of society, especially national and sub-national institutions and officials responsible for addressing justice, governance and law issues, including judges, prosecutors, auditing institutions and other key functionaries, can meaningful progress be achieved that is sustained and responsive to the needs of the peoples of the world and protective of human rights.

The Declaration concludes by defining the purposes of an international institutional network that should be established with UNEP in the lead and with the engagement of other relevant actors. This endeavor should be managed under the guidance of selected members of the professions that participated in the World Congress.

The long term objective of the World Congress is to become an important platform in strengthening environmental laws and governance frameworks for the future implementation of environmental law and policy through the involvement of, and in consultation with participants in the Congress and other key stakeholders.



Reflections on the Outcome of the World Congress on Justice, Governance and Law for Environmental Sustainability*

Following fruitful discussions at the Congress, the participants' enlightened suggestions were reflected in the outcome document, which fully recognizes the importance of rules-based societies, adequate and effective governance frameworks and equity and justice as inextricable aspects of environmental sustainability and sustainable development; the need for adequate legal foundations for the transition to greener economies and for leading humanity on the path to sustainability; and the need for governance frameworks at all levels, including the international level, that could address the complexity of sustainable development.

The Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability is a vital document for everyone working in the field of environmental law, providing an authoritative reference and guiding principles to assist them with their work in their institutions. UNEP was privileged to have assisted the process and will honour the recommendations and conclusions from the Congress, with the participants' active engagement and support, and in close cooperation with our partners.

Chief Justices, Attorneys General and Chief Prosecutors, Auditors General and other eminent members of the law enforcement community have a special role to play in addressing environmental sustainability challenges. Their day-to-

day efforts, leadership and dedication provide the backbone for the realization of environmental sustainability objectives while their authoritative voice can inspire the adoption of ambitious decisions. Although the environment is seen as the foundation of all activities, vital for human well-being and humanity's very survival, many ecosystems are facing increasing pressure. To address the complex environmental sustainability challenges around the world, urgent, concerted and effective action is needed, as has been eloquently stated during the Congress. That requires renewed political commitment and appropriate decisions by the international community, supported by a web of actors, enabling conditions and institutional arrangements that will facilitate decision-making and the translation of commitments into action.

The right policy choices have to be followed by the enactment of good legislation and regulations, and their implementation, supported by a well-informed, strong and independent judiciary, adequate enforcement and the integrity and accountability of institutions. The representatives of the legal and auditing communities have a crucial role to play in that continuum: only with their full engagement will progress towards the delivery of economic, environmental and social objectives be possible. The debates held during the World Congress have delivered on that promise and show the way towards improving justice, governance and law for environmental sustainability.

*Summary of the reflections made by Ms. Mohamed at the World Congress on Justice, Governance and Law for Environmental Sustainability on 20 June 2012 in Rio de Janeiro, Brazil



Useful Resources

Scenic view of Jordan Pond in Acadia National Park in Maine, with reflections of the blue sky, clouds, and rocks, in the water
© Lynda Lehmann

Useful Resources

Publications*

Compliance-Related Texts and Decisions of Selected Multilateral Environmental Agreements
 Course on Compliance with and Enforcement of Multilateral Environmental Agreements
 Auditing the Implementation of Multilateral Environmental Agreements (MEAs): Primer for Auditors
 Compliance Mechanisms Under Selected Multilateral Environmental Agreements
 Glossary of Terms for Negotiators of Multilateral Environmental Agreements
 Guide for Negotiators of Multilateral Environmental Agreements
 Judicial Handbook on Environmental Law
 Civil Law Perspective of the Judicial Handbook on Environmental Law
 Judicial Training Modules on Environmental Law
 UNEP Compendium of Summaries of Judgments in Environment-related Cases
 Manual on Compliance with and Enforcement of MEAs
 MEAs Negotiator's Handbook
 Negotiating and Implementing MEAs: A Manual for NGOs
 Register of International Treaties and Other Agreements in the Field of the Environment
 Selected Texts of Legal Instruments in International Environmental Law
 Training Manual on International Environmental Law

Guidebook for Policy and Legislative Development on Conservation and Sustainable Use of Freshwater Resources
 UNEP Handbook for Drafting Laws on Energy Efficiency and Renewable Energy Resources
 The Greening of Water Law
 Guidebook on national legislation for adaptation to climate change
 Feed-in tariffs and a policy instrument for promoting renewable energies and green economies in developing countries

Environmental Law Databases

InforMEA (www.informe.org)
 ECOLEX (www.ecolex.org)

World Congress Website

www.unep.org/delc/worldcongress

**Environmental Law is one of the priority areas of UNEP's work. Environmental law publications aim to provide technical, legal and institutional advice to a wide range of stakeholders and enhance information on environmental law. To order these publications, contact UNEP's official online bookshop at <www.earthprint.com>. These and more publications can be accessed online at: <www.unep.org/delc>. For further resources, including background papers, articles, media coverage and other contributions specifically related to the World Congress, see: <www.unep.org/delc/worldcongress>.*



IVS

Acknowledgements

Participants and speakers at the World Congress on Justice, Governance and Law for Environmental Sustainability, Supreme Court of Justice of the State of Rio de Janeiro, Brazil, 17 – 20 June 2012
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AMAERJ: Associação dos Magistrados do Estado do Rio de Janeiro

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Asian Development Bank

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

Interpol

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Participants

The over 250 Chief Justices, Attorneys General, Auditors
General and other high level representatives from the legal and
auditing communities who participated in the World Congress
(www.unep.org/delc/worldcongress)

For additional information about the World Congress on Justice,
Governance and Law for Environmental Sustainability visit
<www.unep.org/delc/worldcongress>, or contact the UNEP
Secretariat at <world.congress@unep.org>



World Congress Secretary General Hon. Justice Antonio Herman Benjamin,
with UNEP Executive Director Mr. Achim Steiner; and the Director and staff of
the Division of Environmental Law and Conventions of UNEP

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