

HIGH-LEVEL MEETING ON THE RULE OF LAW AND THE ENVIRONMENT: 17 FEBRUARY 2013

The High-Level Meeting on the Rule of Law and the Environment took place on 17 February 2013 at the UN Office in Nairobi, Kenya. The meeting, which was held on the eve of the 27th session of the Governing Council/Global Ministerial Environment Forum (GC27/GMEF) of the UN Environment Programme (UNEP) scheduled to convene from 18-22 February 2013, was attended by high-ranking representatives of the judicial, legal and auditing professions, among others. The aim of the meeting was to provide a platform for participants to: discuss important recent developments and new opportunities regarding the rule of law in the field of the environment; and consider how the rule of law can be promoted for greater effect in the quest for environmental sustainability, sustainable development and social justice.

Discussions during the one-day event were divided into sessions on: UNEP, the UN Conference on Sustainable Development (UNCSD, or Rio+20) and new perspectives for the rule of law in the environment; the mutually supportive relationship between the adherence to the rule of law and respect for human rights; access to justice, public participation and information; and the challenges to sustainable development and the rule of law.

This briefing note provides a summary of the presentations and discussions during the meeting.

OPENING SESSION

Bakary Kante, Director, UNEP Division of Environmental Law and Conventions (UNEP-DEL), chaired the meeting. In his welcoming remarks, Achim Steiner, UNEP Executive Director, highlighted that the rights of citizens to hold their governments accountable to environmental governance is the underlying issue in relation to the rule of law.

Abdou Salam Diallo, Permanent Representative of Senegal to the UN, noted that the rule of law would not be meaningful without enforcement of deterrents to breaking environmental laws including on pollution and toxic wastes. Mohamed Ali, Kenya's Permanent Secretary, Ministry of Environment and Mineral Resources, said UNEP's strengthened role in the rule of law would benefit Kenya in the country's efforts to combat poaching and wildlife trafficking.

Antonio Benjamin, Justice of the National High Court of Brazil, presented on the outcomes and opportunities from the World Congress on Justice, Governance and Law for

Environmental Sustainability held in Brazil in June 2012, highlighting the establishment of the International Advisory Council for the Advancement of Justice, Governance and Law for Enforcement Sustainability. He underscored that the Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability, which was adopted by the Congress, supports the non-regression principle as a means to ensure environmental protection by enforcing environmental laws and upholding human rights.

KEYNOTE SPEECHES - UNEP, RIO+20 AND NEW PERSPECTIVES FOR THE RULE OF LAW

Ricardo Lorenzetti, Chief Justice of Argentina, outlined the evolution of environmental law from: the 1970s when language and vocabulary were coined; through the analytical phase where issues were identified, studied and modeled; and to the present when legal procedures are tools for compliance with environmental law.

Tun Arifin Zakaria, Chief Justice of Malaysia, said the effective implementation of national laws and environmental regulations is a prerequisite to ensuring controlled and healthy use of natural resources, and that investments in the environment assist in the transition to a green economy.

THE MUTUALLY SUPPORTIVE RELATIONSHIP BETWEEN THE ADHERENCE TO THE RULE OF LAW AND THE RESPECT FOR ALL HUMAN RIGHTS

Dan Magraw, President Emeritus and Distinguished Scholar, Center for International Environmental Law, moderated this session. Phil Hogan, Minister for Environment, Republic of Ireland, highlighted that at the international level, the rule of law accords predictability and legitimacy to states for their national legislations.

Luc Lavrysen, Judge, Constitutional Court of Belgium, underscored the importance of access to justice. He noted that 15% of cases in Belgium deal with environmental law in a broad sense and that most of these cases are brought to court by citizens. Edric Selous, Director, Rule of Law Unit, UN Executive Office of the Secretary General, said the lack of information about the rule of law contributes to the fact that few environment-related complaints are brought to court.

Marie-Claire Cordonier, Chief, Environment and Sustainable Development Law Program, International Development Law Organization, explained that the rule of law provides a regime to address the socio-economic pillar of sustainable development, including the rights of local communities to information. Ivana Savic, Executive Director, Centre for Human Rights



and Development Studies, called for more attention to public involvement in environmental rights regulation and capacity building in environmental law.

ACCESS TO JUSTICE, PUBLIC PARTICIPATION AND INFORMATION IN ENVIRONMENTAL MATTERS AND NEW AND EMERGING PRINCIPLES OF ENVIRONMENTAL LAW

Robert Carnwath, Justice of the UK Supreme Court, moderated this session. Ricardo Lorenzetti remarked that there has been general reluctance to discuss shortfalls in access to justice on environmental matters. Antonio Benjamin noted that access to justice is linked to the rights of citizens to sue, and underscored the need to develop innovative environmental procedures and policies to implement the principle of non-regression.

Helge Zeitler, Director General Environment, European Union Commission, highlighted important case law from the European Court of Justice on access to justice, as well as new policy developments such as the e-justice portal that facilitates access to information on laws in different Member States. Pauline Nyamweya, Judge, Environment and Land Court, Kenya, reported that the inadequate number of judges has resulted in an enormous backlog of cases, which has in turn denied justice to the public.

CHALLENGES TO SUSTAINABLE DEVELOPMENT AND THE RULE OF LAW

Cletus Springer, Director, Department of Sustainable Development, Organization of American States, moderated this session. Durwood Zaelke, Director, International Network for Environmental Compliance and Enforcement, said there is a need to use existing forms of law, including criminal law, to promote behavioral change and reduce negative impacts on the environment.

Edward Ouko, Auditor General, Kenya, said the lack of implementation of environmental policies in Kenya is due to low public awareness and a lack of resources for enforcement. Dirk Edward Harrison, Deputy Director of Public Prosecutions, Jamaica, highlighted a 2010 report by Jamaica's Auditor General which found that the Government Minister with responsibility for the country's National Environment and Planning Agency overturned the agency's decisions numerous times, giving permission for developments it deemed to have potential damage on the environment and therefore rejected. He endorsed the Auditor General's recommendation that the Minister with responsibility should not be involved in the decision making or appeal process.

Wilbur Simuusa, Minister of Lands, Energy and Water Development, Zambia, said the challenge in natural resource management is in converting natural wealth to sustainable livelihood benefits for local communities.

David Higgins, Manager, Environmental Crime Programme, INTERPOL, said climate change is a national security issue that affects social, economic, political and environmental stability and needs to be addressed through environmental governance. Marceil Yeater, Chief, Legal Affairs and Trade Policy Unit, Convention on Trade in Endangered Species of Wild Fauna and Flora (CITES), said CITES is working to ensure that benefits from trade are passed to local peoples and that it has developed programmes to consider livelihoods.

IMPROVING THE EFFECTIVENESS OF ENVIRONMENTAL LAW AT THE NATIONAL LEVEL

Dirk Edward Harrison moderated this session. Ali Masykur Musa, Audit Board of Indonesia, highlighted public financial audits in forest, mining and fisheries, and made recommendations for improving enforcement of laws. Kenneth Markowitz, Managing Director, International Network for Environmental Compliance and Enforcement, said compliance and enforcement form the foundation for the rule of law.

Sheila Abed, Executive Director, International Dialogue for Environmental Action, noted the need to improve the quality of regulations by simplifying them for public understanding, in order to promote compliance and enforcement. Walker Smith, Director, Office of Global Affairs and Policy, US Environment Protection Agency, said lack of resources for enforcement is a limiting factor for all and that countries should prioritize infractions that would have a tangible effect on the security of citizens.

SUMMARIZING ENDNOTE: ACTIONS AND CONCLUSIONS

Antonio Benjamin reported that the name of the advisory council has been changed to "UNEP Advisory Committee on Environmental Justice." Edric Selous said the Advisory Committee can play a major role in educating policymakers on the legal framework to advance the outcomes of Rio+20 and the World Congress on Justice, Governance and Law for Environmental Sustainability. Bakary Kante informed participants that Sheila Abed will be the special envoy to the Advisory Committee.

Ricardo Lorenzetti noted the need for a website for providing and sharing information on jurisprudence decisions. He remarked that a journal with specific focus on the rule of law and the environment would also allow publishing of opinions, and that capacity building to transform environmental justice was key to effecting change in the judiciary.

Amina Mohamed, UNEP Deputy Executive Director, in her closing remarks, said UNEP would support the website and portal, capacity building initiatives, and journal on the rule of law and the environment. She declared the meeting closed at 5:06pm.