



### SUMMARY OF THE WORLD CONGRESS ON JUSTICE, GOVERNANCE AND LAW FOR ENVIRONMENTAL SUSTAINABILITY: 17-20 JUNE 2012

The World Congress on Justice, Governance and Law for Environmental Sustainability was held in Brazil, from 17-20 June 2012, with the aim to contribute to the support of Chief Justices, Attorneys General, Auditors General and other legal experts to the achievement of sustainable development and to provide inputs to the United Nations Conference on Sustainable Development Rio +20.

The meeting, held at the Portobello Resort in Mangaratiba, and at the Supreme Court of the State of Rio de Janeiro, was hosted by the UN Environment Programme (UNEP), the Association of Judges of the State of Rio de Janeiro (AMAERJ), the Getulio Vargas Foundation (FGV) and the Public Ministry of the State of Rio de Janeiro. Partners in organizing the event included the Asian Development Bank (ADB), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), International Organisation of Supreme Audit Institutions (INTOSAI), the Organization of American States (OAS), the Secretariat of the Pacific Regional Environment Programme (SPREP), the World Bank, the International Network for Environmental Compliance and Enforcement (INECE) and the International Union for Conservation of Nature (IUCN).

The Congress gathered high-level judges, prosecutors, auditors and other legal experts for four days of interchange of experiences and discussion on leading cases and challenges in promoting a healthy environment from the legal field. The aim of the World Congress was to foster a common vision and principles on how to use justice, law and governance to promote sustainable development.

More than 200 participants attended the Congress and emphasized the value of exchanging experiences at the national level and the need for enhancing international cooperation. After lively exchanges of views on how to reflect their ideas in a final document, participants agreed to include views in a declaration to be presented to the Rio +20 Conference. The "Rio +20 Declaration on Justice, Governance and Law for Environmental Sustainability" sets out three main sections on: messages to Heads of State and government and the world community; procedural and substantive principles to advance the rule of law on environmental matters; and on an institutional framework for the advancement of justice, governance and law for environmental sustainability. The Declaration reflects participants' demand for a follow-up process suggesting that UNEP lead the establishment of an international institutional network to continue engaging high-level legal officers, and promote information exchange,



Congress participants pose for a photograph at the closing session

education and capacity building of members of the judicial, auditing and prosecuting agencies.

### A BRIEF HISTORY OF THE WORLD CONGRESS ON JUSTICE, GOVERNANCE AND LAW FOR ENVIRONMENTAL SUSTAINABILITY

The first Global Judges Symposium was convened by UNEP in 2002, in conjunction with the World Summit on Sustainable Development (WSSD). Since then, the importance of the judiciary in environmental matters has resulted in a rich corpus of decisions, as well as in the creation of specialized environmental courts. Involvement by the judiciary in environmental policy implementation and enforcement has been recognized to have a lasting effect on improving social justice, environmental governance and the further development of environmental law, especially in developing countries.

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The *UNEP World Congress Bulletin* is a publication of the International Institute for Sustainable Development (IISD) <[info@iisd.ca](mailto:info@iisd.ca)>, publishers of the *Earth Negotiations Bulletin* © <[www.iisd.org](http://www.iisd.org)>. This issue was written and edited by Soledad Aguilar, Qian Cheng, Eugenia Recio and Hugh Wilkins. The Digital Editor is Manu Kabahizi. The Editor is Tanya Rosen <[tanya@iisd.org](mailto:tanya@iisd.org)>. The Director of IISD Reporting Services is Langston James "Kimo" Goree VI <[kimo@iisd.org](mailto:kimo@iisd.org)>. Funding for coverage of this event has been provided by the UN Environment Programme (UNEP). IISD can be contacted at 161 Portage Avenue East, 6th Floor, Winnipeg, Manitoba R3B 0Y4, Canada; tel: +1-204-958-7700; fax: +1-204-958-7710. The opinions expressed in the *Bulletin* are those of the authors and do not necessarily reflect the views of IISD. Excerpts from the *Bulletin* may be used in other publications with appropriate academic citation. Electronic versions of the *Bulletin* are sent to e-mail distribution lists (in HTML and PDF format) and can be found on the Linkages WWW-server at <<http://www.iisd.ca/>>. For information on the *Bulletin*, including requests to provide reporting services, contact the Director of IISD Reporting Services at <[kimo@iisd.org](mailto:kimo@iisd.org)>, +1-646-536-7556 or 300 East 56th St., 11D, New York, New York 10022, USA.

Preparatory meetings for the World Congress on Justice, Governance and Law for Environmental Sustainability were convened in Kuala Lumpur, Malaysia, on 12-13 October 2011 and in Buenos Aires, Argentina, on 23-24 April 2012. The “Kuala Lumpur Statement” highlights, among other issues, the key role of the legal community in advancing national and international efforts to attain environmental sustainability goals. The Statement notes the need to strengthen the operational linkages between social justice and environment in areas such as environmental impact assessment, procedural principles, including principles regarding access to information, 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. It also provides that legal foundations for the advancement of environmental sustainability must be strengthened through mutual support to safeguard the environment and human rights.

The Buenos Aires Statement identified the following themes for consideration and discussion during the Congress: (i) social justice and environmental sustainability: new approaches; (ii) the challenge of environmental governance at national, regional and global levels: improving effectiveness; and (iii) the future of environmental law: emerging issues and opportunities. A list of proposals to be further considered at the Congress, and a summary of discussions on the three core topics were included in the Statement, providing a content-rich background for participants at the World Congress.

## WORLD CONGRESS REPORT

Manoel Alberto Rebêlo dos Santos, Chief Justice of the Supreme Court of Rio de Janeiro welcomed participants to the World Congress on Justice, Governance and Law for Environmental Sustainability on Sunday 17 June 2012. Highlighting efforts to minimize the carbon and water footprints of the Brazilian Judiciary in federal buildings, he said everyone is called to “do their part” and share in the effort to address the challenges of environmental sustainability.

Achim Steiner, UNEP Executive Director, spoke on behalf of UN Secretary-General Ban Ki-moon, thanking Brazil for convening the Congress, highlighting its importance in mapping out how sustainable development and governance should be executed.

Tun Arifin Bin Zakaria, Chief Justice of Malaysia and World Congress President, emphasized the importance of strengthening awareness of judges’ roles in environmental protection. Noting that the Congress will facilitate awareness and networking, he stressed the need for environmental courts, strong enforcement of environmental laws, and strong governance at the national, regional and international levels.

Luis Ricardo Lorenzetti, Supreme Court Judge of Argentina and World Congress Co-President, highlighted the relevant role of the Brazilian judiciary in ensuring governance at the national, regional and international levels. Despite the current global economic crisis, he urged the judges to use the non-regression principle and keep at the forefront of the evolution of environmental protection issues. He described the Congress as an opportunity for deciding on a way to continue the World Congress process in the future.

Claudio Soares Lopes, Attorney General of Rio de Janeiro, highlighted progress achieved in the Brazilian Constitution and in national tools to enable the judiciary to protect the environment through, *inter alia*, the initiation of lawsuits by

citizens. He urged the Congress to work towards a substantive contribution to be taken to world leaders meeting at the Rio +20 Conference.

Terence Nombembe, Auditor General of South Africa and President of INTOSAI, underlined the need for collective leadership to achieve common goals. He emphasized the role public sector auditors can play in the conservation of the environment and the importance of achieving sustainable development.

Kwon Jae-Jin, Minister of Justice of the Republic of Korea, stressed the gravity of climate change and emphasized limits to economic growth. Noting the need for a paradigm shift towards using green technologies, he underlined the importance of the rule of law as the foundation for green growth and sustainable development.

Noting Latin America remains the region with the highest levels of inequality, Albert Ramdin, Assistant Secretary-General, OAS, said sustainable development policy and its enforcement and implementation must not be designed in isolation, but should consider socioeconomic contexts and be shared with, and understood by, those that will be affected.

Isabella Teixeira, Minister of Environment of Brazil, conveyed participants the salutation of Dilma Rousseff, President of Brazil, and highlighted that the complexity of environmental challenges require law to go beyond environmental issues. She said when talking about development, the scope of discussions cannot be restricted to environmental issues, but must incorporate the three Rio + 20 perspectives, namely, the green economy and growth, the social agenda and governance. Pointing to the inextricable relation between environmental justice, human rights and social justice, she said laws, such as those protecting forests in Brazil, may need to be changed to account for the social perspective.

### KEYNOTE SPEECHES

Manoel Alberto Rebêlo dos Santos, Chief Justice of the Supreme Court of Rio de Janeiro, introduced keynote speakers on challenges and opportunities in terms of environmental sustainability, the role of law, justice and governance.

Achim Steiner, Executive Director, UNEP, highlighted that in the past twenty years society has not been able to enhance “the balance sheet” of the planet and that some of the planetary boundaries are already overcome. He also underscored this as a period of innovation and creation of new policies, including the emergence of a vast body of international environmental law. Highlighting the key role of judiciaries and auditing bodies in environmental governance, he questioned whether



Achim Steiner, Executive Director of UNEP

environmental justice can keep pace with the complex challenges ahead. He called for overcoming polarized debates contrasting regulation by state and markets, highlighting a law for a green economy as a key issue in the debate. On international environmental governance, he underscored the need for and relevance of national accountability





Bakary Kante, Director of the Division of Environmental Law and Conventions (DELIC), UNEP, thanking Antonio Herman Benjamin, Justice at the High Court of Brazil, for a gift he received

of commitments made at the international level. He appealed to the judiciary to set in motion the next chapter for justice, governance and law, to reassure citizens that they can believe in judges and the justice they provide.

Antonio Herman Benjamin, Judge, High Court of Brazil and Secretary General of the World Congress, said judges use the constitutional and other existing laws as a starting point, but environmental law requires a renewed ethic that goes beyond traditional boundaries, to incorporate the planet as a whole. He said environmental challenges also transcend historical legal approaches and require judges to incorporate not just the views of different parties, but also the interests of the collective and of future generations. He emphatically rejected the notion that development may be attained at the environment's expense, saying communities and regions that have overexploited resources in the name of growth are those that generally have remained poor. He called for rereading and reinterpreting property law in light of the principle of the ecological function of property rights. He urged the consideration of massive environmental damage as a crime against humanity and the application of the principle of *in dubio pro natura*.

Participants ended the day with a reception at the Supreme Court of Rio de Janeiro.

#### **SCENE-SETTING AND ORGANIZATION OF WORK**

The World Congress gathered on Monday 18 June 2012, in Portobello Resort. Claudio Soares Lopes, Public Ministry of the State of Rio de Janeiro, noted the background materials and ideas presented in the Statements of the Buenos Aires and Kuala Lumpur preparatory meetings.

Claudio dell'Orto, AMAERJ, highlighted that the rule of law must be enforced with a commitment towards the future of humanity, and emphasized the need for procurement control mechanisms to control investments in infrastructure that generate environmental and social risks.

Nelson Novaes Pedroso Junior, FGV, provided examples of his organization's research in environmental law for a risk society and for a green economy. David Higgins, Environmental Crime Programme, Interpol, noted the work of his organization in providing capacity building on environmental law enforcement and the prosecution of environmental crimes. Sheila Abed, IUCN Commission on Environmental Law, underscored that judges must look at the future when implementing and enforcing law and policy.

Kenneth Markowitz, INECE, noted the work of his organization and gave examples of how fostering informal relations among different government agencies at the national level, and building bridges at the regional level, are key to allowing a rapid response to environmental crime and effective enforcement of environmental law.

Bakary Kante, Director of the Division of Environmental Law and Conventions, UNEP, stressed that judges have the right and duty to address issues of common concern and a specific responsibility to address sustainable development. Noting strong actions taken by specific judges contributing to sustainable development, Kante stated that participants must learn from these examples and encouraged participants at the Congress to produce significant results with effective follow-up.

Claudio Soares Lopes highlighted key challenges for judges in the environmental area, including: the need to incorporate science perspectives and socio-environmental concerns and the use of comparative law and other tools, such as environmental impact assessment.

The two Co-Chairs of the High Level International Advisory Committee for the World Congress then addressed the Congress. Zakri Bin Abdul Hamid, Special Advisor to the Prime Minister of Malaysia and Co-Chair of the International High Level Advisory Committee for the World Congress, emphasized the need to strengthen linkages between social justice and the environment in various areas, including on procedural principles to ensure, among other things, access to information. He said a stronger environmental authority and a universal voice on environmental issues across the UN system is pivotal for enhancing cooperation and support for developing countries at the national level.

Gary Sampson, Co-Chair of the International High Level Advisory Committee for the World Congress (Australia), described the outcomes of the preparatory process leading up to the Congress. He stressed the important opportunity for the Congress to recommend concrete action to world leaders at the Rio +20 Conference. Sampson emphasized the need for a strong outcome document consisting of a Rio Declaration on Justice and Law setting out principles for environmental sustainability and a mechanism to continue discussion and implement the Rio +20 and World Congress' outcomes.

#### ***SOCIAL JUSTICE AND ENVIRONMENTAL SUSTAINABILITY: NEW APPROACHES***

##### **RIGHTS-BASED APPROACH: THE NEXUS BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT AND THE EMERGENCE OF ENVIRONMENTAL RIGHTS:**

Khil Raj Regmi, Chief Justice of Nepal, chaired the parallel session. Jerome Kimpele Kitiko, President of the Supreme Court of the Democratic Republic of Congo, said sustainable development can only be achieved through biodiversity management laws and an institutional system that allows for deeper reflection on the implementation of a green economy. He noted the need not just for environmental protection laws, but also for their implementation and for the association of indigenous peoples in natural resource management.



The panelists during the opening session as the Brazilian National Anthem was sang

Luc Lavrysen, Justice of the Constitutional Court of Belgium, discussed issues regarding fundamental rights for protection of the environment, describing Belgian constitutional provisions, the Aarhus Convention and other regional and international human rights instruments. He discussed links between environmental and human rights laws and examined specific interpretation and implementation experiences.

In ensuing discussions, a participant noted that the draft outcome document for Rio +20 did not recognize the right to a healthy and balanced environment, although it does refer to human rights in several places. Several participants emphasized that the concept of “balance” is crucial in the interpretation of environmental rights, as these usually require finding a middle ground between interests of human beings and nature or wildlife.

Participants raised issues concerning: the need for public interest standing to address environmental issues; the roles of public participation and consultation; developments in several countries in strengthening environmental law; the consideration of the needs of local peoples in decision-making; the need for training of judges, prosecutors and others engaged in enforcing environmental law; the UNEP guidelines on the development of national legislation on access to information, public participation and justice in environmental matters; UNEP’s work on links between human rights and the environment; the enforceability of the right to a healthy environment; the need for access to justice; and the creation of expert or specialized environment courts.

**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:** Winston Anderson, Justice of the Caribbean Court of Justice, chaired the morning parallel session. Fredrick Egonda Ntende, Chief Justice of Seychelles, said key challenges in implementing Rio Principle 10 (access to environmental information, participation and justice) are mainly at the national level. To facilitate public participation in environmental decision-making, he highlighted: providing financial incentives and free access to information; making technology available to communities; and making reports on the state of the environment available to the public to help in understanding gaps and actions on environmental sustainability.

Shiranee Tilakawardena, Justice of the Supreme Court of Sri Lanka, highlighted the need for a change of attitude of judges to become “activist judges,” saying courts have the capacity to change and be the drivers of change. She underscored the need for judges to have skills in crafting new and innovative legal concepts and procedures in the area of sustainable development, such as the public trust doctrine, and serve as a check on executive inaction and abuse of power in the environmental area.

Mija Sakslin, Deputy Ombudsman of Finland, underscored her country’s legal framework that: enables informal and free ways for citizens to send complaints on environmental issues; allows the ombudsman to act both upon citizens’ initiatives and by self-initiative; and enables the ombudsman to request the review of solved cases. She explained that the right to a healthy environment has gradually been transformed from a political and moral concept to a fundamental right and



Luc Lavrysen, Justice, Supreme Court of Belgium

obligation, citing examples at the national level.

Hans Corell, former UN Under-Secretary-General for Legal Affairs, stressed, *inter alia*: the need for transparency at the national level, which is favoured by ensuring individuals’ access to information on environmental

issues such as hazardous materials and activities happening in their communities.

Simon Upton, Director of the OECD Environment Directorate, noted the need for accurate information, in particular economic data, to inform decision-making. He underscored the need to value natural assets and clarify ownership, in particular in developing countries where wealth often relies on natural resources. He urged participants to include in the Congress’ outcome document: the need for information for environmental decision-making and further consideration of the economic costs of implementing law and regulations, avoiding extremely complex and demanding regulations.

Participants discussed, *inter alia*, possible messages to advance the implementation of Rio Principle 10. A member of the UK’s judiciary highlighted the Aarhus Convention as a model for further implementation of Principle 10 at the global level. A prosecutor from Brazil underscored the need to provide the necessary means to ensure that communities with a lack of resources can access information and justice. Several participants reflected on the need to: bring law to remote communities; remove procedural impediments for access to justice by vulnerable groups; and ensure that environmental information, both from public and private entities, is placed in the public domain and disclosed without procedural restraints.

An Argentinian participant highlighted that while most Latin American and Caribbean countries have substantive environmental laws, their procedural codes respond to old schemes and regulate conflict resolution from the perspective of individual rights and goods. He called for further regulation of procedures to implement collective rights, such as class actions. A representative from the Costa Rican judiciary said stronger procedural laws are needed, enabling, *inter alia*: public interest legal standing, ample cautionary measures and a “dynamic” onus of proof. Many agreed that strong execution mechanisms are needed.

Many participants underscored the need for enhancing capacity building of judges in environmental law, highlighting the role of schools and associations for judges, as well as of an international network for exchanging information on law cases and environmental justice information. The role of “proactive judges” and their potential conflict with the executive and legislative branches were also discussed.

The panelists closed the session with considerations on the need to work collaboratively among sectors, improve monitoring and quality of information, and strengthening the scope of interpretation of access to information rights, to incorporate enabling requisites such as education.



## THE CHALLENGES OF ENVIRONMENTAL GOVERNANCE AT NATIONAL, REGIONAL AND GLOBAL LEVELS: IMPROVING EFFECTIVENESS

### PRECEPTS AND ENABLING CONDITIONS FOR EFFECTIVE GOVERNANCE AT THE NATIONAL

**LEVEL:** Scott Vaughan, Commissioner for the Environment and Sustainable Development of Canada, chaired the parallel session. Takdir Rahmadi, Justice of the Supreme Court of Justice of Indonesia, discussed his country's initiative of instituting a judicial environmental certification to be implemented in 2013, saying only judges with these certificates will be qualified to hear environmental cases. He indicated that a working group was established for developing: the curriculum for environmental law training; guidelines for judges hearing environmental cases; and methods, procedures of evaluation and monitoring of the certification programmes.

Gopal Krishna Pandey, Green Tribunal of India, presented the Indian environmental legal framework and underscored



Anna O. Chifungula, Auditor General, Zambia

that India was the third country in the world to have a green tribunal. He elaborated on the Tribunal's dedicated jurisdiction in environmental matters aimed at providing speedy environmental justice and helping in reducing the burden of litigation in the higher courts.

Anna O. Chifungula, Auditor General of Zambia, presented on her experience in auditing forests and waste policy implementation in Zambia, noting audits bring to light severe weaknesses in environmental policy implementation and enforcement. She noted environmental auditing increases awareness, reminds policy makers of their obligations, and, once results are presented, are oftentimes valued by audited entities as input to improve their internal processes.

Scott Fulton, Legal Counsel, United States Environmental Protection Agency, noted that since the WSSD in Johannesburg in 2002, more than 350 green courts have been established around the world, and a common understanding is growing among judges and prosecutors on their role in promoting environmental governance at the national level. He highlighted key governance elements, including: sanctioning enforceable

laws, requiring disclosure of information by private companies, promoting public participation and engagement by civil society, ensuring adequate incentive and punishment structures, and strong auditing institutions as barriers against illegality and corruption.

Tonis Saar, Working Group on Environmental Auditing, INTOSAI, presented the results of a survey among national audit offices on the reasons for failure of sustainable development policies. Noting that the reasons for failure coincided around the world, he said typical problems include unclear or overlapping jurisdictions, lack of long-term planning and deficient monitoring, as well as lack of environmental data. He also emphasized that auditing government spending on environmental matters is key to ensuring results, and called for countries to require regular reporting on compliance with international conventions, as well as monitoring of results of national environmental policy implementation.

A representative from the Indian judiciary said many countries like his own have environmental laws in place but lack adequate implementation, citing cases where judges are improperly expected to make judicial orders as a substitute for the lack of enforcement on the ground. A participant suggested UNEP could provide information on relevant non-governmental organizations (NGOs) that could provide support for objective reporting on environmental issues. Participants discussed the role of green tribunals and their relationship with constitutional courts. A US participant underscored that specialized tribunals can help to reduce the burden of constitutional courts by providing another path for claims, as well as particular expertise on environmental issues. A member of the Australian judiciary underscored the need to interpret legislation in light of changing economic conditions and to ensure, *inter alia*, that penalties are realistic and that courts have adequate resources, including specialized judges. A participant suggested that making alleged polluters pay for technical assessments is a way to overcome budgetary restraints for environmental courts, and emphasized that judges must consider, when sentencing, the costs and viability of executing sentences and must monitor execution.

In a last round of comments, panellists reflected on how to empower citizens to exercise their rights and demand stronger responses by political authorities, and on how to increase management responsibility to build accountability and more responsible decision making.

**EFFECTIVE GOVERNANCE AT THE REGIONAL AND INTERNATIONAL LEVEL, INCLUDING THE ROLE OF CROSS-BORDER COOPERATION IN ENVIRONMENTAL MATTERS:** Githu Muigai, Attorney



Participants in a parallel session on precepts and enabling conditions for effective governance at the national level.

General of Kenya, introduced the panel and recalled the Kuala Lumpur and Buenos Aires Statements. Leandro Despouy, Auditor General of Argentina, noted that third generation rights, such as environmental rights have not had the development at the international level that civil and political rights have experienced in the past. He related his experiences as auditor general in cases with strong environmental components, such as fisheries, groundwater and pesticide use, noting for transboundary resources like many rivers and aquifers, cooperation with other bodies in the region using common methodologies for auditing is key to prevent international conflict. He also recalled the growth in the number of judges, lawyers and prosecutors under threat for defending environmental causes, hoping that the courage and commitment of these colleagues around the world inspire the Congress.

James Cameron, Climate Change Capital, underlined the need for strong connections between law-making processes at international and national levels and the importance of the principle of direct applicability. He noted environmental adjudication must often confront judicial discomfort, resulting in poor jurisprudence regarding international environmental law. Noting convincing arguments by many civil society organizations on the need for a global environmental court, he called for capitalizing on this demand by developing arbitration courts that incorporate transdisciplinary expertise, for example from auditors, to decide on environmental cases. He also argued for creating 21st Century institutions, like Facebook, to provide open access to a global, publicly accessible database of information on environmental variables.

Cletus Springer, OAS, said many environmental issues have shifted from the national domain to the multinational, requiring better architecture to deal with transboundary resources management matters on a proactive basis. He stressed that baseline data availability is often inadequate, more proactive environmental protection measures are needed, and human resource capacities and skill sets must be strengthened.

Aroldo Cedraz de Oliveira, Court of Auditors of Brazil, emphasized the important role of higher inspection systems in verifying implementation of laws and international commitments. He stressed the need for: auditors across international boundaries to act in concert; auditor training; and the enhancement of UNEP's role.

Mohan Pieris, former Attorney General of Sri Lanka, urged the transformation of UNEP into a stronger body to more effectively advance law making and sustainable development.

Edward Ouko, Auditor General of Kenya, stressed the global responsibility to address environmental challenges, while taking into account state capacities. He noted the important role of environmental auditing to ensure accountability and proactive and preventive action, stressing the need for bridging the capacity gap.

Participants expressed the need to: consider successes and failures in advancing sustainable development since the WSSD; develop international mechanisms; and courts to take direct actions to implement laws and prevent environmental harm. Means to address challenges in facilitating and sharing open data systems, ways to strengthen UNEP, establishing a high-level forum for advancing sustainable development, and the value of information technology for advancing sustainable development were discussed. Participants also noted: concerns regarding the establishment of an international environmental court; the need for a universal convention on procedural rights; the need for international recognition of a crime of ecocide;

the desire for an annual World Congress; the importance of information gathering and sharing; the desirability of effective procedural rules; and the need for a strong outcome document from the Congress.

### **CLOSING SESSION FOR THE DAY**

The Chairs of the parallel sessions presented the highlights of their respective discussions, noting issues that will be included in the final outcome document for the Congress, and invited participants to submit any additional issues. Further to some opinion exchanges on the process and contents of the final declaration, participants agreed to continue discussions the next day.

Bindu Lohani, Vice President of the ADB, closed the session reviewing the experience of the ADB in promoting environmental protection in Asia, noting national, subregional and regional projects that address the main challenges for the region, namely how to strengthen the environmental sustainability component of Asia's expected growth.

### **FUTURE OF ENVIRONMENTAL LAW: OPPORTUNITIES AND EMERGING ISSUES**

On Tuesday 19 June 2012 participants continued holding discussions at the Portobello Resort in Mangaratiba, and produced an outcome document for the Congress.

#### **EMERGING DEVELOPMENTS AND PRINCIPLES IN ENVIRONMENTAL LAW: PROCEDURAL CHALLENGES AND OPPORTUNITIES:**

Ragnhild Noer, Justice of the Supreme Court of Norway, chaired the parallel session. Gonzalo Hurtado Zamorano, President of the Supreme Court of Bolivia, discussed recent environmental law developments in his country, stressing new efforts aimed at strengthening natural resource management. He emphasized the importance of the precautionary principle, public interest standing, and the use of criminal law in environmental protection, as well as the need for strong stewardship of land and resources.

Winai Ruangsri, Justice of the Supreme Court of Thailand, described the actions taken in Thailand to address environmental law issues through the creation of green courts, the establishment of progressive procedures and the training of judges on environmental law. He reviewed the challenges of creating specialized environmental courts, the organization of courts and cases, and the implementation of environmental and sustainable laws and policies in Thailand.

Noting changed circumstances regarding the nature of financing and the likelihood of environmental conflicts



Winai Ruangsri, Justice, Supreme Court of Thailand

among states, Charles Di Leva, World Bank, described emerging environmental challenges and legal issues. He emphasized the importance of: transboundary environmental, strategic and social impact assessments; the need for funders to verify project compliance with national law; and putting procedures in place to address public grievances with funders.



Noting the Philippines' constitutional provisions guaranteeing the right to a balanced and healthy environment, Presbitero Velasco, Justice of the Supreme Court of the Philippines, reviewed efforts taken in his country to operationalize Principle 10 of the Rio Declaration. These efforts include: the establishment of green courts, judicial training on environmental issues, expanded standing rules, simplified procedures for environmental matters, procedures to address strategic lawsuits against public participation, and the use of continuing writs of mandamus.

Participants discussed the role of auditing to address emerging issues, including: putting into action and strengthening established principles, such as the polluter-pays, precautionary, non-regression and *in dubio pro natura* principles; reversing the onus of proof; regional tribunals; and the consideration of local peoples' needs.

#### **THE ROLE OF LAW IN ADDRESSING NEW AND EMERGING ENVIRONMENTAL SUSTAINABILITY ISSUES: SUBSTANTIVE CHALLENGES AND OPPORTUNITIES:**

Lord Robert Carnwath, Justice of the Supreme Court of the UK, chaired the parallel session. He highlighted the need to provide a clear message to Rio +20 as the Rio +20 draft document did not include any reference to judges or the judiciary. Syed Mansoor Ali Shah, Justice of the High Court of Pakistan, elaborated on a proposal for an environmental "planetary" court. He proposed that the court: rely upon a pool of expert judges; be at a regional or wider scale; be based on a coordinated network; and be "solution-rather than judgment-based." He suggested the court integrate tools for enabling "participatory justice."

Dhananjaya Chandrachud, Justice of the High Court of Bombay, India, highlighted initiatives to facilitate the participation of the public before courts, such as the presentation of petitions through postcards. He also stressed the need to disclose information held by judges by ensuring a complete and unrestricted flow to the public. He proposed the Congress' outcome document include clarifications on what is meant by access to justice, public participation and access to information.

John Scanlon, Secretary General of CITES, presented challenges to be addressed in the field of illegal trade in wildlife, underscoring that this crime usually: is operated by organized crime; is considered by most countries a low-level crime with weak penalties; and generates large revenues for criminals. He called for stronger penalties and placing these illegal activities as priority crimes at the national level. He underscored the need for coordination, collaboration and building capacities and awareness among the judiciary, police, custom officers and prosecutors. Citing South Africa as a

good example of increasing efforts to combat illegal trade in wildlife, Scanlon proposed the consideration of the principle of "control delivery," as used with respect to narcotics, to track illegal shippings and to enable the prosecution of the whole illegal chain. On messages for Rio +20, he stressed that wildlife crime should be considered a "serious crime."

David Higgins, Interpol, highlighted the need for further provision of information by governments on environmental crimes, as well as intelligence exchange and bridging gaps in capacities. While recognizing that environmental crime is often organized, he stressed the lack of knowledge on its reach. In raising political awareness on environmental security, he emphasized the need to identify the drivers for governments to consider environmental crime as a priority and take action.

In ensuing discussions, some participants suggested that considering an international environmental court at this point is unrealistic, while others highlighted the existence of national environmental courts that could be replicated in other countries. One NGO representative underscored that international environmental laws are needed for addressing ecocide. One prosecutor from Paraguay described practical challenges in transboundary environmental crimes, highlighting the need for awareness raising among relevant officers and further coordinated action. One participant emphasized that there is no need to reinvent the wheel, but rather a reaffirmation is needed of the commitment made at the WSSD to have independent judiciaries and judicial processes for enforcement of environmental law. One Argentinian participant highlighted an institutional gap in terms of addressing transboundary environmental issues, noting that the International Court of Justice is not a specialized body and provides a difficult and expensive way of solving transboundary environmental conflicts.

#### **RIO+20 AND BEYOND: FORMULATION OF OUTCOMES FROM THE WORLD CONGRESS**

The Chairs of the parallel events presented the main results of their deliberations to Plenary and participants continued discussions on the final outcome document. After holding regional meetings during lunch, representatives of each of the regions presented to the Plenary their views on a draft outcome document that had been circulated. The Asian group made several points to prevent repetition of issues already addressed in the Statements and to simplify the message. They noted disagreement by some members of the region regarding specific substantive aspects of the document, as some provisions refer to issues beyond the Congress' expertise, for example on the promotion of a follow-up mechanism under UNEP.



Participants watched a CITES film on enforcement efforts by South Africa to confront rhino poaching and the illegal trade in rhino horn

The representative of Latin America suggested replacing reference to the “green economy” given the controversial meaning of this term, and proposed a strong reference to respect for the rule of law. They suggested adding specific principles, including *in dubio pro natura* and expedient judicial processes.

The representative of the Caribbean stated that the draft generally reflected the group’s views. They suggested providing more visibility of capacity building needs and further references to access to justice.

The representative of Europe and North America suggested further reference to principles agreed at the Global Judges Symposium convened by UNEP at the WSSD, and an explicit reference to capacity building for judges.

The representative of Africa welcomed the draft. He suggested, *inter alia*: more emphasis on the role of governments in enhancing the work of judges; including a reference to quality of information and data exchange; and a reference to adequate funding by the respective national governments.

Participants expressed concerns regarding: whether recommendations on UNEP’s structure were within the Congress’ area of expertise; the nature of the outcome document; the importance of environmental law in advancing the green economy; improving monitoring and measurement of progress; the need for a disclaimer in the outcome document regarding the roles of participants; and the need to provide direction on how to build on past successes. Judge Benjamin noted the need for the outcome document to encompass both discussions at the Congress and those at the preparatory meetings. On the issue of UNEP, he supported stressing the need for a strong UNEP in the outcome document without necessarily stating the shape that it should take. Kante underlined the need for an outcome document with strong substantive content.



Antonio Herman Benjamin,  
Justice at the High Court of Brazil

#### FINALIZATION OF THE DRAFT OUTCOME DOCUMENT:

Judges representing the different regional groups met throughout the afternoon in a closed group to try to agree on an outcome document that reflected the views of all participants. They reconvened in Plenary at 7:30 pm where participants were presented with a draft outcome document. The Latin American group presented an additional document with views shared within the region on guidelines for the application of environmental norms. Judge Lorenzetti and Judge Benjamin welcomed the participatory process that took place at the Congress and presented the document for adoption, requesting that any final minor amendments be suggested in writing. A participant from India requested making changes to the document, stating that text on the urgency of transforming UNEP was beyond the competence of this forum and should be dealt with by the UNEP Governing Council. Several participants commented on the international framework to be created for the continuation of work done by the Congress. One participant suggested including the crime

of ecocide. Several other participants suggested minor amendments to improve the text.

Kante closed the session noting that the suggested amendments would be considered and reflected in the final version of the text to be presented on Wednesday. He thanked the members of the Advisory Committee for their work in arriving at a common outcome.



Bakary Kante, Director of the Division of Environmental Law and Conventions (DELIC), UNEP

#### CLOSING OF THE CONGRESS

The closing ceremony for the World Congress was held in the Supreme Court of Rio de Janeiro on Wednesday 20 June 2012.

Manoel Alberto Rebêlo dos Santos, Chief Justice of the Supreme Court of Rio de Janeiro, said without protecting the environment, the future is uncertain. He said laws and policies should be non-regressive to ensure progress in human rights and environmental protection and underscored key elements of the Congress’ outcome document.

Amina Mohamed, Deputy Executive Director, UNEP, noted significant aspects of the Congress’ outcome document recognizing the critical importance of: the rule of law, effective governance, equity and justice; solid legal foundations for transitioning to green economies and sustainability; and strong governance frameworks at all levels to address the complexity of sustainable development. She stressed the important role of judges and auditors in achieving sustainable development and the need for effective action and follow-up to the Congress.

Navathem Pillay, UN High Commissioner for Human Rights, emphasized the important links between human rights and sustainable development, providing examples from both national and international jurisprudence. She described the value of the enforcement of environment-related human rights, including the rights to health, life, a healthy environment, privacy, development (including inter-generational aspects), as well as procedural rights. She emphasized the need for a strong commitment to the rule of law.

Charles Di Leva, World Bank, noted that present challenges, including population growth and pressure over natural resources, as well as growing inequality, are at the heart of many environmental crimes and of much environmental degradation. He called for increasing actions to enhance connectivity, allowing judges to share collective knowledge on environmental law, and underscored that respect for the rule of law is paramount for ensuring international finance achieves its objectives.

Rajat Nag, ADB, via videoconference, said good environmental governance is a priority in the Bank’s long-term vision, noting its work on strengthening national safeguards systems and environmental impact assessment in Asia and the Pacific.





John Scanlon, Secretary General, CITES

John Scanlon highlighted that the implementation of CITES relies heavily on national level implementation and enforcement, saying the engagement of relevant players at the national level, including judges, prosecutors and auditors is indispensable for the implementation of the Convention.

Cesar Cuhna Campos, FGV, congratulated participants for the message, and President Zakaria presented the document for approval.

Judge Benjamin presented the Congress outcome document saying it reflects participants' views and that fair consideration to all comments had been given. He added that the reports of the parallel sessions will be attached as an Annex to the document, once approved by the respective chairs.

Participants adopted the outcome document. President Zakaria indicated that the declaration was unanimously adopted, and thanked UNEP for its support to judges, prosecutors and auditors promoting environmental protection and sustainable development. Manoel Alberto Rebêlo dos Santos drew the meeting to a close at 12.57 pm.

**OUTCOME DOCUMENT: "RIO+20 DECLARATION ON JUSTICE, GOVERNANCE AND LAW FOR ENVIRONMENTAL SUSTAINABILITY":** Recalling the principles set out in the 1972 Stockholm Declaration and outcomes of the 1992 Rio Summit, the Rio +20 Declaration expresses concern regarding the continuing degradation of the natural environment and the important role of the judiciary in improving environmental governance and the development of environmental law.

It reminds Heads of State and Government of the importance of the rule of law and the role of the judiciary for the implementation, development and enforcement of environmental law, noting that environmental law is essential for the protection of natural resources and ecosystems. It calls on them for more effective national and international dispute settlement systems for resolving conflicts and to build capacity of the judicial and auditing entities. Noting that environmental

sustainability cannot be achieved without good quality data, monitoring, auditing and accounting for performance, it states that environmental and sustainability auditing ensures transparency, access to information, accountability and efficient use of public finances, while protecting the environment for future generations. The Declaration also calls for the strengthening of existing international governance institutions and consideration to "transforming UNEP to effectively lead and advance the global policy and law-making agenda for the environment within the framework of sustainable development."

Regarding principles for advancing justice, governance and law for environmental sustainability, the Declaration recognizes that environmental laws and policies should be non-regressive and that environmental sustainability can only be achieved in the context of fair, effective and transparent national governance arrangements and rule of law. It underlines that this must be based on, *inter alia*: public participation in decision-making, and access to justice and information; accountability and integrity of institutions and decision-makers; accessible, fair, impartial, timely and responsive dispute resolution mechanisms, including developing specialized expertise in environmental adjudication, and innovative environmental procedures and remedies; recognition of the relationship between human rights and the environment; and the use of specific criteria for the interpretation of environmental law. It highlights the value of effective regimes that address *locus standi* and collective access to justice, participatory decision-making and the protection of vulnerable groups from disproportionate negative environmental impacts.

Addressing the institutional framework for the advancement of justice, governance and law for environmental sustainability, the declaration urges the establishment, with UNEP's leadership, of an international institutional network to promote: continued engagement of Chief Justices, Attorneys General, Heads of Jurisdiction, Chief Prosecutors and Auditors General, and others; the generation of good quality information and data exchange, and discussion among the legal and auditing communities; continued development and implementation of environmental law; improved education, capacity building, technology transfer and technical assistance; and adequate engagement by respective national governments for the set objectives. It states that UNEP may contribute to ensure necessary funding for capacity building and information exchange for strengthened capacities.



Roberto Monteiro Gurgel Santos (middle), Prosecutor General of Brazil, delivering opening speech for the closing ceremony of the Congress with Tun Arifin bin Zakaria, Chief Justice of Malaysia to his right and Antonio Herman Benjamin, Justice at the Supreme Court of Brazil to his left