

Specialized courts for environment cases among proposals as law experts mull green governance

Assigning environment-related legal cases to specialized tribunals, courts and judges is among the ideas being aired as experts convene in Malaysia for a two-day United Nations conference on the relationship between the world's law, justice and governance systems and sustainable development.

High court "green benches" already exist in India, established by that country's Supreme Court to ensure judges have the expertise and resources to properly consider environmental issues.

"Specialist environment courts and tribunals can reduce the number of cases brought before the Supreme Courts and High Courts, facilitate more consistent and expeditious environmental decision-making and be less expensive," says Greg Rose, associate law professor at Australia's University of Wollongong, just south of Sydney.

In a brief prepared for the Malaysia meeting, entitled "Gaps in the Implementation of Environmental Law at the National Regional and Global Level," Mr. Rose also recommends creating a catalog of the type and severity of penalties imposed in environment-related judgements as an international resource for prosecutors and judges.

"These may be especially useful in courts of general jurisdiction where there is limited expertise in environment matters," he says.

Among the complex considerations and issues commonly confronting judges in environment-related cases:

- The public's right to information and participation
- Interpreting agreed international principles of sustainable development, including the polluter pays principle and the precautionary principle
- Inter-generational interests and entitlements
- Obtaining authoritative information and interpreting technical scientific assessments
- Interpretation of constitutional rights - including rights to life and a healthy environment
- Corporate responsibility and liability, and obligating continuous environmental impact assessment
- Judicial reasoning in environment-related cases, including the importance of traditional values and ideas

Malaysia's Prime Minister and the Chief Judge of Malaya state lead a distinguished group of participants expected at the Kuala Lumpur meeting, convened under the auspices of the UN Environment Programme.

The meeting is the first in a series to be held in different world regions in the lead-up to a UNEP-hosted World Congress on Justice, Governance and Law for Environmental Sustainability 1-3 June 2012 in Rio de Janeiro, Brazil -- immediately before the United Nations Conference on Sustainable Development (UNCSD 2012 -- the "Rio+20 Conference"). A similar event was held just prior to a 2002 meeting in Johannesburg on the 10th anniversary of Rio's original landmark 1992 environmental summit.

Participants expected at UNEP's upcoming World Congress in Rio include Attorneys-General, Chief Prosecutors, Auditors-General, Chief Justices and senior judges from around the world.

Malaysia's Prime Minister, Hon. Dato' Sri Mohd Najib bin Tun Abdul Razak, notes that over the past 50 years "humans have changed ecosystems more rapidly and extensively than in any comparable period of time in human history, largely to meet rapidly growing demands for food, fresh water, timber, fiber and fuel.

"A sustainable future needs to be founded on a strong judiciary system. The full participation of all stakeholders within a framework of justice, governance and rule of law is needed for any strategy for sustainability to be successful."

Says Zakri Abdul Hamid, Science Advisor to Prime Minister of Malaysia and co-chair the High Level International Advisory Committee for the World Congress in June: "This event recognizes that many of the principles agreed by leaders at world summits later find expression in environmental conventions dealing with such issues as ozone depletion, prior informed consent related to imports, ocean management, species protection, climate change, desertification and several others."

"At the national level, new laws and regulations are enacted and top judges deliver many landmark decisions giving shape, content and legal effect to these principles," says Dr. Zakri, who also serves as Joint Chair of the Malaysian Industry-Government Group for High Technology (MIGHT). "The judiciary therefore remains a crucial player in promoting compliance with and enforcement of laws critical to sustainable development goals."

Among their objectives in Malaysia, judges and legal experts will exchange views, knowledge and experience related to environmental law implementation. Regional co-operation will also be promoted, including the collation and sharing of information and material via such tools as ECOLEX (<http://www.ecolex.org>), a comprehensive database of information on environmental law maintained UNEP, the UN Food and Agriculture Organization (FAO) and the International Union for the Conservation of Nature (IUCN).

A world environmental organization with influence akin to WTO's

Participants will also consider the adequacy of today's institutions to cope with looming global and regional environmental challenges. A growing number of voices worldwide are calling for an international environment-related institution comparable in influence to the World Trade Organization.

In his brief for the meeting, Bakary Kante, Director of UNEP's Division of Environmental Law and Conventions, notes "arguments that international environmental governance is incoherent because there are so many layers of bureaucratic fragmentations between multilateral environmental agreements and has evolved as a system that is too loosely connected."

"The heart of the incoherence problem is the very fact that the primary international organization responsible for environment, the United Nations Environment Programme, is solely an 'environment' organization and does not place environment in the context of overall sustainability (economic and social). ... (U)ntil this fundamental flaw is fixed in the IEG (international environmental governance) systems, progress towards environmental sustainability cannot be achieved."

Says Prime Minister Razak: "From the perspective of our government and many others, only with a major overhaul of the governance system will we be able to address the challenges of environmental sustainability. The complex international environmental governance infrastructure in place today needs to be streamlined and strengthened to become more effective. The existing systems are so complicated it is virtually impossible for countries, especially developing countries, to participate effectively. Most global organizations in place today were designed and negotiated by the developed world, with developing countries largely on the sidelines. We have to change the approach: the International Environmental Governance system has to respond better to developing countries' needs in their pursuit of sustainable development."

Also tabled for consideration in Malaysia: a brief by University of Edinburgh Law Professor Alan Boyle on the need to rethink human rights and "the right to a decent or satisfactory environment."

"Simply put ... should we continue to think about human rights and the environment within the existing framework of human rights law, in which the protection of humans is the central focus ... - or has the time come to talk directly about environmental rights -- in other words, a right to have the environment itself protected? Should we transcend the anthropo-centric in favour of the eco-centric?"

Meanwhile, Brazilian Supreme Court Justice Antonio Herman Benjamin, Chair of the Executive Steering Committee for the June World Congress, and Scott Fulton, General Counsel for the United States Environmental Protection Agency, have written a brief on "effective national environmental governance."

In it, they list seven "core precepts" that have emerged in the past 40 years and form a basis for effective national environmental governance:

- Environmental laws should be clear, evenhanded, implementable and enforceable
- Environmental information should be shared with the public
- Affected stakeholders should be afforded opportunities to participate in environmental decision-making
- Environmental decision-makers, both public and private, should be accountable for their decisions
- Roles and lines of authority for environmental protection should be clear, coordinated and designed to produce efficient and non-duplicative program delivery
- Affected stakeholders should have access to fair and responsive dispute resolution procedures
- Graft and corruption in environmental program delivery can obstruct environmental protection and mask results and must be actively prevented

At the end of the meeting, the Chair will present the Kuala Lumpur Statement as a contribution to June's World Congress.

###

High-level participants anticipated in Kuala Lumpur include:

Hon. Dato' Sri Mohd Najib bin Tun Abdul Razak, Prime Minister of Malaysia

Tan Sri Zulkefli Ahmad Makinudin, Chief Judge of Malaya

The Hon. Chief Justice of Bangladesh, Justice Md. Muzammel Hossain

The Hon. Mr. Justice Frederick Egonda Ntende, Chief Justice, Republic of Seychelles

The Hon. Mr. Anwar-ul-Haq, Attorney General of Pakistan

Dr. Zakri Abdul Hamid, Science Advisor to Prime Minister of Malaysia

Prof. Gary Sampson, Melbourne Business School, Australia

(Drs. Zakri and Sampson co-chair the High Level International Advisory Committee for the June World Congress in Rio)

The Hon. Mats Palm, Chief Public Prosecutor and Head of the National Environmental Crimes Unit, Sweden

The Hon. Lic. Wilehaldo David Cruz Bressant, Attorney-General for the Environmental Sector and Overseer of Judicial Linkages of the Executive Power for Environmental Issues, Mexico

Mr. Mohan Peiris, Senior Legal Advisor to the Cabinet of Ministers of Sri Lanka

Ms. Sheila Abed, Director, IDEA and Chair, IUCN Commission on Environmental Law

Mr. Bakary Kante, Director, Division of Environmental Law and Conventions, UNEP

Mr. Bradnee Chambers, Chief, Environmental Law and Governance Branch, UNEP

Mr. Vijay Eswaran, Executive Chairman, QI Group of Companies

Mr. James Cameron, Executive Director and Vice Chairman, Climate Change Capital

Public release date: 11-Oct-2011

[[Print](#) | [E-mail](#) | [+ Share](#)] [[Close Window](#)]

Contact: Terry Collins

tc@tca.tc

416-538-8712

[Malaysian Industry-Government Group for High Technology](#)