



WORLD CONGRESS ON
JUSTICE, GOVERNANCE AND
LAW FOR ENVIRONMENTAL
SUSTAINABILITY

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

Buenos Aires Statement¹

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.

¹ 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.

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 1 – 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 UNEP's 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.

III. Summary of the Discussions:

The following section sets out a brief summary of the discussions that took place among the participants in three separate and parallel break-out sessions at the 2nd Preparatory Meeting.

Theme 1 – Social Justice and Environmental Sustainability: New Approaches

The participants in this subgroup were of the view that social justice had taken on new significance in the light of increased environmental pressures and challenges and that the linkages between the notions of social justice and the environment should be further explored with a view to fully recognizing its importance for the attainment of sustainable development. They believed that greater awareness raising and strengthening of the nexus between social justice and the environment would help to promote the mainstreaming of poverty alleviation, equity and other social justice objectives in environmental decision-making. They were firmly of the view that participants at the World Congress had a unique opportunity to highlight these linkages and pave the way for the creation of the necessary tools for strengthening these linkages at the national, provincial and local levels.

The participants examined the subject in the context of four inter-related sub-themes. On "*Law as a tool to promote social inclusion, social protection and equitable and sustainable development and resilience to environmental change*", some participants observed the value of direct enforcement of norms and principles incorporated in multilateral environmental treaties and conventions as a means of providing a consistent, minimum standard of environmental protection, when permitted by national constructs for ratifying international agreements. Participants emphasized the importance of implementation of environmental law, including robust enforcement, with a focus on prevention, to, *inter alia*, ensure that a disproportionate burden of protecting the environment was not borne by any particular group, especially the poor and the vulnerable. They also emphasized that there should be

transparency in and accountability for actions taken and that all stakeholders should enjoy right of access to information and participation in decision-making, including during environmental impact assessments or environmental audits. In this connection, they emphasized the need for expeditious investigation and hearing of cases relating to violations of environmental laws. They called for Judges who decide on environmental cases to be provided with adequate relevant information and advisory support. They also highlighted the need for encouraging direct judicial cooperation in sharing information relevant to adjudicating cases with transnational or cross-border environmental and social justice implications.

On the *“Legal dimension of equity, distribution and access to ecosystem services and natural resources”*, some participants were of the view that legal norms and practices needed to be strengthened with the further development of concepts such as the public trust principle, advocated by some as a means to facilitate equitable access to environmental resources. The participants also discussed the possible value of enhancing access by foreign nationals to courts in countries where multi-national corporations have their headquarters, when, for example, pollution is caused by their activities in less developed countries with insufficient justice mechanisms.

Some also encouraged the further development of social inclusion within the framework of the UNEP Guidelines on Access to Information, Public Participation and Environmental Justice.

In regard to *“Advancing the implementation of Rio Principle 10 on access to information, public participation and access to justice in environmental matters”*, the participants were strongly of the view that despite the great strides made by many countries in substantive and procedural terms to promote social inclusion and social protection, particularly of vulnerable groups, including the poor, much more needed to be done to improve access to justice in environmental matters and opportunities for public participation, through access to information, especially in relation to the often illusive inter-generational aspect of environmental justice. In this connection, the participants emphasized the need for institutions engaged in the review of administrative actions such as final decisions in environmental permitting processes - which required good faith considerations - to take due account of every significant and relevant environmental issue, including those raised through public participation. There was also a need, they said, for improving the ways in which the judiciary, prosecutors and auditors, communicated with the interested public, making use of the best available communication technology, such as electronic processes, and new media. Participants noted the value of Judges giving reasons for their decisions in environmental cases and in appropriate cases, particularly those involving vulnerable communities, providing summaries or other reader-friendly accounts of the content of their decisions. They affirmed the need for strict enforcement of the rules related to content and process of environmental impact assessments and strategic environmental assessments, and called for ensuring the availability of effective review processes for administrative decisions that violated rules on transparency, access to information and the rights of public participation.

On the question of a *“rights-based approach to environmental management”*, some participants maintained that the right to live in a “healthy” and “clean” environment was indispensable to the integrity of the human person and that this right should be echoed in national legal systems including constitutions. Participants highlighted some of the procedural tools that are used in some countries to advance a rights-based approach to environmental protection such as, provision of attorney fees for plaintiffs representing the public interest; shifting the burden of proof; strict liability for damage to natural resources; and injunctive relief to preclude continuation of an ongoing harm, consistent with a precautionary approach. They also believed that substantive environmental rights should be

referenced to objective standards such as, for example, guidelines provided by WHO regarding maximum exposure to pollutants. Alternative or complementary methodologies for giving effect to substantive rights, they said, required judges, prosecutors and other relevant legal stakeholders basing their actions on the right to a healthy and clean environment as an intangible and fundamental human right and the application of precautionary principle in the event of doubt. The actions should also respect and balance the public interest with the interests of the private investors, and exploitation of natural resources should respect the imperatives of environmental sustainability, including the adoption of measures of prevention, mitigation, recovery, and reparations or compensation. Among the other actions that they believed could promote a rights-based approach to environmental management were: continued adoption of a broad basis for standing to allow easy access to courts; non-discrimination; enhancing respect for the cultural and environmental values of indigenous peoples relative to the economic value of environment-impacting activity; and methods to promote the implementation or domestication of international principles, conventions and declarations, taking into account variations between different legal systems. They also called for all attempts to be made to eliminate any conflict and ensure clarity of responsibilities between the various levels of government. They also considered favorably the establishment of specialized environmental courts at the national levels complemented by the provision of technical and jurisdictional support to judges.

Finally, the participants deliberated on the concept of an international ombudsperson to represent future generations whose jurisdiction should focus on “tipping points” for ecosystem integrity. They believed that such ombudsperson should also have a voice in international negotiation of MEAs and perhaps, an advisory role in national environmental law-making. There was also a suggestion that creation of an international ombudsman could occur as part of the reformed institutional framework for sustainability, with the possibility of conferring this jurisdiction on UNEP.

Theme 2 – The Challenge of Environmental Governance at National, Regional and Global Levels: Improving Effectiveness

Many of the challenges and opportunities that were discussed in this subgroup centered on the requirements for effective environmental governance in national contexts. Participants also drew attention to the close nexus between international and national environmental governance, and expressed the view that improved environmental governance at the international level could significantly enhance environmental governance at the national level by, inter alia, supporting the judiciary, auditors and other stakeholders to more effectively implement environmental law. In this connection, the view was expressed by a number of participants that improved international environmental governance could result from an evolution of UNEP beyond the status of a ‘programme’.

Participants discussed both negative and positive factors relating to the enforcement of existing laws and regulations. There was consensus on the view that in order to achieve more effective enforcement, an enhanced role of the judiciary was crucial. Judges played a key role in interpreting and implementing the vast array of laws and regulations including international, regional, national and municipal laws. They affirmed that from a national perspective, implementation could be improved significantly, if the judiciary along with auditors and other stakeholders had a more precise overview of developments at the regional and global levels in the field of environmental law. They observed that the independence of the judiciary was essential for effective governance. Further, the functional autonomy of technical offices was also crucial for the same objective.

Increasing the effectiveness and coherent implementation of Multilateral Environmental Agreements (MEAs) was discussed in the context of the impact on national environmental governance. In this regard, they highlighted that key issues for deliberation at the World Congress could include a review of the effectiveness of Multilateral Environmental Agreements and the implications for the further development of international environmental law, as well as increased collaboration, coordination and coherent national implementation.

Participants discussed the fact that in jurisdictions allowing direct enforcement of MEAs, the provisions of the MEAs are an important source of law that the courts have a key role in effectuating, even in face of otherwise inadequate or uneven MEA implementation at the national level. In view of the courts' key role as an implementing mechanism in many jurisdictions, some participants advocated for better systems for informing and consulting members of the judiciary in the context of international discussions related to environmental law and treaties, based on the view that this would both help inform the international deliberations and ultimately enhance the capacity of the courts to serve their effectuating role. Participants saw the review of the governance architecture at the global level as offering a possible opportunity for considering innovations along these lines.

Strengthening national accountability, transparency and integrity for actions regarding the environment was considered an integral part of environmental governance which could be improved through the inclusion of a broader spectrum of society in the decision making processes.

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

The participants in this subgroup observed that law, in a broad sense, played a fundamental role in shaping behavioral change and promoting environmental sustainability. For example, law could play an important role in providing a general framework as well as implementing tools for a green economy and in ensuring that social objectives such as poverty eradication and social equity were adequately reflected and promoted when transitioning to a green economy.

Since the Rio Declaration in 1992, there had been significant development of international and national law inspired by the Rio Principles, in the form of multilateral environmental agreements, national legislation and judicial decisions. The participants considered these developments as important to the full realization of the aspirations of the 1992 Earth Summit as well as new developments associated with the green economy, and called for encouraging their continued progression. They also called for a comprehensive review of gaps in implementing the Rio Declaration that could help guide future international cooperation and collaboration and viewed coherent governance systems, at all levels, from the local to the global, as a foundation for the continued development and implementation of environmental law.

In terms of the further evolution of environmental law, they reiterated the imperative of ensuring compliance with existing laws. A range of enforcement responses, including tough prosecution of environmental misdeeds to impose penalties sufficient to deter violations, and strong, fair, and expeditious adjudication by judges, were considered to be essential to achieving environmental objectives and promoting the rule of law in the area of environment and development.

They also observed a need for further law development in the environmental context, especially in the area of procedural rights, particularly, the rights of the public to access environmental

information, participate in environmental decision-making, and to gain access to justice. They saw these procedural issues as a significant remaining obstacle to achieving global environmental objectives, and called for urgent attention, vigilance, and commitment, as well as consideration of new approaches to address these issues. They also called for recognizing the importance of precautionary and preventive considerations in environmental procedures, speedy and open processes, and effective execution of judgments, in order to ensure effective measures to avoid environmental damage and control risks.

With regard to the types of legal actions that could be brought to address environmental disputes and the remedies that flow from those actions, the participants observed that they were unduly limiting in terms of the extent to which they allowed for tailored and meaningful redress and questioned whether classical criminal prosecution alone was too blunt an instrument to address the full range of modern environmental problems. They observed that the time was right for development of other causes of action, remedies, and procedures that could complement criminal prosecutions and in this connection saw a need for: a.) review of rules of evidence and procedure to assess effectiveness in advancing the Rio Principles, b.) expanded use of alternative dispute resolution techniques, such as mediation, and c.) enlargement of the toolkit for addressing environmental disputes.

They noted that transition to the green economy would in some circumstances require amendments to or strengthening of environmental law, as well as other areas of law, such as tax, finance, planning, and import/export law that could incentivize behavior and materially intersect with environmental law in the context of a green economy. The command and control regimes that had been so instrumental to improving environmental quality in much of the world, while remaining important, they contended needed to be examined to ensure that they provided sufficient flexibility to allow for market-based approaches when these were appropriate and necessary to achieving green economy objectives. They stated that instruments such as environmental impact assessment (EIA), in their various forms, and other legal tools, would play an important role in the green economy, ensuring environmental integrity and avoiding potential negative social, economic and environmental results. They indicated that EIA instruments might need to be reconsidered to ensure that they allow consideration of the full range of issues and interests relevant in the progression towards the green economy.

They further observed that although a premise of the green economy is founded on the notion that economic development and environmental protection can and should proceed as complementary, or even with merged objectives, there was significant concern about environmental protections being rolled back in the name of spurring economic development. They believed that the choice between the economy and the environment was a false choice and that it was critical that the environmental progress of the last twenty years not be eroded, and in this connection saw the further development of non-regression and anti-backsliding law in many jurisdictions as offering a promising response to this matter.

Environmental challenges being border-blind, in that ecosystems often transcend national boundaries, they reflected on the issue of transboundary impacts on shared ecosystems and natural resources, which continues to be a significant area of concern for many states. They observed that just as neighboring states often share ecosystems, they also often share history, tradition and culture, and for this reason, regional and bi-lateral arrangements to facilitate resolution of transboundary issues and disputes had proven helpful in some parts of the world and bore consideration for broader utilization. Consideration of opportunities to harmonize environmental protection requirements and strategies

might, they said, be particularly appropriate in this setting, and they called for additional cooperation mechanisms to prevent and apprehend trans-national violations, including environmental crime.

They also considered that laws pertaining to protection of areas beyond national jurisdictions – for which none are specifically responsible but which all value and upon which all depend – might be inadequate in responding to modern challenges, such as depletion of global fishing stocks and protection of biodiversity and genetic resources and asserted that preoccupation with national and regional environmental problems should not distract from protecting areas beyond national jurisdictions, and called for closer and more urgent attention to the further development of law and institutional mechanisms in this area, in addition to the application of existing legal principles.

Finally, they noted that environmental law and jurisprudence do not regulate a static system and that new scientific knowledge, economic theory, and other developments and trends can rapidly change the parameters and context in which environmental law operates. In this connection, they articulated the need for further examination of the intersection between environmental law and human rights law and for new understandings regarding the role and value of environmental services in the context of evolving circular economy concepts, and called for these to be factored more fully into the analytic framework for environmental decision-making.

24 April 2012, Buenos Aires, Argentina