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[...]

Justice, Governance and Law for Environmental Sustainability
Report of the Executive Director

Summary

The present report provides information about recent developments related to the rule of law and environmental law in particular, including the outcome of the World Congress on Justice, Governance and Law for Environmental Sustainability held in Rio de Janeiro, Brazil, from 17 – 20 June 2012. It includes suggested action by the Governing Council in light of the Congress' outcome as well as in light of pertinent provisions from the outcome document of the United Nations Conference on Sustainable Development (Rio+20).

* UNEP/GC.27/1.

I. Suggested action by the Governing Council

1. The Governing Council may wish to consider the adoption of a decision along the lines suggested below:

The Governing Council,

Recalling its decision 25/11(I) concerning the Fourth Programme for the Development and Periodic Review of Environmental Law,

Recalling the 1997 Nairobi Declaration on the Role and Mandate of the United Nations Environment Programme,

Recalling the guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters, as well as the guidelines for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment, both adopted by the Governing Council in its decision SS.XI/5 A and B,

Acknowledging the important contributions made by environmental law to sustainable development,

Noting that democracy, good governance and the rule of law, at the national and international levels, as well as an enabling environment, are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger,

Recognizing the important contribution made by the legal and auditing community worldwide to the enforcement of standards and safeguards for environmental sustainability,

Noting the General Assembly resolution 67/1 of 24 September 2012 on the Rule of Law at the National and International levels,

Noting also the outcome document of the United Nations Conference on Sustainable Development, endorsed by the General Assembly in its resolution 66/288 of 27 July 2012,

Having considered the report of the Executive Director¹ and the information contained therein on the outcome of the World Congress on Justice, Governance and Law for Environmental Sustainability,

1. *Acknowledges with appreciation* the Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability adopted by Chief Justices, Heads of Jurisdiction, Attorneys General, Auditors General, Chief Prosecutors, and other high-ranking representatives of the judicial, legal and auditing professions at the World Congress on Justice, Governance and Law for Environmental Sustainability on 20 June 2012 in Rio de Janeiro, Brazil;

2. *Notes* that an independent judiciary and judicial process is vital for the implementation, development and enforcement of environmental law;

3. *Emphasizes* that environmental and sustainability auditing is important in ensuring transparency, access to information, accountability, and efficient use of public finances, while protecting the environment for future generations;

4. *Further emphasizes* that justice, including participatory decision-making and the protection of vulnerable groups from disproportionate negative environmental impacts should be seen as an intrinsic element of environmental sustainability;

5. *Recognizes* that environmental crime presents a real danger to sustainable development and the implementation of agreed environmental goals and objectives at all levels, and *invites* Governments and relevant organizations to further strengthen the existing initiatives to exchange information and share experiences with a view to facilitating efforts for combatting environmental crime and increasing the effectiveness of laws in the field of the environment;

6. *Welcomes* the Principles for the Advancement of Justice, Governance and Law for Environmental Sustainability adopted at the World Congress on Justice, Governance and Law for Environmental Sustainability;

1 UNEP/GC.27/13.

7. *Requests* the Executive Director to promote the implementation of the Principles for the Advancement of Justice, Governance and Law for Environmental Sustainability and to promote the continued engagement of Chief Justices, Attorneys General, Heads of Jurisdiction, Chief Prosecutors and Auditors General, the institutions they represent and other components of the legal and enforcement chain, including through networks at the international and regional levels;
8. *Further requests* the Executive Director to fully implement the Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability and to continue to:
- (a) Lead the United Nations system and support national Governments in the development and implementation of environmental law at all levels;
 - (b) Encourage the further expansion of environmental jurisprudence;
 - (c) Promote quality information and data exchange among the legal and auditing communities and improve education, capacity building, technology transfer and technical assistance, including with the aim of strengthening effective national environmental governance and improving the effectiveness of the rule of law;
 - (d) Improve coherence and coordination among UN entities and other relevant organizations in these areas;
9. *Invites* Governments to cooperate to build and support the capacity of courts and tribunals as well as prosecutors, auditors and other related stakeholders at national, sub-regional and regional levels to implement environmental law, and to facilitate exchanges of best practices in order to achieve environmental sustainability;
10. *Invites* Governments to take into consideration the guidelines set out in the annexes to Governing Council decision SS.XI/5 A and B, respectively, when developing or amending their national legislation related to development of national legislation on access to information, public participation and access to justice in environmental matters, or on liability, response action and compensation for damage caused by activities dangerous to the environment;
11. *Requests* the Executive Director to present a report on the progress made in the implementation of the present decision, as part of a report on the mid-term review of the Fourth Programme for the Development and Periodic Review of Environmental Law envisaged in decision 25/11(I), to the Governing Council at its twenty-eighth session.

II. Background

2. The present report provides information about recent developments related to the rule of law and environmental law in particular, including the outcome of the World Congress on Justice, Governance and Law for Environmental Sustainability held in Rio de Janeiro, Brazil, from 17 – 20 June 2012. It includes suggested action by the Governing Council in light of the Congress' outcome as well as in light of pertinent provisions from the outcome document of the United Nations Conference on Sustainable Development (Rio+20).
3. Attention is drawn to the following documents, which provide additional information relevant to the present report:
- (a) Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability (annexed to this report);
 - (b) General Assembly resolution 67/1 of 24 September 2012: Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels;
 - (c) General Assembly resolution 66/288 of 27 July 2012: The future we want.
4. It might be recalled that the Fourth Programme for the Development and Periodic Review of Environmental Law (also known as the Montevideo Programme IV), adopted by the Governing Council in its decision 25/11(I), provides a broad strategy and guidance for the international law community and UNEP in formulating the activities in the field of environmental law for the decade commencing 2010. For UNEP, such activities are being carried out through its programme of work. The recent developments in the field of environmental law highlighted in this report might be considered against the backdrop of the Montevideo Programme IV.

III. The Promotion of the Rule of Law Related to the Environment

5. Promoting the rule of law is one of the primary objectives of the UN as a whole. Law in general sets authoritative prescriptions, standards and procedures for decision-making and their effective implementation. It designs and empowers the necessary institutions and provides for good governance based on inclusiveness, transparency and accountability in their operations as well as safeguards for the protection of the vulnerable sections of society. It also provides, among other things, legal choices and institutions for intervention in the event of denial of the protection of the law. It is a dynamic force that responds to the needs and aspiration of society in a changing world and is guided by the values and challenges of the time. In the 21st Century, one of its primary tasks is to illuminate the path to sustainable development.

6. Legal and institutional developments in the past forty to fifty years show that environmental law at national and international levels can make a significant contribution toward forging an enduring partnership between the environment and a development approach founded on ecological and social sustainability. It is, however, universally recognized that its full potential has yet to be realized, judging by the continuing trajectory of rapid environmental degradation and natural resource depletion brought about by globally unsustainable production and consumption patterns.

7. The recently adopted General Assembly resolution on the Rule of Law (A/RES/67/1) underlines the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable development and maintaining peace and security. The resolution further points out the strong linkages between sustainable development and the rule of law, such as the negative effects of transnational organized crime, including environmental crime, as well as the mutually supportive relationship between the adherence to the rule of law and the respect of all human rights, including those related to the environment. In line with this report, the resolution requests the UN Secretary General to ensure greater coordination and coherence among UN entities, donors and recipients to improve the effectiveness of the rule of law capacity building activities.

8. At its eleventh special session, the Governing Council, in its decision SS.XI/5 A and B, adopted the guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters, and the guidelines for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment. The implementation and use of these guidelines would significantly contribute to the promotion of the rule of law in the field of the environment.

IV. The UNEP World Congress on Justice, Governance and Law for Environmental Sustainability

9. After two preparatory meetings held in Kuala Lumpur (October 2011) and Buenos Aires (April 2012) UNEP organized the World Congress on Justice, Governance and Law for Environmental Sustainability in Rio de Janeiro, from 17 – 20 June 2012. Through the World Congress, over 250 of the world's Chief Justices, Attorneys General and Auditors General, and other high-ranking representatives of the judicial, legal and auditing professions contributed to the debates on the environment at Rio +20.

10. It was the first time in history that these three key groups of national stakeholders have declared their unified commitment to cooperate to build and support the capacity of courts and tribunals as well as prosecutors, auditors and other related stakeholders at national, sub-regional and regional levels to implement environmental law, and to facilitate exchanges of best practices in order to achieve environmental sustainability.

11. The World Congress outcome calls for strengthened international governance institutions to protect the global environment and has affirmed the role of law as an indispensable tool on the path towards sustainable development and 'greener' economies. It demonstrates the need for continued involvement of the judiciary in the pursuit of sustainable development.

12. The Congress also adopted a set of guiding principles for the Advancement of Justice, Governance and Law for Environmental Sustainability and declared that any diplomatic outcomes related to the environment and sustainable development, including from Rio+20, will remain unimplemented without adherence to the rule of law, and without open, just and dependable legal orders.

13. The principles for the advancement of justice, governance and law for environmental sustainability state that environmental sustainability can only be achieved in the context of fair, effective and transparent national governance arrangements and rule of law, predicated on:

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

14. The outcome furthermore calls upon UNEP to lead the establishment of an international institutional network for, inter alia, continued development and implementation of environmental law at all levels, and the further expansion of environmental jurisprudence.

15. In similar language compared to the World Congress Declaration and the General Assembly resolution on the Rule of Law (A/RES/67/1), the outcome document of the United Nations Conference on Sustainable Development ('The Future We Want') states in paragraph 10 that "good governance and the rule of law (...) are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger." This statement is repeated in paragraph 252 under 'means of implementation', highlighting the essential role accorded to law, governance and implicitly the pursuit of just societies, in the implementation of the Rio+20 outcomes and the pursuit of sustainable development overall. This is an important outcome for the implementation and development of environmental law and for UNEP's further work in this area.

16. The World Congress on Justice, Governance and Law for Environmental Sustainability was organized in partnership with a range of global and regional organizations active in the area of environmental law and sustainable development, including the World Bank, the Asian Development Bank (ADB), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the International Criminal Police Organization (Interpol), the International Organization of Supreme Audit Institutions – Working Group on Environmental Auditing (INTOSAI – WGEA), the Organization of American States (OAS), the South Pacific Regional Environment Program (SPREP), the International Union for the Conservation of Nature (IUCN), and the International Network for Environmental Compliance and Enforcement (INECE).

V. Environmental Crime

17. Environmental crime is currently one of the most profitable forms of criminal activity. Interpol estimates that global wildlife crime is worth billions of dollars a year. The economic value of global illegal logging, including processing, is estimated to be worth between US dollars 30 billion and 100 billion, or 10-30 percent of global wood trade.² Environmental crimes encompass a broad list of illicit activities, including illegal trade in wildlife; smuggling of ozone-depleting substances; illicit trade of hazardous waste; illegal, unregulated, and unreported fishing; and illegal logging and trade in timber. Environmental crimes impose a security and safety threat to a large number of countries and have a significant negative impact on sustainable development and the rule of law. The involvement of organized criminal groups acting across borders, led by vast financial gains and facilitated by a low risk of detection and scarce conviction rates, is fueling corruption and money-laundering, and undermining the capacity of states to build/maintain fair, stable and predictable legal frameworks.

² Christian Nellemann, *INTERPOL Environmental Crime Programme (editors), "Green Carbon, Black Trade: Illegal logging, tax fraud and laundering in the world's tropical forests: A rapid response assessment"*, UNEP-GRID Arendal, 2012, page 6.

18. The Rio+20 outcome document “future we want” also highlighted illegal, unreported and unregulated fishing, illegal dumping of hazardous wastes, and illicit trafficking in wildlife as hindering the achievement of sustainable development.

19. To prevent and combat illegal trade or illicit activities in the field of the environment, there exist a number of initiatives. CITES, Interpol, the United Nations Office on Drugs and Crime (UNODC), World Customs Organization (WCO) and the World Bank jointly established, in November 2010, the International Consortium on Combating Wildlife Crime (ICWC). The Green Customs Initiative is a partnership of international organizations cooperating to prevent the illegal trade in environmentally-sensitive commodities and facilitation of the legal trade in these. Its partners include UNEP, the secretariats of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, CITES, Interpol, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Organization for the Prohibition of Chemical Weapons, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants, UNODC and WCO. The “Partnership Against Transnational-crime through Regional Organized Law-enforcement (PATROL)” was established in 2010 by UNODC, UNEP, TRAFFIC and Freeland Foundation to improve border security at land borders, sea ports and airports in China and the ASEAN countries of the Greater Mekong Sub-region to deal with, among other things, illegal traffic in wildlife and materials dangerous to the environment. The Basel Convention secretariat has published an instruction manual on the prosecution of illegal traffic of hazardous wastes or other wastes, and also a training manual on illegal traffic for customs and enforcement agencies.

20. Highlighting the need for increased commitments in the fight against environmental crime, government representatives from over 70 countries gathering in Lyon, France, from 27-29 March 2012, for the first “International Chiefs of Environmental Compliance and Enforcement Summit” convened by INTERPOL in partnership with UNEP, called upon UNEP to help facilitate cooperation, collaboration, and communication in order to raise public and political awareness and profile of environmental crime, facilitate information and intelligence exchange and strategic and tactical planning. This includes working with the Secretariats of relevant multilateral environmental agreements and support to the Parties to these agreements in their implementation. In October 2012, during a conference organized in Rome by the United Nations Interregional Crime and Justice Research Institute (UNICRI) together with UNEP, government experts in the field of enforcement, advocate and other legal practitioners, scholars in relevant field of laws and representatives of relevant organizations considered a range of issues related to environment crime and provided recommendations.

VI. Human Rights and the Environment

21. Environmental sustainability and the promotion of human rights are increasingly intertwined, complementary goals, and foundations for strengthening the three dimensions of sustainable development. Ecosystems and the services they provide, such as food, water, disease management, climate regulation, spiritual fulfillment, and aesthetic enjoyment are the foundations for the full enjoyment of human rights, such as the right to life, food, clean water, and privacy. At the same time, human rights and the legal and institutional instruments developed for their protection can be instrumental in fostering sustainable development and environmental objectives.

22. The cooperation between the Office of the High Commissioner for Human Rights (OHCHR) and UNEP recently produced a joint report³ on the issue which was launched within the framework of Rio+20 and which demonstrates how human rights and the environment can play an integral, indivisible role in achieving equality of access to basic needs while demonstrating how environmental and human rights policies affect each other and can support each other in common cause.

23. Using a rights-based approach to guide decision-making will ultimately lead to better results in implementing the outcomes from Rio+20 and in addressing the impact of environmental degradation generally, in particular the impact on the world’s poorest and most vulnerable populations, and in encouraging a greener economy that recognizes that healthy ecosystems are a precondition for poverty reduction and an opportunity for economic growth.

³ <http://www.unep.org/delc/Portals/119/JointReportOHCHRandUNEPonHumanRightsandtheEnvironment.pdf>

Annex:

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

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

Expressing our concern for the continuing and unprecedented degradation of the natural environment which adversely impacts on achieving the goal of sustainable development and therefore the prosperity of present and future generations;

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

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

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

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

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

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

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

Appreciating the important role played by UNEP and its partner organizations and co-hosts² in the convening of this Congress,

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

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

Declare that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) fair, clear and implementable environmental laws;
- (b) public participation in decision-making, and access to justice and information, in accordance with Principle 10 of the Rio Declaration, including exploring the potential value of borrowing provisions from the Aarhus Convention in this regard;
- (c) accountability and integrity of institutions and decision-makers, including through the active engagement of environmental auditing and enforcement;

- (d) clear and coordinated mandates and roles;
- (e) accessible, fair, impartial, timely and responsive dispute resolution mechanisms, including developing specialized expertise in environmental adjudication, and innovative environmental procedures and remedies;
- (f) recognition of the relationship between human rights and the environment; and
- (g) specific criteria for the interpretation of environmental law.

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

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

Only through the active engagement of all parts of society, especially national and sub-national institutions and officials responsible for addressing justice, governance and law issues, including judges, prosecutors, auditing institutions and other key functionaries, can meaningful progress be achieved that is sustained and responsive to the needs of the peoples of the world and protective of human rights.

III. Institutional Framework for the Advancement of Justice, Governance and Law for Environmental Sustainability in the 21st Century

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

This international institutional network may promote the achievement of:

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

UNEP may contribute to ensure necessary funding for capacity building and information exchange for strengthened capacities.

Rio de Janeiro, Brazil, 20 June 2012