
UNEP JUDICIAL SYMPOSIA ON THE ROLE OF JUDICIARY IN PROMOTING SUSTAINABLE DEVELOPMENT

KANIARU, DONALD¹, KURUKULASURIYA, LAL², and OKIDI, CHARLES³

¹Director, UNEP Environmental Law and Institutions Centre

²Chief, Regional Environmental Law Program for Asia and the Pacific

³Task Manager, Joint UNEP/UNDP/Dutch Government Project on Environmental law in Africa

United Nations Building, Rajadamnern Avenue, 10th Floor, 10200 Bangkok, Thailand

SUMMARY

This paper describes a UNEP initiative to train judges in domestic and international environmental law to promote sustainable development

1 INTRODUCTION

The United Nations Environment Program (UNEP) is convening a series of Regional Symposia for Judges on the role of the Judiciary in promoting the rule of law in the area of sustainable development. The first was held in Mombasa, Kenya for countries in Africa in October 1996 by UNEP's Environmental Law Centre under the Joint UNEP/UNDP Project on Environmental Law in Africa funded by the Dutch Government. It was attended by judges and judicial officers from South Africa, Kenya, Uganda, Tanzania, Mozambique, Sao Tome and Principe, Burkina Faso, and Mauritania. Encouraged by the outstanding results of this pioneering initiative, UNEP organized the second, for countries in South Asia in collaboration with the South Asia Cooperative Environment Program (SACEP) with funding from the Royal Norwegian Government through NORAD, in Colombo, Sri Lanka in July 1997. It was attended by delegations from Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. The third in the series is being organized by UNEP in partnership with UNDP for the ten countries in South East Asia and was held in Manila, Philippines from 4-7 March 1998 at the invitation of the Government of the Philippines. The Chief justice of the Philippines hosted the symposium.

These Symposia bring together superior court judges from countries in the region to examine contemporary developments in the field of environmental law - both international and national, - exchange views on their experiences in their respective jurisdictions relating to the progressive development of this new and rapidly growing branch of law, and to find ways and means of strengthening judicial cooperation in the region.

The Colombo Symposium was attended by three Chief Justices and several Supreme Court Justices from seven countries in South Asia. The Vice President of the International Court of Justice His Excellency Judge Christopher G. Weeramantry served as its Moderator.

Senior Judges including several Chief Justices from the ten countries in South East Asia as well as Supreme Court Justices from other jurisdictions and a Judge of the International Court of Justice are expected to participate in the South East Asia symposium to be held in Manila in March 1999. Arrangements are also being made for the participation of Observers from international and national organizations working in the field of environmental law and sustainable development.

2 THE GOALS OF THE SYMPOSIA

As expressly stated in Chapter 8 of Agenda 21, "Laws and regulations suited to country-specific conditions are among the most important instruments for transforming environment and development policies into action." The judiciary plays a critical role in the enhancement and interpretation of environmental law and the vindication of the public interest in a health and secure environment. Judiciaries have, and will most certainly continue to play a pivotal role both in the development and implementation of legislative and institution regimes for sustainable development. A judiciary, well informed on the contemporary developments in the field of international and national imperatives of environmentally friendly development will be a major force in strengthening national efforts to realize the goals of environmentally-friendly development and in particular, in vindicating the rights of individuals substantively and in accessing the judicial process. The UNEP Judicial Symposia will help to achieve greater access to judicial process.

3 INTERNATIONAL EXCHANGE ON A RANGE OF ISSUES

The agenda of the symposia though focusing on the respective regional priorities and concerns, provides an opportunity for the participants to make country presentations focusing on national legal and institutional regimes for promoting environmental management in the context of sustainable development, integration of environmental considerations in development decision making, incorporation of contemporary approaches and strategies for pursuing environmental law from the Stockholm Declaration to the Rio Declaration, among others. They also provide a forum for exchanging information on judicial decisions on environment and development issues in the various jurisdictions.

Other areas considered at the Symposia include new directions in the prevention and resolution of environmental disputed, contemporary developments in international and national law in the field of sustainable development, and the linkages between globalization, sustainable development and environmental law.

The following are among the important legal issues that were discussed at these Symposia against the backdrop of judgements of superior courts of the region in recent environment related cases: Incorporation of the principle of sustainable development, the polluter pays principle, the precautionary principle, and the principle of continuous mandamus in the corpus of international and national law; invocation of the extraordinary jurisdiction of the Supreme Court in environmental matters; public participation, including substantive and procedural matters relating to public interest litigation; the *erga omnes* character of environmental matters and the problem of applying *inter partes* procedures in environmental dispute resolution; limits of the concepts of "aggrieved person" and "locus standi" in regard to environmental damage; inter-generational and inter-generational equity; court commissions to ascertain facts and an authoritative assessment of the scientific and technical aspects of environment and development issues; interpretation of constitutional rights including right to life and right to a healthy environment; public's right to information; obligation for continuous environmental impact assessment; application of the public trust doctrine in regard to natural resources and the environment: corporate responsibility and liability; approaches to judicial reasoning in environment related matters including the importance of traditional values and ideas, and the importance of promoting public awareness and environmental education at secondary and tertiary levels.

These discussions were predicted on the recognition of the responsibility of the judiciary to mould emerging principles of law with a view of giving these a sense of coherence and direction, while always acting within the framework of legislation and law and without trespassing on the spheres of the legislative and executive branches of government.

The Symposia further considered the experience of countries in the region in regard to the legislative and institutional approaches to promoting environmental management and the integration of environment and development in decision making, including collective approaches to standard setting, incentive mechanisms to promote voluntary compliance, and expanding the scope of public participation, including citizen suits. Following presentations on the Australian and Mauritius experience in alternative dispute resolution mechanisms in the environment field, the Symposia discussed new ways of environmental dispute resolution which placed greater emphasis on prevention and avoidance of disputes than on the adversarial dispute resolution mechanisms which are currently in force in most countries.

4 FOLLOW UP ACTIONS AND RECOMMENDATIONS

The Mombasa and Colombo Symposia recommended a series of actions, designed to facilitate and encourage the judiciaries in the respective regions to take cognisance of the growing body of judicial decisions and formulations - both within and outside the region - on environment related issues, especially in regard to balancing environmental and developmental considerations in judicial decision making. At national level, several national judicial activities are taking place or are planned. In addition, UNEP is currently implementing these recommendations in collaboration with the partner Agencies under the Joint SACEP/UNEP/NORAD Project on Environmental Law in South Asia, and the Joint UNEP/SACEP/NORAD Project on Environmental Law in South Asia, respectively.

Following the recommendations of the Colombo Symposium, UNEP and SACEP have published *The Compendium of Summaries of Judicial Decisions in Environment Related Cases*, which provides an overview of the thrust of judicial decisions especially in South Asian countries on environment and development issues. As Judge Weeramantry has said in the Foreword of the *Compendium*, "This volume, hopefully the precursor of others of follow, will be a useful guide to all the judiciaries of the region in the discharge of the heavy responsibilities that will increasingly devolve upon them in the environmental area. It is to be hoped it will foster international Judicial dialogue in the region, inspire the judiciary with new enthusiasm, and provide an overarching vision of what collective thought and action can achieve in an area of such momentous importance to the human future. It will help in building up the necessary judicial initiatives to meet these problems which are without precedent in the long annals of the law." In Africa, precedent worthy judgements relevant to the issue are being published in 1998 for wider dissemination in the region and several volumes of a *Compendium of Environmental Statutes in Africa* is in wide circulation already.

Other recommendations of the Colombo Symposium include the publication in 1998 of the full texts of the judgements referred to in the *Compendium*, to be followed from 1999 by an annual UNEP/SACEP Asia-Pacific Environmental Law Report, publication of a compendium of texts of selected national environmental legislation of South Asian countries, and the publication in 1999, of a revised updated edition of the 1997 SACEP/UNEP/NORAD South Asia Handbook of Treaties and Other Legal Instruments in the Field of Environment. It has also been resolved to convene such judicial meetings once every two or three years, and with national judicial seminars taking place already, a rich exchange of judicial experiences can be expected to provide a strong foundation in judicial intervention and development in the next century.

