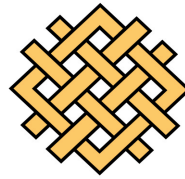




PACE LAW SCHOOL
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**WORLD
RESOURCES
INSTITUTE**

SUMMARY REPORT

Meeting of U.S.-Based Organizations and Entities Working on Environmental Courts, Rule of Law, and Access to Justice

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I. Introduction

On Thursday, July 15, 2010, Pace Law School and the World Resources Institute (WRI), in collaboration with the U.S. Environmental Protection Agency (EPA), sponsored a meeting in Washington, D.C., of U.S.-based organizations and entities working internationally on environmental courts, the rule of law, and access to justice. The meeting provided a forum for an informal discussion in order to promote an exchange of information among organizations that are actively involved in environmental adjudication and to identify potential areas of collaboration. It allowed for participants to share ideas about capacity building from a variety of perspectives, with the overall goal of ensuring fair and effective environmental courts and tribunals around the globe.

Participants represented several key global organizations and entities, including the United States Environmental Protection Agency (EPA), specifically attorneys from the Office of General Counsel (OGC) and attorneys and judges from the Environmental Appeals Board (EAB), the Natural Resources Defense Council (NRDC), the US Department of Justice's Environment and Natural Resources Division (DOJ ENRD), the American Bar Association Rule of Law Initiative (ABA ROLI), the World Bank, WRI, including those working with the Access Initiative, and academia. An attendance list for the meeting is included at Appendix A.

II. Judicial Training and Capacity Building

The meeting commenced with a discussion of attendees' participation in judicial training and capacity building. Many organization representatives offered their personal experiences with such training programs. For example, the EPA EAB discussed a three day course it developed to aid judges, prosecutors, and administrative agencies in trying an environmental case. The course was developed to cover the key topics in handling environmental cases, and be applied in various settings, with each nation able to adapt the course to its specific needs. The EAB has received positive feedback on deliveries of their course in Central America, the Middle East, and Asia. DOJ ENRD collaborated with EAB in some of these training courses, and has also been involved in permit and prosecution training. DOJ representatives emphasized the importance of incorporating local experts and particularly a country's judicial training institute when developing judicial training programs. Several meeting attendees reiterated this idea, as they believe it important to institutionalize the courses in local judicial training academies. Sometimes, as stated by an ELI representative, the training involves extensive discussion of US experiences, whereas, in other cases, this has been deemed unhelpful. As stated several times,

it just depends on the nation and the way the information is presented as to what will work and what will not.

Meeting participants asked what techniques have been deemed successful in their individual training efforts. Many agreed that training should be context specific, as each system is very different. Although important generalizations can be made, there is no detailed “one size fits all” approach. In addition, it was made clear that, while training for judicial officers is important, it is often also useful to include other entities, such as NGOs and administrative agencies, as well as members of the private sector, who are often forgotten. At the same time there is occasionally sensitivity on the part of judges to being part of a broad training that lacks a judicial focus. Many participants also agreed that while it is important to focus on environmental courts, access to justice solutions are not exclusively dependent on the creation of environmental courts distinct from courts of general jurisdiction and/or administrative tribunals. There are many important components, beyond the actual courts. It is important to address larger governance issues, and the bigger questions of how to build a stable legal community, transparency, and effective enforcement systems. Environmental courts may serve as a tool to enhance environmental adjudication, but alone will not solve the entire problem.

An Asian Development Bank (ADB) representative elaborated on this point, stating that environmental courts are only one aspect in the capacity building process. The judiciary is viewed as the end of the enforcement chain, and whether courts are getting cases depends on the training of others in the chain, such as NGOs. Further, demand for cases is important, as it essentially drives the need for these environmental institutions. Without effective enforcement efforts, there will not be a demand. The ADB, while focusing on judicial training in a symposium held in July, aims to broaden the scope of its work in upcoming projects. Overall, efforts must be made to incorporate all aspects of environmental governance to really make great strides in the international environmental law arena.

III. Access to Environmental Judicial and Quasi-Judicial Forums

Another important issue with regard to environmental courts and tribunals is ensuring access on the part of the public to the various environmental judicial and quasi-judicial forums. While judicial training and capacity building is critical, it is equally as necessary to ensure that litigants can effectively gain *access* to courts and other forums. Leaders of the Access Initiative, a network of NGOs in approximately 50 countries that promote access to justice, have discovered several obstacles to access these judicial institutions. They include: (1) costs, (2) harassment (by citizens, corporations, government, etc.), (3) procedural rules (once someone actually gets

into court), (4) evidentiary burdens, (5) cultural barriers, and (6) lack of enforcement mechanisms or legal causes of action. It is necessary to work with individual countries to address these obstacles.

Lack of transparency is another important issue with respect to access. It is necessary to increase transparency across the globe in order to ensure that decision-makers are held accountable for their decisions. Access to a nation's environmental laws is a necessary component of transparency as well as access to justice in general. In many countries, judicial decisions and/or environmental laws are not published, and so are not available to the general public. Several organizations, including WRI and ELI, have compiled environmental laws in some countries that have not themselves compiled and published the laws, including Uganda, Jamaica and Liberia. In addition to making these laws available, it is also imperative to develop mechanisms and training to ensure that citizens are aware of the existence of the laws and know how to use them. EPA has created a Chinese environmental law website to promote dialogue on China's evolving environmental law framework, implementation.

Within the overall discussion of access, the group discussed the extent to which outside groups should work within a country to create and sustain a demand for environmental courts and tribunals. Some suggested that, in order to enhance citizen access to justice, specific training could be conducted in connection with a particular environmental law. In addition, work could be undertaken to build capacity on compliance and enforcement at the country's environment agency. It is also necessary to promote alternative dispute resolution (ADR) techniques, as in many cases, mediation or other ADR approaches can be effective and efficient means of resolution. Further, building local capacity is important: for example, in China, NRDC has supported local fellowships and training in environmental litigation, in order to foster a locally led effort. Lastly, the importance of transparent procedures for permitting of individual facilities, and legal provisions for access opportunities to ensure consistency of permitting decisions with applicable legal authority was discussed. Some organizations have helped with drafting and/or funding to enhance access opportunities in the permitting system in order to ensure the effectiveness of permits.

Overall, environmental courts and tribunals achieve little if citizens lack the ability to access them. Therefore, efforts must be made to ensure and increase access in those countries that are developing, or have already developed, these environmental forums.

IV. Support for and Institutionalization of New Environmental Courts and Tribunals (ECTs)

There are currently over 350 ECTs in over 43 countries around the world. There have been several ECT initiatives in other countries just this year, including British Columbia, Ontario, Chile, the Caribbean, England and Wales, Hungary, Africa and Japan. As the number of ECTs grows, several questions must be addressed, such as how do we: (1) support, in an corresponding manner, capacity of the bar in particular countries, (2) use ADR as a tool to solve environmental cases, (3) the need for more effective legislation, and (4) replicate successful systems?

The last question of how to replicate successful systems must take into account that every country is different. There were certain key concepts and ideas shared by participants that should be kept in mind when trying to replicate a successful design. First, it may not be necessary to, in all cases, build a new forum. Perhaps in some countries, restructuring of the current system can be sufficient, if related reforms to support access are pursued. Second, there must be a desire within the country to move forward with ECT efforts, in order for the efforts to be successful. Third, effective leadership in-country is needed for these efforts to be successful. Fourth, deference should be given to the local approach and culture. Finally, techniques used should be flexible enough to apply in various locations. While these are important ideas to point out and aid in creating a successful system, there are surely many more components that are important; the system in the Philippines might serve as a useful model for study and replication.

V. Conclusion

The meeting concluded with a discussion of potential areas of future collaboration. Pace Law School's newly formed International Judicial Institute for Environmental Courts and Tribunals is currently working on the development of a global directory of environmental courts and tribunals and sought the aid of the meeting attendees. Attendees will likely continue the discussion on potential collaboration in particular countries. Overall, in order to successfully continue with the efforts in creating and stimulating environmental courts and tribunals across the globe, it will become necessary to continue ongoing and grab new opportunities for collaboration efforts, and remain open to discussion.

WRI has written a blog on The Access Initiative website about the meeting. It is available here: <http://www.accessinitiative.org/blog/2010/07/best-practices-implementing-environmental-courts-and-tribunals-around-world>. WRI has also begun a discussion thread for ECT experts: <http://www.accessinitiative.org/law/node/1225>

In addition, Pace Law School is working to create a list serv to allow for easy communication between ECT experts.

APPENDIX A

List of Attendees

1. Alex Wang (NRDC)
2. Dean Alexandra Dunn (Assistant Dean of Environmental Law Programs, Pace University School of Law)
3. Almira Moronne (Intern, NRDC)
4. Andrea Berlowe (DOJ)
5. Anjali Jaiswal (NRDC)
6. Professor Ann Powers (Pace University School of Law)
7. Judge Anna Wolgast (EPA Environmental Appeals Board)
8. Hon. Antonio Herman Benjamin (Justice, Supreme Court of Brazil; Founder, Law for Green Planet Institute; Deputy Chair, IUCN Commission on Environmental Law)*
9. Ben Longstreth (NRDC)
10. Carole Excell (World Resources Institute)
11. Catherine “Kitty” Pring (Partner, Global Environmental Outcomes, LLC, Golden, Colorado)
12. Charles DiLeva (World Bank)
13. David Gravalles (EPA)
14. Durwood Zaelke (INECE)*
15. Professor George “Rock” Pring (University of Denver Sturm College of Law)
16. Jacob Scherr (NRDC)
17. Jacob Werksman (World Resources Institute)
18. Jane Nishida (World Bank)
19. Jay Pendergrass (Environmental Law Institute)
20. Jen Salen (ABA Rule of Law Initiative)
21. Jie Gao (NRDC)*
22. Joseph Foti (World Resources Institute)
23. Jumaina Siddiqui (ABA Rule of Law Initiative)
24. Kala Mulqueeny (ADB)*
25. Judge Kathie Stein (EPA Environmental Appeals Board)
26. Lalanath DeSilva (World Resources Institute)
27. Judge Merideth Wright (Vermont Environment Court)
28. Monika Kerdeman (World Resources Institute; Media & Communications Coordinator, Access Initiative)
29. Nina Eejima (World Bank)

30. Ritwick Dutta (LIFE, India)*
31. Sara Vinson (Summer Research Scholar, Pace Law Center for Environmental Legal Studies)
32. Shravya Reddy (NRDC)
33. Siu Tip Lam (Vermont Law School)
34. Steve Wolfson (EPA)*
35. Tim Epp (EPA Environmental Appeals Board)
36. Tom Swegle (DOJ)
37. Tseming Yang (EPA)
38. Professor Wang Jin (Peking University)

* = On the phone

APPENDIX B

Weblinks and References Provided by Meeting Attendees

1. EPA OGC Chinese Environmental Law website:

www.epa.gov/ogc

2. ELI's website on Judicial Education:

http://www.eli.org/Program_Areas/judicial_education.cfm

3. Rock and Kitty Pring's Greening Justice Report:

www.accessinitiative.org/resource/greening-justice

or

www.law.du.edu/ect-study

4. IJIECT website:

www.law.pace.edu/ijiect

5. WRI website:

www.wri.org

6. The Access Initiative

<http://www.accessinitiative.org/>

7. ADB's Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice Background Paper

<http://www.adb.org/documents/events/2010/asian-judges-symposium/asian-judges-symposium-background-paper.pdf>