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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, in particular environmental law, including activities of the General Assembly, the outcome of the United Nations Conference on Sustainable Development (Rio+20) and the outcome of the World Congress on Justice, Governance and Law for Environmental Sustainability, held in Rio de Janeiro, Brazil, from 17 to 20 June 2012. Taking into account the outcome of the Congress and pertinent provisions of the Rio+20 outcome document, it suggests action by the Governing Council to further justice, governance and law for environmental sustainability in the context of sustainable development.

* 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 by the Executive Director. The suggested action will be submitted separately to the Committee of Permanent Representatives for its use in the preparation of draft decisions for consideration by the Governing Council.

II. Background

2. The present report provides information about recent developments related to the rule of law, in particular environmental law, in the context of sustainable development, including the outcome of the World Congress on Justice, Governance and Law for Environmental Sustainability, held in Rio de Janeiro, Brazil, from 17 to 20 June 2012. It includes suggested action that the Governing Council may wish to take in the light of the outcome of the Congress, pertinent provisions of the outcome document of the United Nations Conference on Sustainable Development (Rio+20), held in Rio de Janeiro from 20 to 22 June 2012, and recent developments in the promotion of the rule of law at the national and international levels.

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 (the Rio+20 Declaration, reproduced in the annex to the present report);

(b) Rio+20 outcome document, "The future we want";¹

(c) Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels.²

4. The Fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV), adopted by the Governing Council of the United Nations Environment Programme (UNEP) (decision 25/11(sect. I)), provides a broad strategy and guidance for the international law community and UNEP in formulating activities in the field of environmental law for the decade beginning in 2010. UNEP is carrying out such activities through its programme of work, and the recent developments in the field of environmental law highlighted in the present report may be considered against the backdrop of Montevideo Programme IV.

III. Promotion of the rule of law related to the environment

5. Promoting the rule of law is one of the primary objectives of the United Nations as a whole. Law sets authoritative norms, standards and procedures for the adoption and effective implementation of decisions. Law provides for the design and empowerment of necessary institutions. It establishes good governance based on inclusiveness, transparency and accountability in the operation of such institutions and safeguards for the protection of vulnerable sectors of society. It also provides, among other things, legal choices and institutions that allow for intervention in the event of denial of the protection of the law. Law is a dynamic force that responds to the needs and aspirations of society in a changing world and is guided by the values and challenges of the time. In the twenty-first century, one of its primary tasks is to illuminate the path to sustainable development.

6. Legal and institutional developments in the past 40 or 50 years show that environmental law at the national and international levels can make a significant contribution to forging an enduring partnership between environmental protection and a development approach founded on ecological, economic and social sustainability. It is, however, universally recognized that the full potential of environmental law 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, with adverse consequences for the ecosystem services on which individuals and communities depend such as food, water, disease management, climate regulation, spiritual fulfilment and aesthetic enjoyment.

7. By its resolution 67/1, the General Assembly adopted a declaration on the rule of law at the national and international levels, in which Heads of State and Government underlined the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable

¹ General Assembly resolution 66/288, annex.

² See General Assembly resolution 67/1.

development and maintaining peace and security. They also pointed 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 adherence to the rule of law and respect for all human rights, including those related to the environment. They requested the Secretary-General to ensure greater coordination and coherence among United Nations entities, donors and recipients to improve the effectiveness of rule of law capacity-building activities. It is therefore important that UNEP continue and strengthen its active contribution to such United Nations system-wide efforts in collaboration with relevant bodies and agencies. In doing so, the following areas merit particular attention owing to their impact on the rule of law overall, as reflected in the suggested action and outcome documents of the World Congress on Justice, Governance and Law for Environmental Sustainability and Rio+20, as well as the above-mentioned declaration.

IV. Environmental crime

8. Environmental crime is currently one of the most profitable forms of criminal activity. The International Criminal Police Organization (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 \$30 billion and \$100 billion, approximately 10 per cent to 30 per cent of the global wood trade.³ Environmental crimes encompass a broad list of illicit activities, including illegal trade in wildlife; smuggling of ozone-depleting substances; illicit trade in hazardous wastes; illegal, unregulated and unreported fishing; and illegal logging and trade in timber. Environmental crimes pose a security and safety threat to many countries and have a significant negative impact on sustainable development and the rule of law. The involvement of organized criminal groups acting across borders, spurred by vast financial gains and facilitated by a low risk of detection and low conviction rates, is fuelling corruption and money-laundering and undermining the capacity of States to build and maintain fair, stable and predictable legal frameworks.

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

10. A number of initiatives have been established to prevent and combat illegal trade and illicit activities in the field of the environment. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), INTERPOL, the United Nations Office on Drugs and Crime, the World Customs Organization (WCO) and the World Bank jointly established, in November 2010, the International Consortium on Combating Wildlife Crime. The Green Customs Initiative is a partnership of international organizations cooperating to facilitate legal trade and prevent illegal trade in environmentally sensitive commodities. 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, the United Nations Office on Drugs and Crime and WCO. The Partnership Against Transnational-crime through Regional Organized Law-enforcement was established in 2010 by the United Nations Office on Drugs and Crime, UNEP, TRAFFIC International and the Freeland Foundation to improve border security at land borders, seaports and airports in China and member States of the Association of South-East Asian Nations in the Greater Mekong subregion 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 in hazardous wastes or other wastes and a training manual on illegal traffic for customs and enforcement agencies.

11. Highlighting the need for increased commitment in the fight against environmental crime, government representatives from over 70 countries gathering in Lyon, France, from 27 to 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 of environmental crime and facilitate information and intelligence exchange and strategic and tactical planning. These

³ 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, p. 6.

activities would include working with the secretariats of relevant multilateral environmental agreements and providing support to the parties to such 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, prosecutors, advocates and other legal practitioners, scholars in relevant field of laws and representatives of relevant organizations considered a range of issues related to environmental crime and provided recommendations. As recommended at that conference, UNEP and UNICRI, working in collaboration with relevant partner organizations, will undertake an international study on environmental crime.

V. Human rights and the environment

12. Environmental sustainability in the context of sustainable development and the promotion of human rights are increasingly intertwined, complementary goals; they are also foundations for strengthening the three dimensions of sustainable development. Ecosystems and the services that they provide, including food, water, disease management, climate regulation, spiritual fulfilment and aesthetic enjoyment, are the foundations of the full enjoyment of human rights such as the right to life, health, food and safe drinking water. 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.

13. The Office of the United Nations High Commissioner for Human Rights and UNEP recently produced a joint report⁴ on the issue, launched in the context of Rio+20, 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 a common cause.

14. Using a rights-based approach to guide decision-making will ultimately lead to better results in implementing the outcomes of Rio+20 and in addressing the impact of environmental degradation generally, in particular its 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.

VI. Access to justice in environmental matters

15. Strengthening effective engagement of stakeholders in environmental decision-making is an important prerequisite for sustainable development. Principle 10 of the Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992, set as a goal the strengthening of access to information, public participation and access to justice in environmental matters. More recently, the Governing Council at its eleventh special session adopted guidelines on the development of national legislation on access to information, public participation and access to justice in environmental matters (Access Guidelines), as well as guidelines on the promotion of environmental justice through the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment (Liability Guidelines). The implementation and use of these guidelines significantly contributes to the promotion of the rule of law in the field of the environment.

16. UNEP is collaborating with the United Nations Institute for Training and Research (UNITAR) to enhance the capacity of Governments, major groups and other concerned stakeholders in developing countries and countries with economies in transition to implement Principle 10 of the Rio Declaration and the Access Guidelines and to promote broader capacity development action in line with national needs and priorities. In this context, tools such as a guide to implementing the Access Guidelines and training materials for legal practitioners will be developed to support Governments in the drafting of national legislation for the implementation of Principle 10 on the basis of the Access Guidelines. Regional workshops will be organized to raise awareness and support efforts to develop such legislation. Furthermore, technical assistance will be provided to 10 pilot countries in the five United Nations regions for the development of action plans to strengthen capacities in that area. The outcome of the World Congress, the Rio+20 Declaration (see annex), also places emphasis on further advancing the implementation of Rio Principle 10, especially in the principles listed in part II of the Declaration.

⁴ <http://www.unep.org/delc/Portals/119/JointReportOHCHRandUNEPonHumanRightsandtheEnvironment.pdf>

17. Further promoting implementation of the Access Guidelines and the Liability Guidelines through awareness-raising, capacity-building and the provision of knowledge and guidance tools will be an essential contribution to the promotion of the rule of law in the field of the environment and will further advance the mutual supportiveness of the environmental and social dimensions of sustainable development and of the promotion of human rights and environmental objectives.

VII. UNEP support for the implementation of environmental law

18. The gap between commitments, in the form of internationally agreed goals and objectives, and their implementation, as pointed out in the 2000 Malmö Ministerial Declaration, remains a major challenge. In recent decades UNEP has focused in its work not only on the continued development of environmental law at the national and international levels, but also and especially on the promotion of the effective implementation of environmental law, including through the provision of technical assistance to developing countries in the development of national legislation and institutions and the enhancement of national capacities in environmental law, including capacities for enhancing compliance with and the enforcement of multilateral environmental agreements.

19. Strengthening the regulatory and institutional capacity of developing countries to address national environmental priorities and pursue broader sustainable development objectives is at the core of the UNEP mandate in the current and previous Montevideo programmes and is in line with the Bali Strategic Plan for Technology Support and Capacity-building. UNEP supports Governments in their efforts to develop and implement environmental law at the national level, and to that end works with government institutions, including the executive branch, primarily ministries with environmental mandates, the judiciary and public prosecutors, as well as civil society, including auditing institutions, universities and non-governmental organizations. It provides technical assistance to developing countries seeking to establish and strengthen domestic legislation and strengthen national institutions and provides the tools needed to strengthen the entire enforcement chain. In the previous biennium, for example, UNEP undertook activities in 11 countries with a view to strengthening their environmental legislation. Highlights include work on the finalization of a framework environmental law in Timor-Leste, the revision of the environmental protection law in Mongolia, the harmonization and updating of chemicals-related legislation in Cambodia and Uganda, the strengthening of capacity to adapt to climate change in Turkey, including through the development of a national strategy and its policy and law foundations, and revisions to national legislation in Viet Nam, Cambodia and the Lao People's Democratic Republic and efforts to reduce vulnerability to the impacts of climate change.

20. Information and knowledge tools are also important services that UNEP provides to support countries' efforts, such as the INFORMEA portal, ECOLEX and a wide range of publications. One of the areas where UNEP has been particularly active is the production of guidance materials for policy and lawmakers to assist them in developing policies and legislation to address issues related to water, energy and adaptation to climate change. Examples include a UNEP guidebook on national legislation for adaptation to climate change and UNEP guidance on greening water laws.

21. On the basis of the Bali Strategic Plan and the UNEP guidelines on compliance with and enforcement of multilateral environmental agreements, adopted by the Governing Council in its decision SS.VII/4, UNEP is actively promoting effective participation in multilateral environmental agreements, which is a key factor in attaining internationally agreed environmental goals and, ultimately, achieving sustainable development. Efforts to this end include, inter alia, support for Governments in their efforts to participate effectively in negotiations related to multilateral environmental agreements, the development of relevant strategies, mechanisms and national legislation in response to national priorities and global challenges and the promotion of enabling conditions in the form of effective national governance arrangements, capacity-building, information dissemination and other tools meant to support the entire continuum of law development, implementation and enforcement at the national level, with a focus on developing countries and countries with economies in transition.

22. UNEP has organized regional preparatory workshops bringing together policymakers and environmental negotiators, in particular from developing countries, to better equip delegations from those countries for the negotiations and subsequent implementation of commitments undertaken, expanding to a wider number of multilateral environmental agreement processes. In cooperation with Governments, multilateral environmental agreement secretariats and international and regional networks, including the International Network for Environmental Compliance and Enforcement, the Working Group on Environmental Auditing of the International Organization of Supreme Auditing Institutions (INTOSAI) and many others, UNEP also engages with actors that play key roles at the national level in translating legal provisions into concrete decisions, such as the judiciary, legal

practitioners, prosecutors, enforcement officers and national auditors through concrete capacity-building and awareness-raising initiatives. The Green Customs Initiative (see para.10 above), for instance, is an unprecedented partnership administered by UNEP to enhance the capacity of customs and other enforcement personnel to monitor and facilitate legal trade and detect and prevent illegal trade in environmentally-sensitive commodities covered by relevant multilateral environmental agreements. These include ozone-depleting substances, toxic chemical products, hazardous wastes, endangered species and living modified organisms.

23. The capacity of States to implement their environmental obligations has also been enhanced through targeted capacity-building training and awareness-raising programmes at the national and regional levels in African, Caribbean and Pacific (ACP) countries. In particular, the European-Union-funded, EC ACP MEAs Project supported 10 countries in Africa in the development of multi-stakeholder collaboration strategies on multilateral environmental agreements and three of the four Federated States of Micronesia in the development of integrated environmental impact assessment guidelines. UNEP also executed the second phase of the UNEP-Global Environment Facility Biosafety Clearing-House project, focusing on capacity-building for national focal points of the Biosafety Clearing-House, a mechanism set up under the Cartagena Protocol on Biosafety to facilitate the exchange of information on living modified organisms and assist the parties to the Protocol in better complying with their obligations. As a result of the training-of-trainers component of the project, 46 out of 50 participating countries independently and successfully organized national training workshops on the issue. In addition, 12 of the 50 countries have incorporated UNEP training materials into their national academic curricula.

24. UNEP provides substantive support to the parties and secretariats of the multilateral environmental agreements on biodiversity and chemicals and wastes to enhance the implementation of those conventions at the regional and national levels. Support is provided on matters such as the identification of priority regional and subregional issues, provision of a platform for problem identification and solving and policy analysis and the development of regional and subregional action plans for improved and synergistic implementation of multilateral environmental agreements.

25. UNEP performs an important function in leading the United Nations system and in supporting national Governments in the development and implementation of environmental law in the context of sustainable development. As a result of UNEP activities, considerable progress has been made in strengthening institutions and implementing environmental law. Increased efforts are required, however, to realize the full potential of environmental law, in particular with regard to the capacity of courts and other tribunals, prosecutors, auditors and other stakeholders to implement environmental law at the national, subregional and regional levels, to address emerging and growing issues such as environmental crime, promote progress in key areas such as the human rights and environment nexus and further strengthen the implementation of key environmental law principles and the use of existing mechanisms, including through the implementation of the UNEP Access Guidelines and Liability Guidelines.

26. The importance of environmental law has been reaffirmed through the Rio+20 processes, but sustainable development in a just context will require further resources to be channelled to promoting and developing legal and practical means to increase transparency, strengthen access to information and enhance public participation in environmental decision-making processes, including through the implementation of existing mechanisms such as the above-mentioned guidelines. It is therefore crucial for UNEP to continue its cooperation with Governments and international institutions to improve education, capacity-building, technology transfer and technical assistance with the aim of strengthening national environmental governance and ensuring the effectiveness of environmental law and ultimately achieving sustainable development, including, as stated in paragraph 10 of “The future we want”, “sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger.”

27. Finally, there is a need to improve coherence and coordination among United Nations entities and other relevant organizations with regard to the implementation of and compliance with environmental law and multilateral environmental agreements and, more broadly, supporting the rule of law at all levels and pursuing internationally agreed environmental objectives and goals and sustainable development objectives in a coherent and integrated manner, in line with the United Nations system-wide efforts regarding the rule of law. Developing national, subregional, regional and global actions is important to the application of appropriate harmonized approaches to environmental law and to encouraging coherence and coordination of international environmental law and institutions.

VIII. World Congress on Justice, Governance and Law for Environmental Sustainability

28. In an effort to increase the effectiveness of environmental law at the national level, UNEP, motivated by past initiatives such as its Global Judges Programme, brought together three of the most crucial stakeholder groups at the national level for the promotion of the rule of law in the field of the environment – chief justices, attorneys general and auditors general – for the World Congress on Justice, Governance and Law for Environmental Sustainability. While the Congress lasted four days, the process that led to it is expected to create continued momentum for the involvement of chief justices, attorneys general and auditors general worldwide and the effective implementation of environmental obligations at the national level.

29. After two preparatory meetings, held in Kuala Lumpur (October 2011) and Buenos Aires (April 2012), UNEP organized the World Congress in Rio de Janeiro, Brazil, from 17 to 20 June 2012. Through the World Congress, more than 250 of the world's chief justices, attorneys general and auditors general, as well as other high-ranking representatives of the judicial, legal and auditing professions, contributed to the debates on the environment at Rio+20.

30. The Congress marked the first time in history that those three key groups of national stakeholders declared their unified commitment to cooperating to build and support the capacity of courts and other tribunals, prosecutors, auditors and other stakeholders at the national, subregional and regional levels to implement environmental law and to facilitate exchanges of best practices in order to achieve environmental sustainability in the context of sustainable development.

31. The World Congress outcome document, the Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability, called for strengthened international governance institutions to protect the global environment and 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.

32. 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, would remain unimplemented without adherence to the rule of law and open, just and dependable legal systems.

33. The principles for the advancement of justice, governance and law for environmental sustainability state that environmental sustainability and sustainable development can be achieved only in the context of fair, effective and transparent national governance arrangements and the 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 that 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;
- (g) Specific criteria for the interpretation of environmental law.

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

35. In language similar to that of the Rio+20 Declaration and of the declaration adopted by the General Assembly by its resolution 67/1, Heads of State and Government, in the Rio+20 outcome document, entitled "The future we want", acknowledged 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" (para. 10). That statement is repeated in paragraph 252 of the outcome document, 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 further UNEP work in this area.

36. 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, the CITES secretariat, INTERPOL, the INTOSAI Working Group on Environmental Auditing, the Organization of American States, the South Pacific Regional Environment Programme, the International Union for the Conservation of Nature and the International Network for Environmental Compliance and Enforcement.

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 in Rio de Janeiro, Brazil, from 17 to 20 June 2012 for the World Congress on Justice, Governance and Law for Environmental Sustainability,¹

Expressing concern for the continuing and unprecedented degradation of the natural environment, which adversely affects the achievement of the goal of sustainable development and therefore the prosperity of present and future generations,

Noting the observations recorded in *Global Environmental Outlook 5* concerning the extent of environmental degradation in each of the world's regions,

Recalling the principles enshrined in the 1972 Stockholm Declaration on the Human Environment, the 1992 Rio Declaration on Environment and Development and 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 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, 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 Buenos Aires statements of the two preparatory meetings for this Congress attended by chief justices, heads of jurisdiction, attorneys general, auditors general and other high-ranking representatives of the legal and auditing professions in Kuala Lumpur, Malaysia, on 12 and 13 October 2011 and Buenos Aires, Argentina, on 23 and 24 April 2012, 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 2012 United Nations Conference on Sustainable Development (Rio+20),

Appreciating the important role played by the United Nations Environment Programme and its partner organizations and co-hosts² in the convening of this Congress,

Declare that:

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 of the State of Rio de Janeiro (Associação dos Magistrados do Estado do Rio de Janeiro - AMAERJ); Getulio Vargas Foundation (Fundação Getulio Vargas); and Attorney General of the State of Rio de Janeiro (Ministério Público do Estado do Rio de Janeiro). It was organized with the following partners: Asian Development Bank; Convention on International Trade in Endangered Species of Wild Fauna and Flora; International Criminal Police Organization; International Organization of Supreme Audit Institutions – Working Group on Environmental Auditing; Organization of American States; South Pacific Regional Environment Program; World Bank; International Network for Environmental Compliance and Enforcement; Environmental Law Commission of the International Union for the Conservation of Nature; and Law for a Green Planet Institute.

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 and open, just and dependable legal orders the outcomes of Rio+20 will remain unimplemented.

An independent judiciary and judicial process are 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 constitute 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 the national, subregional 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 continuing education.

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 the United Nations Environment Programme 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 those objectives should be non-regressive.

Environmental sustainability can only be achieved in the context of fair, effective and transparent national governance arrangements and the 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 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) in this regard;
- (c) Accountability and integrity of institutions and decision makers, including through the active engagement of environmental auditing and enforcement institutions;
- (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 with regard to 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 subnational 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 twenty-first century

With the leadership of the United Nations Environment Programme, 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 encouragement of 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;
- (e) Adequate engagement by respective national Governments for the set objectives.

The United Nations Environment Programme may contribute to ensuring necessary funding for capacity-building and information exchange for strengthened capacities.

Rio de Janeiro, Brazil, 20 June 2012