Notes on Recent Developments

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UN Environment and Environmental Law in the Asia Pacific

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1 Introduction

The Asia Pacific is the largest and fastest growing region in the world. Implementation of environmental commitments and achieving the Sustainable Development Goals¹ in this dynamic and diverse region requires effective laws that are adequately implemented and enforced by strong institutions and other stakeholders. The United Nations Environment Programme (UN Environment) supports countries in Asia and the Pacific to achieve these goals.² It works with a broad range of partners to support the development

* The views expressed in this paper are those of the authors and do not necessarily represent those of UN Environment.

1 UNGA, 'Transforming our world: the 2030 Agenda for Sustainable Development' A/RES/70/1 (25 September 2015) <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> accessed 7 December 2017.

2 There are 41 countries geographically served by UN Environment's Asia and the Pacific Office. These are: Afghanistan; Australia; Bangladesh; Bhutan; Brunei Darussalam; Cambodia;

or strengthening of environmental laws and their enforcement to achieve countries' environmental goals in the context of sustainable development. Its strategic priorities are informed and set by resolutions of the United Nations Environment Assembly, UN Environment's Medium-Term Strategy and biennial Programmes of Work, and country requests communicated bilaterally and through regional and sub-regional political forums. This report outlines some of the current activities of UN Environment in Asia and the Pacific with respect to its work on environmental law. It describes recent and planned activities in the areas of: (a) climate change; (b) illegal trade in wildlife; and (c) pollution and illegal trade in chemicals and waste. It also shares information on new partnerships developed in 2017 to advance this work.

2 Climate Change: 'Climate-Proofing' Legal Frameworks

Implementing the Paris Agreement³ will require countries to urgently strengthen legal frameworks relevant to climate change. Many countries have identified this as a priority for the region as well as nationally, as evidenced in their Nationally Determined Contributions, National Adaptation Plans, and/or other national climate change strategies. Private sector actors also need clear and coherent regulatory environmental laws that are impartially and transparently enforced. This is essential to support investments in renewable energy projects, energy efficiency initiatives, and adaptation and disaster reduction projects, amongst others. Such frameworks facilitate coordinated responses to climate hazards and disasters, and are also needed to meet and implement national commitments and goals under other instruments such as the

China; Cook Islands; Democratic People's Republic of Korea; Fiji; India; Indonesia; Iran (Islamic Republic of); Japan; Kiribati; Lao People's Democratic Republic; Malaysia; Maldives; Marshall Islands; Micronesia (Federated States of); Mongolia; Myanmar; Nauru; Nepal; New Zealand; Niue; Pakistan; Palau; Papua New Guinea; Philippines; Republic of Korea; Samoa; Singapore; Solomon Islands; Sri Lanka; Thailand; Timor-Leste; Tonga; Tuvalu; Vanuatu; and Viet Nam.

3 Paris Agreement (Paris) (adopted 12 December 2015, entered into force 4 November 2016) FCCC/CP/2015/L.9/Rev.1.

Kigali Amendment⁴ to the Montreal Protocol,⁵ the Small Island Developing States Accelerated Modalities of Action (Samoa Pathway),⁶ and the ASEAN Agreement on Disaster Management and Emergency Response.⁷

In response, UN Environment, working together with partners, is supporting countries to 'climate-proof' their legal frameworks. One such initiative is through technical and financial support to the Republic of Maldives. With UN Environment's support, the Maldives has started developing an overarching framework law on climate change. The draft legislation was prepared in the course of 2017, and stakeholder consultations are planned for early 2018. Another relevant initiative is UN Environment's support of developing a global Law and Climate Change Toolkit. The toolkit will be an online platform comprising a database of global climate change laws arranged by sector, supported by a self-assessment platform to guide countries and other stakeholders through best practices and guidelines for developing or strengthening their legal frameworks. It will also include information on relevant national and international experts and initiatives in climate law. The toolkit is a joint initiative of the Commonwealth Secretariat, the Secretariat of the United Nations Framework Convention on Climate Change,⁸ UN Environment, and others. It is planned for launch by the second half of 2018.

3 **Illegal Trade in Wildlife: Strengthening Laws to Combat Wildlife Crime**

Wildlife crime transcends national borders, with Africa and the Asia Pacific being especially linked. Organized crime networks operating within and across

4 Twenty-Eighth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (Decision XXVIII/1), 'Further Amendment of the Montreal Protocol' (10–14 October 2016) C.N.872.2016.TREATIES-XXVII.2.f <<https://treaties.un.org/doc/Publication/CN/2016/CN.872.2016-Eng.pdf>> accessed 6 October 2017>.

5 Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal) (adopted on 16 September 1987, entered into force 1 January 1989) 1522 UNTS 3; 26 ILM 1550 (1987).

6 UNGA 'SIDS Accelerated Modalities of Action (SAMOA) Pathway' GA Res 69/15 (15 December 2014) UN GAOR 69th Session UN Doc A/RES/69/15 <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/69/15&Lang=E> accessed 6 October 2017.

7 Association of South East Asian Nations Agreement on Disaster Management and Emergency Response (Vientiane) (adopted on 26 July 2005, 24 December 2009) <<http://agreement.asean.org/media/download/20140119170000.pdf>> accessed 6 October 2017.

8 United Nations Framework Convention on Climate Change (New York) (adopted 9 May 1992, entered into force 21 March 1994) 31 ILM 849 (1992).

these two regions routinely exploit gaps and discrepancies in national wildlife, forestry, criminal and other laws. Challenges include, but are not limited to, inadequate criminal penalties in some jurisdictions, different definitions of 'wildlife' that may exclude non-native species, absence of whistle-blower and witness protection laws, weak criminal laws that do not extend to 'attempted offences' or 'participation' in these offences, and do not prohibit the possession and sale of illegally obtained wildlife specimens and products, and failure to designate wildlife crime as a predicate (underlying) offence in anti-money laundering legislation. In addition, countries within and across the two regions have sometimes experienced challenges from absent or inadequate bilateral agreements or arrangements to facilitate cross-border enforcement efforts, including in the areas of mutual legal assistance and extradition arrangements.

UN Environment supports countries to strengthen their legal frameworks to combat the illegal trade in wildlife. A key initiative undertaken in 2017 was the Africa-Asia-Pacific Symposium on Strengthening Legal Frameworks to Combat Wildlife Crime held in Bangkok in July 2017. The symposium was convened by the United Nations Inter-Agency Task Force on Illicit Trade in Wildlife and Forest Products,⁹ in partnership with the World Bank-led, Global Environment Facility-financed Global Wildlife Program and the United States Agency for International Development (USAID). It brought together senior officials from 22 countries spanning Africa and the Asia-Pacific to advance their collective understanding of the key elements and provisions needed for effective legal frameworks to combat wildlife crime. A key outcome was the identification of recommended minimum elements that should be included in national legal frameworks relevant to combating wildlife crime. In 2018, UN Environment's work will continue to support countries in strengthening their legal frameworks, utilizing the momentum of the symposium and the recommendations agreed at it. UN Environment will also continue its ongoing work in supporting countries in the region on implementation of biodiversity-related multilateral

9 The UN Inter-Agency Task Force was created in 2016 to provide a holistic and comprehensive UN response to the multi-faceted problem of illegal trade in wildlife. It has its origins in the 30 July 2015 UN General Assembly resolution 69/314 calling upon the UN system to bring its complementary capacities to bear on combatting illegal trade in wildlife. The eight original member entities of the Task Force are: CITES Secretariat, UN Development Programme (UNDP), UN Environment, United Nations Office on Drugs and Crime (UNODC), Department of Economic and Social Affairs, Department of Political Affairs, Department for Peacekeeping Operations, and Department of Public Information. The Task Force is also open for working with other UN entities addressing issues related to illicit trade in wildlife.

environmental agreements, as well as giving support to regional coherence in preparing for participation in relevant conferences of the parties.

4 Pollution Law: Combating the Illegal Trade in Chemicals and Waste

The illegal trade in hazardous wastes and harmful chemicals into and within Asia has significant and negative impacts on human health and the environment. Hundreds of thousands of tonnes of waste and chemicals falling within the scope of the Basel, Rotterdam and Stockholm Conventions are illegally transported into Asia, which has for many years been one of the world's 'dumping grounds' for such materials. New trends are emerging, including the growth of illegal waste trade within Asian countries. Uneven regulatory landscapes are also raising enforcement challenges, with policy leadership given by some countries and not by others.

A significant activity by UN Environment to combat this trade is its coordination of the Regional Enforcement Network for Chemicals and Waste, which has been operating since 2012. This network is a partnership of 25 countries in Asia that aims at strengthening the capacity of countries to control illegal trade in chemicals and waste. The network has five priority areas: (a) Technical assistance for problem-solving; (b) Information and intelligence sharing; (c) Enforcement operations and the Asia Environmental Enforcement Award; (d) Networking and awareness, and (e) Partnership for sustainability. Achievements of the network include the identification and seizure of hundreds of thousands of tonnes of illegally traded waste and chemicals; strengthened enforcement partnerships with key agencies such as the International Police Organisation (INTERPOL) and the United Nations Office on Drugs and Crime (UNODC); and training of over 1000 frontline enforcement officers. The project that finances the network was scheduled to end in December 2017, and UN Environment has prepared a proposal for the next phase of a strengthened network.

5 New Partnerships in 2017 and Beyond

UN Environment works with a broad range of stakeholders across the region to advance its work. In addition to sub-regional, national and sub-national government entities, this includes parliamentarians, judiciaries, other UN agencies, multilateral development banks, civil society organizations, universities, and the private sector. To take China as an example, a recent partnership

includes a Memorandum of Understanding with the Supreme People's Court of China, signed in September 2017, to outline a framework of cooperation in advancing the role of the judiciary in safeguarding the environment and natural resources. The partnership envisages activities on information exchange, judicial training in environmental law, and public awareness activities, amongst others. Other partnerships in China being actively explored and developed include those with Chinese universities to support initiatives to strengthen environmental laws relevant to China's Belt and Road initiative, as well as initiatives to increase capacity on public interest litigation as a key mechanism for the enforcement of environmental law. For example, in September 2017, UN Environment and the China University of Political Science and Law (CUPL) launched the UN Environment-CUPL Environmental Law Academy, focused on the support of legal scholarship in key areas of environmental law agreed between the partners.