

**STATEMENT BY HON. AMOS S. WAKO PRESIDENT OF THE 44<sup>TH</sup> SESSION OF AALCO AND THE ATTORNEY GENERAL OF KENYA DURING THE SPECIAL MEETING OF AALCO ON WEDNESDAY JUNE 29<sup>TH</sup> 2005**

**H.E. THE VICE PRESIDENT OF THE REPUBLIC OF KENYA,  
HON. DR. MOODY AWORI, EGH, MP**

**HON. STEPHEN KALONZO MUSYOKA, MINISTER FOR  
ENVIRONMENT AND NATURAL RESOURCES, REPUBLIC OF  
KENYA**

**H.E. AMBASSADOR DR. WAFIQ Z. KAMIL, SECRETARY  
GENERAL, AALCO**

**HON. MINISTERS AND ATTORNEYS GENERAL PRESENT**

**DISTINGUISHED PARTICIPANTS LADIES AND GENTLEMEN**

As President of this current session, it is my pleasure to make a statement at this special meeting on the theme “**Environmental Law and Sustainable Development**”.

In 1992 at the United Nations Conference on Environment and Development in Rio de Janeiro, Brazil the world identified the need to create “**an environment – at the national and global levels – which is conducive to development and elimination of poverty**”. Governments also identified the need to ensure that “globalization becomes a positive force for the entire world’s people”.

One of the outcomes of the Rio Conference – **Agenda 21** – set forth a strategic framework on fundamental environmental principles that would ensure that the present generation developmental needs are fulfilled in such a way as to equitably meet the developmental and environmental needs of both the present and future generations.

The principles of the Rio Declaration and Agenda 21 are an important goal for mankind to aim towards the improvement of the human environment for the present and future generations. Modalities for integrating more fully environmental dimensions into development policies and practices are fully amplified. This goal must be pursued together with, and in harmony with,

the established and fundamental goals of peace, economic and social development.

### **Excellencies and Distinguished Delegates**

The haphazard approach to environment and development issues has helped to fan the flames of conflict within societies and to generate much discussion on the development challenge that nations throughout the world face in the 21<sup>st</sup> century. It is now clear that a business as usual attitude is not an option and that economic growth is both necessary and possible but only through a transition to sustainable development.

There is thus, more than ever before, an urgent need to integrate environmental issues into every aspect of our economic life from planning and policy making to patterns of production and consumption. Even more important is the need for public participation in the environment and development debate.

Environment and development must now be moved from policy and concept to action. The general public including civil society must be involved in the planning stages of policy and decision making in order to help anticipate and avoid and where necessary mitigate conflicts that may develop later. Socio-economic development should be harmonious with the protection of the environment as the main thrust of the concept of sustainable development is to keep choices open for future generations and this requires marked changes in lifestyles.

### **Excellencies and Distinguished Delegates**

Poverty and environmental degradation are the results of bad development choices. Asian and African countries must adopt wholesome development strategies that suit our needs as developing nations and which strategies must take environmental protection fully into account including the involvement of all stakeholders.

The 2002 World Summit on Sustainable Development held in Johannesburg, South Africa marked a subsequent significant milestone in the systematic integration of environment and development concerns. Since the 1972 Stockholm Conference on the Human Environment when the protection of the environment became an issue of international concern, there has been a

deep divide between developed and developing countries regarding the appropriate allocation of responsibility for environmental problems.

Integration and mainstreaming of the concept of sustainable development would, in my view, go a long way in mitigating the negative effects of these challenges. We therefore need to adopt robust policies, action plans and regulatory frameworks to consolidate and promote sustainable development for our two regions.

### **Excellencies and Distinguished Delegates**

In Kenya the process to integrate the concept of sustainable development has been slow but steady. Kenya's commitment to achieving sustainable development in accordance with the Principles of the Rio Declaration and Agenda 21 led to the adoption of the National Environment Action Plan (NEAP) in 1994 and the consequent Sessional Paper No.6 of 1999 on Environment and Development. In addition, the Kenyan Parliament enacted into law the Environmental Management and Co-ordination Act No.8 of 1999 which came into force on January 14<sup>th</sup> 2000.

This law fully incorporates the principle of sustainable development, the precautionary approach to development, the principle of public participation, the polluter-pays principle, the principles of intergenerational and intragenerational equity, the cultural and social principles traditionally applied by communities in Kenya in environmental management, the principle of access to information and justice and the principle of international cooperation.

The enactment of the Environmental Management and Co-ordination Act in Kenya saw a major turning point in national development priorities and activities. This law entitles every person in Kenya to a clean and healthy environment with a corresponding duty on every person in Kenya to safeguard and enhance the environment.

This entitlement to a clean and healthy environment combines the aspirations of society with the rights of the individual. In this context, any person in Kenya can bring a cause of action to the High Court of Kenya for redress if he/she alleges that his/her entitlement to a clean and healthy environment is being or is likely to be contravened.

## **Excellencies and Distinguished Delegates**

The Environmental Management and Coordination Act has also provided an elaborate legal and institutional framework with checks and balances for sound environment management in Kenya. This law established the National Environment Management Authority as the principal instrument of Government in the implementation of all environmental policies. Further, in order to promote environmental justice, the law also established the Public Complaints Committee as the investigative arm of the Authority to investigate any complaints or allegations of environmental degradation and the National Environment Tribunal which serves as a quick avenue to seek justice for environmental disputes.

The Authority is also mandated to ensure that development activities and projects in Kenya that may have a negative impact on the environment must undergo an Environmental Impact Assessment to ensure that those negative impacts are properly mitigated. The Authority has also been developing environmental standards, regulations and guidelines to ensure that Kenya's development activities take environmental protection fully into account.

## **Excellencies and Distinguished Delegates**

As I conclude, I wish to emphasize that a point has reached where the discussion is no longer simply about what sustainable development means but rather how sustainable development is to be implemented in practice. An optimal balance must be achieved between environmental protection and development. In addition, environmental protection, social and economic development, gender empowerment and the promotion of human and peoples' rights are among a range of factors that clearly have a role to play. The debate on these issues must be allowed to flourish.

We must continue to be creative in our proposals as to how international and national law can facilitate the promotion of sustainable development. This forum composed of the best legal minds from Asia and Africa can develop values and norms to shed more light on the theme “**Environmental Law and Sustainable Development**”.

With these few remarks, I now invite the Hon. Minister for Environment and Natural Resources of the Republic of Kenya to give his statement.

I thank you.

**SPEECH FOR THE HON. MINISTER FOR ENVIRONMENT AND  
NATURAL RESOURCES DURING THE 44<sup>TH</sup> SESSION OF THE  
ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION  
(AALCO), NAIROBI, 27<sup>TH</sup> JUNE TO 1<sup>ST</sup> July 2005**

His Excellency the Vice President, Deputy Director, UNEP, Secretary-General, AALCO, Attorneys General present, Honorable Ministers present, Members of the Diplomatic Corps, Representatives of International Organizations, Members of Observer Governments and Institutions, Distinguished Delegates, Ladies and Gentlemen:

I am delighted to be with you and share my thoughts on the theme of this session “Environmental Law and Sustainable Development” that is dear to the countries of the two regions.

**Ladies and Gentlemen,**

We recognize that conservation and protection of the environment is essential to our survival as a region. Sustainable development depends on complex and fragile ecosystems and requires the cooperation and participation of all stakeholders. The environmental problems that threaten sustainable development include urban degradation, deforestation, desertification, soil erosion and alien invasive species. These problems have aggravated the poverty situation in most countries in Africa and Asia, yet, ironically, affluence is also creating its own environmental problems as evidenced by ozone depletion due to use of ozone depleting substances. Furthermore, inappropriate legislation and planning is posing a potentially serious environmental problem since developmental needs are not always adequately matched to ecological concerns.

The major implementation constraints among us include lack of adequate resources and capacities which includes human, financial, technological and institutional. It is within this framework that I urge AALCO member states to marshal all efforts in ensuring that timely, proper and adequate discharge of obligations under the various Multilateral Environmental Agreements are met.

**Ladies and Gentlemen,**

In the area of Climate Change the entry into force the Kyoto Protocol is indeed a major step towards dealing with global warming. However, allow

me to point out the need to emphasize that the fulfillment of the current commitments under the UN Framework convention on climate change and its Kyoto Protocol remain a critical prerequisite to achieving these instruments objectives. For example the Article 4.1 (b) of the UNFCCC provides for measures aimed at facilitating adequate adaptation to climate change. Further Part 4 of the same Article provides that Annex 2 Parties shall assist developing parties that are particularly vulnerable to the effects of climate change in meeting costs of adaptation to those adverse effects. This is important in the light of recent Tsunami disaster. In this regard, we, AALCO members need to reiterate the fact that the primary responsibility for mitigating climate change alongside other unsustainable patterns of production and consumption lie with countries that contribute most of the emissions. There is therefore need to call upon those countries which are yet to accede to the climate change convention and its Kyoto Protocol to do so with immediate effect, while taking due recognition of the principles of common but differentiated responsibilities.

**Ladies and Gentlemen,**

Biodiversity provides the natural resource base for development in most member countries and is essential for sustaining livelihoods. Local communities draw their economic needs directly from natural resources and fragile ecological systems.

In recognition to the importance of biodiversity and commitment to the Convention on Biological Diversity, Kenya, like most other member states has formulated a National Biodiversity Strategy and Action Plan. However, its implementation has been constrained by inadequate resources, among others.

We recognize that the three components of the CBD – i.e. conservation; sustainable use and the fair and equitable sharing of benefits arising out of the use of genetic resources are mutually reinforcing. Time has therefore come for us to emphatically remind our development partners that all necessary steps must be taken for the full implementation of the Convention and its Cartagena Protocol on Biosafety.

**Ladies and Gentlemen,**

There is need for our development partners to support Africa and Asia in the following broad areas among others:-

- Implementation of their National Biodiversity Strategies and Action Plans;
- Development and implementation of effective mechanisms to regulate access to genetic resources and benefit sharing;
- To put in place the necessary legal framework to help resolve existing intricacies that obtains between environment and trade issues.
- Create awareness at all levels on the importance of biodiversity conservation, including the social, cultural and economic values of biodiversity and the potential of sustainable use of biodiversity in combating poverty; and
- Development of a legislation for regulating importation, handling and use of genetically modified organisms;

**Ladies and Gentlemen,**

In addition to the fore-going desertification is a major challenge from a sustainable development perspective in many of African and Asian countries.

In line with the Convention to Combat Desertification most countries have prepared National Action Plans to combat desertification.

However, Constraints to the successful implementation of the Convention include among others lack of financial resources, recourse use conflicts among local communities and capacities at all levels.

To combat desertification therefore, the international community must provide the necessary financial and technological support to the national sub-regional and regional strategies.

**Ladies and Gentlemen,**

For those of our countries endowed with a coastal line, there would be need to map them with the aim of identifying threats and challenges. In this respect I am informed that UNEP-CRID has entered into a partnership with ARENDAL which is a Norwegian company. The Partnership has developed tools for mapping the exclusive economic zones of territorial waters of countries with a coastal line. I therefore urge Africa and Asia to take advantage of these facilities.

**Ladies and Gentlemen,**

In conclusion, let me express my hope that this forum will develop concrete strategies and plans that member states can use to address the myriad environmental challenges facing them. I do recommend that AALCO undertake:

- To put in place the necessary legal framework to help resolve the existing intricacies that obtains between environment and trade issues. This need for the legal framework arises from the realization that more often than not, our development partners have fallen into the habit of using environmental conditionality as trade barriers to perpetrate unfair trade practices against developing countries.
- To come up with relevant legal framework to handle and manage legal issues relating to the emerging environmental conventions and protocols to promote harmonization and easier management.
- To assist in the building of legal capacity that will help developing countries to effectively negotiate and protect their interests within the current and emerging Multilateral Environmental Convention; and
- Considers making environment a standing agenda.

I wish you fruitful deliberations and successful conference and a good stay in Kenya.

I thank you all.



**Deputy Director, UNEP, Secretary General, AALCO, Attorneys General present, Honorable Ministers present, Members of the Diplomatic Corps, Representatives of International Organizations, Members of Observer Governments and Institutions, Distinguished Delegates**

**Ladies and Gentlemen:**

It is my distinct pleasure to deliver this keynote address to this auspicious and noble gathering of Asian and African Member States of the Asian-African Legal Consultative Organization during this special session on Environmental Law and Sustainable Development. I also recognize the presence of various categories of observers and representatives of international organizations duly accredited by AALCO.

I am informed that this is the third time that AALCO has devoted a special portion in its work programme to environmental matters. The first was during the 31<sup>st</sup> Session held in 1992 at Islamabad under the theme “Preparation of the United Nations Conference on Environment and Development”. The second was during the 38<sup>th</sup> Session in Accra, Ghana, in 1999, under the theme “Effective means of implementation, enforcement and dispute settlement in international environmental law.” This to me demonstrates the significance accorded to environmental matters by AALCO Member States, matters that are of topical and contemporary relevance to the international community today.

**Ladies and Gentlemen,**

Today’s special meeting on the environment under the theme “Environmental Law and Sustainable Development” offers yet another unique opportunity for us to advance our environmental agenda for the betterment of our livelihoods and general quality to life. This is well in with the declaration of the first ever South-South Summit held in Havana, Cuba, in the year 2000, which recognized the imperative need for a new global human order aimed at reversing the growing disparities between the rich and the poor.

The nexus between the environment and sustainable development becomes urgently poignant at this time and age that continues to witness immense developmental challenges across the developing world. The war on poverty

continues to find expression in projects and programmes that are potentially harmful to the general environment if not mitigated in a structured manner.

Indeed, if these developmental initiatives are grounded on policies that do not integrate the nexus between environmental protection and development, then our efforts are in vain. This was the ringing call of the World Summit on Sustainable Development held in Johannesburg, South Africa in 2002. Hence the relevance of environmental law for sustainable development.

Since the Stockholm Conference on Environment and Human Settlements in 1982, environmental issues took long in gaining momentum in many countries, Kenya included. However, since the Rio Earth Summit in 1992, environmental issues have gained growing significance in Kenya's national developmental agenda, and several action plans in the areas of policies, law and institutions have been developed. This is further reinforced by the fact that Nairobi is the Headquarters for the United Nations Environment Programme – the UNEP.

Only recently, as you are aware, one of our illustrious daughters, Hon. Prof. Wangari Maathai, Assistant Minister for Environment and Natural Resources, was awarded the Nobel Peace Prize for the year 2004. This award is not only to Kenya; it gives prominence in symbolic and real terms to Africa's environmental agenda and places it at the limelight of international attention. The award is a solid recognition of the linkage between environmental protection, sustainable development, good governance, democracy and women's rights.

### **Ladies and Gentlemen:**

My attention is drawn to this year's World Environment Day held on June 5, 2005 whose theme was **“Green Cities, Plan for the Planet”**. This theme highlights one of the greater challenges facing our countries in our time. An increasing proportion of people are now living in urban environments. Statistics indicate that one in every three urban dwellers live in a slum, and that by 2030, an estimated 60% of the world's population will live in urban areas, with most growth in this area being recorded in the developing world. This is the category in which most of us fall. Taking into account the fact that today, more than one billion people live in urban areas, these projections present serious food for thought.

Urbanization has always presented serious infrastructural challenges for developing countries, with incidences of poverty, pollution, disease, unemployment, crime, substance abuse being but a few of the negative manifestations. Living conditions in most of our cities are squalid for the most part, devoid of clean or safe water for domestic use, basic effective sanitation infrastructure, adequate shelter, and access to medical facilities, among many more.

This forum presents a unique platform for AALCO to canvass these challenges, and adopt resolutions to counter the threats they pose.

**Ladies and Gentlemen:**

We must at all times keep within view the core pillars of sustainable development, which as we know are economic, social and environment. These pillars, it is established, are mutually interdependent and mutually reinforcing. The Rio and Johannesburg aspirations and principles on sustainable development set noble goals for sustainable development. It is with painful reality that I note that most of our countries are in danger of not achieving the Millennium Development Goals by the set deadline of 2015. In particular, Goal One on eradication of extreme poverty and hunger, and Goal Seven on ensuring environmental sustainability respectively.

This is a challenge we need to come awake to, and the question I would pose to this august gathering is, what should AALCO do to help its Member States move closer to the realization of the Millennium Development Goals? We owe it to ourselves to meet our needs, and we owe it to future generations to preserve the environment for their needs.

**Ladies and Gentlemen:**

The law is central to sustainable development. It is it that catalyses and manages change and progress in societies, and for our agenda today, the law sits exalted at the center-stage. This is easily demonstrable: over the years, the world has adopted many multi-lateral agreements and action plans to address diverse emerging issues of environmental protection. These include the outcomes of the 1992 Rio Earth Summit, whose offshoots include the UN Convention on Biodiversity, the UN Framework Convention on Climate Change and the subsequent UN Convention to Combat Desertification, to name but a few. The recent entry into force of the Kyoto Protocol on

Climate Change further demonstrates the world's determination to address environmental challenges through international legal instruments.

I would appeal to Member States of AALCO who are not yet States Parties to these multilateral instruments to seriously and urgently consider acceding thereto. This is because it is only through international cooperation that we could reverse the clock on environmental degradation. Furthermore, it should be recalled that environmental problems know no boundaries. The problem of global warming illustrates this fact with clinical precision: what is done in one corner of the globe affects all of us at the end of the day. We must adopt and embrace the principle of multilateralism in dealing with these threats.

**Ladies and Gentlemen,**

Allow me to dwell for a moment on the global environmental governance process. There is no doubt that governance of the global environment has become challenging with the increasing complexity of the broad range of environmental issues. This development has given rise to a multiplicity of multilateral environmental agreements numbering over 400 in various forms, and it is obvious that the burden of implementation for poor countries is enormous, sometimes near overwhelming. This development has strengthened the cause for the establishment of a global, regional and national mechanism to streamline implementation.

As a country, and in light of these developments, we fully endorse the ongoing process of defining components of international environmental governance in accordance with the decision adopted at Cartagena during the 8<sup>th</sup> Special Session of the UNEP Governing Council/Global Ministerial Environment Forum. That decision called and still calls for the strengthening of UNEP financially and otherwise to enable it discharge its current mandate, rather than dissipating energies and resources in the creation of new institutions to discharge substantially the same mandate. To this end, I would urge all Member States of AALCO to join us in supporting and fully endorsing the goal of strengthening UNEP to facilitate a more vigorous pursuit of its technical mandate.

**Ladies and Gentlemen:**

On the second level, we would be failing if we did not emphasize enforcement mechanisms. For those Member States that are already States

Parties to these international instruments, the need to put in place national legislative frameworks and regulations is critical and urgent. International edicts are meaningless and ineffectual unless translated into law. I am aware that most of our jurisdictions do not apply international law directly in their national spheres, and domestication is a process that often takes inordinately long in our countries. We need to encourage ourselves to implement what we agree, for progeny may judge us harshly for being a talk-shop if we fail to put what we agree into daily practice back home.

**Ladies and Gentlemen:**

On another level, it should be interesting to you to note that later this year, Kenya shall be hosting the 7<sup>th</sup> Conference of Parties to the UN Convention to Combat Desertification. Furthermore, Kenya shall also host the 8<sup>th</sup> Conference of Parties to the Basel Convention on Transboundary Movement of Hazardous Waste and Their Disposal next year. It is my pleasure and honour to invite AALCO to attend and participate in these meetings, for they should offer useful opportunity for AALCO to better chart out solutions to address the problems unique to our two regions.

**Ladies and Gentlemen:**

I also note from your programme that you shall be addressing the sub-themes of the role of law, human rights, environmental justice, compliance with and enforcement of environmental law among other sub-themes. The correlation between the environment and these themes is obvious. In many of our jurisdictions, the entitlement of the right to clean and healthy environment has been guaranteed either in national constitutions or laws as justiciable human rights, and most jurisdictions have established elaborate legal systems and institutional frameworks to assure the enjoyment of these rights. For example, in Kenya, the Environmental Management and Coordination Act provides that **“every person in Kenya is entitled to a clean and healthy environment and has a duty to safeguard and enhance the environment.”**

We need to integrate in our approaches the commonly agreed principles of environmental sustainability, some of which are the precautionary principle, the principle of public participation, the polluter pays principle, the principle of access to information and justice, the principle of inter and intra generational equity, cultural and social principles traditionally applied by

our communities in environmental management together with the principle of cooperation to address respective environmental challenges in our region.

**In conclusion,**

**Ladies and Gentlemen:**

Allow me to express confidence in the eminence of representation at this conference, and to note that some of the best legal minds in our two regions are here. In addition, and for this special meeting. We have penalists who are environmental experts. It is my hope that you will deliberate and consider the various dynamic sub-themes in an interactive and lively exchange of ideas. Clear mechanisms that will ensure compliance with and implementation of environmental standards need to be developed,, and I shall personally look forward to your adopting specific implementable resolutions for that purpose. These resolutions should contain concrete strategies and recommendations to Member States on how to address the issues flagged above.

I wish you fruitful deliberations, a successful conference and a good stay in Kenya. I urge you to take time and enjoy some of the unique flora and fauna in this country that I am sure some of you have only read about in magazines or watched on the electronic media.

I thank you all.

## **Speech by Ambassador Yamada on Environmental Issues at AALCO Special Meeting.**

**Mr. President, Ladies and Gentlemen, Distinguished Delegates,**

It is indeed my great honor to speak to you on “Sustainable development, the role of law, human rights and environmental justice together with Prof. Njenga, where I have my pleasure of meeting after 11 years since Tokyo Meeting in 1994. I will first explain Japan’s basic views on environmental issues, and then look at the development of legal frameworks. After that, I will briefly mention importance of non-legal approach and then talk about Asian regional cooperation. Though I was asked by the Secretary-General to make presentation from Asian perspective, I am not capable to do so as \_\_\_ does not exist any unified perspective in Asia. I would rather speak from Japanese perspective and make some reference to Asian initiatives.

(Japan’s basic views on environmental issues)

First I would like to explain Japan’s basic views on environmental issues.

Globalization has accelerated and increased cross-boarder movement of people, goods and services, bringing about economic benefits. However, if we pursue materialistic richness and convenience, continue to consume energies without limit and exploit the nature; mountains, forests and rivers, it will no doubt result in serious destruction of environment at the global level; such as global warming, air pollution, forests degradation, destruction of the ecosystems and ozone layer destruction and economic development can not be sustained. Japan, in fact, experienced grave environmental pollution in the period of its high economic growth in the 1960s and 70s. If other countries are to follow the same path in their process of economic development their precious environment of the mother earth can not be maintained for the future generation. We should realize “sustainable economic and social development”, by preserving global environment through the effective use of limited resources.

Recognizing global environmental issues as a threat to the survival of human kind, Japan has proposed the idea of “global sharing” in which strategies, responsibilities, experiences and information should be all shared at the global level, and has called on the international community for solidarity to that end.

(Development of legal frameworks and tasks we are facing now)

Next I would like to touch upon the development of legal instruments after 1970s and talk about tasks we are now facing.

Before the 1970s, environmental issues were generally seen as local or almost domestic issues. But after the Stockholm Conference, environmental issues were gradually recognized as issues which affect all the human beings and the entire earth. Since then, the gravity of environmental issues and the importance of their early solution have been widely recognized in the international community and these issues have been integrated into the Agenda 21 at the UN Conference on Environment and Development and the Johannesburg Plan of Implementation at the World Summit on Sustainable Development.

Numerous specific legal instruments have been negotiated. The number of such legal instruments now amounts to several hundred, including global, regional and bilateral agreements. This specific agreement was forwarded in different form. There exists the Phenomenon which \_\_\_\_ calls \_\_\_\_ of international law. \_\_\_\_ of International Law itself is not necessary bad. Our task is to ensure the compliance of these international legal frameworks, having in mind the inter-linkage among them and also pursuing so-called “synergistic effects” among relevant actors. I believe that this aspect will be addressed in the afternoon of Session 3.

(Global Warming)

The Kyoto Protocol came into force in February this year 7 years after its adoption. Japan, as the host country of COP3 in Kyoto, continuously encouraged other countries to join the Protocol for its early entry-into-force. This question will be addressed also in the afternoon in Session IV. The greenhouse gas emissions reduction target of 6% below the 1990 level as our emissions in 2003 was 8% above the 1990 level, Japan must reduce 10% to \_\_\_\_ the target. Japan will make every effort to fulfill its obligation.

(Importance of non-legal approach)

While many international legal frameworks have been built, we might have focused too much on legalistic approach aiming at creation and implementation of legal obligations. Global environmental issues cannot be



effectively tackled without changing our way of life and thinking. The key word in this regard is “Think globally. Act locally”. Each of us must locally take voluntary initiatives recognizing collective impact of our individual actions on global environment.

Each society and State has its own culture, way of life and value. It is wrong to try to impose \_\_\_\_ to others. H.E. Ms. Wangari M\_\_\_\_, Kenyan \_\_\_\_\_ was in Japan last February to witness the ceremony of the coming into force of Kyoto Protocol. She came across with the Japanese Expression” Mothainai” and said that this is playing the key role in Japan for preservation of environment. The concept of the “Motharainai” is to avoid wasteful use. As you are well aware, Japan is the country scarce in natural resources and energy resources. To \_\_\_\_ nation under such \_\_\_\_ whichever the \_\_\_\_ precious and their wasteful use was not tolerated. This concept was deep rooted in every family. However, drastic economic \_\_\_\_ in 1960s and 70s \_\_\_\_ with it the consumption culture from the developed world in the West. For instance the people started bringing new \_\_\_\_, shoes and even cars and just throw away the half used ones. \_\_\_\_\_. Which we need to find \_\_\_\_\_ just disappeared. This change of life style accredited the destruction of environment. Now we are \_\_\_\_ look to the old concept of “Mothainai”.

(The 3R Initiative)

As an example of such non-legal approach based on the concept of “Mothainai”, I would like to refer to the “3R Initiative” proposed by Prime Minister Koizumi at the G8 Sea Island Summit in June 2004. The 3Rs Initiative aims at global promotion of the “3Rs, namely ‘reduce’, ‘reuse’ and ‘recycle’”. These 3Rs hold a key to building a society where sound material cycle can be maintained through the efficient use of resources and materials. This proposal was supported by the leaders of G8 states and was adopted as “the G8 Action Plan: Science and Technology for Sustainable Development: the 3Rs Action Plan and the Proceedings of Implementation.” This Action Plan suggests the following measures:

- (a) Promotion of the 3Rs,
- (b) Reduction of barriers to the international flow of goods and materials.
- (c) Cooperation on science and technology and
- (d) Cooperation with developing countries.

In accordance with the Action Plan, the Ministerial Conference on the 3R initiative was held in April 2005, hosted by the Ministry of Environment of Japan. We are earnestly hoping that, through this 3Rs initiative, greater awareness on the importance of saving resources and materials will be raised globally.

(Cooperation in Asia)

Lastly, let me briefly mention cooperation taking place in Asia.

It is indispensable to implement actions not only at the global level but also at regional level to combat global environmental issues. In Asia, environmental issues such as the increase of CO<sub>2</sub> emissions, acid rain, the sea pollution and the depletion of some fish stocks have been occurring along with the industrialization of countries in the region. We regret that the necessary measures against these problems have not yet been successfully taken in Asia. Since Asia is a region with expected high economic growth, environmental issues can be aggravated by the economic growth. Therefore, effective measures must be taken for the early solution of environmental issues.

Japan has been promoting cooperation for such measures in Asian region. In June 2004, “Asia Cooperation Dialogue – Dialogue on Environmental Education” was held in Tokyo, where we discussed various issues, including the cooperation and information sharing of various actors, training, monitoring and assessment. Also, “Asia Forest Partnership” was established at the Johannesburg Summit in August 2002, which promotes cooperation among Asian countries, donor countries and international organizations in combating illegal deforestation, prevention of forest fire and afforestation aiming at the promotion of sustainable forest management. Japan has taken an initiative to strengthen international measures against illegal deforestation through these forums.

In addition, Japan will put further efforts to transfer and spread technologies relating to combating global warming to developing countries, and will also improve the scientific, social and procedural capacity to tackle global warming.

Our efforts may cause serious conflict of interests among various countries. Asia is the region with vast variety. Every culture has its own merit and we should not impose any one \_\_\_\_\_ to other. In order to promote the common

good of international community, we must consider ourselves as global citizens. Asia has the largest population and the greatest potential. Therefore, we have heavy responsibility for the protection of global environment. Japan will take the same approach to the African countries. As a group of Asian and African countries, let us think globally and act locally and regionally for the future of our own planet.

## **Environmental Law and Sustainable Development – The Role of Law Human Rights and Environmental Justice**

### **44<sup>th</sup> Session of the Asian African legal Consultative Organization**

**Mr. President, Mr. Secretary General, Distinguished Delegates, Ladies and Gentlemen.**

For me it is a singular honour to be invited here, to participate in this important **“Special Meeting on Environmental Law”** during the 44<sup>th</sup> Session of the Asian African Legal Consultative Organization. This session is being held in Nairobi after a lapse of nearly sixteen years since the last session was held here in 1989. Let me therefore take this opportunity to extend to all the participants a most cordial welcome to Kenya and express the earnest hope that your deliberations here will be crowned with success, and you will all have a enjoyable, albeit, best stay in our country. As a former Secretary General of the Organization, it is with nostalgia that I participate in your deliberations. I am very impressed at the continued success and achievements of our Organization.

I also feel honoured to have been invited to participate at this session and to make a few remarks on **Sustainable Development, the Role of Law, Human Rights and Environmental Justice**. The presence here of the key-note speaker, Dr. Moody Awari in his statement Vice President of the Republic of Kenya a Minister for Home Affairs as well as H.E. Mr. Kal\_Musyoki, Minister for Environment berars testimony to the commitment of Kenya the issues of the preservation of the Environment.

If I may now turn briefly to the concept of sustainable development, it will be recalled that the World Commission on Environment and Development (WECD) – the Brundtland Commission, stressed that

“Sustainable development is development that meet, the needs of the present, without compromising the ability of future generations to meet their own needs (See “Our Common Future” 1987 p.43)

The Commission went on to emphasize that his concept contains two key elements;

- (i) the concept of “needs”, in particular the essential needs of the poor to which overriding priority should be given and

- (j) the ideal of limitation imposed by the state of technology and social organization on the environment ability to meet the present and future needs.

The UNEP Governing Council finally in its decision 15/2 of May 1989 refined this concept to read as follows:

“Sustainable development to read as follows that meets the need of the present without comprising the need of future generations to meet their own needs and does not imply in any way encroachment of material sovereignty” (emphasis added)

It is thus clear that the concept of sustainable development is central to the realization of the goals of environmental law. It is intrinsically linked to intergenerational equity, the need to ensure that activities and policies adopted in any generation do not compromise the ability of future generations to realize their own developmental ambitions. It also stresses the necessity to ensure to the extent possible, intergenerational equity, so that the least advantaged in society, both nationally and internationally, should have provisions made for their needs.

The concept does not contrast “growth” against “environment” but rather accepts that in some cases environmental protection and conservation can promote growth in the economy and stresses that the real issue is not “growth or no growth” but how growth is to be attained. Sustainable development therefore is geared towards harmonious development which values the well being of individuals, their freedom and self respect and stresses active co-operation, both nationally and internationally.

Sustainable development also embraces anticipatory approach to environmental issues, under which an attempt is made to determine the likely, nature and cost of environmental problems in advance of their occurrence, so that timely appropriate measures can be taken to prevent the impoverishment of future. This involves the balancing of competing interests, and in that context the role of the law can hardly be over-emphasized.

The experts group on the environmental law of the World Commission on Environmental protection and Sustainable Development, set down general principles with regard to the rights and obligations relating to environmental resources and interests as follows:-

1. There is human right to have an environment adequate to support life and well being.
2. Nations should adopt principles of intergenerational equity in the use of the environment and its natural resources.
3. There is a principle of conservation i.e. the management of the environment and its resources so as to give the greatest sustainable benefit to the current generation while maintaining the ability of the resource base to meet the needs of future generations.
4. The essential ecosystems and ecological process of the biosphere should be subject to conservation and the need to preserve biological biodiversity.
5. Nations should adopt adequate standards of environmental protection, and should monitor changes in the quality and use of environmental resources, publishing relevant data obtained.
6. Where an activity may result in significant impact on the environment or use of its resources that activity should
7. Those likely to be affect by the activities of the foregoing kind should be informed of the issue in good time and given access to any relevant administrative or judicial proceedings.
8. Nations should cooperate in promoting the concept of sustainable development and those nations which are more developed should assist those which are still developing.
9. Where natural resources traverse natural boundaries, they should be used by nations in a reasonable and equitable way, while nations should generally prevent environmental interferences from causing significant transboundary harm.
10. When nations allow, or themselves undertake, beneficial activities which are dangerous, they should take all reasonable precautionary measures to limit risk and provide compensation should there be substantial transboundary harm. Furthermore, compensation should be provided in respect of such harm where it arises from activities whose harmfulness was not appreciated when they took place.
11. Nations should apply standards in respect of transboundary interference and the use of environmental resources no less strict than those applied domestically.
12. There is a general obligation on nations to cooperate in respect of environmental problems, interference and use of natural resources which transcend national boundaries, and to pass relevant information concerning such matters to other concerned nations in timely fashion.

13. Where there is an existing potential transboundary environmental interference or use of environmental resources, concerned states should come together in good faith at an early stage, and similarly they should cooperate in monitoring and researching such issues, collaborating in setting appropriate standards.
14. Nations should develop contingency plans to deal with situations where transboundary interferences may arise, and where such an emergency eventuates they should warn each state concerned promptly and provide them with relevant information.
15. Where persons are affected by transboundary interference, or their use of an environmental resource is affected, equal access and treatment should be afforded them in any relevant administrative or judicial proceedings.
16. Nations should cease any activities which are in breach of international environmental obligations and should provide for compensation for harm caused and should also settle environmental disputes by peaceful means.

These provisions remain as valid today as when they were first promulgated. These principles have been reflected in numerous conventions both at international and regional levels, which we are discussing today as well as the principles adopted by the UNCED at the Rio Conference in 1992.

Mr. President,

Africa still remains basically rural with over eighty per cent of the population living and working in the rural areas with minimal modern facilities. They depend on the numerous rivers and lakes for them to drinking waters, and that of their livestock in its natural conditions. Consequently any activities which may jeopardise its portable quality will be catastrophic and hence for Africa, ensuring sustainable development is literally a matter of life and death. We cannot sustain any industrial development which results in significant pollution of our watercourse. Let, we have to engage in industrialization and all other forms of development. It is therefore necessary to obtain appropriate technologies and obtain assistance through international cooperation to ensure that any such developments activities are sustainable.

Africa is also faced with phenomenon population growth which has resulted in massive increase in population. The old, tried methods of sustainable agriculture such as shifting cultivation, slash and burn practices for opening

new fields are no longer possible. The population pressure have led to fragmentation of available agriculture holdings and extending cultivation to marginal lands, including forest reserves and river beds, resulting in deforestation and soil erosion and degradation. It is in this context that the authorities are often forced to adopt unpopular measures, to ensure sustainability of land use.

Another result of the population explosion is the exodus of people from rural areas to urban centers, where facilities are already over stretched, in search of employment and better living conditions today, African cities and towns are experiencing the highest growth in the world, resulting in mushrooming of slums and unplanned structures. The issue is how do you maintain sustainable growth in such circumstances.

Conducive environment is indeed a matter of human rights. Environmental conservation however cannot be realized without due regard for the human rights of those involved. Thus the proliferation of slums and other unplanned structures in urban areas contribute towards unacceptable unsustainable development, and any state concerned has a right to take measures, including the demolition of such structures for the sake of sustainable development. But such measures should only be taken after due notice to the inhabitants concerned, and after the provision of suitable alternatives.

Similarly, uncontrolled agricultural activities in forests and water catchment areas can only lead to unsustainable land use and cannot be tolerated. However, the human rights of those concerned should not be ignored as they may not have any viable alternatives. It is therefore necessary that before the requisite drastic measures are taken, consideration about the welfare of the individuals concerned and their human rights are carefully assessed and adequate period of notice is given to them to voluntarily evacuate. Consideration should also be given to suitable resettlement in deserving cases before forcible eviction.

It is not possible in my view, to achieve sustainable development for the future generations, through the wholesale suppression of the human rights of the current generation.



**INTERVENTION BY H.E. MINISTER OF JUSTICE HEAD OF  
DELEGATION OF THE SYRIAN ARAB REPUBLIC 44<sup>TH</sup> SESSION  
OF THE AALCO, 27/6 TO 1/7/2005 NAIROBI – KENYA**

**Wednesday 29<sup>th</sup> June 2005**

**Session2: Sustainable Development, the Role of Law, Human Rights  
and Environmental Justice.**

**Mr. President,**

**Ladies and Gentlemen,**

I want to add in brief, that hostility to environment and exhaustion of the limited natural resources is done – mostly – because of personal greediness or ignorance, or miscalculation, or may be because something else.

The deliberate torture for the purpose of displacement and occupation of others' lands is sometimes manifested by cutting trees of vast areas of land according to a premeditated and organized plan. This is considered a type of hostility to nature and confiscation of the right of the next generations to live on their land and to benefit from its natural resources.

The prevention of this kind of hostility over the environment and hindrance of sustainable development lies on International Organizations.

Asian African Legal Consultative Organization (AALCO) could effectively contribute in this regard.

Thank you.

Head of the Syrian Delegation  
Minister of Justice  
Judge Mohammad AlGhafri

**STATEMENT OF THE INDIAN DELEGATION AT THE 43<sup>RD</sup> SESSION OF THE ASIAN AFRICAN LEGAL CONSULTATIVE ORGANIZATION NAIROBI, 27<sup>TH</sup> JUNE – 1 JULY 2005, ON ENVIRONMENT AND SUSTAINABLE DEVELOPMENT**

**Mr. President, Excellencies, Ladies and Gentlemen,**

1. Let me at the outset take this opportunity to congratulate the Secretary General and the Secretariat of the Asian African Legal Consultative Organization for preparing an excellent background note titled AALCO/44/NAIROBI/2005/SD/S.11 on the topic “Environment and Sustainable Development”. We hope that this document would generate a valuable discussion on the diverse themes of the Special Meeting on Environment, namely (i) Concept of Sustainable Development, Role of Law, Human Rights and Environmental Justice; (ii) Compliance with and Enforcement of Environmental Law; and (iii) Entry into force of the Kyoto Protocol: Problems and Prospects.

2. With respect to the first theme, on “Concept of Sustainable Development, Role of Law, Human Rights and Environmental Justice”, it may be stated that the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992, clearly brought out the linkage between environmental and developmental issues. Apart from the adoption of two important treaties on climate change and biological diversity, the Conference adopted Agenda 21, a blueprint for sustainable development strategies. Ten years hence in 2002, the World Summit on Sustainable Development was held in Johannesburg which provided an excellent opportunity to the international community to review the implementation of Agenda 21.

3. The Summit adopted a political declaration called the Johannesburg Plan of Implementation (JPOI), wherein developing countries speaking in one voice through the Group of 77 and China were able to ensure that eradication of poverty and unsustainable patterns of consumption and production were given top priority and were also able to ensure that the Rio principle of “common but differentiated responsibilities” was not diluted. Further, it may be recalled that the work plan of the Commission of Sustainable Development (CSD) at its 11<sup>th</sup> session held in 2003, provided a central role to the JPOI, when a multiplayer programme of work from 2003-2017 was agreed upon. The international community must make serious

efforts to implement that this work plan agreed upon at the Johannesburg Summit

4. As regards the “Role of Law in Environmental Protection”, it may be stated that to date there has been a phenomenal growth in environmental law with over 3000 multilateral, regional and bilateral environmental treaties being adopted. Today international environmental laws regulate most of the global environmental issues such as ozone depletion, acid rain, global warming, climate change etc. While we realize that global environmental issues should not be viewed in a North-South context, we believe that the environment is matter of the world rich and poor, big and small. In our view combating these problems calls for international cooperation and a concerted multilateral approach.

5. We also believe that while undertaking commitments under the international environmental treaties, all efforts must be made to address the genuine concerns of developing countries. Bearing in mind that most the pollutants are emitted by the developed countries, it is their responsibility to combat pollution. If developing countries are to become equal partners is undertaking such pollution abatement measures then they must be provided necessary financial and technological resources.

6. With respect to viewing “Environment as a Human Right”, we believe that protection of the environment cannot be isolated from general issues of development. The concept of sustainable in our view must include needs of (health, nutrition, education and housing) and eradication of poverty. Eradication of poverty and improving the standards of living of people in the developing world, will surely lead to a cleaner and after environment. In my country, the Supreme Court of India has in a number of judgments interpreted ‘right to a clean environment’ as an essential component of the ‘right to life’ itself, wherein the latter is a fundamental right guaranteed in the Constitution.

7. The “Concept of Environmental Justice” is well documented in the Constitution of India and also the Environmental Protection Act, 1986. We believe that development strategies in pursuance of sustainable development are a matter of national decision making and for the benefit of all people living in our country.

8. On the second theme of the Special Meeting relating to “Compliance with and Enforcement of Environmental Law”, it is observed that

compliance/implementation of international legal obligations has been one of the foremost challenges in international law, especially in the field of environment. Despite setting out in many cases concrete obligations and duties for States, a lot of legal ground still needs to be covered in different sectors of environment. This is particularly so in establishing suitable international and national standards and deciding applicable and pragmatic procedures for implementation and enforcement of such standards.

9. The UNEP's Montevideo Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-first century identified "Effectiveness of Environmental Law", as one of the main programme areas. It may be noted that the effective implementation of international environmental law is inter alia dependent on: wider participation of (underdeveloped and developing) States in multilateral treaty negotiations: capacity building; prevention and mitigation of environmental damage; dispute settlement and avoidance; harmonization and coordination of laws: public participation and devising novel approaches to environmental law. We believe that for international regimes to be effectively and purposefully implemented, developed countries must fulfill their commitments of capacity building and transfer of resources to assist developing countries in meeting their international obligations.

10. With respect to the last theme, we believe that the entry into force of the Kyoto Protocol is just a good beginning wherein a legal framework for stabilization of greenhouse gases is put in place. However, the real challenge lies in fulfillment of the commitments by the industrialized (Annex-I) countries to reduce their emission in the 2008-2012 period by 5.2% compared to 1990 levels.

11. In this regard, the UN Convention on Climate Change and the Kyoto Protocol on the basis of substantive provisions on 'equity considerations' and the 'principle of common but differentiated responsibilities' place the responsibility upon developed States to provide adequate, new and additional funding and transfer of environmentally benign technologies to developing countries to assist them in fulfilling their future commitments or obligations.

12. While it may be a little too early to debate the climate change agenda beyond the first commitment period of 2012, we believe that Annex-I countries must show the way for a more effective adherence and implementation of the Kyoto Protocol.

13. As regards the Clean Development Mechanism, which would help developing countries undertake cooperation for greenhouse gas mitigation projects, it needs be stated that such projects must contribute significantly to their sustainable development needs and should not become simply another source of commercial profit as under a CDM project.

Mr. President, I thank you and look forward to a fruitful discussion in the Special Meeting.

## **Environment**

### **Mr. President,**

We are pleased to touch upon the issue of environment, a major concern to all member states. It is imperative to maintain the ecological balance and harmony between human beings and nature. Ongoing global warming of the climate is a reality, however, the Kyoto Protocol is a significant stride in the right direction. The coming into effect of the Protocol is a cause to celebrate, however, we regret that not all industrialized countries are onboard.

### **Mr. President,**

Myanmar places great importance on environmental issues and fully subscribes to the concept of sustainable development. The Myanmar government has adopted the Myanmar Agenda-21 and promulgated the national environmental policy to guide our efforts in achieving sustainable development. Myanmar Agenda 21 is a solid and concrete expression of the Government's Political Commitment to sustainable development. It is an inseparable part of the country's efforts to fulfill its commitments and obligations to the Earth Summit of 1992 held in Rio de Janeiro, Brazil.

Myanmar, in addition to establishing a National Commission for Environmental Affairs, has also established a high-level Committee on Nature Conservation to integrate environmental impact assessment procedures into the planning and formulation of economic development projects.

### **Mr. President,**

Myanmar is one of the few countries in the world which still maintains over 52% of its total land area under forest cover. This is due to sustainable forest management system and its reforestation efforts. But we are not resting on our laurels. As part of its sustainable forest policy, the Government with the objective of restoring the ecological balance, is ardently pursuing reforestation activities. A special 9-district dry zone greening project in central Myanmar was formulated and implemented since 1994, current coverage now extends to 13 districts. More than 109,300 hectares of forest plantations have been established and 0.45 million hectares of natural forest have been put under systematic protection. The Bago Yoma

(Bago Mountain range) is home and natural habitat of Myanmar's world renowned teak. A 5-year "Bago Yoma Greening Project (2004-05 to 2008-09)" will be implemented with the objective of restoring the ecological balance and productivity of Bago Yoma forest area. The project will also contribute largely to the protection of watersheds, ensure supply of water for agriculture and promote community forestry through participatory approaches.

**Mr. President,**

Myanmar is a state party to the Convention on Biological Diversity and Biosafety Protocol. It is home to more than 7,000 recorded plants, about 100 species of bamboos, 30 species of rattan and 800 species of orchids as well as about 1,000 bird species, nearly 300 mammal species and about 360 known species of reptiles. In collaboration with the Wildlife Conservation Society of New York, Myanmar has designated the Hukuang Valley totaling 8,418 square miles in the northwestern part of the country to become the largest designated tiger reserve in the World.

**Mr. President,**

The wealth of a nation is its people, its cultural heritage, its environment and its natural resources. The objective of Myanmar's environment policy is aimed at achieving harmony and balance between these through the integration of environmental considerations into the development process to enhance the quality of life of all its citizens. Every nation has the sovereign right to utilize its natural resources in accordance with its environmental policies; but great care must be taken not to exceed its jurisdiction or infringe upon the interests of other nations. It is the responsibility of the State and every citizen to preserve its natural resources in the interest of present and future generation. Environmental protection should always be the primary objective in seeking development.

**Mr. President,**

In conclusion, I wish to reiterate Myanmar's firm commitment to maintaining the global environment and cooperating with our friends from Africa and Asia in this aspect.

## **OVERVIEW**

- Why the current focus on compliance and enforcement of international environmental law (or MEAs)?
- Why MEAs take so long to be effectively implemented ?
- What are the benefits of implementation of international standards and norms?
- What are the commonly identified problems in the implementation and enforcement of treaties?
- What role has UNEP and its partners play to support countries in their efforts to implement and comply with treaties related to environment?
- What is the future focus by UNEP, in partnership with the Parties and secretariats, on implementation of MEAs?

## **WHY MEAs TAKE SO LONG TO BE EFFECTIVELY IMPLEMENTED?**

- Widespread view that environmental enforcement hinders competitiveness and hence a brake to economic development. May be widespread but misleading. Why?
- This does not take into account the fact that:
  - Properly designed environmental standards and regulations trigger innovations and, therefore, create market value
  - Adoption of standards is becoming necessary to remain competitive in a globalized economy.

## **WHAT ARE THE BENEFITS OF IMPLEMENTATION OF INTERNATIONAL ENVIRONMENTAL TREATIES?**

EU report in 2001 on costs and benefits analysis done for implementing its 300 directives in new member states though requires up to 120 billion Euros revealed more benefits than cost

- health benefits (reduction of illnesses)
- resource benefits (to agriculture, fisheries, forestry)
- wider economic benefits (tourism, investment attraction, reduction of primary material imports due to recycling and reuse)



Cost-benefit ratio is not only positive and should be considered by all decision makers but environmental compliance can equally be cost-effective of firm level.

### **WHY CURRENT FOCUS ON COMPLIANCE AND ENFORCEMENT OF INTERNATIONAL TREATIES?**

- Past decades saw rapid development of international environmental law through negotiations of MEAs.
- Some of the existing MEAs duplicate each other thus undermining the very measures intended to be curbed
- UNEP played a positive but also negative role. Why?
- Its focus then was on development of international law and not so much their implementation.
- Global attention thus shifted from development of new Instruments to Implementation of agreed International norms to foster their compliance and enforcement.

### **ANY OTHER IDENTIFIED PROBLEMS IN THE IMPLEMENTATION & ENFORCEMENT OF TREATIES?**

Lack of capacity

- limited financial, human, and technical resources
- lack of environmental awareness among decision-makers (i.e parliamentarians), among enforcement agents(i.e judges, prosecutors) and among citizens

Lack of intent because of

- fear of investors turning away from the country
- the private sector not willing to take risks
- environment being considered a secondary focus

Lack of transparency and public participation (closed related to the democratic situation of the country)

### **ANY REGIONAL EFFORTS MADE TO PROMOTE COMPLIANCE WITH TREATIES?**

Regional mechanisms developed to ensure compliance and enforcement of MEAs include:

- CARIBBEAN COUNTRIES – Guidelines for the Implementation of MEAs, 2000
- UNECE – Guidelines for strengthening compliance and implementation of MEAs, 2003
- OECD – Supported Newly Independent States to develop principles for environmental enforcement authorities, 2002
- Agreement on cooperative enforcement measures on illegal wildlife trade implementing CITES in Africa, 1994.

## **WHAT MEASURES ARE TAKEN BY THE TREATIES THEMSELVES OR SECRETARIATS?**

MEAs themselves and their secretariats are taking measures towards compliance and enforcement:

- Ozone Convention through its Montreal Protocol
- UNFCCC through its Kyoto Protocol
- CBD through its Biosafety Protocol
- CITES through its Guidelines on Compliance as well as national legislation programme
- Basel Convention through its Draft Guidelines.

## **UNEP's GUIDELINES ON COMPLIANCE WITH AND ENFORCEMENT OF MEAs**

The Guidelines are divided in two chapters:

- One on improving compliance, envisaging all phases of treaty negotiation, as well as measures to Implement the treaties nationally, and capacity-building with this objective.
- Another on **effective enforcement**, detailing measures to strengthen national enforcement capacities, judicial cooperation to combat environmental crime, as well as public participation.

## **MEANS DEVELOPED TO ENCOURAGE/ASSIST COUNTRIES TO COMPLY (1)**

Non-Compliance Vs. Compliance Procedures

- A response to the fact that lack of implementation usually comes from lack of capacity, not lack of intent. A new approach to understanding non-compliance
- An alternative to formal judicial dispute settlement procedures
- Opportunity for the parties to signal difficulties out of their own initiative, or
- MEAs Secretariat can detect them from the analysis of national reports
- For instance: The Montreal Protocol's mechanism

### **ANY ROLE PLAYED BY UNEP IN ENSURING COMPLIANCE AND ENFORCEMENT OF MEAs?**

Developed Guidelines on Compliance and Enforcement of MEAs adopted in 2002

- The Guidelines intends to assist all relevant stakeholders in enhancing compliance with MEAs. They provide a menu of solution for addressing shortcomings such as lack of national legislation, of financial resources, of capacity needs and assessments etc.

Developed a Manual on the Guidelines on Compliance with and Enforcement of MEAs

- The Manual provides a comprehensive guidance to parties or would-be parties to MEAs, through case studies, best practices, checklists.., giving concrete advice to foster implementation.

### **WHAT NEEDS TO BE CONSIDERED TO ENSURE EFFECTIVE IMPLEMENTATION OF MEAs?**

- Effective preparation for and participation in negotiations
- Assess domestic capabilities to comply with upcoming and existing
- Develop national implementation plan to comply and enforce MEAs
- Enact appropriate national legislation to enforce MEAs
- Use of economic instruments to promote compliance with MEAs
- Designate or establish national focal point(s) and build their capacity
- Encourage national coordination between and among stakeholder
- Strengthen national institutional frameworks
- Strengthen international cooperation and coordination

- Encourage and involve public access to information, administrative and judicial proceedings, public awareness/education and public participation in MEAs negotiation and enforcement.
- Allocate adequate resources to support implementation of MEAs

## **MEANS DEVELOPED TO ENCOURAGE/ASSIST COUNTRIES TO COMPLY (2)**

Sunshine methods:

- Heavily relies on “naming and shaming” violators of international environmental law – MEAs
- Based on transparency and communication of information on national compliance and implementation measures
- Largely, treaties rely on self-reporting by States
- On-site monitoring by independent experts though rare (e.g. treaties on nuclear weapons)
- NGO and civil society participation is necessary

## **MEANS DEVELOPED TO ENCOURAGE/ASSIST COUNTRIES TO COMPLY (3)**

Positive incentives, such as, creation of funds:

- Most recent conventions include a funding mechanism to support projects on and technological adoption measures, as well as capacity building.
- Their establishment is becoming a prerequisite for developing countries before they join treaties.
- Various financial mechanisms exists, including trust funds, GEF funds, or bilateral funds
- The Montreal Protocol’s Multilateral Environment Fund is proving to be the most successful in this scheme.

## **UNEP”s FOCUS TOWARDS IMPLEMENTATION OF COMMON CROSS – CUTTING ISSUES**

- MEAs secretariats pays attention to their specific MEAs as mandated by their respective conventions or their COPs – UNFCCC, CBD, CITES and Basel Convention

- Regional bodies promotes compliance of those MEAs of Importance to their regions – UNECE and OECD.
- UNEP through its Guidelines on Compliance with and Enforcement of MEAs covers all types of environmental conventions be it bilateral, regional, sub-regional or global as well as both current and future MEAs.
- While MEAs secretariats concentraters on issues based crossing-cutting matters of specific MEAs, UNEP through its Guidelines focuses on all MEAs combined.

## **TO CONCLUDE**

For many Parties, to fulfill the appropriate requirements and prescriptions for effective compliance with and enforcement of international environmental law is a challenge. A number of them still grapple with those requirements in order to fulfill their international obligations on compliance and enforcement as well as attain and maintain sustainable future.

With your commitment as our partner and collaborator in this endeavour I am sure, we will succeed. Thank you.

## **MEANS DEVELOPED TO ENCOURAGE/ASSIST COUNTRIES TO COMPLY (4)**

Negative incentives:

- Sanctions
  - Trade sanctions, eg, sometimes used in CITES
  - Loss of privileges eg., technical assistance and funding
- Judicial dispute settlement procedures when diplomatic means have failed although hardly used in MEAs so far
- Neither of these have proved efficient, and they are seldom used to address environmental non-compliance (example of the ICJ Chamber for Environmental Matters' not utilized as yet)

## **HOW DOES UNEP FACILITATE AND PROMOTES COMPLIANCE WITH MEAs?**

In collaboration with MEAs secretariats and partners focus on common cross cutting MEA issues: Eg.

- development of national legislation implementing a cluster of MEAs (eg. biodiversity and/or chemical related MEAs);
- strengthening capacities through training of customs officials on implementation of MEAs with trade related provisions;
- Development of modules and training of other enforcement officials, such as, negotiators, judges/magistrates, prosecutors, NGOs, decisions makers etc. on negotiations and implementation
- Syergies in MEAs implementation of national level;
- Development of indicators on compliance and enforcement;
- Harmonization of information management and reporting of cluster of MEAs, such as, biodiversity related treaties; and
- Issue-based modules for cluster of biodiversity related MEAs.

# ENHANCING COMPLIANCE WITH AND ENFORCEMENT OF NATIONAL ENVIRONMENTAL LAWS

**PRESENTED BY: PROF. RATEMO W. MICHIEKA.**

**Ladies and Gentlemen,**

It gives me great pleasure to be a participant of this forty-fourth session of the Asian-African legal Consultative Organization and to present this paper on Enhancing Compliance with and Enforcement of National Environmental Laws.

## **A. Introduction**

The National Environment Management Authority (NEMA) is a statutory body created under Section 7f of the Environment Management and Co-ordination Act No.8 of 1999 (EMCA). The primary objective and purpose of NEMA is to exercise general supervision and co-ordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment. Although NEMA did become operational in the year 2001, a time lag was experienced due to “teething problems”, its presence and impact began to be recognized from the later part of 2003.

EMCA is the principal Statute that establishes the legal and institutional framework for environmental management in Kenya. It empowers NEMA to implement the provisions set out therein, in fulfillment of the entitlement given to all persons in Kenya, namely a **“clean and healthy environment”**.

Enforcement and compliance are pivotal to the success of any environmental legal regime. So many jurisdictions, statutes become dead letters for lack of effective enforcement and compliance procedures.

The International Network for Environmental Compliance and Enforcement (INECE) has described this as the “enforcement gap”. In the Co-Chair final Conference Statement of INECE the concept of the enforcement gap was captured in paragraph seven (7) where it was stated that:

“Despite a growing body of environmental law at the national and international level – more than 300 international and regional agreements have been developed in the thirty years since the

1972 Stockholm conference – measures of environmental quality show continuing degradation across a broad spectrum, with serious consequences for ecosystems and public health, as well as the rule of law and good governance. A telling example is the substantial mortality from lack of clean water, lack of clean air, and other forms of industrial pollution.”

The responsibility to seal this gap is key if national environmental laws are to impact positively on the environment as is their objective. The mandate to address this gap was further emphasized at the Rio Earth Summit, Agenda 21, which requires inter alia that states develop their enforcement and compliance capacity in order to make this environmental legislation more effective.

## **B. Structural Organization**

Enforcement and compliance is coordinated and supervised from the NEMA headquarters situate in Nairobi. To assist in the fulfillment of the responsibilities of NEMA, there are operational Provincial and District offices of NEMA set up across the country in accordance with the EMCA. They are headed by Provincial Directors of Environment (PDEs) and the District Environment Officers (DEOs) respectively.

EMCA provides several procedures and processes that NEMA has utilized to ensure that individuals and corporations carry out their activities in line with the environmental standards so far established.

Distinguished guests let me highlight some of these procedures and processes:

### **1. THE ENVIRONMENTAL IMPACT ASSESSMENT (EIAs) AND ENVIRONMENTAL AUDITS (EAs).**

EIAs and EAs have, in the experience of NEMA, been the procedures that have been most utilized to enforce and ensure compliance with the national environmental laws. Section 58 of EMCA requires that any person who intends to finance, commence, proceed with, carry out, execute or conduct the projects set out in the Second Schedule to the Act, must make an application to the Authority for an EIA license in accordance with the Environmental (Impact Assessment and Audit) Regulations, 2003.



The EIA license is mandatory and cannot be superceded by any other form of authorization. The Authority reviews EIA study reports before making the decision to grant or refuse to grant the EIA licenses. Further the Authority may attach conditions to the licenses granted to ensure complete compliance with national environmental laws and standards, as well as to facilitate sustainable development and sound environmental management.

To date, the Authority has received and reviewed two hundred and six (206) EIA study reports, four hundred (400) project reports and four thousand and fifty (4050) environmental audit reports. Each day new reports continue to be filed and assessed by the Authority.

Although the figures are impressive, there are some sectors that the Authority is still struggling to capture within its ambit, particularly unplanned developments carried out on small scale. There remains a lot to be done in building capacity in terms of sensitizing the entire populace on their duty to undertake these environmental assessments as well as the benefits thereof.

## **2. INSPECTION**

In its endeavours towards the realization of a clean and healthy environment for all, the Authority recognizes the need to “monitor” the operations of licensed facilities. Inspectors appointed by the Authority are empowered to enter and inspect specified facilities, examine documents, take samples, seize any matter believed to have been used in the commission of an offence, amongst other powers in order to monitor compliance with environmental standards and adherence to the terms and conditions of the licenses that are granted by the Authority.

The reports that are filed by the inspectors form a valuable database that is used as a starting point for orders that are issued to remedy situations and activities that are conducted in contravention of the environmental standards.

### **3. ENVIRONMENTAL RESTORATION ORDERS, CONSERVATION ORDERS AND ENVIRONMENTAL EASEMENTS**

These orders are provided for under Part IX of EMCA and are a valuable tool harnessed by the Authority to enforce environmental laws and standards.

The environment restoration orders are issued against a person and may:

- Require persons to restore the environment to its state prior to the undertaking of the action which is subject to the order; or
- Prohibit persons from taking any action likely to harm the environment
- Require persons to pay compensation to the persons upon whom damage is occasioned as a result of the harmful action undertaken; and
- Impose a levy on the defaulter as a reasonable estimate of the costs incurred by a person duly authorized to restore the environment, otherwise known as the “polluter pays” principle.

Courts can also grant environmental easements and environmental conservation orders. These facilitate the conservation and enhancement of the environment by imposition of one or more obligations in respect of the use of land. A person or a group of persons may file an application for such an easement to operate against the use of certain land.

### **4. ENVIRONMENTAL OFFENCES**

Enforcement of environmental laws is greatly assisted where the said laws clearly set out the acts that amount to contravention of the laws. Part XII of EMCA does define what acts amount to offences under the Act and prescribes the corresponding responsibility thereof.

The offences relate to inspection, EIAs, records, standards, hazardous wastes, hazardous materials, chemicals and radioactive substances, pollution, environmental restoration orders, easements and conservation orders amongst others.

Environmental Inspectors appointed by the Authority in consultation with the office of the Attorney General, have prosecutorial powers in such

matters. This ensures that the prosecution is conducted by persons well versed in environmental laws.

## **5. DEVELOPMENT OF SUBSIDIARY LEGISLATION**

The EMCA is framework legislation on environmental management. One of the major challenges of the Authority in ensuring enforcement and compliance has been the development of subsidiary legislation for effective implementation of the provisions of EMCA. Enforcement and compliance cannot be satisfactorily achieved until there are clear set minimum standards against which to measure performance.

NEMA has finalized and submitted the following guidelines and regulations for gazettelement:

- Waste Management Regulations;
- Water quality Regulations;
- Wetlands, River Banks, Lake Shores and Sea Shore Management;
- Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing Regulations;
- Environmental Management and Co-ordination (Ozone Depleting Substances) Regulations;

The Standards and Enforcement Review Committee (SERC) created by EMCA has been pivotal in the promulgation of these draft Regulations. The Committee has, through cooperation with various government ministries, departments, parastatals and other stakeholders, been able to develop standards that are comprehensive and properly suited to the realities in Kenya.

## **6. CONFLICT RESOLUTION**

Enforcement and compliance will be better achieved where there is machinery or institutional organs in place that can ensure that parties do carry out their activities in accordance with the environmental standards.

Under EMCA the Public Complaints Committee (PCC) is established as a committee of the Authority with the powers to investigate any allegations or complaints against any person including the Authority, in relation to the condition of the environment in Kenya. The PCC makes a report of its

findings, recommendations relative to the complaint to the National Environment Council (NEC) for further action.

EMCA further provides for the establishment of the National Environment Tribunal (NET) as the organ to hear appeals from persons aggrieved by any decision of the Authority. Such decisions may include:

- A refusal to grant a licence; or
- To the transfer of a licence under EMCA;
- The imposition of any condition or restriction on a licence;
- Revocation, suspension or variation of a licence; and
- The imposition of an environmental restoration order or an environmental improvement order by the Authority.

NET plays a critical role in enforcement and compliance, since it has jurisdiction to confirm, set aside or vary the order or decision in question, exercised by the Authority in the proceedings in connection with the appeal and make such orders as it may deem just.

Until recently no appeals had been filed with the Tribunal. However, this year alone has seen the filing of a number of appeals, which undoubtedly will set precedent on key issues relating to the Authority's regulatory powers with respect to environmental management.

### **C. RAISING OF PUBLIC AWARENESS**

The Authority appreciates that in order for the people to comply with environmental standards they must be made fully aware of them. In light of this, NEMA has undertaken several projects aimed at creating public awareness and education on national environmental laws and compliance with same.

NEMA publishes a quarterly magazine available for free called "NEMA News", so far there have been about seven issues of this magazine. The magazine highlights current issues in the arena of environmental law and policy both locally and internationally and contains educational material on environmental topics.

Pamphlets on NEMA, the EIA and EA processes and procedures setting out the underlying concepts and operationalisation of each are, readily available at the Authority's headquarters and district offices.

The Authority is also required under EMCA to compile, publish and distribute the annual State of Environment Report. This report gives a detailed account of vital indicators of the environment such as climate, population, air and water quality and pollution levels in general amongst others. So far, NEMA has finalized two such reports for 2003 and 2004 respectively. These reports are required to be tabled before Parliament for discussion and adoption.

The Authority also encourages the media to play a significant role in reporting on environmental issues. The Authority has sponsored the environmental-media awards. As a result, there has been an evident increase in the number of environment-related articles in the print and electronic media, which is pivotal in educating the Kenyan people about the importance of sound environmental management.

In addition, the Authority has actively participated in environment-related celebrations such as the National Tree-Planting Day, the World Environment Day, and the World Day to Combat Desertification. NEMA has used these as platforms to educate and sensitize the citizenry on the national environmental laws and the importance of compliance therewith.

The Authority continues to conduct “barazas”, public hearings and workshops for specific groups. These programmes to promote awareness, although noble have been limited in terms of the numbers that we have been able to reach due to constraints in financial resources, infrastructure and hostility from individuals who are pro-development with little or no regard to the principles of sustainable development and sound environmental management.

#### **D. CHALLENGES FACED BY NEMA**

In the discharge of our functions, NEMA is faced with a number of challenges, which must be overcome before the environmental management legal regime is deemed successful. The biggest challenge faced by NEMA is that currently NEMA’s operations are curtailed by the lack of adequate funding. Every succeeding financial year, NEMA receives reduced financing from the Exchequer. This limits the expanse of our outreach programmes, efficiency of processing applications due to understaffing, undertaking of restoration of the environment and general policing. It is our

prayer that the Government will see the important role that NEMA plays and reflect this in the allocation of funds in future budgets.

The other challenge faced by NEMA is the “hostility” experienced, particularly from individuals or corporations, which are pro-development. In a few cases NEMA is viewed as an impediment towards development.

We appreciate that we can overcome the “problems” that NEMA currently faces if the people are empowered with knowledge. I have outlined the steps we have taken so far in this regard. However, a lot remains to be done in order to beef up the capacity building efforts particularly in the rural areas where small-scale projects are prominent.

NEMA recently rolled out a syllabus for environmental impact assessment to be used in all institutions offering such training, so as to ensure consistency in the knowledge disseminated in the market.

## **E. CONCLUSION**

NEMA has so far and in the circumstances made tremendous and commendable steps towards realization of enforcement and compliance of national environmental laws effective. There, however, remains a lot to be done to ensure effective compliance, in particular the Authority’s ability to reach the entire populace, including the small-scale enterprises and the remote parts of the country.

In the urban centers, the challenge is to achieve a mental shift from a negative attitude to a positive one with regard to compliance, so that individuals can begin to see that the protection and conservation of the environment is for their own benefit and that of future generations.

As we conclude our 44<sup>th</sup> Session, let us all consider our unique global positioning, and use the South-South linkage and safeguard our enviable mega-biodiversity. The laws you enact in your individual countries could be emulated across the South-South divide.

Thank you.

## **ENTRY INTO FORCE OF THE KYOTO PROTOCOL PROSPECTS AND CHALLENGES FOR DEVELOPING COUNTRIES**

### **PRESENTATION BY SETH OSAFO, SENIOR LEGAL ADVISER UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE.**

A few years ago during the negotiations leading to the adoption of the Climate Change Convention 1992, one of the delegates made a statement to the effect that “if climate change will enable us to grow oranges in Siberia then so be it”. This statement drew a lot of laughter from some of the delegates, but if the same statement were made today, it will not be a laughing matter as the real effects of climate change have become more obvious than before. People in some areas may benefit from Climate Change, but many more will struggle to cope. Developing countries will suffer more than others, as lack of resources makes such countries vulnerable to adversity or emergencies on any major scale. It is well known that people in developing countries have contributed only a small proportion of the total global greenhouse gas emissions. In a recent statement Mr. Rajendra Pachuri, Chairman of the Intergovernmental Panel on Climate Change Scientific panel of more than 2000 scientists stated that “Consensus is very, very strong and compelling that we are on a warming trend”. The impact of global warming is already being felt all over the world, and mostly by the world’s poorest. Food production, water supplies, public health, and peoples livelihoods are being damaged and undermined. Global warming threatens to undermine human progress and efforts by the international community towards bridging the development gap between the north and the south.

To stop Global warming from getting out of control, the international community negotiated the United Nations Convention on Climate Change (UNFCCC) which was adopted in 1992. This was followed by the adoption of the Kyoto Protocol in 1997. The Kyoto Protocol entered into force in February this year, almost eight years after adoption. As of last week the Protocol has 150 Parties. The Protocol supplements and strengthens the Convention, providing a framework for remedial and precautionary action to tackle adverse effects of climate change. The protocol imposes more concrete and legally binding emission reduction targets on more than 30 industrialized countries. The United States and Australia are not bound by such targets because they have decided not to ratify the Protocol. Meeting

the emission targets of the Kyoto Protocol will be quite a challenge to the developed countries that have ratified the Protocol.

What are some of the challenges that developing countries face with the entry into force of the Protocol:

Most of the countries represented at this meeting have already ratified the Kyoto Protocol and have signaled their willingness to contribute to the global efforts to address climate change. The current and historical greenhouse gas emissions of rich, industrial countries have grown over the years. Developing countries are least responsible for climate change and yet due to their vulnerability are most affected most by the consequences. Rich countries have an obligation to take the lead in meeting their commitments towards climate change mitigation and adaptation and to bear an equitable burden of the associated costs. Developing countries do not have specific reduction targets under the protocol. The Protocol pays special attention to the needs of developing countries, with emphasis on the specific needs of Least Developed Countries and of countries that are particularly vulnerable either to the adverse impacts of climate change or the side effects of response measures. The Protocol commits the industrialized countries to strive to reduce emissions so as to help minimize adverse impacts on developing countries.

The entry into force of the protocol has opened a new chapter in the international cooperation to address climate change. But many challenges still remain, so the international community must build on this momentum, closely monitor what is happening and learn from the experience, that may differ from region to region and from country to country. Tackling climate change requires a shift of national development policies to take account of climate objectives. Energy conservation measures need to be taken seriously and transportation ought to be made more efficient to conserve energy. There is also an urgent need for the developed countries to make every effort to transfer existing climate – friendly and new technologies to developing countries for development and facilitate technology transfer to less developed countries. Considerable investment will be needed in energy infrastructure in the coming decades in many developing countries to meet the basic needs for development. This will provide a huge opportunity for promoting climate-friendly energy sources that will enable developing countries to leap frog the phase of intense fossil fuel dependent industrialization that other countries have gone through. In so doing, this type of development will put a minimal burden on the global climate.



Since 1991, grants worth US \$ 1.6 billion have been provided from the Global Environment Facility Trust Fund which is the financial mechanism for the Convention and now for the Protocol for action on climate change in developing countries. 3 per cent of this total was used to fund the preparation of national communications of non Annex I Parties. Another 7.4 billion was injected into co-financing from bilateral agencies, recipient countries and the private sector making a total of US \$ 9 billion. As part of the decisions adopted at Marrakech, Morocco in 2001, the Conference of the Parties advised the Global Environment Facility to expand the scope of activities eligible for funding such as work on adaptation and capacity building. Three new funds were established at Marrakesh to assist developing countries with the implementation of the Convention and the Protocol. All three funds are to be managed by the GEF.

**Special Climate Change Fund:** The fund complements other funding mechanisms and exists to finance projects relating to capacity building, adaptation, technology transfer, climate change mitigation and economic diversification for countries highly dependent on income from fossil fuels.

**Least Developed Countries Fund:** Established to support a special work programme to assist LDCs.

**Adaptation Fund:** This is a fund established under the Kyoto Protocol to finance adaptation projects and programmes in developing countries, and support capacity building activities. The adaptation fund will be funded from an adaptation levy on CDM projects. In addition, developed countries can make contributions to it.

Several developed countries at COP 6 in Bonn declared their intention to contribute US \$ 410 million a year in extra funding for developing countries by 2005 with this level to be reviewed in 2008.

The Kyoto Protocol broke new grounds with the establishment of three innovative mechanisms, i.e. the Clean Development Mechanism, Joint Implementation and emissions trading designed to boost the cost effectiveness of climate change mitigation by opening ways for parties to cut emissions or enhance carbon sinks more cheaply abroad than at home. Of the three mechanisms established under the Kyoto Protocol, the one that is of major interest to developing countries is the Clean Development Mechanism, a system to support sustainable development projects in

developing countries which generate credits that can be used by developed industrialized countries to meet their greenhouse gas emission reduction targets. According to independent estimates, the CDM is thought to have an investment potential of some US \$ 14 billion in the period up to 2012 – if a post 2012 value can be assured. The institutions to manage CDM have been set up at the national and international level. At the national level, 75 designated national authorities are now in place with 60 of them in developing countries. At the international level, the CDM Executive Board and its panel on accreditation and Methodologies are at the heart of the system. The CDM is fully operational. Seventeen projects have required registration, nine of which have been registered. Some 100 projects have undergone the validation process by operational entities, and some 250 potential projects are being considered in the outside world.

In the process of adapting to climate change, the international community has seen an increase in the attention and urgency devoted to adaptation to climate change impacts, such as rises in mean temperatures and associated impacts on agriculture, shifts in seasons and an increasing frequency of extreme weather events, notably floods, droughts and tropical storms. This is not surprising, considering the fact that economic losses associated with these catastrophic events have risen sharply in recent decades from an average of 4 billion USD in the 1950s to 40 billion USD per year in 1992. The adoption of the Buenos Aires programme of work on adaptation and response measures at the last session of the Conference of the Parties held in December 2004 in Buenos Aires, Argentina is another important step in international cooperation on this important issue. Adaptation is a global issue, but has greater relevance for developing countries, as they are likely to be the hardest hit by the adverse effects of climate change. It is obvious that further international cooperation is needed, and therefore adaptation will likely be part of future climate change agreements.

Effectively addressing the climate change challenge is a major global task in which both developed and developing countries must be engaged. It requires vision and courage from leaders and decision makers. Success is crucial to ensure that climate change impacts do not endanger the achievements of the Millennium Development Goals. The urgency of the challenge and the global nature of its causes and impacts require an aggressive multilateral response. Building on the areas of mutual interest, successful experiences and common understanding, rather than focusing on the existing differences in national circumstances and positions, may lead the way forward. But involvement of Governments alone is not enough.

Active engagement of business, civil society and the general public in the process and in implementation is essential. There are challenges, but also many attractive opportunities and benefits and I hope and trust that our countries will take advantage of the opportunities presented through the implementation of the Kyoto Protocol to enhance national development goals and to advance the quality of life for our peoples, particularly, the poor and weal who are the most vulnerable to the adverse impact of Climate Change.

## **SESSION II ENFORCEMENT AND COMPLIANCE WITH ENVIRONMENTAL LAW**

We have 2 speakers 1<sup>st</sup> is Elizabeth Maruma from UNEP who will be speaking on the topic of ‘compliance with and enforcement of international environmental law’ and another speaker is Prof. Ratemo. W.Michieka, Director General of NEMA of Govt. of Kenya is speaking to the enhancing compliance with and enforcement of national environmental laws’. So we are going to have two perspectives, one national and another international. Just to give you a very brief presume/biodata to these two speakers. Elizabeth Maruma is a lawyer is a diplomat with an under graduate degree in law and also a masters degree and a post graduate diploma in international relations and diplomacy. She has worked with the Tanzanian Ministry of Foreign Affairs at the International Cooperation as Legal Advisor for the Tanzanians for various international and national law issues. She was part time law lecturer in Public International Law is conducted diplomacy courses at the center for foreign relations and diplomacy in Tanzania. She has worked with UNEP for the decade focusing generally on all environmental law issues and in particular on development of international both hard law and soft law as well as technical assistance and support to developing countries. As I have said I should be speaking on the international perspective of this topic.

One second speaker Prof. Ratemo W.Michieka is the Director General of National Environment Management Authority (NEMA) and as you all know it has been the responsibility of ensuring every person in Kenya is entitled to a clean and healthy environment. Prof. Ratemo Michieka holds a Doctorate

in Wheat Science from the University of and has been the Chairman of dept of Crop Science in the University of Nairobi. Prof. Michieka was Vice Chancellor of the \_\_\_\_University agriculture technology which is center of excellence in agriculture, engineering literature and life sciences. Prof. Michieka has held several positions both in private and public sectors as Chairman and board members of various status. He is one only in the order of academic and education policy divisions in Kenya as well as the east African Region. He has edited several books, journals and a sharing job performance in the Govt. State Commission of EBS \_\_\_\_\_. So we will telling credentials I am sure you gentlemen and distinguished participants that you are going to have an engaging afternoon. And so without wasting anytime May I call upon Mr. President to take over – from me. Thank you.

President: I thank the Solicitor General for every introducing the topic of discussion this afternoon and also the eminent speakers who are going to present the paper. Just for one small details the detail is that Ms. Elizabeth Maruma took a law degree from the University of Walslaw. The detail is he forgot that the President of the 42<sup>nd</sup> Session of AALCO also got his Bachelor's degree from University of Walslaw. May I call Elizabeth Maruma to make her presentation.

Ms. Elizabeth Marema : Thank you very much Mr. President with your permission I present my paper as I sent.

Good afternoon ladies and gentlemen it is my pleasure to be here with you this afternoon and I am here because I am being requested to share with you some you some view points and what UNEP has been doing in this topic of

compliances and enforcement of international environmental law. You recall our discussion this morning particularly after the presentation of the two persons whom we heard during the discussion on the topic of enforcement and implementation of environmental law by a number of delegates at that time – indicating that the topic is not rule and is practical matter and hence is important and hence the choice by this special meeting on environmental law and sustainable development will spend some time to focus both at what is happening at international level and at what is happening at national level. I would like to address my presentation by responding, asking a number of questions and I hope at the end of 15-20 minutes I would respond to the questions which one asked in response /overview of the topic of compliance with enforcement of international environmental law.

Just to begin with I will use the words international environmental law or international multilateral agreement or international multilateral treaties. So if I use them it all means the same international environmental agreements, law or treaties. In the 1st instance I would like to look on is why this focus on compliance and enforcement of international environmental or MEA. Why we say implementation of international Environmental Law take longer than development of those laws. What are the benefits of the implementation compliance and enforcement of the international standards and norms on environment. What are the problems that have been identified which number of authorities are quibbling with as far as implementation and enforcement of international treaties is concerned. And what role has the United Nations Environmental Programme as well as its partners play and support the countries or the parties and in their efforts to implementation and

enforcement of treaties related to environment. And lastly I will be looking at what is the future focus by UNEP in partnership with the countries with the Secretariat as far as implementation of environmental law are concerned.

So to begin with the 1st one, why are we currently focusing on the issue of compliance and enforcement of inter environmental treaties why today why not in last 10 years or 20 years? My Deputy Executive Director noted in his morning's in his statement that there are several international treaties which are related to environment which exists today. Their number is not even certain or clear. Put the number between 200 to 300, 500 and even as much as 700. So how many international treaties exist today we don't know. But the problem remain there are just one too many but there. These in bilateral level, regional level international level. And since environment became a subject particularly after 1972 with the Stockholm Conference. The international Community held focus its attention in to the development of international environmental law through the negotiation of various environmental development agreements which exist today. Of course a number of these agreements were negotiated and adopted even before the famous conference in 1972. We also know that some or a number of these MEAs which exist today some of them duplicate each other complete each other compliment each others in some cases this duplicate and conflict each other undermining the very measures that the international community intended to deal with the negotiations specific multilateral environmental agreements. We are also saying that although UNEP is playing a positive role in the development of international treaties, it also played a negative role and why am I saying so? It played a negative role in the sense that of the 30 years of its existence their focus has been working with govts with

countries towards the development of international treaties related to environment. At the time the focus has not been so much on implementation of the treaties which has been developed or has been existing. However the global or international community now has drawn to our attention to not just UNEP but to UNEP partners to the Govt. to you and me with regard to the MEAs which I am addressing for which the International concern has been focusing on their development needs also are to be implemented and it is one role to ensure that they are effectively implemented. And so that is the change that we are seeing now where by although new treaties relating to development still continues to be under threaten but hand in hand issues of compliance, enforcement and implementation are considered. Ist for the MEAs which are currently under negotiations, for the once that are being negotiated in future, and for the existing once what their implementation means. Today at the national level or regional level. So why are we saying that MEAs take so long to be implemented. I think one part is clear a number of international treaties we had today, the negotiation period look lesser or less period with an exception of a few like the law of the Sea Convention which took about 10 years. However when it comes to implementation, implementation we can not give a specific period, that give 10 years or give 5 years or 20 years we can say a particular treaty has been effectively implemented or enforced. Implementation is a continuous process and even if we reach an optimum point where by we say that yes a particular treaty has been effectively implemented what it means is that effectiveness has to be maintained. Because the moment it is not maintained we go back to again future date for discussion of the issue of enforcement and implementation. So implementation is a continuous process we can not give a period to say exactly as to how long a particular MEA is



implemented. So the wide spread view that the environmental enforcement \_\_\_\_ competitiveness and therefore that others consider that environmental compliance may end up in to hindering economic development. I will ask myself one and would like to use of all of us or some of us even read a daily national news paper of this country. Yesterday there was an article which has a title Environment Rules Hurting us. A friend says and if I may just quote 2 paragraphs of yesterday's news paper which will exactly out say the friend who as arguing the way our State as it is written in the paper will exactly agree with the statement that environmental compliance or enforcement might hinder economic development. And the article says a cross section of investors say regulation by National Environment Management Authority. I am sorry their Executive Director is here have caused a cost of business in Kenya. Investors who include building, engineers, manufactures, horticulture producers wants the National Environmental Management Authority i.e. NEMA to review its rules for \_\_\_\_ of industry. And it gives an example, Fresh Producers Exporters Association said that their requirement by NEMA are cutting on their margin of Horticulture producers and it went on to giving an example how environmental impact assessment processing procedure, environmental monitoring and auditing delays or cuts in to the margins of the private sector. And what we are saying is that such a statement does not take into account the fact that properly designed environmental standards and regulations would in each of us trigger innovation and creates market value and if I may give specific examples in this regard in California for instance the success of air emissions reduction industries was a direct consequence of States setting stringent environmental standards. In Sweden for instance, domination of cellulose pulp processing industry is clearly due to extremely

efficient production machinery developed by national industries to meet the countries high air, water and waste standards. Lets take another e.g. Poland, which we also know has intensive cultivation of flowers in small areas contaminating soil and ground water with pesticides, herbicides and fertilizers. However due to increasing regulations on the issue the flower industry responded by putting in to place a closed loop system with flowers growing in reused and circulating water. And the need for chemical substances was subsequently reduced, product quality was improved, through more precise monitoring and handling cost. And these examples can go on and on if I may go on to give another example of European Union. European Union did a cost benefit analysis on environmental compliance at a time when they are discussing the issue of accepting the new to member states which joined the European Union last year. And in that the conclusion of that study also began with such a statement where by with regard to the view that environmental compliance might hinder development. What the EU study found out. EU has over 300 directives regulations which actually will require a 120 million Euros for the new members States to implement however the benefit in terms of health economic development resource benefit in terms of in forestry agriculture and fisheries economic benefits in attracting investments reducing import of primary materials to recycling and reuse, tourism development the finding that the benefits far much out weigh their cost of over 120 million Euros for the new countries to implement the EU directives.

And what we are telling the private sector is that probably there are problems which they are not been able to they do not understand or not been able to identify or they do not yet understand what are the benefits of

environmental compliance is concerned. Because we all know when there is pollution what it means to human health and environment around. But then of course for the private sector it is the question of profit and profit margin at the cost of human health. And what we are saying is that we need to also deal with problems of compliance and enforcement of treaties in related to environment. We now see number of countries the issue of lack of capacity inadequate capacity might be an issue which needs to be considered. Issues of limited financial, human and technical resources, inadequate environment awareness among our decision makes, we now heard some of our decision makers here but what is the role of each and every decision makers be it a parliamentarians , be it a judge, a prosecutor the themselves, the private sector, the NGO as far as environmental enforcement or compliance is concerned. For instance when we talk with the parliamentarians it is our role to create awareness for the parliamentarians so that they are about to use environment as their campaign weapon. The parliamentarians are the once who play a key role in the development of environmental legislations at national level. They are the one who in all the bills which is presented to parliament the attorney general who is with us, they have to be debated by the parliament, they have to be pre-decided by parliamentarians before they finally adopt them. But the process does not end these we still need parliamentarians to take this law back to their community to the local community what does it mean. As far as that law to the local community which or to his/her constituency's I don't want to talk much as I have Prof.Michieka hopefully will deal with those issues. We have the judges with us. The judges deal with the cases related to environment be it on implementation of treaty or enforcement of a national legislation. We also know that today in a no of countries a no. of our judges at the time they went

to the law school environment as a subject was not yet emerged/introduced to the universities and I think His Excellency \_\_\_\_\_ might correct me, in the University of Islam in 1960's environment was a subject. But we today we have to tell them that they have to help us in the subject of environmental protection. But they can not help us unless we can empower them. It is our role to empower them. So that when we are in the court we are not looking at environment as a criminal offence. We need to look at environment in order to promote compliance through its protection and what are these mechanism to promote compliance are the issues which as far as enforcement of international treaties would also like the judiciary to help us on. There is an issue of lack of intent and this is where the investors fear and end up turning away from the issues of environmental compliance. The private sector is not willing to take a risk but this is the time we are urging them the risks they are taking might be more beneficial than the profit margin they are looking at. In an experience in a no. of countries show that the financial crimes specialized in equity and insurance reduce risks and increase opportunities by paying close attention to the environmental performance of their friends. \_\_\_\_\_ with good environmental effort are usually those which have enforced the toughest norms and have lower accident rates judicial proceedings with their neighbouring communities are regulated. These are studies which have been done and proved completely otherwise. And in our countries, Africa, Asia our private sector need to look at the risks as against the benefits in the long run even to their own financial sector or private sector is the case may be. So what are their benefits of implementation of international norms or international environmental treaties. I have already dealt giving the e.g. of European Union so I don't need to repeat that I can only conclude on this aspect that the cost benefit

ratio is not only positive and should not only be considered by decision makers but environmental compliance can equally be cost effective at different level. So at regional level what efforts have been taken to promote compliance with the international treaties related to environment. A no. of mechanisms are currently under way not just international level, not just global level but also regional level and just to give you few examples the Caribbean Countries have 5 years ago have developed and adopted guidelines for implementation of international law treaties related to environment. The Economic Commission for Europe based on their global guidelines developed and under the auspicious of UNEP have also developed guidelines for strengthening compliance and implementation of Multilateral Environmental Agreements. The Organization of European Countries OECD have been supporting the newly independent countries to develop principles of developmental enforcement authorities. An event in this continent is itself help the Lusaka Agreement on Co-operative enforcement directed at Trade in Fauna and Flora in 1994. It adopted a regional agreement enforcing CITES and this is the Convention on International Trade in Endangered Species or \_\_\_\_ in wild Flora and Fauna. And it implement CITES in the continent in Africa. So these are some of the regional efforts on the table facilitating the member states in the implementation of our international treaties. And what are the measures taken by the treaties themselves or the secretariats of the various treaties to promote compliance with their specific environmental treaties. The MEAs themselves and the secretariats have been taking measures towards compliance and enforcement. I think all of us here know the Ozone Convention on Substances that deplete the ozone layer has through its Montreal protocol a mechanism for promotion of the Ozone Convention and

its Protocol. The Climate Change Convention through its Kyoto Protocol is equally is developing its compliance mechanism to promote implementation of climate change convention, I need not talk in detail on this topic because we have a discussion on this topic. The Convention on biological diversity through its bio-safety protocol is equally also doing same, CITES have been developing guidelines for compliance, they have also been having their programme on national legislation waiting with the parties to implement the convention, and the Basel Convention is equally developing guidelines to promote compliance with that Convention. That is the efforts by themselves or the Secretariats. At global level what has UNEP done or what role has UNEP played in the compliance and enforcement of Multilateral \_\_\_\_\_ Agreement.

In 1992 with govts UNEP developed guidelines compliance and enforcement of MEAs. It is this book let, enough copies of it each one of you will have copies by tomorrow morning. These guidelines were developed between 1999's were adopted by UNEP governing Council in Feb. 2002. The guidelines intend to assist all stake holders be it parties to the MEAs, the future parties to the MEAs, the MEA Secretariats, the other international regional bodies all those who are involved in one or the other in enhancing with MEAs, the guidelines provide a menu, solutions or menu of solutions for providing short comings such as the lack of national legislation or financial resources, capacity building needs. It is a tool the guidelines it is not an international treaty we can say it is a soft law, it is a tool, it gives a check list more or less a remainder to the parties what we need to think as far as implementation or fulfilling obligations to a particular group of multilateral environmental agreements. With that guidelines UNEP has

developed a manual or guidelines on compliance with enforcement of multilateral environmental agreements. The Manual provides a comprehensive guidance to the parties to all the parties to MEAs through the specific case studies, best practices, check list and trying to give concrete advice intended to further foster implementation and enforcement of international environmental agreements. The manual is still in its draft form but well advanced draft form. It has been tested through a series of about 8 regional workshops in all the developing continents of this globe. We finished the last one last month and, we are now in the process of completely revising the manual taking in to account all the comments we are about to receive during the 8 workshop particularly the case studies the checklist, the examples, the experiences put together before it is finalized and distributed for later in the year. The guidelines themselves are divided into two chapters. One chapter deals with compliance and basically compliance is that it remains again negotiators of various MEAs what they need to bear in mind, how they can prepare themselves from the time before they leave their capitals to go for negotiations, how they would behave during the negotiations to ensure effective participation and what happens after negotiation and after a particular treaty is adopted and when a country has opted to become a party to a particular treaty. So again Chapter I provides that checklist basically reminding the delegations how do we prepare ourselves, what position are we going to take in negotiations of particular issue. What are our areas of compromise. We continue to be strict, are we flexible, are we not, what support are we getting from the capital, what is our policy on these issues, if the negotiation is going towards requirements which we will need to change our policy are we ready to do that and if it will indulge in changing our policy, how do we do it. How do we involve the

stake holders at international levels. All these issues are dealt with under Ist Chapter of the guidelines dealing with compliance and compliance here being taken basically at international level. How do you comply with international obligations and also the negotiation process.

The 2<sup>nd</sup> Chapter deals with effective enforcement. This basically details national measures or actions to be taken at national levels to strengthen national enforcement capacity the stakeholders to be involved how to be involved consultations to be held at national level, all those and I am sure Prof. Michika will deal with some of those aspect so I will not go into detail. So what needs to be considered to ensure effective implementation of international environmental law. The guidelines are listed the addresses and numbers of these measure or needs. Here I have summarized only a few but all the details are in the guidelines itself. As I said Chapter I deals with compliance effective preparation and participation in negotiations, it also deals with assessing domestic capabilities to be able to comply with an upcoming or an existing one. It talks of developing national implementation plans for implementation of MEA, the need to enact appropriate legislation to enforce an MEA, use of an economic instruments to promote compliance with MEAs, the need to establish national focal points for implementation of MEAs, a encourages national co-ordination and collaboration and also strengthening co-operation and co-ordination, involvement stakeholders, public access to information, judicial administrative proceedings, education, public participation in the negotiation in the implementation and enforcement of MEAs and of course the issue of which is difficult which is the allocation of adequate resources for the implementation of the MEAs. The MEAs themselves have also with in there own MEAs developed



mechanisms to encourage and promote or assist countries to be able to comply. I mentioned what MEAs the Secretariat in MEAs themselves have been dealing with and this is the issue compliance and non-compliance procedures, the word non-compliance procedures, the word non-compliance has been used. But in the recent times the word non-compliance is not favoured by many countries. They are right, because in the past non-compliance was taken to be punishment a country a party willfully not fulfilling its obligation under the MEA. But we realized that that is not true. Countries decide to get in to an MEA with all good intentions but reasons beyond their control at time make it difficult for the countries to be able to effectively implement a particular MEA and that why the recent MEAs have introduced the concept of compliance procedures to main mechanisms to assist the parties to be able to comply with the obligations and other MEAs. Both going in to details atleast such procedures may have involved technical assistance to the parties to be able to comply provisions of funds to the countries for the parties to be able to comply and of good example here is the Montreal Protocol Mechanism where it has a Montreal fund to help the countries to be able to comply. There is also been what is called a sanction method basically to mean naming and sharing violators of international environmental treaties and this is where the role of NGOs and private sector has become a key in terms of permitting them to participate in meetings and giving them permission or allowing them to play a added or better role to play than they are just observers and offer them to give experiences or examples of course within the limitations given by each MEA or COP.

So I will not go equally into the detail about that but those are some of the mechanisms used to encourage parties to assist with compliance. Questions

of positive incentives, creation of funds, their global environmental funds has been its funds to assist to also undertake measures for implementation of various MEAs. I have already mentioned the Montreal Protocol Mechanism of Fund and of course other specific MEAs also have specific funds within their MEA as trust funds to help the countries. There are negative incentives in unfortunately in some of the MEAs Trade sanctions have been used for instance under CITES. Laws of privileges have at times been used to also more or less putting a little pressure of on the countries to comply. All MEAs will look like they have provision for dispute settlement mechanisms. Negotiation, mediation but the judicial aspect although it is in all MEAs or all international treaties it is a mechanism which is hardly been used. It has been hardly used because of the impact or read as seen with the compliance procedure mechanisms where mechanism to assist and help the countries to be able to comply through capacity building, through technical assistance and through provision of funds.

And as far as implementation of treaties is concerned and where the parties are failing or not being able to comply is not taken in the negative sense but it is taken in a positive sense. The intentions are there, reasons beyond their control might need a different mechanism and that is the compliance UNEP's focus towards this implementation of MEAs without avoiding inter-pacing in to the mind of the MEAs mandate given by the MEAs themselves or by COP has been focusing daily with cross cutting issues. And cross cutting issues we here mean the issues that are common to a number of MEAs as opposed to one MEA. We are leaving each specific MEA to be the focus of each MEA and COP but where there are common issues common to number of MEAs then that's where UNEP works with MEA

Secretariat to add value in that respect to give a few examples for instance level is expected to play role as far as implementation of CITES convention, Basel Convention, CBD Convention, Montreal Protocol Convention and the like.

So we have a number of MEAs all of which at the national level they need to work with the same individual a custom officer. So what we have been doing is to help joint training programmes working together with a 4-5 MEAs Secretariats to train the same stake holder, the customs official. The same we apply when it comes to training or empowering the parliamentarians, empowering the judiciary all matters of capacity building, training instead of each Secretariat dealing with its own environmental agreements then we collaborate, work together and hope in this may we will be able to create synergies and inter linkages among the international treaties is concerned.

We have been working with countries to develop national legislation implementing a cluster of MEAs, biodiversity related MEAs, chemical related, waste management related MEAs instead of having 5 national legislation implementing 5 related MEAs we are developing one harmonized national legislation intended to implement a cluster of MEAs. And this has become more so favoured by small island developing states. We know the challenges these small island states are facing both on terms of size and population. And with the population to several national legislation to implement a number of MEAs would be quite a challenge. We have been developing indicators on compliance and enforcement of MEAs and these are being tested in a number of countries again to be able to look at MEAs in

a clustering way. We have been working with countries with regards to harmonization of information management and reporting on a cluster based cluster of MEAs and particularly the biodiversity related. And a number of these cross cutting issues have been the focused and the UNEP has been focusing to conclude.

For effective compliance with and enforcement of international environmental law is a challenge. A number of them still grapple with those requirements in order to fulfill their international obligation on compliance and enforcement as well as to be able to attain maintain sustainable future. However with your commitment as our partner and collaborator in this endeavour as believe we will succeed. Thank you very much.

I thank Elizebeth Marume who has given a very comprehensive paper on this topic which we can hardly do justice on if we have between 200-700 international treaties and if the poor customs officer have to deal with so many on environmental law alone so many different laws and clusters and so on but we are happy that atleast UNEP is now coping up with guidelines of compliance and enforcement of MEAs. In my pleasure Now I call up on Prof. Ratemo. W. Michieka, Director General of National Environmental Management Agency.

**President:** Thank you Prof. Rakmo Michieka for an excellent presentation as a Kenyan I am presently surprised as to how much of \_\_\_\_ in a very short time I don't even know that 4050 environmental law impact auditors very surprised.

With that we had two excellent presentations I think it is time for tea. But let me make time for contributions. We have very shut eyes to put them down Indonesia, I take this opportunity to call delegate of Indonesia to make a presentation.

Thank you Mr. President,

Human activities are having an increasing impact on the integrity of complex natural eco-system that provide essential support for human health and economic activities. An eco-system approach to the integrated managements of land, water and living resources promotes the conservation and sustainable use of resources, based on an astounding of the interactions between the elements eco-system including human activities.

Developing countries have right to demand greater support from wealthy nations in their effort to \_\_\_\_ support their natural resources and property to promote sustainable human development. The US European countries have bigger share in the global economy and have accumulated wealth by divesting their own environment and those of the developing world they have colonized. The rich also consume a disproportionate amount of the worlds resources and our diverse pollutants. It is perfectly logical therefore that they be expected to pay more self for the global loss.

It is rightful to call on all countries and all development partners to make this key issues subject of genuine international co-ordination and concrete action plan show that some solutions can be found to solve the problems that affect as all.

Mr. President, this morning Prof. Yamada from Japan made a good receipt to one of my question, the problem of law enforcement. My country of Indonesia at present face two problems i.e. the illegal logging and illegal fishing. These two different acts are one of the methods of depleting of natural resources particularly the developing countries. And then Prof. Yamada made a receipt when he said well we may call for change the life style in this respect against this illegal fishing and illegal logging I would like to propose a very short change of life style. Do not import fish illegally caught, do not eat fish illegally caught and then do not import log illegally but do not use furniture made of illegal logging. This is the receipt I think today we can use to solve some of our problem. I thank you Mr. President.

President,

The thank the distinguished delegate from Indonesia, you have made a prescription do not import, eat or use. Now the challenges that one has to is how to identify the timber which is illegally loped the fish that is illegally fished.

India

Thank you Mr. President, and the Secretariat Let me at the outset congratulate the Secretary General of AALCO as for preparing an excellent background note number AALCO/44-Nairobi-SD-S.11 on the topic environment and sustainable development. We hope this document would develop valuable discussion on the diverse themes in the Special Meeting on Environment (1) concept of sustainable development, rule of law, human rights and environmental justice (2) compliance with and enforcement of environmental law and thirdly entry in to force of the Kyoto Protocol problems and prospects.

1. With respect to the ist theme with regard to the concept of sustainable development rule of law, human right and environmental justice. It may be acted that UN conference on environment and development held in Rio clearly brought out the linkage between environment and development issues apart from two important treaties on climate change biological diversity the conference adopted agenda 21 a blue print on sustainable development strategies. With respect to political declaration called JPOI, UNESCO plan of action, the international community must make serious efforts to implement this work plan to ensure top priority for eradication of poverty and sustainable patterns for consumption and production. As regards role of law and environmental protection there has been phenomenal growth in environmental laws regulating most of the global and environmental issues such as ozone depletion acid rain, global warming, climate change etc. In order to compact this problems international co-operation and multilateral approach is required. Bearing in mind that most

of the pollutants are emitted by the developed countries it is their responsibility to combat pollution.

With respect to viewing environment as human rights. Protection of environment can not be isolated from general issues of development. The Supreme Court of India has in a number of judgments interpreted right to a clean environment as an essential component of the right to life guarantee under the constitution.

With regard to concept of environment justice. We believe that development of strategies in pursuance of sustainable development are of national decision making process for the benefit of the people in the country.

On the 2<sup>nd</sup> theme of compliance with and enforcement of environmental law, a lot of legal grounds needs to be covered in different sectors of the environment particularly in establishing suitable international and national standards.

With reference to effectiveness of environmental law, we believe that for international regions to be effectively, purposefully implemented, developed countries must fulfill their commitments of capacity building and transfer of resources to assist developing countries in meeting their international commitments and obligations.

In the context of Kyoto Protocol the real challenge lies in the fulfillment of the commitment by industrialized, countries to reduce their emissions in the period 2008-2012 by 5.2% compared to 199- levels. As also



to provide educate new and additional fundings and transfer of requisite technologies to developing countries to assist them in fulfilling their future obligations.

As regards clean development mechanism any, such projects meant for developing countries under the co-operation for green house gas mitigation must contribute significantly in their sustainable development needs and should not become simply another source of commercial benefit.

Thank you Mr. President.

President: I thank the distinguished consultative of India and with that I think we stand adjourned for this particular session a very very important session on the issue of enforcement and like the morning session. I think it calls for AALCO and UNEP to organize more workshops in different regions for the clear problems that are concerned with and see how they can be dealt with particularly when it comes to the issue of enforcement.

We shall only adjourn for 15 minutes. We resume at 4.15 for session no.4.

Master of the Ceremony

The 1st speaker is Mr. Seth Osafo who is a senior legal advisor of United Nations Framework on Convention on Climate Change (UNFCCC) and he will lead us on the problems and prospects of developing countries.

And Mr. Seth Osafo like I said is a senior legal advisor at the Secretariat of UN Framework on Convention on Climate Change UNFCCC and was involved in the drafting and negotiation of the both the Convention and the Kyoto Protocol. Before UNFCCC Secretariat Mr. Osafo was with the UNEP as the Chief of the National Legislations registrations environmental law branch. He also worked in the Govt. of Vietnam as Assistant editor of Govt. Las reports. As editor solicitor General protection at the Environmental Council.

Mr. Seth Osafo \_\_\_\_\_ to sufficiently enough for us to proceed with the input.

Another speaker to speak about prospect for developing countries is Patricia \_\_\_\_\_ with the chair of the private law at the department of Nairobi and Patricia is a law sociology teacher based in Nairobi, she studied law in the University of Nairobi, University of Warwick, University of Zimbawai and pursued her doctoral studies at Stedford law school at stedford University. She is currently a senior lecturer in law in Secretary of law in University of Nairobi, and an advocate in the High Court Kenya. She has also taught International Environmental law at the University of Texas, the member of the IUCM Commission on environmental law a board member of the advocates commission for environment at the environment high court Ugovia, and women and law in east Africa. She has been consultant for many international agencies and national agencies including the World Bank, UNEP, WIPO also Govt. of Kenya. She has published widely in the areas of international law, environmental law women's right and property rights. Having such interest in public international law environment and

natural resources law and policy, human rights, women's rights, intellectual property right by a technology policy, by law and economic law. With this kind of personalities leading us in this discussions. Mr. President lead this endearour I hand over to the President to lead us and I invite him to speak. Thank you.

President: thank you Mr. \_\_\_\_\_ the Master of the ceremonies for the properly introducing the topic for this session 4 and also for amply introducing the presenters. I may just wish to add that this afternoon's session shows that AALCO is increasingly becoming \_\_\_\_\_ concerns in to account as we noticed in session No.3 we had \_\_\_\_\_ lady and gentlemen. Problems and prospects what developing countries for Kyoto Protocol.

Thank you Mr. Chairman, Mr. President, Secretary General of AALCO distinguished delegates and observers. I have been asked executive secretary, the Secretariat of the United Nations Framework Convention on Climate Change \_\_\_\_\_ to extend for all her service gratitude for the invitation extended to the Secretariat to participate in the environmental law and sustainable development.

Mr. President Climate change and global warming are environmental problems that require concerted global action. We are reminded this morning that environmental problems have no respect for national boundaries. Climate change is a classical example of an environmental problem that cuts across national boundaries. It is a problem for the whole planet one and only planet that we have and inhabit.

Mr. President climate change has been high on the international environmental agenda for the past 3 decades or more. In view of all statements and views we had this morning from his Excellency the Vice – President of Kenya, Minister of Environment and Dy. Executive Director of UNEP emphasized Climate Change is one of the major challenges facing one plant today. The G-8 has Climate Change in its agenda for next week in Sportland.

I thank Mr. Seth Osafo very comprehensive and for a detailed presentation. I now call upon Dr. Patricia Kameri – Mbote, Chair, Private Law, to make a presentation.

Mr. President, S-4, Master of Ceremony distinguished participants Observers and Ladies and Gentlemen. I just like to start where Mr. Osafo has left because essentially and actually Elizabeth and Machicho left essentially looking into the entry into force of the Kyoto Protocol and the kind of prospects and challenges that a country like Kenya has \_\_\_\_ and faces has to be taken within a broader context of multilateral environmental agreements.

\_\_\_\_ ly, you could not look at environmental law in a country without looking into the norms that are coming from a broader international framework and which then find expression in the domestic framework and my presentation has 6 key points. First one being main introduction, I will see not to repeat what Mr. Osafo has talked about and then I will look at what legal responses there have been to climate change and then the clean development mechanism into sharp focus looking at the kind of

opportunities that it conveys to developing countries in the form of keys prospects and then challenges and just give a kind of word of conclusion.

When Mr. Osafo spoke, he talked about the kind of vulnerability that the developing countries have performed as a consequence of climate change and essentially the effects includes increases in temperatures whole issue of loss of biodiversity the drying up of waterpools, as well as increased land degradation. All these are problems that a country like Kenya is experiencing - so - by whatever name we call climate change this is something that we line in with and the experience in a day to day \_\_\_ in a country where only one-third of the land is arable and the population is growing, the whole question of land degradation and the kind of impact these are to environmental resources by \_\_\_ changing climate is something that people live with and have to counted with and this \_\_\_ a perception that has been long held that climate change is really a problem of developed countries and of course one of the agreement given here is that African countries, including Kenya and other developing countries --- are --- minimum contributions to GHG emissions. They really ought not worry about climate change. But as Mr. Osafo there are people that are most valuable is the people are the developing area. So in essence you might well say that \_\_\_\_\_ because even through you contribute imminently to climate change you will suffer probably more then the people who contributed most to it and the developing countries are adding the issue of climate change you will suffer probably more than the people that contributed more do it and developing countries are addressing the issue of C.C. within a context where they are also looking out for eco growth opportunities and that I think is the point of entry where you tell a developing country that you have to put in

place mechanisms not just to abate C.C. but in any area that you are dealing with \_\_\_\_ resources. The agreement essentially is why should we not use our resources to develop where that is all what we have. And where then in getting developing country, to participate would have to look at meeting of mind between those countries objectives for eco. Growth and environmental objectives and some of these would be bound in the realm of C.C. in energy sector where you are talking about domestic energy consumption as well as industrial energy consumption. You are also looking at the transport sector and you are looking also at the agriculture sector and within the African context where many African countries depend both for subsistence and their economic \_\_\_\_ on agriculture, C.C. then becomes the very crucial issue.

For African countries unlike others especially developed countries one could include into one sector to the exclusion of others. \_\_\_\_ because there is an interdependence B/w whichever sector you look at and a holistic approach then could be one that would look at not just cc but also other issues including econ. Development the two main aspects often responding to global warming include firstly mitigation of emission where you try reduce the extent of climatic change second one is adaptation where you ameliorate the adverse effects that cc. May have and essentially cc mitigation in adoption in Africa must be addressed within development priorities in the realms not just of the environment and the economy but also societal development because econ-development is not necessarily in gender social development.

In looking at the legal responses that they have bent cc Mr. Osafo talked about the UNFCCC and its K.P. and basically looked at its objective to

manage and their stabilization of GHG concentrations and essentially and most essential for developing countries is guiding principle both behind framework Convention on cc. And the K.P., the \_\_\_\_\_ of CBDR which basically places the objective cc at the global community as a common responsibility but different actions to be taken by requiring developed countries that have been responsible for greater emissions in the past so actually take more combat than Developing countries and essentially this is not a new principle it is not just finding expression in the convention and the protocol. You find it also in the Rio Declaration and essentially this is the meeting of the developing countries and developed countries in the whole area of multilateral \_\_\_\_\_ agreement for seeking the need to balance of interest of different parties. In terms of legal responses Kenya is a party to both \_\_\_\_\_ and Protocol and as a party to these 2 International Instruments it does have obligation to do certain things but essentially it has no commitment to reduce GHG emissions because it is what would be designated as a non-Annex I country, basically not a developed country.

It can however, participate in the implementation \_\_\_\_\_ cc. Is a common concern of humankind and there are opportunities for countries that are not Annex I countries and which here no commitments to reduce GHG emission to participate and in looking to participate what Kenya would be doing is balancing eco. Development and environmental sustainability and these again is something that is coming from the MEA that Elizebeth very ably talked about before me. And Specially Article 3 and 4 enn. Management and ensuring that both occur without compromising either there is also the sense in which a country in particular Kenya is being watched. It is a \_\_\_\_\_ of these issues so that the directions that Kenya takes

in terms of participating in the Commission and the Protocol is something that might provide useful lessons for her neighbours and gain Ms. Osafo said one of the mechanism that Kenya can participate in is the CDM 4 this is just one of the no. of mechanisms that have been provided for. I would like to point out that before KP the pilot phase of Joint Implementation had anticipated that developing countries would also participate in these activities. But there were lot of discussions about whether this should happen or should not happen \_\_\_\_\_ the KP \_\_\_\_ what we have now for developing countries like Kenya in CDM which again as Mr. Osafo said is a method based instrument which is supposed to encourage cost effective reduction in GHG emissions while promoting sustainable eco. Growth just what countries like Kenya would be looking for and representing what would be \_\_\_\_ insinuations for all concerned parties where you have industrial countries have commitment to reduce emission undertaking projects in developing countries and being able to do that in less cost than they would at \_\_\_\_ and seen for developing countries they have opportunities to \_\_\_\_ the international efforts to curb GHG emissions and essentially. \_\_\_\_ also \_\_\_\_ an opportunity to be \_\_\_\_\_ of \_\_\_\_ investment flows and also technologies which are climate friendly just because other countries developed those mechanisms heed to cc. Does it mean that the countries that were developing now here to go there the same development trajectory. They should be able to learn lessons from those that have gone before them and I think they clean development mechanisms that provide opportunity for that kind of learning and it is also critical that participation in these mechanisms is valuator \_\_\_\_ in that there are mechanisms established to ensure that they are real measurable and long term in GHG emission. Essentially, there is the requirement that whatever emission reduction is



achieved by a country party to the protocol must be additional to what would have occurred in the absence of the activities and these prevent countries from delaying activities at home and concentrating mainly on activities abroad which would in turn encourage them to go on with the business as usual approach, whereas other countries are burdened through projects under the CDM that would be carried out in their home country of their GHG emitter.

What then are the key prospects. Again, it cannot be emphasized that one is the opportunity to cooperate to deal with the global problem and again to avoid 'free riding' problem. Even though we are saying that developing countries such as Kenya are not great emitters of GHG it is important to point out that their emissions are growing. So if we don't begin to deal with them that's going to be the problem in many years down the line. So having the opportunity to co-operate to deal with these problem is an opportunity that should not be missed again the fact that it encourages partnerships and looking at even the achievement of the MDG, there is a lot of emphasis on partnership. So encouraging international initiative, to have partnerships to deal with the global problem is something that is also a prospect and which could also provide a context for adapt co-operation. Again, there is also \_\_\_\_ of the fact that it is been carried out within a framework, it prevents the relocation of GHG emitting industries to developing countries because they are also participating it also ensures that all factors are carried on board. There is also a fact that are how here the acceptance of a rule of equity, the principle of CBDR as a rule of operation which allows for different treatment of actors and I think if you look of MEA, post Rio is see that many of them to have these different treatment which is a good thing because it is taking countries as, they are and allowing them to participate to the extent

they are able to co-exist mandating those that are responsible to the environmental problem to contribute to dealing with that problem. Again with that I think that another prospect is that if there is one environmental problem that in my short experience the I see developed countries taking seriously at his c.c. they will sit and listen and given that if we talk about desertification they may not sit and listen. If a quote desertification with cc. You do have an opportunity to engaged with developed countries which again provides context for partnership.

Again an prospects this also now an enabling environment for countries to accept fundings for mitigation, adaptation, capacity building and tech acquisition and billions or I don't remember its million or billions of dollar that Mr. Osafo was talking about seem to be \_\_\_\_ so that ought to be that might not have happened, but we accept that we have a common problem which we need to deal with and countries therefore do here the opportunity to use the CDMN as an innovative input tool. So for country like Kenya that have an economic economy strategy you could actually look at what aspect of strategy can be dealt with there the CDM, what kind of interventions would be capable of being brought under the CDM and that bring in those in.

And it is enables the parties to leverage flow of private capital looking at the fram ccc and the KP at as agreement. Having private actors coming into participate in implementation that is a critical question and also provides a prospects for bringing finding that may not otherwise have been there and also it underscores the role that private actors can play in the implementation

of international environmental obligations, where they are really the main actors where problem is occurring.

And in terms of areas, which one may be at, one could look at, I pointed out the Energy sector is one area that one could look at, question of hydropower, biomass gas, gas \_\_\_\_\_ alternative of energy resources \_\_\_\_\_ polluting and which do not cause climate change there is also the whole issue of land use, land use change, and forestings as something that has been discussed within the context of the KP. This again promotes the integration of climate considerations in land use policies, and there is bringing about the context for holistic looking at the international problems land ensure econ. Development, etc, and when a look again at carbon sinks I know that there is a lot of contestations as to whether we should emphasize carbon sinks in the form of forest, but one would also to look at deforestation as a source of carbon emissions into the atmosphere as well as deforestation contribution to the loss of potential sinks therefore, accelerating the rate of it \_\_\_\_.

And for a country like Kenya where the forest cover has been lost I don't think that having forestry projects is an altogether as a welcome venture not just for cc. But it has other benefits that has been recognized and again I will quickly pointed out that there is transport sector as well which is an area where we could use to deal with. I do \_\_\_\_ CDM as providing mechanism for implementing environmental laws and then of course with benefits to environmental quality and health and that again is a prospect which we should finally in terms of prospects CDM offers in opportunity to strengthen the social, economic and technical \_\_\_\_\_ of the poorest and most vulnerable because you have to address the problem where people are. If you are

talking about land use change, you cannot deal with land use change at \_\_\_\_, is have to deal with it where people are actually using the land and there is also the potential to use traditional knowledge and to have the improvement therefore there use of new tech and on the other hand the scaling up of t.k. as a way of facilitating the implementation of International obligation and MEAs.

In terms of challenges. I will not believed that the issues that have been discussed throughout the life of \_\_\_\_ and even in the discussions of the KYP, with respect to waste land or desertification. What I would like to say that there is a need to raise awareness of c.c. l. as problem and these can be done only through linking it to things that people are associated with that of loss of biodiversity, desertification, food insecurity it a link it to \_\_\_\_ to \_\_\_\_ of people, because the context no longer fails them what they need to live in particular place, inter\_\_\_\_ displacement. I think those would be ways of getting people to associate more close with CCC rather than discussing it just within the context of international emission trading which tends to over the heads of most people. I think also there is a need to have diverse stake holders participate even at as I went on and on Private partner participation and also talking about also leveraging private capital. I think we really must have local community and NGOs. Participating in the process, because as I before this is the issue of whose it is deal with it the \_\_\_\_over where changes are made, the other change is harnessing the potential for the CDM and here I am looking at the fact that the CDM will occurs within context of other laws and policies such as investment policies and those may not necessarily have been thought through idea through sustainable development as also whole question of competition between countries which is not a

necessarily but it may also mean they may have certain countries because there will be favour to the countries, then the fact that technology acquisition is critical as dealing the CC, CDM and our countries have no endogenous technological capacity is going to be benefit that be laid.

There are also legal impediments, sectoral legislative approaches I think I have given example of investment laws but you look at eco, incentives not many of them mainstreamed into environmental laws. So the eco incentives happen and environment management happen and there is no meeting unless it happens and there may not be the case of CDM will assist in ameliorating the start developing countries. Then again the need for policy and institutional frameworks that address sustainable development not just S.D. and also I think there is a regional approach, so that countries pool each other as well as pool their resources given the size of the economy, this may be critical. And then finally on challenges capacity to implement requires different skills, it requires a business mind if require scientific mind and also it requires legal mind. IN many times we don't have these three minds of meetings. The whole challenges of getting disciplines to talk one another and to ensure the harness the benefits that could come from CDM. So, finally in conclusion, I think there are opportunities for engender sustainable development through mechanisms that the Kyoto Protocol provide and Kenya's ratification and domestication of the protocol is an important first step towards availing the itself of those opportunities but there is need for changes to occur in other contexts that is other laws that it will impact in CDM affecting sustainable development and also the empowerment of all actors to participate so that you get the least advantage. Thank you.

I thank Dr. Patricia Kameri Mbote for the excellent presentation veritably delivered. Its now for discussion and could you please indicate if want to contribute to the discussions. So that the Secretary General can take your name. We consider the peoples of Republic of China \_\_\_\_ any body else apart from the Peoples of Republic of China, Kuwait, Republic of Nigeria, O.K. we can have those two and \_\_\_\_ on time any body from the observers. O.K. we can have People's Republic of China and the Republic of Nigeria.

Thank you Mr. President.

Mr. President, I would like to start thanking Mr. Osafo My good friend and Dr. Patricia Kameri – Mbote for Kenya. Two a \_\_\_\_ presented with us with excellent and comprehensive introduction on the subject mater and the discussions especially I want to extend my sincere respect admirations to Dr. Kameri Mbote. You see she is a Professor, thank, she is understanding and interpreting the Protocol is really \_\_\_\_ I have a few brief points to share with you. Mr. President, first, difficulty in implementation of the KP as we have to \_\_\_\_ it \_\_\_\_ entry into force of KP is an important step. It opens a new chapter for us international community for just the issue of cc and how one have to faces the difficulty in implementing this KP you see first that among the parties US, Australia does not ratified the Protocol yet and you see we were talking about between developing countries about the issues but the way they talked about within developed countries. They will take all the issues economic compatibilities, so I don't know that until US ratifies, I wonder whether other developed countries will sincerely really implement their commitments. I hope actually, we sincerely hope that they undertake this commitments under the protocol. Secondly since this Protocol has got

into force after \_\_\_\_\_ after this adoption so see my Annex I parties \_\_\_\_\_ parties their emissions are still increasing instead of reducing and even for them it will be difficult.