



## Mauritius Hosts Environmental Law Seminar



The first regional environmental law meeting was held in Mauritius on October 31 – November 6, 2005. The meeting was opened by the Attorney General and Minister for Justice of Mauritius, the Hon. Rama Valayden who observed that “opportunities exist for international environmental agreements to work together in capacity building programmes related to the development of national legislation and other cross-cutting issues that support the implementation of conventions and protocols at the national level.” The Minister further emphasised the importance of regional cooperation among African countries.

The Seminar sought to assist small states of the African Region to implement international environment conventions and to encourage the development of comprehensive environmental law. The meeting was attended by both legal and

environment officers so as to ensure that there was a sound understanding of the operative policy and legal frameworks within member countries.

There were extensive discussions on the scientific, legal and policy issues concerning the environment. The meeting discussed, in particular, the key environmental instruments. Participants observed that there were various programmes and policies which sought to implement the various conventions, but noted the importance of developing a comprehensive legislative framework.

Countries represented were Botswana, The Gambia, Lesotho, Mauritius, Namibia, Seychelles and Swaziland, as too, regional representatives from Jamaica (the Caribbean), Papua New Guinea (the Pacific) and Singapore (Asia). A representative of the UNEP Regional Office for Africa, also attended.

## Contents

|   |     |
|---|-----|
| Mauritius Hosts Environmental Law Seminar ..... | 1   |
| Developments in Environment Law .....           | 2   |
| Lesotho Hosts Landlocked States Seminar .....   | 3   |
| Final/Regional Appellate Courts .....           | 4-5 |
| Feature .....                                   | 6   |
| Other Developments .....                        | 7   |
| Upcoming Activities .....                       | 8   |

### HEADS OF GOVERNMENT ENDORSE CLIMATE CHANGE FRAMEWORK

Pacific Forum Leaders have, in November 2005 endorsed the Pacific Islands Framework - for Action on Climate Change 2006 to 2015 - adopted by representatives of South Pacific Regional Environment Programme (SPREP) members at an earlier meeting in Madang, Papua New Guinea.

The Framework identifies the key climate change priorities of the Pacific region and activities for action at the national and regional levels over the next five years. This document is intended to help target, catalyse action and strengthen partnerships at all levels to enable the Pacific region to better understand and respond to climate change and climate variability.

The Framework is consistent with the timeframes of the Millennium Declaration, the Johannesburg Plan of Implementation and the subsequent work of the UN Commission on Sustainable Development. An Action Plan relating to the Framework is being developed. The Framework is intended to deepen and strengthen regional cooperation under the Pacific Plan.

### WORLD EXPERTS AGREE ON AGRICULTURAL DEVELOPMENT BLUEPRINT FOR 21ST CENTURY

World experts have agreed for the first time on a blueprint on sustainable agricultural development to reduce hunger and poverty and improve environmental protection in developing countries. The experts called for higher priority to be given to agricultural research among others.

In addressing environmental concerns in the blueprint the experts exhorted rural societies to be the primary custodians of local ecosystems. They noted that “conservation and sustainable management of eco-systems is the best insurance for the continued supply of eco-system services such as biodiversity, carbon sequestration, pollination and water purification.” They urged for a plan of action to be developed which would allow the poor to benefit from “selling” environmental services. Details of this document can be found on <http://www.fao.org/newsroom/en/news/2005/107643/index.html>

### NIGERIA RATIFIES IMO CONVENTION

The Federal Republic of Nigeria is the fifth country to ratify the 2004 International Convention for the Control and Management of Ships’ Ballast Water and Sediments. The Convention, which was adopted in February 2004, seeks to prevent, minimize and ultimately eliminate the transfer of harmful aquatic organisms carried in ships’ ballast water, through the control and management of ships’ ballast water and sediments.

Invasive species are noted as being one of the four greatest threats to the world’s oceans, and the increase in trade and traffic volumes poses an ever increasing threat. The Secretary General of IMO has therefore emphasized the importance of early and effective implementation of the Convention. The Convention will enter into force 12 months after ratification by thirty states, representing thirty-five per cent of world merchant shipping tonnage.

## Lesotho Hosts Landlocked States Seminar



The second of a series of seminars aimed at sensitising and assisting landlocked states of the African region to implement the relevant provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) was held in Lesotho from 28th November – 1st December, 2005. The Seminar was opened by the Minister of Law and Constitutional Affairs, the Honourable Moses Refiloe Masemene. The Minister expounded on the importance of UNCLOS, which was noted as having the potential to advance the economic development of landlocked state parties. The Minister further observed that it was necessary for states who had not yet ratified, to speed up the process of ratification.

The seminar was attended by delegates of the core group which met in Swaziland in June. The meeting discussed in greater depth the provisions of UNCLOS which relate to access to the sea and the sharing of the surplus living resources of the

Exclusive Economic Zone, and considered in particular, the implications for trade and development. A brief overview was also given of treaty law and drafting. A bilateral treaty template was drafted concerning transit rights and duties and the sharing of surplus living resources in the EEZ. This draft treaty seeks to provide a framework within which landlocked state parties to UNCLOS may pursue negotiations with coastal states of the region. The treaty is to be further refined at a subsequent meeting of the core group.

This work serves to give effect to the 2005 mandate of Law Ministers who encouraged the Secretariat to continue to sensitise member countries to the immediate need to accede to UNCLOS with the necessary enabling legislation, recognising that the provisions of UNCLOS may be utilized by landlocked states and their neighbouring coastal states to foster relations and enhance regional co-operation.

### **NIGERIAN BAR ASSOCIATION QUESTIONS ECOWAS COURT OVER ELECTION MATTERS**

The Nigerian Bar Association (NBA) has called into question the jurisdiction of the ECOWAS Court of Justice with regard to election petitions. The NBA has brought the Court before the Attorney General the Federation and the Minister of Justice, Bayo Ojo. A complaint was laid at the inauguration of the 2005/2006 calendar legal year.

### **ALLEGATIONS THAT “MABO” JUDGES MISREAD HISTORY**

A publication by a Tasmanian academic has alleged that the Mabo decision was erroneous because the High Court of Australia had wrongly recognised that when Britain settled Australia it was done as empty land— terra nullius. The Lawyer who had represented Eddie Mabo in the Australian landmark case which gave recognition to Aboriginal native title, has agreed that even though there were inadequacies in the historical research of the case by the High Court of Australia, this was not sufficient to correct the judgement of the High Court. The Lawyer went on to advise that the decision of the High Court “had been based on the legal reality of the dispossession of Aboriginal people, not the documented intentions of the British imperial government.” See more on this discussion at [http://www.theaustralian.news.com.au/common/story\\_page/0,5744,17497649%255E,2702,00.html](http://www.theaustralian.news.com.au/common/story_page/0,5744,17497649%255E,2702,00.html)

### **LAW COUNCIL HOPES HIGH COURT WILL STOP ANTI TERRORISM LAWS**

The Law Council is hopeful that the High Court will strike down the laws on anti terrorism which were recently passed in the Australian Senate. These proposed laws will empower the respective authorities to keep suspects in detention, impose control and monitor them, to restrict their activities.

The views of the Law Council indicate that they perceive that fundamental rights and freedoms are being lost by the citizenry, and that the existing criminal laws are adequate to deal with the terrorist threat. The expectation now of the Law Council rests with the ruling of the High Court.

See <http://www.abc.net.au/am/content/2005/s1525336.htm>

### **LEAVE TO APPEAL GRANTED BY CCJ IN BARBADOS LIBEL SUIT**

In November 2005, the Caribbean Court of Justice (CCJ) granted a Barbados radio station leave to appeal a High Court ruling, and therefore the right to defend itself against a libel lawsuit filed by the owners of a farm in 1990.

The CCJ ruled in its first-ever written judgment that the decision by the Barbados High Court to strike out the defence of Barbados Rediffusion Services Ltd., now carrying on business as Starcom Network, could result in a miscarriage of justice.

According to the CCJ judgment: “We are certainly not in a position to hold, and do not hold, that the sanction imposed was wrongly imposed. We have however, come to the conclusion that in the circumstances of this case the possibility that it may have been wrongly or unfairly imposed is significant enough to warrant the issue being fully and finally ventilated before this Court.”

The court, which is presided over by Chief Justice Michael de la Bastide, Rolston Nelson, Adrian Saundes, Désirée Bernard and Prof David Hayton, heard the substantive appeal last month.

The case was taken to the CCJ by the radio station after the High Court in Barbados struck out the company’s defence on the basis that it had consistently failed to comply with orders to hand over recordings requested by the owners of McDonald chicken farm, Ram and Asha Mirchandani.

It was claimed the station’s live broadcast of semi-finals and finals of the 1989 Pic-O-De-crop Calypso competition, of three songs - the ‘Madd Chicken Song’, ‘Pluck It’ and ‘Tit for Tat’ - which alleged the farm processed chicken in unhealthy conditions and allowed diseased birds to be distributed, destroyed their business and reputation.

They are seeking BDS\$2.8 million in compensation.

### **ANTIGUA AND BARBUDA TO HOLD REFERENDUM ON THE CCJ**

This twin island nation state is to hold a referendum to determine its position with the regional court – the CCJ. The Governor General, Sir James Carlisle stated that the referendum is the only manner in which the government will be placed to determine its commitment to replacing the Judicial Committee

with the CCJ as the nation's final appellate Court. While most of the Caribbean states have signed on the CCJ in its original jurisdiction, thus far, just a few Members have embraced the CCJ in its appellate mode.

### WAY FORWARD TO CONSOLIDATE RULE OF LAW IN WEST AFRICA

Mrs. Justice Aminata Malle Sanogo, a member of the ECOWAS Court of Justice, recently observed that the acceptance and execution of judicial decisions constituted not only a measure of the system's efficacy as established by the founders of the Community, but also helped consolidate the rule of law in West Africa. Making the observation in a paper she delivered at the Conference of ECOWAS Chief Justices and ECOWAS Court of Justice in Accra in late November, Mrs. Justice Sanogo urged the Community Court of Justice (CCJ) to regulate and constitute as a strong force in the development of judicial policy, which is indispensable for the realisation of the objectives of ECOWAS.

The two-day meeting with delegates from 10 of the 15-member states of ECOWAS, as well as others from the World Bank, the South African Development Commission and the Common Market for Eastern and Southern Africa, was under the theme: *"The Judiciary as a Partner in the Regional Integration Process"*. Mrs. Justice Sanogo, whose topic was: *"The ECOWAS Court of Justice: Enforcement of its Decisions and Challenges Facing the Court"*, said that in principle, one could not fail to observe that in the light of the revised treaty, decisions of CCJ were binding and without appeal. However, those decisions were neither immutable nor sacrosanct, she added.

Mrs. Justice Sanogo said some of the problems facing CCJ were accessibility and cost, and noted that the court could not adequately carry out its mandate of defending the law without the resolution of those problems, which threatened to bring its operations to a halt. She held the view that the putting in place of a Legal Aid Programme within a reasonable time frame to enable deprived applicants to benefit from it would greatly alleviate the accessibility problem. She also called upon member-states of ECOWAS to provide the CCJ with appropriate funding to deal with the inadequate human, financial and material resources problems confronting the court.

"As the principal legal organ of ECOWAS, the Community Court is called upon to define the norms on the protection of the rights of citizens and to ensure a reasonable interpretation and application of the provisions of the Treaty and related instruments." Mrs. Justice Sanogo stated that it might not be an exaggeration to say that practical support from the active operators of the Community "is a sine qua non" for the fulfillment of the mandate of the Court.

### SUPREME COURT OF CANADA RULES MUNICIPALITIES EXEMPT FROM LANGUAGE ACT

The Supreme Court of Canada has ruled that the City of St John, Canada did not have to provide Court documents in the French language. This ruling came as a result of a challenge posed by a business man for a parking ticket as far back as 2002.

The judgement of the Court given on a 5 – 4 decision, advised that municipalities are not bound by the New Brunswick's Official Languages Act which requires "institutions" to conduct legal proceedings in the language chosen. This decision was based on the interpretation of the word "institutions" which was held to not include municipalities.

### COMESA MINISTERS MEET TO DISCUSS JUDICIAL ARRANGEMENTS

Ministers and Attorneys-General of the Common Market for Eastern and Southern Africa (COMESA) met in November 2005 to review the Rules of Court for the Court of Justice of COMESA on account of recent reforms.

The structural reforms agreed by the COMESA summit in 2004, include the expansion of the Court from seven to eleven judges and the division of the Court into two Chambers: The First Instance Division and the Appellate Division.

The Rules of Court have accordingly been amended to detail the appeals procedure and the roles of the President as head of the Appellate Division and the Principal Judge, as head of the First Instance Division.

## FINAL APPEAL AND REGIONAL COURTS EMERGE TO DEVELOP JURISPRUDENCE

The evolving jurisprudential landscape in the Commonwealth is undergoing interesting changes as countries and regions seek to define their jurisprudence.

The Law Development Section's (LDS) work has involved the assistance to Member Countries which were removing jurisdiction from the Judicial Committee of the Privy Council (JCPC) as their final Court of Appeal, as they establish their own Courts.

This exercise equally relates to the establishment of regional Courts as Member Countries see wisdom in adjudicating on their various treaties of association through a dedicated Court in this regard. Law Ministers of the Commonwealth from 2002 acknowledged the challenges these changes presented and requested the Legal and Constitutional Affairs Division to assist Member Countries in ensuring that Commonwealth principles were maintained.

To this end, an Expert Group was convened in June 2003 which produced a comprehensive list of "best practices" guide to inform and facilitate Member Countries which seek to utilise them as they make their judicial transitions.

Since that meeting of Experts, the Commonwealth has witnessed the birth of the Supreme Court of New Zealand in July 2004; the inauguration of the Caribbean Court of Justice (CCJ) of the Caribbean Community (CARICOM) in April 2005; the appointment of the Justices to the Court of Justice of the Economic Community of West African States (ECOWAS); and fresh appointments to the Court of Justice of the Common Market for Eastern and Southern Africa (COMESA).

These Courts give a most interesting appeal to any dedicated jurisprudential monitoring. The role of the Supreme Court of New Zealand is clear as a final Court of Appeal. It will also be interesting to observe how it will take on its unique jurisprudence, given its cultural diversity of its population.

The CCJ and the Courts of Justice of COMESA and ECOWAS, while mostly constituted of countries of the common law legal system, include those from the civil law system, among others.

The Court of Justice of ECOWAS is deemed to be an organ for jurisdictional control and has the added role of assessing the extent to which its Member States fulfil their obligations and verifying the legality of acts adopted by the institutions of the Community.

Similarly, the Court of Justice of COMESA will seek to foster the development of the regional body of laws and this is additionally consolidated by the fact that decisions of the Court on the interpretation of the provisions of the Treaty will have precedence over decisions of national courts or tribunals. Both these Courts then have a persona of supra nationality.

The CCJ has a dual and unique arrangement. In its original jurisdiction, the CCJ adjudicates on matters relating to the operation of the CARICOM Single Market and Economy (CSME). In its appellate mode, it replaces the JCPC as the highest appellate municipal court of the Member States.

In its work with these Courts, LDS has gained from the experiences of "older" Courts of the Commonwealth such as the High Court of Australia and the Supreme Court of Canada.

LDS will continue work in this regard in the coming year with the gracious hospitality of the Supreme Court of New Zealand and the High Court of Australia, as the emerging jurisprudence of these recent Courts, still in foetal stages, is worthy of attention.

### ZAMBIA NGO CALLS FOR REFORM OF DEBT AND LOAN MANAGEMENT SYSTEM

JUBILEE Zambia, a Non-Governmental Organisation has called on the government to use the Highly Indebted Poor Countries (HIPC) completion point to immediately reform the systems on debt and loan management. This call was made by its coordinator, Charity Musamba, in Lusaka at the launch of a manual on Human Needs Based Debt Sustainability analysis. She said that a transparent, accountable and participatory loan contraction system would only succeed if political will was guaranteed.

Ms Musamba said that with the attainment of the HIPC completion point Zambia was now faced with a challenge of comprehending the meaning of debt sustainability. The organisation had embarked on a campaign to advocate better and effective framework that strongly emphasised the inclusion of human needs and country specific realities in measuring whether or not a country's debt situation was sustainable. Ms Musamba noted that the proposed model could only succeed if it was fully supported by positive reforms of making the loan contraction process more transparent, participatory and accountable to the people.

### PAKISTAN – GOVERNMENT ISSUES NOTICE ON FUNCTIONS OF INTELLECTUAL PROPERTY BODY

The functions of a newly established body – the Intellectual Property Organisation (IPO) - have been notified by the government. The IPO which was set up to protect and strengthen intellectual property rights (IPRs) would undertake functions to include the following:

- prescribe, regulate or implement measures and standards on any matter related to or connected with IPRs, including the accreditation or certification of IPR agents
- levy charges or fees for services and facilities
- collaborate with other bodies - both national and international – in IPRs area

- supervise and coordinate other IPRs bodies such as the copyright office, patent office and the trade marks registry;
- advise the government on laws and policies relating to IPRs,

The IPO which consists of a board headed by a chairman will also promote research and public awareness among others.

### COURT RULES AGAINST INDIAN PHARMACEUTICAL COMPANY IN PATENT CASE

The UK's High Court has ruled in favour of Pfizer in its patent dispute against Indian pharmaceutical company Ranbaxy Laboratories. The case concerned a generic version of Pfizer's anti-cholesterol blockbuster drug Lipitor. The Court held that Pfizer's basic patent for Lipitor, which has sales of US\$11 billion annually, is valid. The patent expires in 2011, and Ranbaxy is prevented from launching a generic in the UK before this time.

### INDUSTRY ASSOCIATION MOVE TO SHUT DOWN COPYRIGHT INFRINGING NETWORK

Lawyers representing the music industry are planning to ask the Federal Court of Australia to shut down a company's file sharing network, Kazaa, for failing to comply with the court's orders to include keyword filters which would block the trade of popular copyright music works. The company, Sharman had previously been found in breach of copyright laws. In response to the move for a shutdown, Sharman, who are appealing the court's decision, said that the measures it had taken were in harmony with the court order as "all activity that could be deemed as authorising has stopped so as to comply with the Court orders."

# Upcoming Activities

## Commonwealth Meeting of Justices and Registrars of Final/Regional Appellate Courts

Wellington, New Zealand  
20 – 24 February 2006

Canberra, Australia  
27 February – 2 March 2006

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