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Soils Governance: Southeast Asia in Focus Introduction to Soil Governance in South East Asia

Co-organizers:

**Asian Research Institute for Environmental Law (ARIEL)
World Commission on Environmental Law (WCEL)
German Environment Agency – Umweltbundesamt (UBA)**

Supporters:

**United Nations Environment Programme (UNEP)
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**ARIEL Zoom Webinar
– Report about the Webinar –**

Last May 18, 2021, the Asian Research Institute for Environmental Law, the World Commission on Environmental Law (WCEL) Soil, Desertification and Sustainable Agriculture Specialist Group and the German Environment Agency – Umweltbundesamt (UBA), held the webinar entitled “Soil Governance: Southeast Asia in Focus”. This event was supported by the UN Environment Programme (UNEP), LAWASIA and the Australian Centre for Agriculture and Law.

The webinar sought to provide an introductory session to stakeholders on the overview, issues and potential ways forward towards a sustainable soil management regime in the Southeast Asia. It thus brought together interested participants to discuss global, regional and key national perspectives.

Among the objectives of the webinar was to assess the current level of interest in soil governance and provide an understanding potential reforms in policy frameworks for sustainable soil management. It also provided a platform for stakeholders to inquire from experts, discuss issues as well as ways forward to address existing gaps in the soil governance framework.

The webinar received more than 200 registrations and was attended by a diversity of participants from the Asia Pacific region, with a strong presence from Southeast Asian countries.

Matthew Baird, Director of the Asian Research Institute for Environmental Law

Matthew Baird opened the webinar and welcomed all participants. He explained that the webinar aims to provide an introduction webinar to stakeholders on the overview, issues and potential ways forward towards a sustainable soil management regime in the region. It intends to bring together interested stakeholders to discuss global, regional and national soil issues, particularly from Southeast Asia. He introduced Irene Heuser as a co-facilitator of this session.

Dr. Irene Heuser, Chair of the Specialist Group “Soil, Desertification and Sustainable Agriculture” of the IUCN World Commission on Environmental Law

Dr. Irene Heuser introduced the topic of this webinar and described the initiatives of the World Commission on Environmental Law dealing with soil protection law and sustainable use of soil from the IUCN World Conservation Congress in Amman in 2000 to the adoption of the 2030 Agenda for Sustainable Development, its SDG 15 and the land degradation neutrality target in 2012. She also introduced each participant of the panel.

Prof. Dr. Ian Hannam (Australian Centre for Agriculture and Law, University of New England): Overview of the Issues of Soil and Soil Conservation

Prof. Ian Hannam provided an overview of soil governance from a global, regional and national perspective. He examined the current regulatory approaches concerning soil governance in Southeast Asia in order to present an understanding of the status of the legal regime for soil. In particular he presented an overview of the legal instruments that the eleven ASEAN countries had identified in regard to the fourteen soil characteristics applied in the UN FAO SoILeX national soil legislation data base. The overview indicates that among the eleven countries, quite different approaches to framing environmental instruments have been taken, and in how these relate to the range of soil problems. Only a few states have specific soil legislation - Thailand, Malaysia, Lao PDR, and Indonesia, where only in the latter case has legislation be introduced in recent times. Most of the states rely on broad, multi-purpose environmental instruments to manage individual soil problems.

With regard to the regional environmental law, Prof. Hannam showed that quite a detailed framework of instruments have been introduced over the years by ASEAN to manage socio-cultural and economic factors which can benefit the soil (e.g., food security, establish ASEAN Biodiversity Center 2005). Moreover, while the draft 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources has not yet attracted sufficient number of ratifications to come into force, it does however include provisions that would be helpful to prepare national soil legislation, e.g., Article 7 – Soil, and Part III – Conservation of Ecological Processes. Another important regional framework is the ASEAN Strategic Plan on Environment 2016-2025, which includes Action Plans to address strategic environmental

priorities, e.g., Strategic Policy 1 on Nature Conservation and Biodiversity. However, one of the most encouraging aspects of reviewing the regional environmental law for Southeast Asia is that, to date, eight of the Southeast Asian countries - Philippines, Timor-Leste, Indonesia, Cambodia, Thailand, Viet Nam, Myanmar, and Lao PDR - have prepared comprehensive Land Degradation Neutrality Targets under the UNCCD COP 2015 Target Setting Program.

Overall, while the national and regional environmental law and policy regimes in SEA in relation to soil can be regarded as incomplete, Prof. Hannam concluded that while currently a total 89 national instruments relate to soil there is a good strategic environmental framework in place to improve on this situation.

Asst. Prof. Dr. Wanwisa Pansak (Naresuan University, Thailand, and World Association of Soil and Water Conservation):

Key Soil Issues in Southeast Asia

Prof. Wanwisa Pansak introduced the key soil issues from a scientific point of view and explained them as they are a starting point for legal reflections. The introduction includes the different soil types in Southeast Asia, their threats and level of degradation as well as the challenges facing the region. She explained the number of soils classified as degraded and the needs for a holistic understanding of various soils and the services they provide. She mentioned some technologies that transfer to farmers for sustainable soil management in Thailand. The “Klaeng Din” (tricking the soil) technology is the royally initiated developing projects of the majesty king Bhumibol Adulyadej to solve soil acidity problem. The soil is de-acidified through various techniques such as controlling the ground-water level to prevent the release of sulfuric acid, applying liming material, and washing away acidity with water. The project also includes the suggestion of farming crops that resist to soil acidity to the farmer. Moreover, technologies of soil and water conservations that recommended by Land Development Department (LDD) include the usages of vetiver grass contour, bench terrace hillside ditches and inter-cropping with maize and bean.

Dr. Harald Ginzky (German Environment Agency):

Soil Law and Governance

Dr. Harald Ginzky pointed out that the very reason for soil governance is that “soils are the future for the Asian region”. With other words: Without healthy soils, sustainable development of the societies in Southeast Asia could not be achieved.

Dr. Ginzky discussed what the challenges are for good soil governance. He elaborated on three aspects that need to be taken into account. First, soil management is a cross-cutting topic, as almost every human activity affects soil. Second, there are many drivers of soil degradation, such as “bad” agricultural practices, land take by urbanization, contamination by industry and infrastructure, destruction of soils by detrimental forestry – an often neglected aspect, negative effects by Climate Change. Third, it is an additional major challenge that soils are so distinct concerning their physical characteristics.

Dr. Ginzky understood the term “governance” very broadly, meaning all measures, instruments and arrangements which have steering effects for soil management. He mentioned that the national level is most important for two reasons. First national governance normally has an immediate effect on the ground. Second: It is politically relatively easy to influence the national legislation.

Three objectives should be explicitly mentioned in all national legislation. First, each legislation should acknowledge that soils are a natural resource which need to be protected. Second, each legislation should ensure that the social and ecological services of soils are maintained and at best enhanced. Third, in any case, it must be stipulated, that the objective of land degradation neutrality needs to be materialized.

Dr. Ginzky emphasized the need of a framework legislation which should emphasize the objectives just mentioned. Furthermore, it should establish a procedure which allow an ex ante control of activities which may be detrimental for soils. Thereby, the competent authority could ensure, that negative effects are at least minimized or at best prevented. Moreover, such a framework legislation should entail an obligation that negative effects on soils which could not be avoided need to be compensated by soil enhancement in other locations. Thereby, the objective of “neutrality” could be realized.

Good governance depends on data and information. For that, soil scientific entities need to be established in the countries. These entities should gather, evaluate and assess soil data and information. Furthermore, the information needs to be made available for policy makers and other users (private sector, farmers).

Many research studies have shown that the success of soil governance in practice very much depend on legally binding standards for the various soil threats. Standards determine what is legally permissible and what not. Those standards are important in two regards: First the user would know what is legally doable and second the competent authorities would be instructed what needs to be implemented and enforced.

Access to land is also extremely important. Lack of legal clarity on tenure rights often is a strong impediment to sustainable soil management as people are not clear on their responsibilities. Sometimes this lack of clarity is caused by the conflict of so-called modern law and traditional concepts of land ownership.

It is fundamentally important to establish effective institutional settings and arrangements for the implementation and enforcement. Therefore, the roles and responsibilities of the various ministries and competent authorities need to be clearly determined by legal provisions.

Sylvia Bankobeza (UNEP Law Division):

The UNEP/FAO Publication on Legislative Approaches to Sustainable Agriculture and Natural Resources Governance

Sylvia Bankobeza gave an overview of this 2020 publication informing participants about its purpose, content, structure, target group and key findings. The meeting was also informed that the main purpose of developing the publication which has many examples of application of legal and institutional approaches from countries was to track progress in the development of legal and institutional approaches to natural resources laws. The publication was being publicized in this Webinar so that interested countries whose legislation is weak or lacking in a particular area covered by the publication can use the publication to guide them when they are reviewing their natural resources laws to address gaps or weak areas.

The publication covers soil laws in Chapter 3.5 which focuses on land legislation as well as in other sectorial chapters such as the agriculture laws, and mining laws as well.

In relation to the background of this publication, this study was building on a FAO 2002 study on developments in natural resources laws. The study was specifically undertaken to mark 10 years after the 1992 Rio Summit on Environment and Development which was also referred to as Rio +10.

The UNEP/FAO Publication on Legislative Approaches to Sustainable Agriculture and Natural Resources Governance can be used as a checklist by countries to review the adequacy of their legal and institutional frameworks and to update them where there is a need.

Question & Answer Session

The discussion aimed at providing an understanding of legal and policy frameworks and potential reforms for sustainable soil management (and the processes it entails) as well as an opportunity for stakeholders to discuss challenges and options to address existing gaps in soil governance. In many countries of Southeast Asia, the current legal and policy framework is governed by various overlapping instruments that touch on soil governance, ranging from different legislation and regulations on agriculture, environment, natural resource management, among others. The soil condition seems to be very different between countries in the region and the challenges include the fact that, for example, many farmers grow crop for subsistence reasons.

Taking up a question from the group of participants, the topic was discussed whether a specific soil legislation or an integration into a comprehensive environmental protection act would be more effective: different points of view were expressed on this, but all of them aimed at protecting soils more effectively and also legally. All panelists agreed that there is a pressing need to determine the status soils in a certain country of Southeast Asia first and then to define the appropriate measures for the protection and sustainable management of soil. It is also important to raise awareness on the importance of this process and to focus on interlinkages, e.g. between sustainable soil management and climate change mitigation and adaptation. It is especially relevant to have healthy soils in urban areas, but also to raise awareness on certain agricultural or other practices that can potentially damage the soil in rural areas. Soil health is regarded as the overarching issue of soil governance.

In a poll conducted during the webinar the majority of participants indicated that they were not really familiar with the topic of sustainable soil management and its governance and that they would be very interested to learn more both from the scientific and the regulatory perspective. A further result of the little survey at the end was that everyone agrees to learn from each other and that it makes sense to create a network for soil governance in Southeast Asia.

Matthew Baird, Director of the Asian Research Institute for Environmental Law:

He concluded that the webinar was intended to start the conversation on soil governance with an initial focus on the southeast Asian region, to promote initiatives that would improve soil governance and to support the conservation and sustainable use of soil.

This webinar is an introductory session for soil governance and key soil issues in Southeast Asia. The organizers envisage subsequent webinars and events to discuss other soils issues in the region, in partnership with further organizations. The subsequent webinars will be announced soon.