25th June, 2009

The Secretariat of the Basel Convention
15, chemin des Anemones,
1219 Chatelaine (Geneva)
Switzerland

RE: COMMENTS ON THE DRAFT OUTLINE OF AN INSTRUCTION MANUAL FOR THE LEGAL PROFESSION ON THE PROSECUTION OF ILLEGAL TRAFFIC

After consultation with the Senior Legal Counsel of the National Environment Management Authority, the following comments were compiled for the consideration of the Secretariat.

On the whole, the draft is quite comprehensive. We would, however, like to highlight the following:

1. Under Part I on enforcement of the Basel Convention, much as it was seen necessary not to have a section on environmental principles, we think it would be appropriate to state why environmental cases are not to be treated in the same way as other criminal cases. For instance, after setting out the dualist and monist approaches, we could also briefly talk about environmental crime, stating the significance of strict liability offences and the emphasis on prevention and ensuring that the polluter pays. This will also require a brief justification for not requiring scientific certainty before a potentially polluting activity can be stopped. This addition will provide a justification for prosecution of illegal traffic in hazardous waste.

2. Under Part II on what judges and prosecutors need to know about the Basel Convention, there could also be reference, in national law, to constitutional provisions like the right to a
healthy environment that could be drawn on if there is no specific legislation on waste management.

3. A brief could also be included about other conventions that relate to activities and processes that may generate waste and how those concerns could be handled in national courts.

4. Part IV paragraph 17 should have a section on evidential difficulties of prosecuting (and investigating) a case and how the prosecutor could be assisted to overcome these challenges.

5. Part VI on sentencing in paragraph 24 should include creative sentencing options with a restorative and environmentally-inclined tilt.

6. In some jurisdictions, prosecution is separate from investigation. So it is important to reflect conduct of investigations under a separate head. The role of environmental inspectors, expert witnesses, collection and analysis of samples should come under this head.

Hope our put will add value to the instruction Manual.

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