

## **Recent Institutional Developments on the Environment in Southeast Asia – A Report Card on the Region**

*Alan Khee-Jin Tan*\*

In most regions around the world, including in Southeast Asia, one of the most challenging issues facing the protection of the environment and the management of natural resources is the institutional structure for governance within state governments. Governance structures commonly produce problems of jurisdictional overlap and lack of operational coordination at two levels – the horizontal, among different sectoral ministries or agencies, and the vertical, as between central and provincial governments.<sup>1</sup>

In the countries of Southeast Asia, as with those in other parts of the world, a relatively youthful environmental consciousness has meant that government ministries or agencies dedicated to environmental protection and natural resource management are relatively new. Consequently, these agencies typically face challenges in asserting their competence and enforcing legislation vis-à-vis other more established sectoral agencies. These latter agencies include those traditionally associated with exploitation or revenue-generating functions such as industry, foreign investment, agriculture, forestry, mining and transport. While these sectoral or “line” agencies usually have their own departments which are dedicated to environmental matters, these are invariably more sympathetic to developmental imperatives. Thus, the sectoral interests are typically suspicious of and resistant to efforts by the new environmental agencies to enter the former’s “turf” and regulate their activities. In addition, environmental programmes planned by agencies at the central level typically meet resistance or simply reticence on the part of regional or provincial authorities whose interests and priorities may not accord with those of the central government.

In the past few years, several Southeast Asian governments have recognised such structural problems and have sought to enhance the powers and competences of their respective environmental agencies, both at the central and provincial levels. These developments have come at a welcome time, in the light of the recommendation made at the recently-concluded Johannesburg World Summit on Sustainable Development to adopt new measures to strengthen institutional arrangements for sustainable development at the international, regional and national levels.<sup>2</sup>

In several Southeast Asian countries, new, dedicated institutions for environmental protection have recently been established. In Thailand, a new Ministry of Natural Resources and Environment (MNRE) was created in 2002. Thus, the environmental functions previously exercised by the Ministry of Science, Technology and Environment have now been transferred to the new MNRE. At the same time, certain functions relating to natural resource management

---

\* LL.B (S'pore), LL.M, J.S.D. (Yale), Associate Professor, Faculty of Law, National University of Singapore.

<sup>1</sup> See generally the analysis of Southeast Asian laws in Alan KJ Tan, *Environmental Laws of the Southeast Asian Countries: A Preliminary Assessment*, Asia Pacific Centre for Environmental Law, 1998. See also Ben Boer, Ross Ramsay, and Donald R. Rothwell, “The ASEAN Region”, Chapter 12, in *International Environmental Law in the Asia Pacific*, Kluwer Law International, 1998 and Terri Mottershead, ed., *Environmental Law and Enforcement in the Asia-Pacific Rim*, Sweet & Maxwell Asia, 2002.

<sup>2</sup> For a summary of the initiatives and results reached at the Summit, see <http://www.johannesburgsummit.org>.

previously exercised by agencies such as the Department of Fisheries of the Ministry of Agriculture and Cooperatives have been transferred to the MNRE as well.

As things currently stand in Thailand, there is a great deal of uncertainty as to how extensive the powers of the new MNRE will be, particularly *vis-à-vis* the other sectoral ministries. Teething problems also mean that it will take time for the MNRE to establish its authority in the provinces, where village, municipal and provincial leaders have traditionally played a dominant role in natural resource management. There are also concerns as to how the MNRE will be able to exert its influence in the multi-agency National Environment Board (NEB), a high-level body chaired by the Prime Minister which oversees developmental and environmental policy coordination among the numerous ministries.

From the manpower perspective, various officials from sectors such as fisheries and agriculture have been transferred to the MNRE. At the same time, many others have stayed behind in their respective ministries. The Thais are thus awaiting clarification from their government as to the precise extent of the MNRE's competence and powers. While these issues are currently being sorted out, it worries Thai environmentalists that the political bargains being negotiated among the different agencies and their associated interests might lead to an incoherent environmental structure being put in place which might prove even more cumbersome and ineffective than the previously existing arrangement.

As an example of how environmental matters are often sidelined, experts cite how the National Environment Board (NEB) was previously left in the hands of a junior coalition party in the government which lacked political clout.<sup>3</sup> There are worries that this will continue to be the case even after the new MNRE commences full-scale operations. In addition, appointments to the NEB have traditionally been politically-motivated,<sup>4</sup> and it does not appear that this will change in the near future. In the meantime, several major developmental projects – including the Thai-Malaysian gas pipeline in Songkhla and the Bo Nok and Hin Krut coal-fired power plants in Prachuap Khiri Khan – remain the subject of great public resistance.<sup>5</sup> There are high (if not unrealistic) expectations for MNRE to find satisfactory solutions to these issues. It can thus be expected that the new MNRE will experience huge challenges in the coming years in finding its place within the complex legal and political order in Thailand.

As far as legislation is concerned, the framework Thai environmental law remains the Enhancement and Conservation of National Environmental Quality Act of 1992. Other relevant laws include the Factories Act, the Public Health Act, the Hazardous Substances Act and the Public Cleansing Act, all of which were enacted in 1992 during the Anand Panyarachun administration. Forestry and protected area management issues come under the National Park Act of 1961, the Wildlife Protection and Reservation Act of 1992 and the National Forest Reserve Act of 1964. These laws, together with their implementing regulations, are administered by the Royal Forest Department of the Ministry of Agriculture and Cooperatives. There are currently plans to overhaul the legislation relating to forests and protected areas with the objective of producing a more unified and coherent regime on the subject.

In Vietnam, a new Ministry of Natural Resources and Environment was also created in 2002 to perform the functions previously exercised by the National Environment Agency [which was

---

<sup>3</sup> “Thaksin’s First Year - Little Done for Environment”, Bangkok Post, 6 February 2002, citing Senator Panat Tassaneeyanond, Chairman of the Senate environment panel.

<sup>4</sup> “Thaksin’s First Year - Little Done for Environment”, Bangkok Post, 6 February 2002.

<sup>5</sup> *Ibid.*

constituted under the Ministry of Science, Technology and Environment (MOSTE)]. The new ministry will initially be in charge of terrestrial environmental issues only. Other natural resources such as water, forests, oil and gas will continue to be managed by the Ministry of Fisheries, the Ministry of Agriculture and Rural Development and the Vietnam Oil and Gas Corporation respectively. The Vietnamese government is expected to gradually transfer the control of these remaining resources to the MNRE in coming years. For now, however, the environmental protection effort in Vietnam is expected to remain piecemeal given the differing competences of the various agencies over environmental matters.

As regards environmental legislation, the framework environmental law in Vietnam is the 1993 Law on Environmental Protection and the various decrees, instructions and ministerial decisions issued under it. The main forestry legislation is the Law on Forestry Protection and Development, originally enacted in 1991. Enforcement of laws in Vietnam remains highly uneven, with problems of lack of manpower and financial resources and the obstructions posed by vested interests being cited as the main reasons. While environmentalists have largely applauded the elevation of the NEA to the status of a full-fledged ministry, there exist concerns that the new Ministry will remain poorly-funded and relatively weak *vis-à-vis* more powerful sectoral agencies such as the Ministry of Planning and Investment (MPI) and the Ministry of Agriculture and Rural Development (MARD).

Within the provincial governments in Vietnam, the functions previously exercised by the Departments of Science, Technology and Environment (DOSTEs, the local branches of the MOSTE) will have to be redistributed to the new Departments of Natural Resources and Environment (DNREs). In this regard, the traditional difficulties of lack of coordination and cooperation between the DOSTEs and the provincial People's Committees will no doubt resurface, this time in relation to the fledgling DNRE institutional arrangements.<sup>6</sup>

In Indonesia, the environmental scene was hitherto complicated by the existence of two seemingly competent agencies at the central level, the Office of the State Minister for the Environment<sup>7</sup> and the Environmental Impact Management Agency (known by its local acronym as BAPEDAL). The Office of the State Minister, often conveniently (but with erroneous consequences) referred to as the Environment Ministry, was and remains a body with relatively limited competence.<sup>8</sup> In essence, it is expected only to oversee and coordinate general policies and has little enforcement competence, particularly at the provincial level. This is in contrast to the "full" Ministries such as those responsible for agriculture and forestry which have (at least in theory) direct provincial competence, including for enforcement of legislation.<sup>9</sup> Overall, the role of the Office of the State Minister is to coordinate and supervise environmental policy-making, with actual enforcement being conducted by the respective local government apparatus.

On its part, BAPEDAL was a separately-constituted agency with at least some provincial enforcement competence being reposed in its provincial branches, the so-called *Bapedalda's*.

---

<sup>6</sup> DOSTEs, though technically accountable to the central MOSTEs, were for most practical purposes controlled by the People's Committees, which are the provincial and municipal governments. Similarly, it can be expected that the DNREs will be answerable mainly to the People's Committees.

<sup>7</sup> Known in Indonesian as *Kantor Menteri Negara Dampak Lingkungan*.

<sup>8</sup> The term "local governments" will be used here to denote the provinces (*propinsi*, which are headed by the *Gubernur* or Governor) as well as the regencies/districts (*kabupaten*, which are headed by the *Bupati* or Regent). The *kabupaten*, together with similar-level urban units known as *kota* (cities led by mayors or *walikota*), together make up the *propinsi*.

<sup>9</sup> In Indonesia, such Ministries are often referred to as possessing "executive power".

BAPEDAL was originally created in the early 1990's to remedy the many weaknesses of the Office of the State Minister, not least of which was the latter's lack of provincial competence for enforcement. To underline the seriousness of its mission, BAPEDAL was meant to answer directly to the President. As to why the Office of the State Minister itself was never bolstered or elevated to the status of a full Ministry, it is widely believed that this was due to the resistance of the vested interests within the resource-extraction agencies which feared interference from an empowered environmental agency. Thus, BAPEDAL's creation was viewed as an attempt to "divide" the environmental management effort in Indonesia.<sup>10</sup> What transpired subsequently was, of course, an unfortunate overlap in the functions of the Office of the State Minister and BAPEDAL, with the consequent paralysis in action arising from rivalries between the two agencies as well as uncertainties as to which agency was responsible for various matters.<sup>11</sup>

With the ongoing movement in Indonesia to devolve more powers to the regions and to increase local government autonomy, the centrally-organised BAPEDAL was abolished in 2002 and merged with the Office of the State Minister.<sup>12</sup> On their part, the provincial *Bapeldalda*'s have been subsumed within the local governments. The task of enacting central government policies relating to the environment remains with the Office of the State Minister, even though enforcement is now fully within the domain of the local governments.

In this regard, a serious problem is emerging. With greater autonomy, local governments are increasingly defying central government instructions and policies on numerous matters of governance. While such problems have long been encountered in this vast archipelagic country, they are occurring at a greater and far more alarming degree than previously. Thus, even the Ministry of Forestry (which has traditionally possessed provincial competence) has been facing severe problems with local governments issuing what it considers "illegal" logging licenses or concessions.<sup>13</sup> In many cases, the local officials have outrightly ignored ministerial decrees. The result is a surge in illegal logging, often with the involvement of the military and police.<sup>14</sup>

Overall, Indonesia appears to be moving in a direction where the only central edicts which local governments will recognise are Laws, Government Regulations and Presidential Decrees (in generally descending order of hierarchy). Thus, anything less than a Presidential Decree (for instance, a Ministerial Decree) risks being ignored. In the result, if large agencies like the Ministry of Forestry are facing such problems, there is very little hope that weaker agencies like the Office of the State Minister for the Environment will be able to exercise any degree of meaningful control over the local governments and associated vested interests.

In any event, the merger of BAPEDAL with the Office of the State Minister has turned out to be highly unpopular with Indonesian environmental NGOs who fear that the environmental protection effort will become further weakened.<sup>15</sup> In particular, the NGOs are concerned that

---

<sup>10</sup> For an analysis of the institutional problems encountered by Indonesia in combating the forest fires problem, see Alan KJ Tan, "Forest Fires in Indonesia: State Responsibility and International Liability", *Int'l & Comp. L. Quarterly*, Vol. 48, at 826-855 (1999).

<sup>11</sup> Ironically, BAPEDAL was headed by none other than the State Minister for the Environment himself. Yet, this did not prevent BAPEDAL and the Office of the State Minister from encountering overlaps in competence and consequent rivalries.

<sup>12</sup> Pursuant to Presidential Decrees Nos. 2 and 4 of 2002.

<sup>13</sup> Rendi A. Witular, "Deforestation accelerated as regions issue concessions", *The Jakarta Post*, 27 January 2003.

<sup>14</sup> *Ibid.*, quoting reports by the London-based Environmental Investigation Agency.

<sup>15</sup> "Koalisi Ornop Demo soal Bapedal" (NGO Coalition demonstrates over Bapedal question), *Kompas*, 11 January 2002.

BAPEDAL's erstwhile enforcement competence (limited and imperfect as it was) would now *completely* disappear and that the Office of the State Minister would remain totally powerless in enforcement matters. In addition, the NGOs see the merger as forestalling any possible future elevation of the Office of the State Minister to the (desirable) status of a full Ministry.

In this regard, the State Minister himself has defended the merger, pointing to the fact that no competence has been lost in the process, and that BAPEDAL's enforcement functions have simply been transferred to his Office. In addition, the Office of the State Minister has argued that the merger will eradicate the bitter rivalries over competence which have long afflicted the two agencies. Time can only tell if the Minister's optimism is well-founded – for now, at least, it remains highly unlikely that the Office of the State Minister will possess any real enforcement competence, particularly in the provinces and the local levels. Meanwhile, the NGOs are planning to challenge the merger before the courts, alleging that the Presidential Decrees which effected it were inconsistent with higher-level Laws and Regulations which were premised upon a separate and independent BAPEDAL.<sup>16</sup> Overall, the future of institutional governance of the environment in Indonesia (as with all other matters of governance) remains mired in uncertainty.

The main environmental laws in Indonesia include the framework 1997 Law on the Management of the Living Environment (also known as the Law on Environmental Management)<sup>17</sup> and the 1999 Law on Forestry. In recent years, important new legislation on various environmental matters have been enacted, including Government Regulations on Forest and Land Fires,<sup>18</sup> Environmental Impact Assessments,<sup>19</sup> Management of Hazardous Substances,<sup>20</sup> Management of Air Quality and Air Pollution,<sup>21</sup> Forest Exploitation and Revenue for Production Forests,<sup>22</sup> Plants and Wildlife Species,<sup>23</sup> Hazardous Wastes,<sup>24</sup> Marine Pollution and Damage,<sup>25</sup> Air Pollution,<sup>26</sup> Alternative Dispute Resolution for Environmental Matters<sup>27</sup> and Land Damage arising from Biomass Production.<sup>28</sup> While these new laws augur well for the environment, the severe lack of law enforcement in Indonesia and the continuing problems of economic decline, corruption and local government intransigence mean that little effective protection of the environment can be contemplated in the next few years.

---

<sup>16</sup> Bapedal merger protests, The Jakarta Post, 28 January 2002. These higher level laws include the 1997 Law on the Management of the Living Environment, *infra* note 17.

<sup>17</sup> This was the law which was enacted at the height of the Indonesian forest fires and smoke haze disaster of 1997 which afflicted vast parts of Southeast Asia, including Singapore, Malaysia and Brunei, see Tan, *supra* note 10. The forest burning problem remains largely unabated today, with intentional and systematic burning still being carried out despite the existence of various laws on the matter. The lack of enforcement and the influence of vested interests remain the primary culprits.

<sup>18</sup> Government Regulation No. 4 of 2001 on the Management of Environmental Damage and Pollution relating to Forest and Land Fires.

<sup>19</sup> An important piece of subsidiary legislation is Government Regulation No. 27/1999 Regarding Environmental Impact Assessment (EIA/AMDAL). This Regulation sets out the rules and procedures on EIA assessments.

<sup>20</sup> Government Regulation No. 74 of 2001 on the Management of Hazardous and Noxious Substances.

<sup>21</sup> Government Regulation No. 82 of 2001 on the Management of Air Quality and Pollution.

<sup>22</sup> Government Regulation No. 6 of 1999.

<sup>23</sup> Government Regulations Nos. 7 and 8 of 1999.

<sup>24</sup> Government Regulations Nos. 18 and 85 of 1999.

<sup>25</sup> Government Regulation No. 19 of 1999.

<sup>26</sup> Government Regulation No. 41 of 1999.

<sup>27</sup> Government Regulation No. 54 of 2000.

<sup>28</sup> Government Regulation No. 150 of 2000.

Meanwhile, in Myanmar, a Ministry dedicated to the protection of the environment has yet to come into existence. Instead, environmental protection matters continue to be handled by the National Commission on Environmental Affairs (NCEA), a body formed in 1994 which curiously comes under the purview of the Ministry of Foreign Affairs. The reason why the Ministry came to possess environmental competence probably has to do with the fact that it was directly in charge of Myanmar's participation in the numerous diplomatic conferences of the 1990's, particularly the 1992 Rio Summit.

Although observers have remarked that this incongruence detracts from the efficacy of the NCEA, anecdotal evidence and interviews with local officials suggest that the powerful influence of the Ministry of Foreign Affairs has actually kept the NCEA's profile relatively high. There have been several proposals made over the last few years to establish a new body or ministry dedicated to environmental affairs. It appears that should such a move be approved, the NCEA and its staff will naturally form the core of this new ministry or agency. Myanmar environmental policy today is largely dictated by a document called "Myanmar Agenda 21", a policy instrument prepared for the Rio Summit of 1992.<sup>29</sup> No framework environmental laws exist, even though legislation relating to forestry and wildlife conservation are in place.<sup>30</sup>

In the neighbouring Lao People's Democratic Republic, environmental matters are handled by the Department of Environment, which is constituted under the Science, Technology and Environment Agency (STEA).<sup>31</sup> STEA was for many years known as the Science, Technology and Environment Organisation (STENO).<sup>32</sup> The Department of Environment within STEA is tasked with the operational duties of environmental management, including regulation and compliance monitoring and policy and programme appraisal. The all-important forestry resources of the Lao PDR comes under the purview of the Ministry of Agriculture and Forestry, while hydro-electricity generation falls under the charge of the Ministry of Industry and Handicrafts. Important policy decisions relating to the environment are typically undertaken by the Inter-Ministerial Working Group (IMWG) coordinated by STEA to ensure that the views of the sectoral agencies (particularly those of the powerful State Planning Committee which is in charge of national development) are taken into account.

STEA has in recent years spearheaded efforts to enact new environmental legislation. A landmark Law on Environmental Protection was adopted in April 1999,<sup>33</sup> containing progressive features providing for public participation and environmental impact assessments (EIA). EIA guidelines were further promulgated in October 2000 in the form of the Regulation on Environmental Impact Assessments, and in the same year, a new Environment Action Plan was released to replace an original version adopted in 1994. Provincial Environmental Action Plans are currently being enacted and implemented.

---

<sup>29</sup> See Lei-Theng Lim, "Myanmar Country Report", in *Environmental Legislation and Sustainable Development – Workshop Report*, Robert Beckman & Lal Kurukulasuriya, eds., UNEP-APCEL Publication Series no. 1 (1997), at 82.

<sup>30</sup> The Forestry Law of 1992 and the Protection of Wildlife and Wild Plants and Conservation of Natural Areas Law of 1994. There has been talk for some time of plans to enact a framework environmental law in Myanmar. This might well accompany the elevation of the National Commission on Environmental Affairs to a ministerial status of some form.

<sup>31</sup> The STEA is itself constituted within the Prime Minister's Office. STEA was created pursuant to the Decree of the Prime Minister No. 68 (Decree 068/PM) on the Establishment and Activities of the Science, Technology and Environment Agency, dated 21 May 1999.

<sup>32</sup> STENO was created in 1993 after the Rio Summit and replaced the then-Ministry of Science and Technology.

<sup>33</sup> Decree 068/PM, *supra* note 31.

At the same time, various Implementation Decrees (pursuant to the 1999 Law on Environmental Protection) are being drafted to clarify the roles and responsibilities of the different agencies. In 2000, STEA established branches in 14 of the country's 17 provinces and special zones, with the remaining few to be set up soon. These branches form the main agencies for environmental management at the provincial level. In view of the importance of the IMWG, the possibility of granting it a permanent and established mandate is currently being considered within STEA and related legislation is reported to be underway.

In the Lao PDR, biodiversity conservation is provided for under the Forest Law of 1996 and a 1993 decree that designated the first national biodiversity conservation areas (NBCAs). 20 NBCAs have thus far been declared, and a National Biodiversity Action Plan and Strategy is scheduled to be finalised in 2003.<sup>34</sup> The drafting of the Action Plan and Strategy is being overseen by the National Biodiversity Steering Committee (NBSC), which is chaired by STEA with representatives from various other ministries and the State Planning Committee. The new Biodiversity Action Plan and Strategy will complement the existing National Forestry Action Plan.

The depletion of forest cover in the Lao PDR is presently occurring at a rapid pace, and illegal logging represents a serious problem.<sup>35</sup> Economic options in the Lao PDR are severely limited, and the reliance on forest reserves has been heightened following Thailand's decision to purchase a reduced amount of hydro-electricity from the Lao PDR.<sup>36</sup> Overall, while some efforts have been made in the Lao PDR to protect the environment and to manage its natural resources, the country's poverty and lack of technical and financial resources mean that the environment is still largely neglected. There are worrying indications that as the country opens up, developmental goals will take precedence, particularly in relation to revenue-generating activities such as forestry, mining and hydro-electricity.<sup>37</sup>

In Cambodia, environmental matters are handled by the Ministry of Environment, which was created in 1993 in the aftermath of the Rio Summit. In this respect, Cambodia was the only country in the region to have established a Ministry solely dedicated to the environment immediately following Rio. Other related ministries with a direct mandate to support rational use of natural resources were created after 1998, namely the Ministry of Water Resources and Meteorology and the Ministry of Land Use Management, Urbanization and Construction.

The Ministry of the Environment administers the framework Law on Environmental Protection and Natural Resources Management, which was enacted in 1996.<sup>38</sup> The Ministry has also come up with various sub-decrees on Water Pollution Control,<sup>39</sup> Solid Waste Management<sup>40</sup> and

---

<sup>34</sup> Assistance for the drafting of the instrument is being provided by the U.N. Development Programme (UNDP) and the Danish International Development Agency (DANIDA). Most of the laws in countries such as Vietnam, the Lao PDR, Cambodia and Myanmar have been drafted with the assistance of inter-governmental organisations and foreign donor agencies.

<sup>35</sup> A ban on logging was imposed in May 2000 to curb the increasingly serious problem of illegal logging. This ban is reportedly ineffective in many areas of the country, primarily due to weak enforcement.

<sup>36</sup> In this regard, Thailand's purchase of hydro-electricity generated by the Nam Theun 2 dam straddling the Mekong River is in itself controversial for the environmental repercussions being threatened.

<sup>37</sup> Forestry matters are regulated by legislation such as the Forestry Law and the Decree of the Prime Minister on the management and use of forests and forest land.

<sup>38</sup> Preah Reach Kram No NS.RKM 1296.36 dated 24 December 1996, announcing the Law on Environmental Protection and Natural Resources Management.

<sup>39</sup> Sub-Decree No. 27 ANRK.BK, dated April 06, 1999.

Environmental Impact Assessment (EIA) Process.<sup>41</sup> Others laws being drafted include the Water Resources Law, Forestry Law, Fisheries Law, Wildlife Law, and Law on Protected Area Management. A 1993 Royal Decree on the Creation of Protected Areas established 23 protected zones with a total area of approximately 18% of the country's surface.

Following the relative success of the first National Environmental Action Plan (NEAP, 1998-2002), a National Biodiversity Strategy and an Action Plan to address Climate Change are currently being prepared in Cambodia with the assistance of foreign aid agencies. Inter-ministerial coordination is recognised by the Ministry of Environment to be crucial, particularly with sectoral agencies such as the Ministry of Land Management, Urbanization and Construction and the Ministry of Agriculture, Forestry and Fisheries. As is the case with the Lao PDR, the lack of financial and technical resources in Cambodia continues to hamper the environmental protection effort. The legacy of the long internal strife in Cambodia has also left its mark – the various governmental agencies are now staffed by different political factions, which makes coordination and cooperation difficult. The pressures imposed by developmental imperatives as well as the demands of vested interests will also continue to pose serious challenges to future conservation and management efforts in Cambodia.

Further south in Malaysia, environmental matters continue to be handled by the Department of Environment (DOE), a department constituted under the Ministry of Science, Technology and Environment. Unlike in other countries, there does not appear to be a move to create a separate Ministry of the Environment in Malaysia. Environmental management in Malaysia continues to be complicated primarily by the relations between the federal and state governments, particularly in the resource-rich East Malaysian states of Sabah and Sarawak where state governments retain relatively stronger competence over natural resource management than in West Malaysia. Thus, environmental protection efforts are constantly hampered by uncertainties as to whether a particular matter falls within the competence of the federal or state governments. By the same token, different sectors of the economy may be governed by different federal or state laws.<sup>42</sup>

The framework environmental law in Malaysia is the Environmental Quality Act of 1974, incorporating amendments throughout the years. The most comprehensive amendments were enacted in 1996, which introduced detailed provisions on environmental impact assessments. Recent amendments were made to the Act in 2001.<sup>43</sup> In addition, recent subsidiary legislation enacted pursuant to the Act include provisions on open burning,<sup>44</sup> industrial wastes<sup>45</sup> and environmental impact assessments.<sup>46</sup>

In Brunei Darussalam, environmental matters continue to be the concurrent responsibility of several ministries (as well as the dominant Shell petroleum company), with some measure of coordination being provided by the inter-agency National Committee on the Environment (NCE).

---

<sup>40</sup> Sub-Decree No. 36 ANRK.BK, dated April 27, 1999.

<sup>41</sup> Sub-Decree No. 72 ANRK.BK, dated 11 August 1999.

<sup>42</sup> For a comprehensive treatment of this issue, see Azmi Sharom, "Malaysian Environmental Law: Ten Years After Rio", elsewhere in this issue.

<sup>43</sup> Environmental Quality (Amendment) Act No. 1102 of 2001.

<sup>44</sup> Environmental Quality (Prescribed Activities) (Open Burning) Order 2000, P.U. (A) 308/2000; Environmental Quality (Clean Air) (Amendments) Regulations 2000, P.U. (A) 309/2000.

<sup>45</sup> Environmental Quality (Industrial Wastes and Effluents) (Amendments) Regulations 2000, P.U. (A) 398/2000.

<sup>46</sup> Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) (Amendments) Order 2000, P.U. (A) 489/2000.

The NCE was set up in 1993 in the wake of the Rio Summit, with its Secretariat being the Environment Unit of the Ministry of Development.<sup>47</sup>

In May 2002, the Environment Unit was enlarged and elevated to the status of a full-fledged Department of Environment, Parks and Recreation (DEPR), covering within its mandate matters relating to environmental protection, parks, landscaping and recreation.<sup>48</sup> The DEPR remains constituted under the Ministry of Development and continues to serve as Secretariat for the NCE. It is currently entrusted with the implementation of the environmental aspects of Brunei's Eighth National Development Plan, spanning the period 2001-2005.

No discrete legislation exists in Brunei for environmental protection and management. In general, environmental policies are promulgated as administrative orders. In addition, numerous environmental regulations appear as incidental provisions in sectoral legislation. Overall, regulations governing pollution and the environment are incomplete and piecemeal, and laws governing some types of pollution are non-existent. Nor are there specific laws requiring environmental impact assessments (EIAs), even though environmental considerations are currently incorporated into developmental decision-making through land use planning and zoning requirements. A draft Environmental Order is currently being formulated which will reflect contemporary concerns like toxic and hazardous wastes management and the incorporation of obligations in international treaties.

The most pressing environmental issue facing Brunei in recent years has been the recurrent haze arising from forest fires, both from within Brunei and from neighbouring Indonesia. A National Committee on Haze was set up in 1998, and this resulted in the adoption of a National Haze Action Plan. A new law was enacted in the form of the Emergency (Penal Code Amendment) Order 1998 which provided for offences relating to open burning to be punishable with hefty fines. Where such offences cause pollution to the atmosphere or endanger human life or property, the punishment is a fine of an unlimited amount and/or imprisonment for a term of up to 5 years.

As can be seen from the overview above, while several Southeast Asian countries have moved towards creating new and/or enhanced agencies for environmental protection, others like Malaysia, Myanmar and Brunei have chosen to retain the *status quo*. Interestingly, there have also been countries which are considering either downsizing their environmental agencies or hiving off certain functions to be performed by other government departments. Singapore, for instance, has had a Ministry of the Environment (ENV) since the 1970s, and was, in fact, one of the first countries to have created a separate agency dedicated to environmental protection. In July 2002, a National Environmental Agency (NEA) was created under the Ministry of the Environment to focus on the implementation of environmental policies. This streamlining of functions is meant to increase the effectiveness and responsiveness of the environmental protection effort. The NEA will thus assume the operations of the Environmental Public Health Division and Environmental Policy and Management Division of ENV. The latter division will concentrate on Singapore's contemporary environmental priorities such as waste minimisation, recycling and energy efficiency. For better synergy, the Meteorological Service Department of the Ministry of Transport will also be integrated into the NEA's Meteorological Service Division.

Meanwhile, in the Philippines, the Department of Environment and Natural Resources (DENR) continues to balance the challenges inherent in environmental protection and natural resource management. Until Thailand and Vietnam established their respective Ministries for Natural

---

<sup>47</sup> The Unit was itself set up in 1993.

<sup>48</sup> See the Department's website at <http://www.jastre.gov.bn>.

Resources and Environment, the Philippines was the only country in the region to have an integrated approach to environmental governance, i.e. a “one-stop” agency handling all issues relating to pollution control, protected areas and natural resource management. In many ways, such integration made sense, for environmental protection and resource management issues are invariably linked. Yet, the challenges and contradictions inherent in reconciling resource exploitation and conservation have led some Filipino commentators to question the wisdom of having a massive, one-stop agency. Thus, the possibility of hiving off certain functions of the DENR has been contemplated.<sup>49</sup>

While lacking a comprehensive framework environmental law, the Philippines has in place a plethora of extremely progressive legislation on various conservation and management issues.<sup>50</sup> Thus, laws exist in relation to subjects as diverse as protected areas,<sup>51</sup> forestry,<sup>52</sup> wildlife,<sup>53</sup> plant variety,<sup>54</sup> toxic substances,<sup>55</sup> mining,<sup>56</sup> air pollution<sup>57</sup> and perhaps unique to the Philippines, ancestral domain and indigenous people’s rights,<sup>58</sup> prospecting of genetic and biological resources<sup>59</sup> and solid waste management.<sup>60</sup> The environmental impact system (EIS) process is comprehensively laid out in a DENR Departmental Administrative Order (DAO).<sup>61</sup> The Philippines is thus an example of a country where well-meaning legislation is abundant, but enforcement still lacking for a variety of reasons, primarily the resistance of vested interests, corruption, the overriding needs of development and the lack of financial and technical resources.

### *Conclusion*

One general observation that can be drawn from the experiences of countries in the region is that a separate ministry or agency for environmental protection appears to be a desirable and even necessary policy option. Admittedly, the existence of such a dedicated body cannot guarantee a satisfactory level of environmental protection. What is important is the actual level of influence and respect which an agency (in whatever form or constitution) can command from the other sectoral agencies as well as the local government units and other vested interests. This is likely to

---

<sup>49</sup> See DAO 2002/17 Converting the Environmental Management Bureau From A Staff To A Line Bureau.

<sup>50</sup> See the DENR website at <http://www.denr.gov.ph>.

<sup>51</sup> Republic Act 7586 [the National Integrated Protected Areas System (NIPAS) Act of 1992].

<sup>52</sup> Republic Act 9175 (the Chain Saw Act of 2001), which is directed at illegal logging. Note also DAO 2000/07 on Provisional Guidelines for Environmental Impact Assessment of Forestry Projects.

<sup>53</sup> Republic Act 9147 (the Wildlife Resources Conservation and Protection Act of 2001).

<sup>54</sup> Republic Act 9168 (the Philippine Plant Variety Protection Act of 2002).

<sup>55</sup> Republic Act 6969 (the Toxic Substances and Hazardous and Nuclear Wastes Act of 1990).

<sup>56</sup> Republic Act 7942 (the Philippine Mining Act of 1995), as supplemented by DAO 96/40 (Revised Implementing Rules and Regulations of the Mining Act) and DAO 99/57 on Amendments to DAO 96/40.

<sup>57</sup> Republic Act 8749 (the Philippine Clean Air of 1999), as supplemented by DAO 2002/23 [Implementing Guidelines on the Implementation of the Air Quality Management Fund (AQMF) under RA 8749]

<sup>58</sup> Republic Act 8371 (the Indigenous Peoples Rights Act of 1997).

<sup>59</sup> Executive Order No. 247 Prescribing Guidelines and Establishing a Regulatory Framework for the Prospecting of Biological and Genetic Resources, their By-products and Derivatives, for Scientific and Commercial Purposes; and for other Purposes.

<sup>60</sup> Republic Act 9003 (the Ecological Solid Waste Management Act of 2000).

<sup>61</sup> DAO 96/37, Revising DENR Administrative Order No. 21, Series of 1992, to further strengthen the Implementation of the Environmental Impact Statement (EIS) System, as supplemented by DAO 2000/05 Revising DAO 94/11 and Supplementing DAO 96/37 and Providing for Programmatic Compliance Procedures within the EIS System.

be achieved (though not *inevitably*) through the instrumentality of a separate, independent environmental authority that at the very least, should possess its own budget and policy-setting competence and is not subordinated to the interests of other government agencies.

That said, the experiences of the various Southeast Asian countries demonstrate amply that there exists no one single institutional model which can satisfactorily reconcile environmental and developmental imperatives. Due to differing historical legacies, concerns and characteristics, each country has had to find its own optimal institutional model for environmental management and governance. At the same time, no particular model has succeeded in wholly overcoming the resistance of the sectoral ministries to regulation by environmental agencies. Thus, for instance, the ministries or agencies in charge of forestry and agriculture continue to be extremely influential (and often obstructive) in most of Southeast Asia, save only in Singapore and Brunei where there is negligible forestry and agricultural activity.

A related problem is the lack of enforcement by government authorities, both at the central and local levels. In Indonesia, for instance, the ongoing forest fires problem has often been blamed on the environmental agencies. Yet, the agencies with direct competence in the matter have always been the provincial authorities and their counterparts in the Ministry of Forestry and Plantations and the Ministry of Agriculture (given that the problem is mainly caused by forest clearing and shifting agriculture activities). The strong vested interests of the plantation owners, inadequate finances and manpower in the local governments, a weak police and court system, together with the existence of rampant corruption all lead to an appalling lack of enforcement of environmental laws.

While new laws have mushroomed all over the region in recent years, these are largely the result of expectations and conditions laid down by foreign donor agencies. The rush to attract investments by overseas investors and funding by international lending agencies has compelled governments to produce a variety of environmental laws, given that aid money invariably comes attached to explicit conditions such as adherence to environmental impact assessment laws. While this is driving a general commitment to the rule of law, there is little indication that these laws are being meaningfully “internalised” into the governance culture, in terms of actual political will to implement and enforce them. Thus, one often encounters situations of fairly comprehensive laws existing in the rule books to meet the demands of foreign investors and aid donors, but with poor actual enforcement on the ground.

It is perhaps easy to dismiss many of the concerns discussed above as being teething problems, particularly in countries like Thailand, Cambodia, Vietnam and Indonesia where new and unfamiliar institutional structures are only beginning to find their feet. To a large extent, the new institutions will need time (and often, patronage) to find their place in the political order and to establish their authority and competence *vis-à-vis* the other sectoral agencies as well as the provincial governments. Yet, it has traditionally been the experience in relatively-developed countries such as Malaysia and the Philippines that even established environmental agencies encounter huge challenges in asserting their competence in matters impacting on natural resource exploitation.

Ultimately, it can only be left to strong political will within the respective government leaderships to incorporate environmental sensibilities into developmental decision-making and to effect a greater balance between environmental and developmental imperatives. This prescription may appear almost simplistic, but the lack of political will to override vested interests and to put in place effective institutional arrangements remain very much at the core of many of the environmental problems plaguing the region.