



## Editorial

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The 1996 decision of the Malaysian High Court in the Bakun Dam case created legal history in Malaysia. Touted as the largest dam in Southeast Asia (equal to the size of Singapore), the construction of the dam has generated much outrage amongst the general public in Malaysia and become a matter of significant public debate. The legal challenge to the construction of the dam began in 1995 when proceedings were brought before the High Court of Malaysia claiming that the project was bound by the provisions of the Environmental Quality Act 1974 which required that environmental impact assessment be undertaken prior to the commencement of any works. This was despite assurances which had previously been given that environmental impact assessment (EIA) would be conducted as part of this project and made available to the public for comment. It was subsequently revealed, however, that the Federal Minister for the Environment had in March 1995 amended the law so as to enable the project to be exempted from the EIA requirements. The June 1996 decision of the Court found in favour of the plaintiffs and declared that the Minister's 1995 amendments were invalid. In addition, it was held that before further work could proceed the EIA requirements were to be complied with. Justice Datuk James Foong held that such an EIA process required public participation, noting that "interaction between people and their environment is fundamental to the concept of environmental impact". The decision received various responses within Malaysia itself. For the public at large, it represented a vindication of the right to be heard on projects which have considerable environmental and social ramifications. For the Malaysian government and business interests, the decision represented a defeat.

The decision has since been appealed to the Malaysian Court of Appeal which in February 1997 overturned the High Court's decision. Notwithstanding this development, the High Court's 1996 decision remains important in terms of the development of environmental law in not only Malaysia but also throughout the region. As countries throughout the Asia Pacific seek to raise their environmental standards and develop appropriate environmental laws to accommodate these changes, tensions will inevitably arise between the constraints the law may

place on the development process. When these tensions arise, it will often be the courts that will be called upon to adjudicate any disputes between project developers and the governments which support these projects, and local communities and land owners affected by the proposed development. The Bakun Dam decision demonstrates the capacity not only of local communities to rely upon the law to halt development projects, but also the important role of the courts in upholding the rule of law. It is therefore important that the courts remain free and independent from political influence when considering these cases.

However, the tension which exists between the community, courts, government and the developers is ultimately the tension over sustainable development. The Bakun Dam decision shows that if sustainable development is to be achieved at the local level, it is important that EIA processes be respected. If the EIA processes are to be truly effective they need to take into account a wide range of factors. Any EIA process which allows all development proposals to proceed must be questioned. Likewise, EIA procedures which do not permit any development activity must also be questioned as to whether the environmental standards are too high. Sustainable development therefore requires a full, fair and open assessment of both the competing needs of the environment (in the widest sense) and the needs of development. These are matters which the Asia Pacific Journal of Environmental Law will continue to address.