

Annulment of decisions for building near Ramsar site on Bonaire was justified.

On 11 September Her Majesty Queen Beatrix of the Netherlands has signed a royal decree rejecting the appeal by the Government of Bonaire against the annulment by the Governor-General of the Netherlands Antilles of the decisions by the Government of Bonaire to approve a resort to be built immediately adjacent to the mangroves of "Het Lac", a Ramsar site since 1980 (nr 199).

On invitation by the Government of Bonaire, Dr Peter Bridgewater, then Secretary General of the Ramsar Convention, visited Bonaire on 18 -20 April 2006 to advise on possible developments around Lac. His conclusions were that the limited developments up to now were manageable but should be monitored. "Further development would seem inadvisable in close proximity to the lagoon, but should such development wish to be pursued, then full environment Impact procedures, according to the Ramsar guidance should be undertaken by the developer as part of the considerations by the Bonaire Government. Lack of such assessment would be a clear breach of the commitments under the Convention."

On 4 May 2006 the Bonaire Government wrote to a developer that for the approval of his request for a long-lease adjacent to Lac he should first supply an EIA report before his request could be honored. The EIA report was provided to the government on 15 May 2006. It would be obvious that this report would be grossly lacking – in fact it was a copy-paste action from preliminary study by someone else for a different project. Notwithstanding negative advise on this report, the government approved the request for a long lease and afterwards issued building permits, which were immediately used by the developer.

Upon a petition by a local NGO, the Governor-general of the Netherlands Antilles, who has an oversight function to ensure that decisions by local governments are not contrary to Kingdom and International law, first suspended on 4 October 2006 and then annulled on 3 January 2007 the decisions by the island government for issuing the long lease and the building permits. The basis for this annulment was that the decisions were contrary to the Ramsar convention, primarily by the lack of an EIA according to Ramsar guidance.

On 1 February 2007 the Government of Bonaire appealed this decision to the Crown. One of the of the issues brought forward by the Government of Bonaire was that according to them the resolutions

concerning EIA's in Ramsar were not legally binding.

In the Kingdom of the Netherlands the advise about these appeals to the Crown are given by the Council of State. The Council of State advises the Dutch government and parliament on legislation and governance and is the country's highest administrative court. On 26 July 2007 the Council of State submitted its advise stating that the appeal against the decision of annulment by the Governor-General was unfounded. The Kingdom Government accepted the advice by the Council of State on 24 August.

One interesting position of the Council of State was that resolutions, decisions and guidelines accepted unanimously by the Conference of Parties to the Convention, a body established by the Convention and which includes representation by the Kingdom of the Netherlands, should be considered part of the obligations under the Convention.