



# JUDGES AND NATURE

HONOLULU, SEPTEMBER 5, 2016

## Introduction

This one-day event, organized by the IUCN World Commission on Environmental Law (WCEL), the Supreme Court of Hawai'i, the United Nations Environment Programme (UNEP) and other partners, provides a special opportunity for all associated with the World Conservation Congress to focus on the role of the judiciary around the globe in the protection of the environment generally and the conservation of Nature in particular. The program's main theme is the compliance with and enforcement of environmental legislation, both nationally and internationally—a significant weakness of many current legal regimes.

The event consists of two parts. The first part will be an "ICJ-4-ICJ" Moot Court Workshop, organized by the University of Hawai'i William S. Richardson School of Law, Pace University's Elisabeth Haub School of Law, and IUCN WCEL. The workshop is a collaboration and performance that involves law students, judges, and academics from various countries in an effort to frame and refine the issues and arguments around a hypothetical submission to the International Court of Justice (ICJ) on the question of the responsibility of states under international law to address the global climate crisis for the benefit of present and future generations. This Workshop takes place in the Hawai'i Convention Center in Room 310 and is open to registered World Conservation Congress participants only.

The second part, beginning at the World Conservation Congress venue in the morning, and continuing at the Supreme Court of Hawai'i in the afternoon, is a colloquium that brings together judges working in or associated with environmental courts and tribunals, prosecutors, professors, and experts in a broad range of environmental law, science and policy fields. Sessions will focus on some of the major legal and institutional challenges in environmental practice, both in terms of the work of the courts as well as in research, teaching, and capacity building. Colloquium participants will also explore the emerging concept of the *Environmental Rule of Law*, initiated through the efforts of UNEP, WCEL, the Organization of American States and partner institutions, in particular at the *Rio+20 Conference on Justice, Governance and Law for Environmental Sustainability* and refined at the *1st IUCN World Congress on Environmental Law* held in Rio de Janeiro in April 2016. The ethical, legal, economic, and policy implications of the Sustainable Development Goals will also be discussed, as well as the recently launched *Global Judicial Institute for the Environment*.

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8:30  
10:30

## Inter-Generational Climate Justice Moot Court ("ICJ4ICJ") "Tony Oposa Intergenerational Moot Court"

### IUCN CONGRESS WORKSHOP #9695

**VENUE: HAWAII CONVENTION CENTER** (WORLD CONSERVATION CONGRESS), ROOM 310 (NB: CONGRESS REGISTRATION REQUIRED FOR ATTENDANCE AT THIS SESSION)

*Discussion by law students and judges on the hypothetical presentation to the International Court of Justice of a request for an advisory opinion on the question of the responsibility of states under international law to address the global climate crisis for the benefit of present and future generations. Includes highlights of video-taped oral argument and memorials from the ICJ4ICJ parallel event on September 1, 2016 at the Supreme Court of Hawai'i. This interactive Workshop will feature a panel of international environmental academics and jurists, and the voices of future generations as represented by law students and their faculty coaches from the Philippines, France, Brazil, South Korea, and the United States (New York & Hawai'i).*

**WELCOME: ANTONIO BENJAMIN** (CHAIR, WCEL AND JUSTICE, NATIONAL HIGH COURT OF BRAZIL) AND **DAVID FORMAN** (WILLIAM S. RICHARDSON SCHOOL OF LAW, UNIVERSITY OF HAWAII AT MANOA, USA)

#### LAW STUDENT ORALISTS:

**BRAZIL - FACULDADE DE DIREITO MILTON CAMPOS: HELENA SETTE CAMARA & NIKOLAS FAN** (REPRESENTING THE ORGANIZATION OF AMERICAN STATES)

**PHILIPPINES - UNIVERSITY OF CEBU - COLLEGE OF LAW: KRISTINE JOY ARGALLON** (REPRESENTING ASEAN)

**SOUTH KOREA - SEOUL NATIONAL UNIVERSITY: SO-HYUN PARK** (REPRESENTING THE ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT)

**USA - NEW YORK, PACE UNIVERSITY – ELISABETH HAUB SCHOOL OF LAW: JOSEPH D. MORAVEC** (REPRESENTING THE ARAB LEAGUE)

**USA - HAWAII, WILLIAM S. RICHARDSON SCHOOL OF LAW, UNIVERSITY OF HAWAII: ALYSSA-MARIE Y. H. KAU** (REPRESENTING AOSIS)

**FRANCE - SCIENCES PO, RENNES: LEA LE CAM** (REPRESENTING THE EUROPEAN PARLIAMENT)

#### PANELISTS/JUDGES:

**DANIEL BODANSKY** (PROFESSOR, GLOBAL INSTITUTE FOR SUSTAINABILITY, ARIZONA STATE UNIVERSITY COLLEGE OF LAW, USA)

**MAXINE BURKETT** (PROFESSOR, UNIVERSITY OF HAWAII, WILLIAM S. RICHARDSON SCHOOL OF LAW, USA)

**IRINA KRASNOVA** (PROFESSOR, MOSCOW STATE JURIDICAL ACADEMY)

**EMILIE GAILLARD** (PROFESSOR, UNIVERSITY OF CAEN, FRANCE)

**RAGNHILD NOER** (JUSTICE, SUPREME COURT OF NORWAY)

**CHRISTINA VOIGT** (PROFESSOR, UNIVERSITY OF OSLO, NORWAY)

**CLOSING COMMENTARY: ANNA OPOSA** (ONE OF THE PLAINTIFFS IN MINORS OPOSA V. FACTORAN, SUPREME COURT OF THE PHILIPPINES G.R. NO. 101083 JULY 30, 1993) AND **NICHOLAS ROBINSON** (UNIVERSITY PROFESSOR FOR THE ENVIRONMENT, ELISABETH HAUB SCHOOL OF LAW, PACE UNIVERSITY, WCEL CHAIR EMERITUS AND MEMBER OF ENVIRONMENTAL LAW INSTITUTE BOARD)

## Colloquium on "Judges and Nature"

Venues : Morning Session (11:00 to 13:45): Hawai'i Convention Center, 3rd Floor, Room 320 (previously in Hawai'i Pacific Pavilion #12226 and #12227)

Celebration Lunch in Honor of the Global Judicial Institute for the Environment: Congress Pavilion (1st Floor, Hawai'i-Pacific Pavilion, Room B)  
Afternoon/Evening Session (15:30 – 19:30): Supreme Court of Hawai'i

### Opening

**CHAIR: ANTONIO BENJAMIN** (CHAIR, WCEL, AND JUSTICE, NATIONAL HIGH COURT OF BRAZIL)

**WELCOMING REMARKS: ZHANG XINSHENG** (IUCN PRESIDENT), **INGER ANDERSEN** (IUCN DIRECTOR GENERAL), **MARK RECKTENWALD** (CHIEF JUSTICE, SUPREME COURT OF HAWAII) AND **ELIZABETH MREMA** (DIRECTOR, UNEP DIVISION OF ENVIRONMENTAL LAW AND CONVENTIONS)

11:00  
19:30

11:00



11:20

## **Keynote Address**

**CHAIR: MALIK AMIN ASLAM KHAN** (IUCN VICE-PRESIDENT, PAKISTAN)

**ACHIM STEINER** (FORMER EXECUTIVE DIRECTOR, UNEP), *STATE OF THE GLOBAL ENVIRONMENT AND THE ROLE OF JUDGES*

*This address will canvass the most crucial environmental issues confronting the world today, and will outline some of the challenges faced by decision-makers, in particular the judiciary, at national and international levels.*

**INCITATION TO THE KEYNOTE SPEAKER BY PIET WIT** (CHAIR, IUCN COMMISSION ON ECOSYSTEM MANAGEMENT – CEM): *Five crucial thoughts on the State of the Global Environment*

11:40

## **The Biodiversity Crisis: A Scientific Perspective**

**CHAIR: SPENCER THOMAS** (AMBASSADOR AND SPECIAL ENVOY FOR MULTILATERAL ENVIRONMENTAL AGREEMENTS, GRENADA)

**KEYNOTE SPEAKER: THOMAS LOVEJOY** (SENIOR FELLOW, UNITED NATIONS FOUNDATION AND UNIVERSITY PROFESSOR, DEPARTMENT OF ENVIRONMENTAL SCIENCE AND POLICY, GEORGE MASON UNIVERSITY)

*This presentation will address the need for judges, public prosecutors and lawyers to understand the underlying scientific learning and prognoses relevant to the current implementation and future reform of environmental law, particularly in respect to the conservation of Nature.*

12:00

## **Judges and Environment: An introduction**

**CHAIR: SABRINA MCKENNA** (JUSTICE, SUPREME COURT OF HAWAII)

**SPEAKERS:**

**JESSICA MAKOWIAK** (PROFESSOR, LIMOGES UNIVERSITY, AND DIRECTOR, CRIDEAU)

**RAGNHILD NOER** (JUSTICE, SUPREME COURT OF NORWAY)

**NICHOLAS ROBINSON** (UNIVERSITY PROFESSOR FOR THE ENVIRONMENT, PACE UNIVERSITY AND WCEL CHAIR EMERITUS)

**MICHAEL WILSON** (JUSTICE, SUPREME COURT OF HAWAII)

*This session will introduce a range of perspectives concerning the responsibilities of judges in environmental disputes at domestic, regional and international levels, including the need for procedural innovations, broader evidentiary considerations and creative remedies, as well as possibilities for the application of new and emerging principles of environmental law. It will also present the Charter of the "Global Judicial Institute for the Environment", launched during the 1st IUCN World Environmental Law Congress, held in Rio de Janeiro in April 2016.*

12:40

## **Environmental Courts and Tribunals: A Comparative Overview**

**CO-CHAIRS: SANDRINE FRIEDLI CELA** (IUCN LEGAL ADVISER, SWITZERLAND) AND **YACOUBA SAVADOGO** (WCEL MEMBER AND LEGAL OFFICER, IUCN REGIONAL OFFICE FOR CENTRAL AND WEST AFRICA - PACO)

**SPEAKERS:**

**ANTONIO BENJAMIN** (JUSTICE, NATIONAL HIGH COURT OF BRAZIL AND WCEL CHAIR), *ENVIRONMENTAL COURTS AND TRIBUNALS: A BRIEF COMPARATIVE OVERVIEW*

**JEANNETTE CASTAGNETTI** (SENIOR ENVIRONMENTAL COURT JUDGE, 1<sup>ST</sup> CIRCUIT, HAWAII), *THE HAWAII MODEL*

**JANE DWASI** (CHAIRPERSON, KENYA ENVIRONMENTAL TRIBUNAL), *THE KENYAN MODEL*

*The session is intended to contrast the advantages and limitations of various systems of environmental courts and tribunals in developing and developed countries, ranging from independent and stand-alone specialist courts to sections or divisions of superior courts in various jurisdictions.*

13:00

## **Discussion**



13:20

### Keynote Address

**CHAIR: JONATHAN HUGHES** (IUCN COUNCILOR AND CHIEF EXECUTIVE, SCOTTISH WILDLIFE TRUST, UNITED KINGDOM)  
**BRAULIO DIAS** (EXECUTIVE SECRETARY, SECRETARIAT OF THE CONVENTION ON BIOLOGICAL DIVERSITY), *THE CBD AND ITS IMPLEMENTATION CHALLENGES*

13:40

### Closing of the morning session

**ALEJANDRO IZA** (DIRECTOR, IUCN ENVIRONMENTAL LAW CENTER, BONN)

13:50  
14:30

### Celebration Lunch in Honor of the “Global Judicial Institute for the Environment”

*‘Ono Hawaiian Food from Waiāhole Poi Factory, sponsored by the WCEL & WSRSL School of Law Environmental Law Program (invitation only)  
Location: Congress Pavilion (1st Floor, Hawai‘i-Pacific Pavilion, Room B)*

14:45

### Transfer to the Supreme Court of Hawai‘i

*Location: Supreme Court of Hawai‘i, 417 South King Street (open to public)  
(Transportation provided for speakers, WCEL members and Guests)*

15:30

### Keynote Address

**CHAIR: MARK RECKTENWALD** (CHIEF JUSTICE OF HAWAI‘I)  
**JOHN KNOX** (PROFESSOR, WAKE FOREST UNIVERSITY SCHOOL OF LAW AND UN SPECIAL RAPPORTEUR ON HUMAN RIGHTS AND THE ENVIRONMENT), *BIODIVERSITY, HUMAN RIGHTS AND THE ROLE OF JUDGES*

*This keynote address is focused on the effects of climate change and biodiversity loss, the two most pressing, and often linked, global issues confronting humanity, both in terms of physical impacts as well as their effect on human rights. The address intends to explore the ways in which judges must grapple with the complex legal challenges associated with these problems in the coming decades.*

15:50

### Environmental Law Challenges: Oceans, Forests and Climate Change

**CHAIR: MARINA VON WEISSENBERG** (IUCN VICE-PRESIDENT, MINISTRY OF THE ENVIRONMENT OF FINLAND)

#### KEYNOTE ADDRESS:

**NILUFER ORAL** (PROFESSOR, BILGI UNIVERSITY, ISTANBUL AND CHAIR, IUCN ACADEMY OF ENVIRONMENTAL LAW),  
*OCEANS, CORAL REEFS AND COASTAL AREAS: THE ROLE OF LAW AND COURTS*

*This presentation will cover the role of international courts and tribunals in terms of the implementation and enforcement of environmental law, with examples drawn from recent cases in the International Court of Justice, ITLOS and the Permanent Court of Arbitration.*

#### SPEAKERS:

**GRETHEL AGUILAR** (WCEL MEMBER AND IUCN REGIONAL DIRECTOR, MESOAMERICA AND THE CARIBBEAN), *FOREST LAW ENFORCEMENT AND GOVERNANCE CHALLENGES: JUST A MATTER FOR THE FOREST SECTOR?*

*This presentation’s point of departure is that forests do not stand alone. Therefore, forest laws and regulations need to respond to critical challenges such as sustainable use and soil conservation management of protected areas that clearly recognize the rights of indigenous peoples, protection of biodiversity taking into account the linkages between biodiversity, agriculture, food security and adaptation to climate change.*

**CHRISTINA VOIGT** (WCEL MEMBER AND PROFESSOR, UNIVERSITY OF OSLO SCHOOL OF LAW), *FROM PARIS TO MARRAKESH*

*This presentation will focus on the evolving legal regime of climate change as initiated by the Paris Agreement.*

16:20

### Discussion



16:30

## ***Environmental Rule of Law and Judges***

CO-CHAIRS:

**CARLOS MANUEL RODRIGUEZ** (FORMER MINISTER OF THE ENVIRONMENT, COSTA RICA, AND VICE PRESIDENT, CONSERVATION INTERNATIONAL) AND **GEORGE GREENE** (IUCN COUNCILOR, CANADA)

**BEN BOER** (WCEL DEPUTY CHAIR, DISTINGUISHED PROFESSOR, WUHAN UNIVERSITY AND EMERITUS PROFESSOR, UNIVERSITY OF SYDNEY), ***EMERGING ENVIRONMENTAL LAW PRINCIPLES***

*This presentation will outline the emerging principles associated with the Environmental Rule of Law, focusing in particular on the meaning and application of the Principles of the Ecological Function of Property Rights and Non-Regression.*

**NICHOLAS BRYNER** (EMMETT INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT, UCLA SCHOOL OF LAW), ***THE PRINCIPLE "IN DUBIO PRO NATURA"***

*This presentation will examine the application of the Principle "In Dubio Pro Natura" by courts and tribunals in resolving uncertainties in environmental adjudication and decisionmaking.*

**JOHN PENDERGRASS** (VICE-PRESIDENT, ENVIRONMENTAL LAW INSTITUTE, UNITED STATES), ***THE KEY ROLE OF JUDGES IN IMPLEMENTING THE ENVIRONMENTAL RULE OF LAW***

*This presentation will cover the main findings of the Environmental Law Institute's review of the global state of the rule of law with respect to the environment*

**ECKARD REHBINDER** (EMERITUS PROFESSOR, GOETHE UNIVERSITY FRANKFURT), ***MODERN ENVIRONMENTAL LAW AS ECONOMIC AND SOFT LAW: NO PLACE FOR JUDGES?***

*This presentation will focus on global challenges confronting environmental law due to its increasing conversion into economic law or even law without the state, laying particular emphasis on the role of judges.*

17:10

## ***Discussion***

17:20

## ***Coffee Break***

17:40

## ***The Experience of Environmental Courts, Tribunals, and Public Prosecutors***

CHAIR: **MICHAEL SEABRIGHT** (CHIEF JUDGE, UNITED STATES COURT FOR THE DISTRICT OF HAWAII)

KEYNOTE ADDRESS:

**JOHN C. CRUDEN** (ASSISTANT ATTORNEY GENERAL, ENVIRONMENT AND NATURAL RESOURCES DIVISION, U.S. DEPARTMENT OF JUSTICE)

SPEAKERS:

**RAFAEL ASENJO** (CHIEF JUSTICE, ENVIRONMENTAL COURT, SANTIAGO, CHILE)

**JOSEPH E. CARDOZA** (CHIEF JUDGE, SECOND CIRCUIT, MAUI, HAWAII)

**RONALD IBARRA** (CHIEF JUDGE, THIRD CIRCUIT, HAWAII ISLAND, HAWAII)

**TRUDY SENDA** (JUDGE, FIFTH CIRCUIT, KAUAI, HAWAII)

*The session will explore the particular advantages of specialized environmental courts, tribunals and public prosecutors, in contrast to the use of the general courts and public prosecutors' practice.*

18:20

## ***Discussion***

18:30

## ***General Report: Prospects and Challenges for Courts and the Environmental***



## Rule of Law

CHAIR: **RICHARD W. POLLACK** (JUSTICE, SUPREME COURT OF HAWAII)

GENERAL RAPORTEURS:

**DENISE ANTOLINI** (PROFESSOR, UNIVERSITY OF HAWAII WILLIAM S. RICHARDSON SCHOOL OF LAW)

**ARNOLD KREILHUBER** (UNEP)

*This session, summarizing the discussion of the Colloquium, will look to the future in terms of the challenges facing judges and courts in the area of environmental law, and will focus in particular on the practical legal and policy aspects of applying the emerging Environmental Rule of Law at national and international levels.*

18:45

### **A Tribute to Professor Denise Antolini (University of Hawai'i, William S. Richardson School of Law)**

CHAIR: **AVI SOIFER** (PROFESSOR AND DEAN, UNIVERSITY OF HAWAII, WILLIAM S. RICHARDSON SCHOOL OF LAW)

SPEAKERS:

**MICHAEL WILSON** (JUSTICE, SUPREME COURT OF HAWAII)

**ANTONIO BENJAMIN** (WCEL CHAIR AND JUSTICE, NATIONAL HIGH COURT OF BRAZIL)

19:00

### **Closing Keynote Address**

CHAIR: **PATRICK DE HENEY** (IUCN COUNCILOR, SWITZERLAND)

KEYNOTE SPEAKER:

**JEFFREY D. SACHS** (PROFESSOR, COLUMBIA UNIVERSITY), **SDGs AND IMPLEMENTATION: THE ROLE OF JUDGES**

*Many of the Sustainable Development Goals agreed in 2015 present specific challenges for the reform and more robust application of environmental law on a global basis. This session will examine the role of judges with regard to the Sustainable Development Goals, particularly from a broader policy and economic perspective.*

19:20

### **Closing**

**MARK RECKTENWALD** (CHIEF JUSTICE OF HAWAII), **MIGUEL PELLERANO** (IUCN COUNCILOR AND VICE-PRESIDENT) AND **ANTONIO BENJAMIN** (WCEL CHAIR)

19:45  
21:45

### **Reception for WCEL Members and Guests (invitation only)**

VENUE: **CAFÉ JULIA, 1040 RICHARDS ST, HONOLULU, HI 96813** (5 MINUTE WALK FROM THE SUPREME COURT)

Organized by:



World Commission  
on Environmental Law

Commission Mondiale de  
Droit de l'Environnement | Comisión Mundial  
de Derecho Ambiental

In Partnership with:



Planet at the crossroads  
[www.iucnworldconservationcongress.org](http://www.iucnworldconservationcongress.org)  
1-10 September 2016, Hawai'i