



Global Judicial Institute  
on the Environment  
Institut Judiciare Mondial  
de l'Environnement  
Instituto Judicial Mundial  
del Ambiente

ADB



International Association of Judges  
*promoting an independent judiciary worldwide*



# SYMPOSIUM ON JUDGES AND THE ENVIRONMENT

*The Impact of the Stockholm Declaration in Shaping  
Global Environmental Law and Jurisprudence*

An Associated Event of the UN Stockholm+50 Conference  
31 May–1 June 2022

**POST-SYMPOSIUM BOOKLET**

In partnership with:



50  
1972-2022



Convention on  
Biological Diversity









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In partnership with:



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Biological Diversity



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The contents of this booklet are a non-verbatim brief of the remarks made by the speakers during the Symposium on Judges and the Environment.

Affiliations and positions indicated are as of symposium dates (31 May–1 June 2022).



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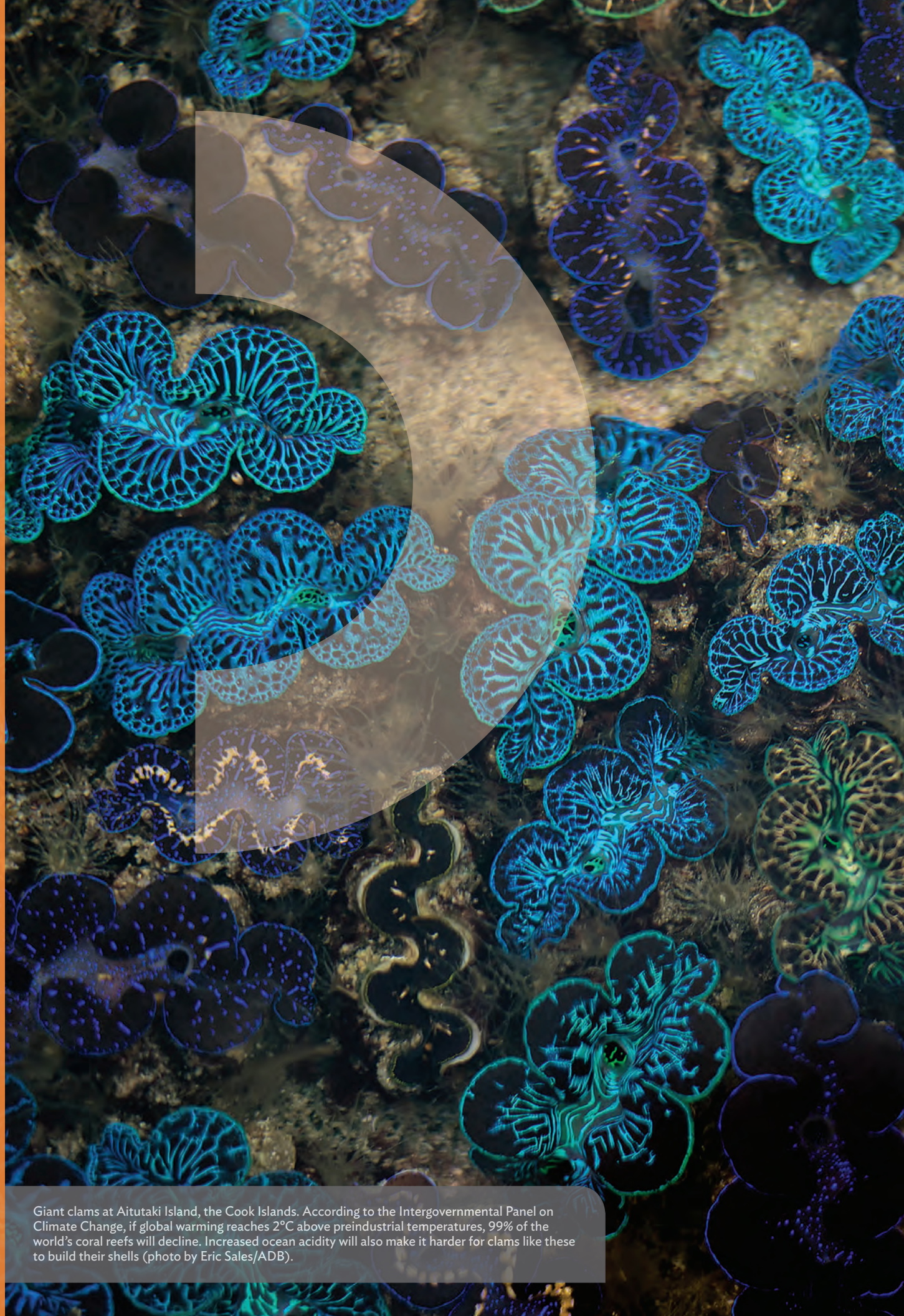




**A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences.** Through ignorance or indifference we can do massive and irreversible harm to the earthly environment on which our life and well being depend. Conversely, through fuller knowledge and wiser action, we can achieve for ourselves and our posterity a better life in an environment more in keeping with human needs and hopes. There are broad vistas for the enhancement of environmental quality and the creation of a good life. What is needed is an enthusiastic but calm state of mind and intense but orderly work. For the purpose of attaining freedom in the world of nature, man must use knowledge to build, in collaboration with nature, a better environment. To defend and improve the human environment for present and future generations has become an imperative goal for mankind—a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of worldwide economic and social development.

*Declaration of the United Nations Conference on the Human Environment (The Stockholm Declaration), Chapeau, para. 6.*





Giant clams at Aitutaki Island, the Cook Islands. According to the Intergovernmental Panel on Climate Change, if global warming reaches 2°C above preindustrial temperatures, 99% of the world's coral reefs will decline. Increased ocean acidity will also make it harder for clams like these to build their shells (photo by Eric Sales/ADB).



The background of the slide is a photograph of a coral reef. The left side shows a close-up of various coral species, including some with bright blue and purple hues. The right side is covered by a semi-transparent blue overlay that features a repeating pattern of faint, stylized coral or floral motifs. A large white number '1' is positioned on the left side, partially overlapping the coral image and the blue overlay.

1

# CONFERENCE AGENDA

## OPENING CEREMONY

### WELCOME AND OPENING REMARKS

**9:00–9:30 am Stockholm** (30 minutes)

3:00–3:30 am	New York	10:00–10:30 am	Nairobi	3:00–3:30 pm	Manila
4:00–4:30 am	Brasilia	12:00–12:30 pm	Islamabad	5:00–5:30 pm	Sydney
8:00–8:30 am	London				

- **Judge Hanna Werth**, *President, Swedish Judges Association*
- **Patricia Kameri-Mbote**, *Director United Nations Environment Program (UNEP) Law Division and Professor, University of Nairobi Law School*
- **Thomas Clark**, *General Counsel, Asian Development Bank (ADB)*
- **Michael Strauss**, *General Counsel, European Bank for Reconstruction and Development (EBRD)*
- **Chair: Justice Antonio Herman Benjamin**, *National High Court of Brazil (STJ), President of the Global Judicial Institute on the Environment (GJIE), and Chair Emeritus, IUCN World Commission on Environmental Law (WCEL)*

### SYMPOSIUM INTRODUCTION BY THE ACADEMIC COORDINATORS

**9:30–9:45 am Stockholm** (15 minutes)

3:30–3:45 am	New York	10:30–10:45 am	Nairobi	3:30–3:45 pm	Manila
4:30–4:45 am	Brasilia	12:30–12:45 pm	Islamabad	5:30–5:45 pm	Sydney
8:30–8:45 am	London				

- **Nicholas Bryner**, *Professor, Louisiana State University School of Law*
- **Denise Antolini**, *Professor, University of Hawaii School of Law*



## OPENING KEYNOTES:

### Stockholm+50 – Reflections about the Past, Present and Future

#### SPEAKERS

- **Jeffrey Sachs**, Professor, Director, Center for Sustainable Development at Columbia University and President, UN Sustainable Development Solutions Network: Judges and Sustainable Development (virtual)
- **Nicholas Robinson**, Professor, Pace Law School; President, ICEL; Chair Emeritus, IUCN World Commission on Environmental Law: Environmental Law—Achievements and Gaps Since the 1972 Stockholm Declaration

#### CO-CHAIRS

- **Justice Ragnhild Noer**, Supreme Court of Norway
- **Christina Pak**, Principal Counsel, ADB

#### WELLNESS BREAK

11:00–11:15 am Stockholm (15 minutes)

5:15–5:30 am	New York	12:15–12:30 pm	Nairobi	5:15–5:30 pm	Manila
6:15–6:30 am	Brasilia	2:15–2:30 pm	Islamabad	7:15–7:30 pm	Sydney
10:15–10:30 am	London				

## PANEL SESSION 1:

### Emerging Trends in Environmental Law

9:30–9:45 am Stockholm (15 minutes)

3:30–3:45 am	New York	10:30–10:45 am	Nairobi	3:30–3:45 pm	Manila
4:30–4:45 am	Brasilia	12:30–12:45 pm	Islamabad	5:30–5:45 pm	Sydney
8:30–8:45 am	London				

#### SPEAKERS

- **Jonas Ebbesson**, Professor and former Dean, University of Stockholm School of Law: The Swedish Environmental Law Model—A Panorama and Lessons Learned
- **Émilie Gaillard**, Lecturer in Environmental and Human Rights Law Sciences Po Rennes, General Coordinator of the Normandy Chair for Peace (CNRS): Towards a Transgenerational Implementation of Fundamental Environmental Rights and Duties



**CO-CHAIRS**

- **Justice Sapana Pradhan Malla**, *Supreme Court of Nepal, and Secretary-General, GJIE*
- **Judge Anders Bengtsson**, *Former Senior Judge, Land and Environment Court, Växjö, Sweden*

**MORNING SESSION CLOSING KEYNOTE  
ADDRESSES**

**The Environmental Rule of Law, Climate Change and Ecocide**

**12:00–12:45 am Stockholm** (45 minutes)

6:00–6:45 am	New York	1:00–1:45 am	Nairobi	6:00–6:45 pm	Manila
7:00–7:45 am	Brasilia	3:00–3:45 pm	Islamabad	8:00–8:45 pm	Sydney
11:00–11:45 am	London				

**SPEAKERS**

- **Christina Voigt, Professor**, *University of Oslo School of Law; Chair, IUCN World Commission on Environmental Law: Environmental Law Priorities and Challenges after Stockholm+50*
- **Jojo Mehta**, *Co-founder and Executive Director of Stop Ecocide International: The Establishment of Ecocide as an International Crime*

**CHAIR**

- **Justice Ambeng Kandakasi**, *Deputy Chief Justice, Supreme Court of Papua New Guinea*

**GROUP PHOTO SESSION AND LUNCH**

**12:45–2:00 pm Stockholm** (1 hour 15 minutes)

6:45–8:00 am	New York	1:45–3:00 pm	Nairobi	6:45–8:00 pm	Manila
7:45–9:00 am	Brasilia	3:45–5:00 pm	Islamabad	8:45–10:00 pm	Sydney
11:45 am–1:00 pm	London				

## **PANEL SESSION 2:**

### **Emerging Environmental Law Principles Since the Stockholm Declaration**

**2:00–3:00 am Stockholm** (1 hour)

8:00–9:00 am	New York	3:00–4:00 pm	Nairobi	8:00–9:00 pm	Manila
9:00–10:00 am	Brasilia	5:00–6:00 pm	Islamabad	10:00–11:00 pm	Sydney
1:00–2:00 pm	London				

#### **SPEAKERS**

- **David Boyd**, *United Nations (UN) Rapporteur for Human Rights and the Environment; Professor, University of British Columbia*
- **Justice Antonio Herman Benjamin**, *National High Court of Brazil (STJ)*
- **Justice Ricardo Lorenzetti**, *Supreme Court of Argentina; Professor, University of Buenos Aires (virtual)*

#### **CO-CHAIRS**

- **Justice Michelle Weekes**, *High Court of Barbados (virtual)*
- **Justice Damaris María Vargas Vásquez**, *Supreme Court of Costa Rica (virtual)*

## **DISCUSSION**

**3:00–3:30 am Stockholm** (30 minutes)

9:00–9:30 am	New York	4:00–4:30 pm	Nairobi	9:00–9:30 pm	Manila
10:00–10:30 am	Brasilia	6:00–6:30 pm	Islamabad	11:00–11:30 pm	Sydney
2:00–2:30 pm	London				

#### **WELLNESS BREAK**

**3:30–4:00 am Stockholm** (30 minutes)

9:30–10:00 am	New York	4:30–5:00 pm	Nairobi	9:30–10:00 pm	Manila
10:30–11:00 am	Brasilia	6:30–7:00 pm	Islamabad	11:30–12:00 pm	Sydney
2:30–3:00 am	London				

## **PANEL SESSION 3:**

### **Climate Change and Courts - A Global Dialogue**

**4:00–5:30 am Stockholm** (1 hour 30 minutes)

10:00–11:30 am	New York	5:00–6:30 pm	Nairobi	10:00–11:30 pm	Manila
11:00 am–12:30 pm	Brasilia	7:00–8:30 pm	Islamabad	12:00–1:30 am	Sydney
3:00–4:30 pm	London				

#### **SPEAKERS**

- **Justice Brian Preston**, Chief Justice, Land and Environment Court, New South Wales, Australia
- **Justice Fabien Raynaud**, Conseil d'État, France (virtual)
- **Justice Syed Mansoor Ali Shah**, Supreme Court of Pakistan
- **Justice Michael Wilson**, Supreme Court of Hawaii
- **Judge Liu Zhumei**, Chief Judge, Environment and Resources Division, Supreme People's Court, People's Republic of China (virtual)
- **Maria Cecilia T. Sicangco**, Senior Legal Officer, ADB

#### **CO-CHAIRS**

- **Andrea Marcela Brusco**, UNEP Environmental Governance Regional Coordinator, Panama City (virtual)
- **Justice Beibut Shermukhametov**, Supreme Court of Kazakhstan

#### **DISCUSSION**

**5:30–6:00 am Stockholm** (30 minutes)

11:30 am–12:00 pm	New York	6:30–7:00 pm	Nairobi	11:30 pm–12:00 am	Manila
12:30–1:00 pm	Brasilia	8:30–9:00 pm	Islamabad	1:30–2:00 am	Sydney
4:30–5:00 pm	London				



## CONCLUDING SESSION OF DAY 1

### KEYNOTE ADDRESS: UNEP AND THE THREE PLANETARY CRISES (CLIMATE, BIODIVERSITY, AND POLLUTION)

**6:00–6:30 am Stockholm** (30 minutes)

12:00–12:30 am	New York	7:00–7:30 pm	Nairobi	12:00–12:30 am	Manila
1:00–1:30 pm	Brasilia	9:00–9:30 pm	Islamabad	2:00–2:30 am	Sydney
5:00–5:30 pm	London				

### KEYNOTE SPEAKER

- **Inger Andersen**, Secretary-General, Stockholm+50 International Meeting and Executive Director, United Nations Environment Programme (UNEP): *UNEP+50 — Challenges and Prospects*

### CHAIR

- **Justice Alfredo Gutiérrez Ortiz Mena**, Supreme Court of Mexico (virtual)

### OPENING

**9:00–9:15 am Stockholm**

3:00–3:15 am New York

4:00–4:15 am Brasilia

8:00–8:15 am London

10:00–10:15 am Nairobi

12:00–12:15 pm Islamabad

3:00–3:15 pm Manila

5:00–5:15 pm Sydney

## PANEL SESSION 4: Official Launch of the Global Judicial Environmental Portal

**9:15–10:00 am Stockholm** (45 minutes)

3:15–4:00 am New York

4:15–5:00 am Brasilia

8:15–9:00 am London

10:15–11:00 am Nairobi

12:15–1:00 pm Islamabad

3:15–4:00 pm Manila

5:15–6:00 pm Sydney

### SPEAKERS

- **Justice Antonio Herman Benjamin**, *National High Court of Brazil (STJ) and President, Global Judicial Institute on the Environment*
- **Eva Duer**, *Legal Officer and Team Leader, Collective Intelligence for Environmental Governance, UNEP INFORMEA, Geneva (virtual)*
- **Judge Marc Clément**, *Presiding Judge, Administrative Court of Lyon, France (virtual)*
- **Peter Speelman**, *Associate Legal Officer, Collective Intelligence for Environmental Governance, UNEP INFORMEA, Geneva (virtual)*

### CO-CHAIRS

- **Justice Luc Lavrysen**, *President, Constitutional Court of Belgium; Chair, European Union Forum of Judges for the Environment (virtual)*
- **Donald Kaniaru**, *ICEL and Former Director of UNEP Law Division*

## **PANEL SESSION 5:**

### **Theory and Practice of the Environmental Rule of Law, with Special Emphasis on Independence, Integrity and the Use of Technology in the Judiciary**

**10:00–11:00 am Stockholm** (1 hour)

4:00–5:00 am	New York	11:00 am–12:00 pm	Nairobi	4:00–5:00 pm	Manila
5:00–6:00 am	Brasilia	1:00–2:00 pm	Islamabad	6:00–7:00 pm	Sydney
9:00–10:00 am	London				

#### **SPEAKERS**

- **Justice Suntariya Muanpawong**, Vice Chief Justice of Region 5 (Thailand)
- **Justice Karen Zariqyan**, Administrative Court of the Republic of Armenia
- **Justice Samson Odhiambo Okong'o**, Presiding Judge, Environment and Land Court of Kenya
- **Federal Judge Marcus Livio Gomes**, National Council of Justice of Brazil (CNJ) – (virtual)

#### **CO-CHAIRS**

- **Vesselina Haralampieva**, Senior Counsel at European Bank for Reconstruction and Development (EBRD)
- **Carl Bruch**, Environmental Law Institute (ELI)

## **DISCUSSION**

**11:00–11:15 am Stockholm** (15 minutes)

5:00–5:15 am	New York	12:00–12:15 pm	Nairobi	5:00–5:15 pm	Manila
6:00–6:15 am	Brasilia	2:00–2:15 pm	Islamabad	7:00–7:15 pm	Sydney
10:00–10:15 am	London				

#### **WELLNESS BREAK**

**11:15–11:30 am Stockholm** (15 minutes)

5:15–5:30 am	New York	12:15–12:30 pm	Nairobi	5:15–5:30 pm	Manila
6:15–6:30 am	Brasilia	2:15–2:30 pm	Islamabad	7:15–7:30 pm	Sydney
10:15–10:30 am	London				

### PANEL SESSION 6:

### Access to Justice: Nature, Indigenous Peoples and Environmental Rule of Law

**11:30 am–12:45 pm Stockholm** (1 hour 15 minutes)

5:30–6:45 am	New York	12:30–1:45 pm	Nairobi	5:30–6:45 pm	Manila
6:30–7:45 am	Brasilia	2:30–3:45 pm	Islamabad	7:30–8:45 pm	Sydney
10:30–11:45 am	London				

#### SPEAKERS

- **Arnold Kreilhuber**, Deputy Director, UNEP Law Division, Nairobi: *Environmental Defenders* (virtual)
- **Justice Joe Williams**, Supreme Court of New Zealand: *Rights of Nature and Indigenous People* (virtual)
- **Kristen Walker Painemilla**, Chair, IUCN CEESP: *Reimagining Environmental Justice*
- **Daniel Magraw**, Johns Hopkins School of Advanced International Studies: *Substantive Access to Justice: The Right to a Healthy Environment* (virtual)

#### CO-CHAIRS

- **Georgina Lloyd Rivera**, Regional Coordinator (Asia and the Pacific) of Environmental Law and Governance, UNEP Bangkok (virtual)
- **Maryna Yanush**, United Nations Economic Commission for Europe (UNECE), Geneva

### DISCUSSION

**12:45–1:00 am Stockholm** (15 minutes)

6:45–7:00 am	New York	1:45–2:00 pm	Nairobi	6:45–7:00 pm	Manila
7:45–8:00 am	Brasilia	3:45–4:00 pm	Islamabad	8:45–9:00 pm	Sydney
11:45 am–12:00 pm	London				

#### LUNCH

**1:00–2:20 pm Stockholm** (1 hour 20 minutes)

8:00–9:20 am	Brasilia	2:00–3:20 pm	Nairobi	7:00–8:20 pm	Manila
12:00–1:20 pm	London	4:00–5:20 pm	Islamabad	9:00–10:20 pm	Sydney

## VIDEO PRESENTATION ON THE RULE OF LAW IN KAZAKHSTAN

Justice Beibut Shermukhametov, *Supreme Court of Kazakhstan*

2:20–2:30 pm Stockholm (10 minutes)

9:20–9:30 am	Brasilia	3:20–3:30 pm	Nairobi	8:20–8:30 pm	Manila
1:20–1:30 pm	London	5:20–5:30 pm	Islamabad	10:20–10:30 pm	Sydney

## PANEL SESSION 7:

### Global Panorama of Judicial Environmental Law Education

2:30–4:00 pm Stockholm (1 hour 30 minutes)

8:30–10:00 am	New York	3:30–5:00 pm	Nairobi	8:30–10:00 pm	Manila
9:30–11:00 am	Brasilia	5:30–7:00 pm	Islamabad	10:30 pm–12:00 am	Sydney
1:30–3:00 pm	London				

#### SPEAKERS

- **Justice Nambitha Dambuza**, *President, African Network of Judicial Academies and the Environment*
- **Robert Wabunoha**, *UNEP Regional Environment Governance Coordinator, Nairobi (virtual)*
- **Scott Fulton**, *President Emeritus and International Envoy, Environmental Law Institute — Washington D.C.*
- **Justice Bambang Hery Mulyono**, *Supreme Court of Indonesia; Head of the Judicial Technical Education and Training Center*
- **Briony Eales**, *Team Leader (Consultant), Environment and Climate Change Judicial Program, ADB*
- **Dimitri de Boer**, *ClientEarth Chief Representative for China (virtual)*

#### CO-CHAIRS

- **Justice C. Adèle Kent**, *Chief Judicial Officer Emerita, National Judicial Institute, Canada (virtual)*
- **Gomolemo Moshoeu**, *Director, Judicial Academy of South Africa (SAJEI)*

#### DISCUSSION

4:00–4:20 pm Stockholm (20 minutes)

10:00–10:20 am	New York	5:00–5:20 pm	Nairobi	10:00–10:20 pm	Manila
11:00–11:20 am	Brasilia	7:00–7:20 pm	Islamabad	12:00–12:20 am	Sydney
3:00–3:20 pm	London				



### WELLNESS BREAK

4:20–4:30 pm Stockholm (10 minutes)

10:20–10:30 am	New York	5:20–5:30 pm	Nairobi	10:20–10:30 pm	Manila
11:20–11:30 am	Brasilia	7:20–7:30 pm	Islamabad	12:20–12:30 am	Sydney
3:20–3:30 pm	London				

## CONCLUDING SESSION OF THE SYMPOSIUM

### KEYNOTE ADDRESS: ENVIRONMENT, BIODIVERSITY, LAW AND DEVELOPMENT

4:30–5:20 pm Stockholm (50 minutes)

10:30–11:20 am	New York	5:30–6:20 pm	Nairobi	10:30–11:20 pm	Manila
11:30 am–12:20 pm	Brasilia	7:30–8:20 pm	Islamabad	12:30–1:20 am	Sydney
3:30–4:20 pm	London				

### KEYNOTE SPEAKERS

- **Achim Steiner, Administrator, United Nations Development Programme (UNDP)**
- **Elizabeth Mrema, Executive Secretary of the Convention on Biological Diversity (CBD)**

### CO-CHAIRS

- **José Igreja Matos, President, International Association of Judges (IAJ)**
- **Christina Voigt, Professor, University of Oslo School of Law; Chair, IUCN World Commission on Environmental Law**

### SYMPOSIUM SYNTHESIS REMARKS

5:20–5:30 pm Stockholm (10 minutes)

11:20–11:30 am	New York	6:20–6:30 pm	Nairobi	11:20–11:30 pm	Manila
12:20–12:30 pm	Brasilia	8:20–8:30 pm	Islamabad	1:20–1:30 am	Sydney
4:20–4:30 pm	London				

- **Denise Antolini, Professor, University of Hawaii School of Law**
- **Nicholas Bryner, Professor, Louisiana State University School of Law**

## CLOSING KEYNOTE ADDRESSES

**5:30–6:15 pm Stockholm** (45 minutes)

11:30–12:15 pm	New York	6:30–7:15 pm	Nairobi	11:30 pm–12:15 am	Manila
12:30–1:15 pm	Brasilia	8:30–9:15 pm	Islamabad	1:30–2:15 am	Sydney
4:30–5:15 pm	London				

### SPEAKERS

- **José Igreja Matos**, *President, International Association of Judges (IAJ)*
- **Bruno Oberle** (*IUCN Director-General*)

### CO-CHAIRS

- **Justice Nambitha Dambuza**, *President, African Network of Judicial Academies and the Environment*
- **Justice Ananda Mohan Bhattarai**, *Supreme Court of Nepal (virtual)*

## FORMAL CLOSING REMARKS AND PARTNER RECOGNITION

**6:15–6:30 pm Stockholm** (15 minutes)

12:15–12:30 pm	New York	7:15–7:30 pm	Nairobi	12:15–12:30 am	Manila
1:15–1:30 pm	Brasilia	9:15–9:30 pm	Islamabad	2:15–2:30 am	Sydney
5:15–5:30 pm	London				

### SPEAKERS

- **Justice Sapana Pradhan Malla**, *Supreme Court of Nepal, and Secretary-General, GJIE*
- **Christina Pak**, *Principal Counsel, ADB*
- **Andrew Raine**, *UNEP Head of International Environmental Law Unit, Nairobi*
- **Kathleen Rogers**, *President, Earth Day*





Greta Thunberg's climate protest in Sweden galvanized people globally to march for climate justice. A growing number of lawsuits reference climate justice and argue that climate change threatens fundamental human rights (photo by Vincent M.A. Janssen).





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# WELCOME AND OPENING REMARKS



## Welcome and Opening Remarks

### Speech by JUDGE HANNA WERTH

*President, Swedish Judges Association*

*Judge, Administrative Court, Malmö, Sweden*

Dear Chairman, dear Justices, and distinguished guests from all over the world—present here in Stockholm or participating via the internet—as chairman of the Swedish Judges’ Association, it is a great honor for me to welcome you all to Sweden and this Symposium on Judges and the Environment, which is held in conjunction with the UN Stockholm+50 Conference.



Given the subject of this Symposium I believe it would be appropriate as an introduction to make reference to the late professor Staffan Westerlund, Sweden’s first professor in environmental law. He often discussed the connection between the different actions available to society to achieve a clean and healthy environment and the overriding goal of sustainable development. He illustrated this with three examples.

The first is the heart, the moral compass. Through information and education, you may reach far, to inspire people towards environmentally friendly behavior and a sustainable way of living.

Unwanted behavior that cannot be stopped by the heart may instead be reached by the second example, the “dollar.” By this he referred to economic instruments which would contain different systems of subsidies, taxes, or fees, implemented with the purpose of influencing and steering actions and activities in a sustainable direction.

But in the end, the final example is the law—how it is constructed, interpreted, applied, and executed. Here, of course, the judiciary is recognized as having a vital role; in a global context courts and judges have been appointed as key players. Regional, national, and global symposiums for judges have been held through the years. Knowledge, ideas, and experiences have been exchanged, strengthening awareness of common issues and how environmental matters can be addressed by the courts.

Fifty years have now passed since the Stockholm Environmental Conference of 1972, which in a way was a starting point for much of the global cooperation on and the development of environmental law. The Stockholm Declaration, along with the Rio Declaration of 1992, are documents that remain crucial for these ongoing efforts to improve and develop ideas and goals for the future.

Networks of judges exist in many countries and efforts have been made to resolve the issue of how to take care of environmental matters via the courts. In Sweden in 1999, for example, five specialized environmental courts were established as well as a specialized appeals court. The jurisdiction of these courts now covers most issues related to health, the environment, planning and building, as well as land disputes.

Scan the QR code to watch  
Judge Hanna Werth’s speech  
on YouTube.



## Welcome and Opening Remarks

### Speech by Judge Hanna Werth *(continued)*

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Environmental problems are often of a global nature and the same principles of environmental law are applied by courts all over the world. This Symposium will be of great importance for the future, and I hope that you will find it a great opportunity to share your experiences, be inspired by some of the speeches at the Symposium, and start discussions with judges from other countries.



Unfortunately, I am not able to stay for the whole Symposium but I sincerely hope you will have two fruitful days in Stockholm.

Thank you.

## Welcome and Opening Remarks

### Speech by **PATRICIA KAMERI-MBOTE**

*Director, United Nations Environment Program (UNEP) Law Division  
Professor, University of Nairobi Law School*

Chair of the Global Judges Institute for the Environment, distinguished judges. It gives me great pleasure to be here. We really have walked a long way to have all these judges who addressed us about the environment because this has not always been the case. Environmental law has grown in leaps and bounds since the Stockholm Conference in 1972, but it has probably not traveled far enough.

Even though we see a significant increase in the number and scope of environmental laws put in place since 1972, the fact that most countries still face challenges in implementation and enforcement means that the journey is not yet complete. This raises the need for renewed legal imagination and global acceleration of environmental rule of law, which is where the role of judges is key. In the last 50 years we have witnessed growth through the establishment and strengthening of environmental courts and tribunals. Even though there is still evidence of non-implementation, non-compliance, and non-enforcement, countries are taking steps to ensure that environmental laws are implemented, complied with, and enforced.



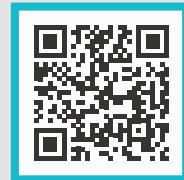
Looking forward from 2022 when we celebrate 50 years of the Stockholm Declaration, and 50 years since the establishment of the United Nations Environment Programme (UNEP), there is reason for optimism.

First, the optimism comes from judges who are guardians of the environmental laws put in place.

Second, there is also optimism because other parts of the United Nations and other parts of law recognize the importance of the environment. The United Nations Secretary-General's report *Our Common Agenda* has a very interesting reference for lawyers and judges as it calls for a renewed 'social contract' between governments and their people and within societies, anchored in human rights.<sup>1</sup> The Secretary-General underscored that "justice is an essential dimension of the social contract."<sup>2</sup> The issue of the 'social contract' is commonplace with regard to national law, but not with respect to international law. A call for bold steps to address the triple planetary crisis of climate change, biodiversity and nature loss, and pollution, and in the same breath for a renewed 'social contract', is a matter that draws optimism.

The third reason to be optimistic is that even though there has been not much enthusiasm to develop more environmental treaties, at the last United Nations Environment Assembly held in Nairobi in March this year, member states

Scan the QR code to watch  
Ms. Patricia Kameri-Mbote's  
speech on YouTube.



<sup>1</sup> United Nations. 2021. *Our Common Agenda—Report of the Secretary-General*. New York. pp. 4.

<sup>2</sup> Footnote 1, p. 24.



## Welcome and Opening Remarks

### Speech by Patricia Kameri-Mbote (continued)

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agreed to convene an inter-governmental negotiating committee towards a treaty on plastics. The bold commitment by member states to strengthen environmental rule of law through negotiating a treaty to address the complex transboundary impacts of plastic pollution, is evidently a reason to be optimistic as we go into the future.

Judges have a role in advancing these rays of optimism through strengthening the environmental rule of law, because people often turn to courts when problems arise. Justice Antonio Benjamin said that judges decide when people begin to live, whether they are living, and whether they are dead. Protection of the environment is a matter of life and death. Since 2016, many environmental courts and tribunals have been designed or redesigned to better hear and adjudicate environmental disputes. The 2016 UNEP Environment Courts and Tribunals Guide notes that since 2000, there was an “explosion” in the number of these courts and tribunals.<sup>3</sup> In a revision of this guide scheduled for publication in 2022, UNEP notes that there are 2,116 environmental



courts and tribunals in 67 countries.<sup>4</sup> UNEP is committed to support judges in furthering environmental rule of law.

And while I and many of us almost certainly won't be around, let us make sure we do what we can here at Stockholm+50, and in years to come, to make Stockholm+100 a celebration of environmental rule of law and a success for people and planet.

Thank you.

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<sup>3</sup> G. Pring and C. Pring. 2016. *Environmental Courts & Tribunals – A Guide for Policy Makers*. Nairobi: UNEP.

<sup>4</sup> Ms. Kameri-Mbote delivered her opening remarks on 31 May 2022. In July 2022, the second guide was published. See L. Sulistiwati, et al. 2022. *Environmental Courts and Tribunals—2021: A Guide for Policy Makers*. Nairobi: UNEP.

## Welcome and Opening Remarks

### Speech by **THOMAS CLARK**

General Counsel, Asian Development Bank (ADB)

Honorable Chief Justices and Judges from around the world; European Bank for Reconstruction and Development (EBRD) General Counsel Michael Strauss; distinguished speakers; respected guests and friends, I am very happy to welcome you to the *Symposium on Judges and the Environment: The Impact of the Stockholm Declaration in Shaping Global Environmental Law and Jurisprudence*, an associated event of Stockholm+50.



I am Thomas Clark, General Counsel of the Asian Development Bank (ADB), and I am really delighted with all of ADB to co-host this extraordinary judicial event with the Global Judicial Institute on the Environment and the International Association of Judges. We welcome the generous support of our other partners: United Nations Environment Programme, EBRD, European Forum for Judges for the Environment, United Nations Economic Commission for Europe (UNECE) Aarhus Convention, and the others that were listed by Justice Benjamin in his opening remarks. This is truly a collaboration among all of us.

To those who join online: welcome to this Symposium. It is an event to celebrate 50 years of global environmental law and jurisprudence since the 1972 Stockholm Declaration. With this event, we reflect on the role of judges in responding to Earth's triple planetary crisis—climate, nature, and pollution—in this Decade of Action.<sup>1</sup>

What is the role of judges in all of these? Some might wonder, with so many other policymakers involved, what is the unique contribution of judges and judicial systems?

I actually was quite moved, Justice Benjamin, by your invocation of the fact that society often—sometimes without thinking about it—turns to judges to help elucidate the most fundamental principles: when life begins, when it ends, human relationships. It is only natural, in light of those very important comments you made, to think about the role of judges in what is truly an existential set of issues that we face.

To make measurable any progress—let alone really meaningful progress—on the climate and environmental crises, it is absolutely necessary to have unprecedented levels [of change], certainly more than we have seen, and the pace has to pick up. We must have 21st century solutions for our 21st century challenges, including legal solutions. It is critical that the law rise to the challenge of furthering a just transition.

Scan the QR code to watch  
Mr. Thomas Clark's speech  
on YouTube.



<sup>1</sup> United Nations. [Stockholm+50: About the Event](#).

## Welcome and Opening Remarks

### Speech by Thomas Clark *(continued)*

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For the past decade, much development work has focused on supporting governments at the sectoral level to achieve their national goals and targets for sustainable development. However, ADB is shifting focus to a whole-of-economy approach, looking at integrated and multistakeholder approaches to effectively implement environmental, biodiversity, and climate goals in our client countries.

To bring about these whole-of-economy shifts, we need ALL arms of government to be functioning at peak levels of performance. We need them to be informed, involved, well-trained, and efficient. We cannot overlook judges' roles as essential partners in these whole-of-economy shifts. They are an arm of government responsible for upholding, interpreting, and validating national laws, but also protecting the rights of citizens affected by environmental crises.

A crucial part of keeping judges involved and informed is including them as key stakeholders in global environmental, biodiversity, climate change, and pollution dialogues.

ADB specifically has worked with judiciaries for over a decade because we noticed how little support they received relative to other arms of government—despite, as Justice Benjamin pointed out, being responsible for some of the most critical judicial decisions that have tremendous sustainable development implications.

Judiciaries themselves have also called for inclusion in international dialogues, and it is a response to that call that we come together here today.

In his opening remarks at the 2018 *Asia Pacific Judicial Colloquium on Climate Change*, Justice Mansoor Ali Shah from the Pakistan Supreme Court observed that for too long, international environmental and climate change summits had failed to include judges as important stakeholders in climate and environmental governance.<sup>2</sup> This is really something that cannot go on.

So, when the Global Judicial Institute on Environment sought assistance in convening this Symposium, we were honored to provide support especially alongside such a historic event as the Stockholm+50.

As the world celebrates 50 years of the Stockholm Declaration, allow me to applaud judges from Asia and the Pacific region on their use of the Stockholm Declaration in transformative environmental jurisprudence.

In 1995, the Supreme Court of India invoked the Stockholm Declaration as an interpretive tool when considering the meaning of the constitutional right to life in *Virender Gaur v. State of Haryana*.<sup>3</sup> The court viewed the Stockholm Declaration as an affirmation that “the right to have a living atmosphere congenial to human existence is a right to life.”

Other courts in South Asia have also moved to protect the environment, either because they also reasoned that environmental protection is fundamental to the preservation of life or because their

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<sup>2</sup> S. Mansoor Ail Shah. 2018. *Environmental and Climate Justice - A perspective from Pakistan*. Address delivered at the opening of Asia Pacific Judicial Colloquium on Climate Change Using Constitutions to Advance Environmental Rights and Achieve Climate Justice. Lahore, Pakistan. 26 February. p. 10, para. 39.

<sup>3</sup> *Virender Gaur and Ors. v. State of Haryana and Ors.* [1995] 2 SCC 577.

## Welcome and Opening Remarks

Speech by Thomas Clark *(continued)*

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constitutions contained an express right to environment.<sup>4</sup> Such cases became possible due to the clear articulation of environmental rights in the Stockholm Declaration.

Other speakers have rightly mentioned the critical role of judicial education and judicial integrity.

This Symposium will explore the essential nature of judicial education, independence, and integrity. ADB takes the view that judicial education is an opportunity for development partners to invest in the very arm of government empowered to spot impediments to effective government and private sector action. Judicial education is also critical for judicial integrity.

Although justice should always be blind, that does not mean that it is uninformed or blind to what we see in society, to contemporary principles, to social consciousness, to societal challenges, and, certainly, to evolving science.

Although judges generally, in their roles, apply rather than create national policies, they must consider how climate justice may be enforceable under existing laws, treaties or constitutions.

Adjudicating the contemporary crises of climate, nature, and pollution is complex. Now, more than ever, judges must understand the technical science and grapple with the rights of emerging stakeholders—the environment, ecosystems, and the Earth’s non-human species. Additionally,

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<sup>4</sup> See, for example, (i) Bangladesh: *M. Farooque Vs. Government of Bangladesh* 17 BLD (AD) 1 (1997); (ii) Nepal: *Advocate Prakash Mani Sharma vs Godavari Marble Industries Pvt. Ltd. and Others*, Writ Petition 068–WO–0082 (Supreme Court of Nepal, 16 April 2015); (iii) Pakistan: *Shehla Zia and Others v. WAPDA*, PLD 1994 SC 693; and (iv) Sri Lanka: *Watte Gedara Wijebandara v Conservator General of Forests* 2009 1 Sri LR 337, p. 356.



## Welcome and Opening Remarks

### Speech by Thomas Clark *(continued)*

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judges are being called to adapt the law to respond to unprecedented challenges. Making those shifts requires resources, knowledge, technology, and new ways of doing business.

We believe that justice and our planet benefit when we provide forums like this for judges to explain and to exchange ideas.

ADB's judicial capacity-building program has created opportunities for regional knowledge-sharing conferences, and we have seen the transformative nature of these judicial exchanges.

For example, when the Lahore High Court issued its landmark decision on climate change in the 2018 *Leghari* case, the court described the petition as a writ of nature, explicitly referencing the Philippine writ of *kalikasan*.<sup>5</sup>

Judicial education, judicial best practice sharing, judicial knowledge sharing, is also vital for judicial integrity.

Judges—like all humans—have feelings and can be prone to inconsistency, uncertainty, and bias.

Nobel Prize winner Daniel Kahneman's latest book, *Noise*, writes about the twin challenges of bias and noise, even within court decisions. He describes noise as unwanted variability in judgments that should, ideally, be consistent.<sup>6</sup> The author's solution for overcoming all of this variability is to ensure consistent training because, "*Highly skilled people are less noisy, and they also show less bias.*"

ADB believes that supporting judges is an opportunity to help our developing member countries achieve their sustainable development goals. We can do this by contributing to the integrity, thoughtfulness, knowledge, and the lack of noise in the judicial process.

Friends, we know that the challenges ahead are daunting. But, let me end with the parting words of Report Two of ADB's flagship publication *Climate Change, Coming Soon to a Court Near You*:

*To this, we say to judges...uphold the law, protect rights, balance interests, and rely on science. Be vigilant and watch for the day when climate change [or nature] comes to your courtroom. Tomorrow will dawn and in it our children must build their lives in the world that we create. Let them stand on the shoulders of those who advocate for integrity, justice, and fairness.*<sup>7</sup>

Thank you all very much and have a terrific symposium.

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<sup>5</sup> *Leghari v. Federation of Pakistan*, PLD 2018 Lahore 364. para. 4.

<sup>6</sup> D. Kahneman, O. Sibony, C.R. Sunstein. 2021. *Noise: A Flaw in Human Judgment* (Kindle Edition). HarperCollins Publishers: Dublin. p. 8.

<sup>7</sup> ADB. 2020. *Climate Change, Coming Soon to a Court Near You: Climate Litigation in Asia and the Pacific and Beyond*. Manila p. 224.

## Welcome and Opening Remarks

### Speech by **MICHAEL STRAUSS**

*General Counsel, European Bank for Reconstruction and Development (EBRD)*

Good morning, honorable judges, ladies and gentlemen. It is a pleasure to welcome you today on behalf of the European Bank for Reconstruction and Development (EBRD). My special thanks go to the Global Judicial Institute on the Environment, the International Association of Judges, and the Asian Development Bank for their collaboration in organizing today's Symposium. It is an honor to welcome such a distinguished group of speakers.

The EBRD operates in Central and Eastern Europe, Central Asia, and the Southern and Eastern Mediterranean. Sustainable development and environmentally sound investment lie at the heart of the EBRD's mandate, something explicitly set out in our founding treaty. One of the advantages that we have by being a later-founded organization is that we were founded well after the Stockholm Declaration, so it really forms part of our DNA as an institution. As a result, the EBRD walks the walk on these commitments by applying our stringent Environmental and Social Policies in each project.



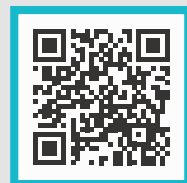
Indeed, the EBRD is strengthening its position as a leader in green finance with an ambitious plan to become a 'majority green bank' by 2025. The EBRD, jointly with other multilateral development banks, has committed to aligning its operations with the goals of the Paris Agreement. We are developing new methodologies and products to support our clients and countries of operations to transition towards greener and more sustainable economies.

A strength of the EBRD's business model is that it combines investment operations with policy advisory services. While it is not unique, it is something that we as an institution, along with other multilateral development banks, do—giving us the ability to influence projects in the right direction for the environment. This includes the provision of technical assistance to national authorities and institutions. These efforts go hand-in-hand with updating domestic legal and regulatory frameworks, through capacity building and outreach. Our participation in today's event and broader support to the Global Judicial Institute on the Environment is an example of these capacity building activities.

The EBRD's promotion of green and sustainable economic development includes a focus on climate and broader environmental objectives, such as biodiversity, pollution, social and governance issues. But climate change and environmental degradation are of course the most urgent—you could say even potentially existential—challenges of our time.

Addressing climate change is in many ways a matter of justice. The impacts of climate change are pervasive and raise many scientific, political, economic, and financial questions, as well as

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Mr. Michael Strauss' speech  
on YouTube.



## Welcome and Opening Remarks

### Speech by Michael Strauss *(continued)*

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questions about equity and responsibility—areas having a direct nexus with the law. Climate change threatens the effective enjoyment of a range of human rights including those to life, water and sanitation, food, health, housing, self-determination, culture, and development.

Not surprisingly, therefore, courts are being called upon to decide on matters related to climate change and the environment. This is transforming traditional principles of environmental law, tort, and public health.

The Stockholm Declaration and its progeny, as it were, were our guiding principles in the way we thought about these issues and the law. Indeed, the 1987 Brundtland Commission Report's definition of sustainable development states, "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs." It is an incredibly simple statement but, when I read that sentence, it talks to me about law. It comes to me as a statement about how you balance the different rights and obligations that parties have to each other, in a scenario where they simply need guidance from society on how we can do what is right for the people now, without harming the interests and rights of people in the future. So simple, incredibly difficult, and deeply embedded in principles of law that we apply on a daily basis.

The EBRD's Legal Transition Programme has worked for many years on judicial capacity building, mainly focused on commercial law. We have provided judges with the tools to adjudicate complex commercial matters, including insolvency, competition law, banking, and finance. Our judicial programme has successfully focused on filling gaps in judicial training in areas where questions of





## Welcome and Opening Remarks

### Speech by Michael Strauss *(continued)*

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law, economics, and finance intersect. Over the last ten years, EBRD has implemented more than 20 judicial training projects in 16 countries.

This leaves the EBRD exceptionally well prepared to extend our support to the judiciary in the emerging intersection of climate and justice. Our experience has shown that one of the most effective ways to support national legal systems and enforcement is through judicial education, training, and information sharing. We stand ready to provide this support.

Indeed, in recent months, the Legal Transition Programme has been developing its first judicial training programme on environmental and climate law. This initiative aims to identify key trends, case law, and the most common legal grounds for claims in climate change and environmental litigation. We have selected a pilot jurisdiction in our region and look forward to working with partners to roll this out to other jurisdictions, as needed.

Contributing to the development of an international judicial community focused on environmental law and climate change is important. Such a network of judges has the potential to promote knowledge-building and peer learning, and share tools and approaches to adjudicate complex issues related to international and national climate-related commitments. This community, supported by partners, can provide access to a large database of resources, good practices, and experiences, and uphold judicial independence and integrity.

Today and tomorrow, we will hear from a forum of high court judges from around the world who will reflect on how the Stockholm Declaration has shaped—and continues to influence—current legal development, implementation, and thinking. With this in mind, I look forward to fruitful and timely discussions on strengthening the role of the judiciary to uphold the rule of law in the context of climate change and safeguard recognized environmental rights, in the EBRD's region and beyond.

Thank you very much and welcome. Välkommen.

Fisherfolk across the Pacific rely on their local fish stocks for nutrition and livelihood (photo by Raul del Rosario/ADB).







A herd of zebras in the Maasai Mara National Reserve, Narok County, Kenya  
(photo by Sutirta Budiman/Unsplash).



# 3

## **SYMPOSIUM INTRODUCTION BY THE ACADEMIC COORDINATORS**



## Symposium Introduction by the Academic Coordinators

### PROFESSOR NICHOLAS BRYNER

*Louisiana State University School of Law*

Professor Nicholas Bryner addressed the “what” and the “why” of the symposium. He first gave a brief introduction to what was in store over the next two days. Participants would hear from 30 judges coming from 24 different countries—including judges from the highest courts in many of the countries that they represent—who would tackle judicial independence and integrity, environmental matters, and the role of judges in advancing justice and the environmental rule of law.

Professor Bryner also discussed what motivated the symposium. In March 2022, at the United Nations Environment Assembly (UNEA), there was a political declaration among the countries of the world that reaffirmed the principles of the Rio Declaration of 1992,<sup>1</sup> which itself reaffirmed many of the principles of the Stockholm Declaration.<sup>2</sup> Thus, looking back over these past 50 years is looking at the past, present, and future of these core principles, i.e., the concepts that judges use to guide decision-making, in balancing the important interests at play, including both present and future interests, human rights, the rights of nature, and the rights of marginalized people or others who may need special protection from the courts. These principles are foundational ideas that inform (i) the role of courts in addressing climate change, and (ii) how access to justice could be better enhanced.

Professor Bryner expressed his hope that the participants take advantage of the opportunities throughout the symposium to exchange ideas. He underscored the importance of gathering, discussing, and exchanging ideas about judicial implementation of the environmental rule of law.



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the Symposium Introduction  
by the Academic Coordinators  
on YouTube.



<sup>1</sup> United Nations. 1993. Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992. A/CONF.151/26/Rev.1 (Vol. I). New York. pp. 9–479. (The [Rio Declaration](#) is Annex I of Resolution 1.)

<sup>2</sup> United Nations. 1973. [Report of the United Nations Conference on the Human Environment](#), Stockholm, 5–16 June 1972. A/CONF.48/14/Rev.1. New York. pp. 3–5.



## Symposium Introduction by the Academic Coordinators

### PROFESSOR DENISE ANTOLINI

*William S. Richardson School of Law, University of Hawai'i*

Professor Denise Antolini addressed the “who” and the “how” of the symposium. Speaking of “who,” Professor Antolini acknowledged the Global Judicial Institute on the Environment (GJIE), which spearheaded the symposium. Professor Antolini remarked that she and Professor Bryner, both professors of environmental law, are devoted to supporting the work of judges and are honored to assist as the symposium’s academic coordinators. Professor Antolini also acknowledged the Asian Development Bank (ADB) team that helped GJIE organize the symposium.<sup>3</sup>



On the “how,” Professor Antolini likened the symposium to a symphony. Everyone gathered in the symposium is part of the symphony. It started out as a solo performance by Professor Nicholas Robinson in 1972, which then became a quartet—composed of Professor Robinson, Justice Antonio Herman Benjamin, and Professors Bryner and Antolini—when Professor Robinson suggested that they become more involved in Stockholm+50. The symposium participants, gathered in Stockholm and via Zoom, then constitute a symphonic assembly, with each one playing an instrument.

Professor Antolini expressed her belief that the symposium would be an incredible kind of symphony that everyone would remember in their hearts. Collegiality, in what is sometimes a lonely profession, may be the most important thing that the participants could take away from this gathering.

<sup>3</sup> The Symposium was organized by GJIE and ADB together with the International Association of Judges, in partnership with the United Nations Environment Programme (UNEP), Sveriges Domareförbund (Swedish Judges Association), European Union Forum of Judges for the Environment (EUFJE), International Union for Conservation of Nature (IUCN) World Commission on Environmental Law (WCEL), the Convention on Biological Diversity, United Nations Economic Commission for Europe (UNECE), European Bank for Reconstruction and Development (EBRD), International Council of Environmental Law (ICEL), Environmental Law Institute, and the Earth Day Network.





Village girls in Nepal play on a dam that is part of an erosion control structure in the village, to slow down flash floods. Extreme rainfall, which translates into massive floods, is a climate change impact felt throughout Asia and the Pacific. The region is home to the most number of climate vulnerable people in the world (photo by Gerhard Jörén/ADB).





# 4

## OPENING KEYNOTES:

Stockholm+50—  
Reflections about the Past,  
Present and Future



## Opening Keynotes

### HON. RAGNHILD NOER

*Justice, Supreme Court of Norway*

*Session Co-Chair*

Justice Ragnhild Noer introduced the Keynote Speakers, who are both eminent in their respective domains.

Professor Sachs is a world-renowned economist who has expertise in diverse fields, from energy transition to the assessment of COVID-19 restrictions. Professor Sachs' latest book, *The Ages of Globalization*, considers what humanity can learn from the last 70,000 years of history in meeting today's immense challenges.<sup>1</sup>



Professor Nicholas Robinson, one of the founding fathers and heroes of the discipline of environmental law, helped establish environmental law as a respected field through numerous books and articles, through environmental legal education, and through his advisory role to various governments and to the United Nations (UN). Professor Robinson's efforts led to the establishment of a forum for judges on environmental law, culminating in the creation of the Global Judicial Institute on the Environment.



<sup>1</sup> J.D. Sachs. 2019. *The Ages of Globalization: Geography, Technology, and Institutions*. Columbia University Press.



### PROFESSOR JEFFREY SACHS

*Director, Center for Sustainable Development at Columbia University  
President, UN Sustainable Development Solutions Network*

*Keynote Speaker*

#### ***Judges and Sustainable Development***

Professor Sachs examined the Stockholm Declaration in parallel with the book *Limits to Growth*, published in 1972, the year of the Stockholm Convention.<sup>2</sup> *Limits to Growth* predicted that humanity was on a trajectory to overshoot Earth's finite resources, and that this could lead to a crash in roughly 50 years' time—that is around now.

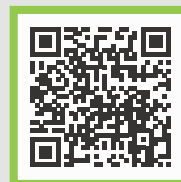
Professor Sachs noted a critique of *Limits to Growth* at the time of its release, arguing that while the book focused on scarcity, markets would address this by pricing scarce goods and resources higher, thereby changing incentives and potentially solving the problems it contemplated.



Professor Sachs stated that the criticism of *Limits to Growth* was flawed, as humanity has continued on a trajectory that is unsustainable for the planet. The book has predicted the dynamics of the past 50 years. Multiple interconnected environmental crises are intensifying, including human-induced climate change, the destruction of biodiversity and disruption of ecosystems, and mega-pollution. Because humanity has shaped so much of the current geological era, the term “Anthropocene” has been coined to describe it. To limit damage to Earth's ecosystems, new concepts like sustainable development and planetary boundaries have been introduced.

Professor Sachs deplored the fact that the self-destructive trajectory of human activity on the planet had not been fundamentally changed by the climate-related conferences that followed the Stockholm Declaration. He specifically mentioned the Earth Summit in Rio de Janeiro in 1992, the Rio+20 Summit in 2012, the adoption of the Sustainable Development Goals (SDGs) and of the Paris Agreement in 2015, and the 26 Conferences of the Parties of the UN Framework Convention on Climate Change (UNFCCC).<sup>3</sup>

Scan the QR code to watch  
the Opening Keynotes  
on YouTube.



<sup>2</sup> D. Meadows, et al. 1972. *Limits to Growth*. New York: New American Library.

<sup>3</sup> United Nations, 1993. [Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992](#). A/CONF.151/26/Rev.1 (Vol. I). New York; United Nations, 2012. [Report of the United Nations Conference on Sustainable Development : Rio de Janeiro, Brazil, 20–22 June 2012](#). A/CONF.216/16; United Nations, 2015. General Assembly Resolution 70/1, [Transforming Our World: The 2030 Agenda for Sustainable Development](#), A/RES/70/1 (25 September 2015); United Nations Framework Convention on Climate Change, 2015. [Paris Agreement](#). United Nations Treaty Series, No. 54113. Paris; United Nations, 1992. [United Nations Framework Convention on Climate Change](#). United Nations Treaty Series, Vol. 1771, No. 30822. New York, 9 May.

## Opening Keynotes



For example, greenhouse gas emissions have risen to such an extent that a downturn in emissions is no longer sufficient. Net zero must be reached to stabilize the concentration of greenhouse gases in the atmosphere; humanity is nowhere near that target. The planet has warmed by 1.2°C compared to the pre-industrial temperature, which is the biggest increase in the past 10,000 years of civilizational history.<sup>4</sup> The planet is now warming by around 0.3°C per decade, which means that the global temperature will soon pass the 1.5°C limit in the increase of temperature set by the Paris Agreement.<sup>5</sup>

Ahead of this, humanity has already reached or exceeded multiple tipping points for the ecosystem. The destruction of large parts of the Antarctic ice sheet could set off a multi-meter rise in sea levels and change thermohaline circulation.<sup>6</sup> The melting of the permafrost would also release large quantities of greenhouse gases—e.g., methane and carbon dioxide—which would have further disastrous implications for the earth's climate.

Professor Sachs posited that law, on the whole, has not been helpful in resolving these planetary crises. This is because law does not guarantee the right to a safe environment as completely as it does the right to private property.

Professor Sachs pointed out that while private property has merits, the exercise of it—for example, in terms of land use, land clearing, or industrial activities that release greenhouse gases—may give rise to externalities that fall outside behavioral self-control of the private

<sup>4</sup> A. Januta. 2021. [Rising global temperatures 'inexorably closer' to climate tipping point - U.N.](#) Reuters. 27 May.

<sup>5</sup> UN News. 2022. [Climate: World getting 'measurably closer' to 1.5-degree threshold.](#) 9 May.

<sup>6</sup> "Thermohaline circulation describes the movement of ocean currents due to differences in temperature and salinity in different regions of water. Temperature and salinity change the density of water, resulting in the water to move accordingly." J. Hanania, A. Sheardown and J. Donev. 2019. [Thermohaline Circulation](#). Energy Education, University of Calgary. 4 January.

property owners. The concept of private property does not guarantee environmental sustainability, and can sometimes mean the opposite.

Professor Sachs noted that the United States Senate has never consented to the ratification of the Convention on Biological Diversity.<sup>7</sup> This is partly because right-wing senators argued that private property rights should take precedence over obligations to protect biodiversity, and saw the convention as a threat to large landowners in the western United States. Professor Sachs reiterated that the problem with the law is that it recognizes property rights more than it does the right to a safe environment, despite the many pioneering and path-breaking rulings that had reinforced the right to a safe environment. Thus, in the United States, the current legal framework protects the right to destroy the planet.

Professor Sachs added that treaty law is not enforced and is non-enforceable in many important jurisdictions, including the United States. In his view as a non-lawyer, the UNFCCC, ratified by the United States in 1992, has had no influence on the country's law on the environment and on its public policy. The United States Senate has also refused to ratify the Kyoto Protocol and to recognize the Paris Agreement in any legislative form.<sup>8</sup>

As a consequence, the Obama and Biden administrations have aimed to implement the Paris Agreement through administrative actions and executive decrees. In brief, the domestic enforcement of international treaties is weak—this is true for the United States and the rest of the world. Agreements, and even treaties, are signed and recognized as the law of the land, but not always implemented.

Many contradictions in international law that work against environmental sustainability have yet to be resolved, notably Investor-State Dispute Settlement (ISDS) mechanisms which have property rights-friendly, corporate-friendly structures. ISDS mechanisms—which are baked into investment treaties and bilateral trade agreements to stabilize the tax and regulatory environment of foreign investors—are regularly used, notably by oil and mining companies, to attack governments attempting to implement environmental regulations, even those stipulated by the Paris Agreement.

Similarly, World Trade Organization (WTO) rules and regulations are not designed for environmental sustainability. For instance, Europe's proposed carbon border adjustment mechanism, which many legal scholars claim is WTO-compatible, will likely be challenged because WTO rules do not explicitly prioritize environmental sustainability over free trade.<sup>9</sup> Governments have no clear guidance on whether they are allowed to implement trade regulations that promote environmental sustainability.

Professor Sachs stressed that new domestic laws are needed to chart a pathway to sustainability. Many countries which have committed to reach net-zero emissions by 2050 through energy and land transformation do not have the necessary legal and regulatory structures in place. Thus, they would require new legislation and a new interpretation of existing codes.

<sup>7</sup> [Convention on Biological Diversity](#), Rio de Janeiro, 5 June 1992, United Nations Treaty Series, Vol. 1760, No. 30619, p. 79.

<sup>8</sup> [Kyoto Protocol to the United Nations Framework Convention on Climate Change](#). Kyoto. 11 December 1997. United Nations Treaty Series, vol. 2303, p. 162.

<sup>9</sup> Council of the European Union. 2022. [Council Agrees on the Carbon Border Adjustment Mechanism](#). Press release. 15 March.



## Opening Keynotes

In the United States, basic business standards need to be re-interpreted. Professor Sachs cited standards governing land use as an example, because they prioritize private claims over sustainability and because the relevant public domain law is fraught with political and legal conflict. In addition, corporate law, especially in the state of Delaware, holds that a corporation is responsible for maximizing shareholder value. Therefore, company managers and boards may

find it difficult—or even illegal—to make decisions that respect planetary boundaries or the Paris Agreement objectives, if these decisions could jeopardize the market value of the company.

Professor Sachs added that the concept of law itself must be challenged. United States law and other Anglo-Saxon systems protect property in a way that makes it difficult to get the collective action to change course, thus limiting progress. Professor Sachs opined that governments in civil law countries are more empowered to set their regulatory environments. Some of them were able to establish the core right to a safe environment through their courts or constitutions.

Overall —whether because of law or lawlessness—humanity is following the trajectories predicted by the book *Limits to Growth*, and is now seeing risks to whole ecosystems, collapse of biodiversity, and climate change as its core challenges. Therefore, humanity needs to step up in the next 20 years, since it already lost 50 years and the present is tied up in geopolitical conflict and an open war.

Professor Sachs closed by acknowledging the timeliness of the symposium and the contributions that justices around the world could make to realizing the future that humanity wants and needs.



We are facing an increasingly fraught world. We understand much more deeply these risks than even the *Limits to Growth* volume, because now we understand the risks to whole ecosystems, to the collapse of biodiversity and to climate change, which were not themes [in] *Limits to Growth*. But now we understand that they are our core challenges. We have to up our game in the next 20 years. We have lost a half century of time.

– **Professor Jeffrey Sachs**  
Director, Center for Sustainable Development, Columbia University;  
President, UN Sustainable Development Solutions Network

### NICHOLAS ROBINSON

*Professor, Pace Law School*

*President, International Council of Environmental Law (ICEL)*

*Chair Emeritus, International Union for Conservation of Nature (IUCN)*

*World Commission on Environmental Law*

#### *Keynote Speaker*

#### ***Environmental Law—Achievements and Gaps Since the 1972 Stockholm Declaration***

Professor Nicholas Robinson contrasted Professor Sach's glass-half-empty outlook with his own glass-half-full perspective. In his view, the past 50 years have seen some extraordinary new developments in law and in the courtrooms.

For instance, in November 2021, voters of the state of New York voted, by two to one, to amend the bill of rights in the state's constitution to recognize every person's right to clean air, clean water, and a healthful environment. Professor Robinson also shared the hope that the UN General Assembly would align with the findings of the UN Human Rights Commission and recognize the right to the environment as a fundamental human right and enshrine it within the Universal Declaration of Human Rights.<sup>10</sup> Once considered fundamental, environmental rights could take precedence over property rights, something that has been happening increasingly since the United Nations Conference on the Human Environment in Stockholm in 1972.



He acknowledged a number of judges who contributed to developing and legitimizing environmental law:

- (i) Justice Paul Steen from New South Wales (NSW), who was one of the pioneering judges in the NSW Land and Environment Court;
- (ii) Former Chief Justice Arthur Chaskalson of the Supreme Court of South Africa, who was a giant in this field;

<sup>10</sup> United Nations, General Assembly, Human Rights Council. 2021. [The human right to a safe, clean, healthy and sustainable environment](#). A/HRC/48/L.23/Rev.1. 5 October. N.B. A General Assembly resolution was issued shortly after the symposium on 28 July 2022 (See United Nations, General Assembly. 2022. [Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms](#), A/76/L.75. 28 July).

## Opening Keynotes

- (iii) Justice Luc Lavrysen, the President of the Constitutional Court of Belgium and Chair of the European Union Forum of Judges for the Environment, who started the initial capacity building for judges and was instrumental in securing support for the United Nations Environment Programme (UNEP) to begin its capacity-building activities in Belgium;
- (iv) Former Chief Justice P.N. Bhagwati of the Supreme Court of India;
- (v) Justice William O. Douglas of the United States Supreme Court, who was an extraordinary writer of environmental decisions; and
- (vi) Judge Raymond Sherwin of the California Superior Court, who was the president of the Sierra Club.

Professor Robinson discussed the wider context of the Stockholm Declaration in 1972. He shared that when he started in law school, there was no environmental law, so he and other students had to teach themselves. However, his friends who were interested in law criticized his focus on nature and conservation which they considered unimportant, while his friends in nature conservation and hiking criticized his interest in law and international law, which they saw as ineffective. The developments in 1972 silenced both sets of critics—the Stockholm Declaration helped start a chain of decisions that have reverberated around the world. In the present day, global public opinion has changed, and environmental law has become an accepted field.

He recalled that when he first visited Stockholm in 1972 as a member of the Sierra Club delegation, the city was much smaller and lacked the convention centers and skyscrapers of today. The atmosphere of the meetings was more informal, with less security and a greater sense of collaboration.

Since there was yet no consensus on how to define the environment, foreign ministers and diplomats went to Stockholm accompanied by whichever experts were available and endorsed by their governments, including public health officials, forest commissioners, fish and game wardens, park managers, and agricultural officials.

Professor Robinson reflected on the progress since 1972, contrasting the words of two UN Secretary-Generals.

- (i) On the eve of the 1972 conference in Stockholm, UN Secretary-General U Thant said, “As we watch the sun go down, evening after evening, through the smog across the poisoned waters of our native Earth, we must ask ourselves seriously whether we really wish some future universal historian on another planet to say about us: ‘With all their genius and with all their skill, they ran out of foresight and air and food and water and ideas,’ or, ‘They went on playing politics until their world collapsed around them.’”
- (ii) Regarding the UN Environment Assembly meeting in Nairobi, Kenya, and the ensuing UNEP@50 events in 2021, UN Secretary-General António Guterres declared, “Humanity is waging a war on nature. This is senseless and suicidal. The consequences of our recklessness are already apparent in human suffering, towering economic loss, and accelerating erosion of life on Earth.”

Professor Robinson believes that ‘the audacity of hope’ drives humanity to progress and address critical challenges. He sees courts as crucial actors in catalyzing change and breathing life into





environmental law. The Stockholm Declaration's Principle 1 is evolving from an idealistic aspiration to an operational legal principle that takes precedence over other principles, through the decisions of judges, through executive orders and rulings by presidents and prime ministers, and even through mayors who need to provide sanitary conditions or fresh water for their local citizens.<sup>11</sup>

Professor Robinson noted that even after Rachel Carson exposed the dangers of pesticides in her book *Silent Spring*, global pesticide production and use increased by a staggering 800 times.<sup>12</sup> This situation is best encapsulated by principle 21 of the Stockholm Declaration that upholds states' right to develop their economies and natural resources, but obligates them to not harm the environment of another state or the commons.<sup>13</sup> This obligation was initially seen as a complex challenge, particularly because developing states want to develop regardless of externalities—since their right to develop was previously curtailed by colonial states. However, diplomats from developing and developed countries were able to find common ground between development and the environment, at a meeting held by Maurice Strong in Founex, Switzerland in 1971.<sup>14</sup>

<sup>11</sup> Principle 1 of the [Stockholm Declaration on the Human Environment](#) states, “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.”

<sup>12</sup> R. Carson. 1962. *Silent Spring*. Houghton Mifflin Co.

<sup>13</sup> Principle 21 of the [Stockholm Declaration on the Human Environment](#) states, “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

<sup>14</sup> Maurice Strong was Secretary General of both the 1972 United Nations Conference on the Human Environment, which launched the world environment movement, and the 1992 Rio Environmental Summit. He was the first Executive Director of the UNEP. [MauriceStrong.net](#). [Short Biography](#).

## Opening Keynotes

Despite differing perspectives at the 1972 Stockholm Conference, the decision to establish UNEP pushed through. Located in Nairobi, UNEP became the first and only UN agency established in the Global South, marking a significant step towards developing countries assuming leadership on environmental issues. A number of people assisted the effort, including Professor Robinson himself, as well as Justice Donald Kaniaru who was also present at the symposium.



The 1992 Rio de Janeiro Conference on Environment and Development resulted in the adoption of Agenda 21, a comprehensive 800-page blueprint for achieving sustainability.<sup>15</sup>

At the same time, the Rio Declaration was negotiated and adopted,<sup>16</sup> and Principle 10 became the foundation for making environmental law more effective by ensuring that every person can access information, participate in decision-making, and have access to justice in environmental matters.<sup>17</sup>

After 10 years, in 2002, the World Summit on Sustainable Development was held in Johannesburg; environment and development became covered by the term sustainable development. There, the states agreed to the three pillars of sustainability: (i) economic, (ii) social, and (iii) environmental protection.

After 20 years, in 2012, the United Nations Conference on Sustainable Development was held in Rio de Janeiro. Representatives adopted the 17 SDGs. Among these goals were the right to water and sanitation in Goal 6; the obligation to work on climate change in Goal 13; the protection of the oceans in Goal 14; and the obligation to protect biodiversity and deal with pollution in Goal 15. The SDGs represent a shift to a firmer commitment toward sustainability and the view that, as David Brower and others have said, the economy is a wholly-owned subsidiary of the climate and the environment, and not the other way around.

Professor Robinson argued that these historical developments have culminated in the present day, where environmental rights are being proclaimed, accepted, and implemented within the framework of the rule of law. Neutral rules are applied; to determine fairness, one has to weigh the facts and bring in the sciences. Moreover, the emergence of the environmental rule of law

<sup>15</sup> United Nations. 1993. Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992. A/CONF.151/26/Rev.1 (Vol. I). New York. pp. 9–479. ([Agenda 21](#) is Annex II of Resolution 1.)

<sup>16</sup> United Nations. 1993. Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992. A/CONF.151/26/Rev.1 (Vol. I). New York: United Nations. ([Rio Declaration](#) is Annex I of Resolution 1.)

<sup>17</sup> Principle 10 of the Rio Declaration provides, “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

establishes clear methods and a mandate to have an overarching legal principle that takes priority before other principles and economic and social rights.

He asserted that despite the continued existence of war—in Vietnam in 1972 and in Ukraine in the present day, there is progress. In 1972, environmental law did not exist and the right to the environment was simply a good idea. In 2022, there is a judges' symposium on environmental law, and the right to the environment is becoming an operational principle. This supports the view the glass is more than half full.

Professor Robinson exhorted participants to make life better for all species, emphasizing the role of the right to environment in achieving this goal. He noted that the human right to the environment does not exclude a judicial recognition of the rights of nature or other parts of the natural system.

Drawing inspiration from indigenous teachings and early religious texts that emphasize human stewardship of the environment, Professor Robinson concluded with a hopeful message. While acknowledging humanity's shortcomings in environmental care, he emphasized the progress made and the potential for a more sustainable future. Indeed, the glass is more than half full.



We need to use this moment, our moment in the history of this planet, to help make life better for all species. And that is what I think the right to the environment is doing. The human right to the environment does not exclude judicial recognition of the rights of nature or other parts of the natural system that sustain us. But we know from the teachings of indigenous people around the world and from the earliest religious texts [...] the obligation to be stewards of God's creation, to care for the earth. Do we do it very well? Of course we do not. We are learning still how to do it. But that is why I think the glass is half full.

– **Professor Nicholas Robinson**

*Pace Law School; President, International Council of Environmental Law;  
Chair Emeritus, International Union for Conservation of Nature (IUCN)*



## Opening Keynotes

### **CHRISTINA PAK**

*Principal Counsel, Office of the General Counsel, Asian Development Bank*

#### *Session Co-Chair*

Ms. Christina Pak expressed her admiration for Professors Sachs and Robinson for being thought leaders and true pioneers and innovators. She noted that their insights and reflections on Stockholm+50 and their recommendations shed light on the good and the bad, the progress and the inaction, at this opportune moment of reflection on how far humanity has come.

Ms. Pak concurred with Professor Robinson that significant progress has been made and that there is reason for hope in humanity's ability to achieve more. She also highlighted Professor Sachs' emphasis on the shortcomings in existing laws, suggesting that these gaps may be why many people turn to the courts to seek a balance in sustainable development. However, Ms. Pak expressed optimism about Professor Sachs' proposition for a complete transformation of laws to facilitate sustainable development. She observed that this legal transformation is already underway, as evidenced by the numerous laws enacted since the Stockholm Conference.

ADB is actively collaborating with its developing member countries to assist them in enacting new legislation across multiple sectors. Additionally, ADB is working to promote the domestic implementation of international agreements and treaties and to incorporate sustainable development principles into international trade and investment agreements. These efforts align with Professor Sachs' critique of ISDS mechanisms, which he has identified as a potential obstacle to sustainable development.

Ms. Pak shared that she also views the glass as half full, believing that the symposium participants are actively considering innovative approaches to address 21st-century challenges with 21st-century solutions. She expressed optimism that, with the guidance of thought leaders like Professors Robinson and Sachs and the collective efforts of the symposium participants, significant progress toward sustainable development will be achieved by the time of the next meeting.





[I]n ADB's developing member countries, we are working with different governments to help enact new laws in many areas and to domesticize some of the international agreements and treaties. [...] Certainly, new laws are required. There are still many, many areas to be filled. [...] The glass is still half full and we are all working towards that. We are all here together to think of new ways to go to the next level to address 21st century challenges with 21st century solutions.

– **Christina Pak**

*Principal Counsel, Office of the General Counsel, Asian Development Bank*

Ms. Pak once again expressed her gratitude to Professors Robinson and Sachs. She recalled that Professor Robinson, as the founder of the IUCN Academy of Environmental Law, played a pivotal role in establishing the environmental law program at Pace University and in integrating environmental law into law schools across Asia and the Pacific. The latter program, initiated in 1995, continues to thrive, alongside ADB's efforts to foster environmental law champions in the region.

## Panel Discussion for the Opening Keynotes Session

**Ms. Briony Eales** invited participants to raise questions or give comments on the keynotes.

**Justice Ragnhild Noer** sought Professor Robinson's perspective on Professor Sachs' assertion that countries which do not have common law traditions appear to be doing better than common law countries in their efforts to change the course of collective action.

**Professor Robinson**, drawing on his two decades of experience as a government negotiator between the United States and the Soviet Union, as well as his work in the People's Republic of China, observed that socialist law jurisdictions are doing no better than capitalist law jurisdictions. Both have the same failure to understand, but the public usually knows better.

## Opening Keynotes



Top Row (left to right): Ms. Briony Eales, Justice Ragnhild Noer  
Bottom Row (left to right): Professor Nicholas Robinson, and Justice Antonio Herman Benjamin

For example, it took decades for the State of New York to amend its constitution to recognize the fundamental right of every individual to clean air, clean water, and a healthy environment. Opponents contended that precise definitions of clean air and water were necessary before these rights could be incorporated into the state's bill of rights. However, proponents of the amendment argued that people have a direct understanding and experience of clean air and water and do not require extensive scientific evidence. Similar reforms are underway in other countries. In China, the concept of ecological civilization has been integrated into the communist ideology, marking a significant step towards environmental sustainability.

Professor Robinson acknowledged that civil law systems possess certain advantages, particularly in their emphasis on treating principles with greater seriousness. In contrast, common law systems are more incremental, defining principles through the accumulation of court decisions. While socialist law systems often proclaim principles, their implementation can be as inconsistent as in other systems. All these legal systems tend to vary, but become very similar when they come together on issues such as human rights to the environment.

**Justice Antonio Benjamin** offered the view that what Professor Sachs meant was that civil law countries had already acknowledged, since the Weimar constitution, the social function of property rights and subsequently incorporated an ecological function into these rights during the 1970s and 1980s. He noted that this ecological function is not recognized or present in the constitutions of the United States or certain Commonwealth countries.





**Mr. Lyle Glowka**, participating via Zoom, requested that Professor Robinson provide further details on how the Stockholm Declaration laid the groundwork for international environmental law concerning biodiversity conservation.

**Professor Robinson** explained that, subsequent to the Stockholm Declaration, many within the IUCN believed that Principle 1 needed to be more specific to facilitate its application by courts and enhance public understanding. In contrast, the World Charter for Nature, taken on by UNEP in the late 1970s and subsequently adopted by the UN General Assembly in 1982, contained precise provisions but, as a UN General Assembly resolution, lacked the binding force of hard law. Subsequently, the Convention on Biological Diversity was established as a treaty with national action plans that could be implemented through domestic legislation and court rulings, offering a more concrete framework for judicial application. In summary, the international community evolved a general principle and refined it into a form that courts could interpret and apply.

Professor Robinson acknowledged that the process of developing and implementing international environmental law has been lengthy and gradual. He highlighted the challenges faced by the UNFCCC and the absence of a comprehensive convention restricting pollution. He observed that there is a growing consensus to shift away from a focus on precision and adopt a more holistic approach.

For this reason, the environmental rule of law is broken down into a procedural process and the right to the environment. This approach allows courts to determine whether this right has been compromised or undermined in any given context, without delving into the specific regulatory thresholds for pollutants, i.e., how many parts per million of a chemical are subject to regulation. In essence, environmental rights are shifting from fine details to a more holistic and meta-level approach.





Peatlands constitute the last wet habitats in a major part of Mongolia. The peatlands maintain wet habitats and pastures, feed rivers, prevent soil erosion, maintain levels of groundwater for forest and crop growth, and keep wells full of water (photo by Tsogtbaatar Khishigdorj/ADB).





# 5

## PANEL **SESSION 1:** Emerging Trends in Environmental Law



## PANEL SESSION 1

### Emerging Trends in Environmental Law

#### JUSTICE ANTONIO HERMAN BENJAMIN

*National High Court of Brazil (STJ)*

*President, Global Judicial Institute on the Environment (GJIE)*

*Chair Emeritus, IUCN World Commission on Environmental Law (WCEL)*



Justice Antonio Herman Benjamin welcomed the co-chairs for the session, Justice Sapana Pradhan Malla and Judge Anders Bengtsson. Justice Sapana Pradhan Malla from the Supreme Court of Nepal also serves as the Secretary-General of GJIE. Justice Benjamin praised Justice Malla for her wisdom, for which she is renowned in her region. Judge Anders Bengtsson, whom Justice Benjamin called a real environmental law expert, is a former senior judge at the Land and Environment Court of Sweden.

#### JUSTICE SAPANA PRADHAN MALLA

*Supreme Court of Nepal*

*Secretary-General, Global Judicial Institute on the Environment (GJIE)*

Justice Sapana Pradhan Malla affirmed that there are many things to celebrate 50 years from the Stockholm Declaration. One of these things is the rapid evolution of environmental law. At the same time, environmental risks have become more apparent, and their assessment and management more complex.

Justice Malla noted current trends, which call for an evaluation of whether our legal systems are sufficiently mature to address the magnitude of the environmental issues we face today. We now have scientific evidence that environmental harm not only impacts human health and the human body, but also the survival of humanity and other species. We have a distinct experience of living during a pandemic. We also see how the world is moving from treaty making to treaty implementation. We are witnessing the decentralization of international environmental law treaties, domesticated through constitutions and national laws. We see the rapid judicialization of international law through regional courts, and domestic law through alternative dispute resolution mechanisms. We also see different approaches being discussed and applied, different principles emerging, and different models in different jurisdictions being introduced.



Sustainable development goals are monitored by state parties through the United Nations. Yet, Justice Malla noted that questions remain on whether these laws are mature enough to deal with the complexity of the present environmental crisis. The propriety of the domestication of these international human rights law, as well as their implementation pattern, remains a question if we consider what has been working, how it is working, and what is not working.

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to watch Panel Session 1  
on YouTube.



Justice Malla introduced the panel, who are academicians and practitioners, to expound on current trends in environmental law. Professor Jonas Ebbesson, former dean of the University of Stockholm School of Law, was to speak on the Swedish model, which is known for being a unique model with many “success stories.” Professor Émilie Gaillard, a professor of environmental law and of human rights, was to speak on the transgenerational implementation of fundamental environmental rights and duties.

### **PROFESSOR JONAS EBBESSON**

*Professor and former Dean, University of Stockholm School of Law*

#### ***The Swedish Environmental Law Model—A Panorama and Lessons Learned***

Professor Jonas Ebbesson began by framing the theme of the symposium in the context of the Swedish model.<sup>1</sup>

Speaking first of legal education in Sweden, Professor Ebbesson shared a unique feature of Stockholm University’s law program. All mandatory courses—procedural law, taxation law, the history of law, company law—have an environmental law dimension. Law students thus take some element of environmental law in all their courses, a considerable achievement in ‘mainstreaming’ environmental law teaching after a 25-year struggle to expand it as part of the law program. Professor Ebbesson expressed his hope that Stockholm University’s initiative would inspire colleagues and other law programs to do the same.

Professor Ebbesson then addressed the role of the judiciary, asserting that the Aarhus Convention, the Escazú Agreement, and the increasing attention to access to justice and participatory rights in environmental matters confirm the importance of the judiciary.<sup>2</sup>

<sup>1</sup> In addition to being a law professor, Professor Ebbesson is actively engaged in the litigation of environmental law cases. He represented the applicants in the case *Karin Andersson and Others v. Sweden* (Application No. 29878/09) before the European Court of Human Rights. The court rendered a judgment that there has been a violation of the right to fair trial under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Professor Ebbesson was also counsel for the plaintiffs (representing 796 Chilean citizens) in *Arica Victims KB v. Boliden Mineral AB* involving the export of 20,000 tons of mining waste to Arica, a port city in northern Chile.

<sup>2</sup> *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, 2161 UNTS 447, 38 ILM 517, 1999; and *Regional Agreement On Access To Information, Public Participation And Justice In Environmental Matters In Latin America And The Caribbean*, 2018.

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In 1972, Sweden started to reform its domestic legislation to effectively address the escalating problem with pollution control. In 1969, Sweden adopted the Environmental Protection Act, which was quite progressive at the time. It took an integrative approach, dealing with air, water, and all aspects of the environment in one procedure under a specific permitting body. It provided for public participation via hearings and in writing. Interestingly, at that time, the courts in Sweden had a very limited role in environmental decision-making. They had essentially no role except for a few civil actions on civil liability. This would change later on.

Around the time of the Rio Conference in 1992, there were discussions in Sweden to expand legislation more broadly and cover not just environmental protection, focusing on essential industries or major plants. Political procedures to adopt an environmental code were also commenced. It took about seven to eight years to adopt the code—a very short time, given that the process may take decades. In 1998, the Environmental Code was adopted, entering into force in 1999.<sup>3</sup> Merging 15 laws, it builds on the idea of integrating pollution control. It established a number of basic principles on precaution and the use of best available technology, with the overarching objective of considering future generations in today's calculus. Professor Ebbesson noted that there are actually a few cases where this objective had an important role in deciding whether or not to permit an activity.

Sweden then established a new environmental judiciary with specific environmental courts. Not only were the environmental courts supposed to deal with civil cases, liability, injunctions, or appeals of administrative decisions, but in some instances (e.g., with respect to major environmental hazardous activities), courts acted as an administrative body—specifically, a permit body, but maintaining basic rules and principles of the judiciary in terms of hearings and other procedures. Professor Ebbesson believes that this is a very important factor.



<sup>3</sup> [The Swedish Environmental Code, 1998.](#)



These environmental courts have expanded and were renamed as the Land and Environment Courts, of which there are currently five. There is also one Land and Environmental Court of Appeal, and some cases may be further elevated to the Supreme Court.

The Swedish system considerably builds on broad participation, and has done so since 1969. For instance, when there are case hearings, anyone can participate and express his or her views about the particular activity being heard, even with no specific link to the activity. There are no geographical limits to participation, or other limits for that matter, as long as time permits during the hearing. Professor Ebbesson remarked that the fact that one does not need to prove an interest to participate in the hearing is a very positive aspect of the Swedish decision-making process. Instead, it is when a decision is appealed that one's interest in the activity affecting the environment must be established.

Previously, Sweden had not been at the frontier on access to justice. In fact, the Swedish legislature had to be quite persistent on allowing nongovernment organizations (NGOs) to appeal cases. It did so partly because Sweden was joining the Aarhus Convention; even so, Sweden learned a hard lesson through the judiciary of the European Union (EU), when it ruled that Swedish laws regulating actions by environmental organizations were too strict. Now Swedish law has expanded standing, and NGOs enjoy broad standing.

Professor Ebbesson emphasized a challenge faced by Swedish courts, which probably also applies to most countries—if we do not provide for *actio popularis* but require that interest should be established, how do we address climate change? If we have a Swedish case involving greenhouse gas emissions, you are actually no less concerned about that activity if you live in Santiago or Tokyo, than if you live 200 meters next to that activity. There are no geographical links whatsoever between the activity and who is concerned. This is thus a challenge if judiciaries were to apply restrictive standards on standing—who is more concerned or less concerned with the case? Professor Ebbesson believes that this issue is partly resolved by allowing NGOs to have standing in such cases.

Thus, the Aarhus Convention, EU law, and international law today have had quite an impact on the Swedish system. Swedish judges have applied the Aarhus Convention, or considered the Aarhus Convention outside the Environmental Code, when environmental associations would not normally have access to the Court of Appeal. As such, even in these cases, Swedish law is interpreted in light of the Aarhus Convention, expanding the possibilities for an NGO to appeal unfavorable decisions.<sup>4</sup>

Professor Ebbesson believes this to be a very positive development for Sweden. Sweden, as elsewhere in the world, now faces the challenge of addressing climate change in courts. Professor Ebbesson opined that Swedish courts can apply the Environmental Code to more fully address climate change issues by, for example, imposing requirements related to climate change on economic activities, particularly those that are outside the emission trading system of the EU. Courts should take into account whether an activity adds to climate change. Professor Ebbesson is convinced that a Swedish *Urgenda* case is in the offing, where

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<sup>4</sup> Article 2, paragraph 5 of the Aarhus Convention defines “the public concerned” as “the public affected or likely to be affected by, or having an interest in, the environmental decision-making, for the purposes of this definition, nongovernmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.”

## Panel Session 1

environmental NGOs would bring the state of Sweden to court, specifically an ordinary court rather than an environment court.<sup>5</sup>

Professor Ebbesson then made some final comments linking the Swedish legal system to international law. Going back more than a century in international law, when security essentially focused on interstate situations, developing alternative ways of resolving disputes (to have peaceful dispute settlement through arbitration, for instance) was important. Professor Ebbesson opined that this is a challenge we will see in the future—for security to provide for access to justice.



Sustainable development goals are not legally binding, but they are legally relevant when applying national laws and considering the rights of individuals.

– **Professor Jonas Ebbesson**  
*Professor and former Dean, University of Stockholm School of Law*

Previous symposium speakers had mentioned the Sustainable Development Goals (SDG), and how they relate to water and air. However, Professor Ebbesson noted that we should not forget SDG 16, which speaks about access to justice for all, as an essential part of sustainable development. It is important, urged Professor Ebbesson, for the symposium participants to keep in mind that the role of the courts is essential for environmental protection and for sustainable development. Moreover, SDGs should be taken into account. They are not legally binding, but they are legally relevant when applying national laws and considering the rights of individuals. Thus, the role of courts and the rule of law are highly important to prevent conflicts and to manage conflicts when they arise.

<sup>5</sup> *The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v. Urgenda Foundation*, Case No. 19/00135, ECLI:NL:HR:2019:2007, Supreme Court of the Netherlands, 20 December 2019 (translation).

### PROFESSOR ÉMILIE GAILLARD

Lecturer in Environmental and Human Rights Law, Sciences Po Rennes  
General Coordinator, Normandy Chair for Peace (CNRS)

#### *Towards a Transgenerational Implementation of Fundamental Environmental Rights and Duties*

Professor Émilie Gaillard dedicated her presentation to Justice Hilario Davide of the Supreme Court of the Philippines, who paved the way for the transgenerational approach to fundamental rights with the *Oposa vs. Factoran* case,<sup>6</sup> and also to Justice Christopher Weeramantry who, in his dissenting opinion to the 1995 International Court of Justice decision in *New Zealand v. France* (Nuclear Tests case) wrote what emerged as a major contribution to the trend in favor of the rights of future generations.<sup>7</sup> Professor Gaillard noted that this way of thinking in terms of human rights—a transgenerational approach—is new for the Occidental people. It is, in a sense, a Copernican revolution. From the Occidental point of view, ethical rules do not contemplate the protection of the future—nothing was imagined in order to protect “the future of the future”. No law for the future was considered necessary.



<sup>6</sup> *Oposa v. Factoran*, G.R. No. 101083, 30 July 1993.

<sup>7</sup> In his [dissenting opinion in \*New Zealand v. France\* \(Nuclear Tests case\)](#), Justice Christopher Weeramantry of the International Court of Justice pointed out that the case raises, as no case ever before the court has done, the important and rapidly developing principle of intergenerational equity. Justice Weeramantry expressed regret that the court has not availed itself of the opportunity to inquire more fully into the matter and make contribution to seminal principles of international environmental law.



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From the perspective of democracy, it could be said that each generation on earth is committing an “abuse of power” against future generations. Therefore, Professor Gaillard opined that society has to create a transgenerational democracy, meaning we have to create new fields in law—in the executive, legislative and judiciary—in order to protect the future of the future. The idea is that future generations can be likened to a chain. Professor Gaillard noted that she prefers to use the word “transgenerational” because we have to think about the present as well as the future generations.

According to Professor Gaillard, there are two major pools when talking about law for future generations—the environmental pool (pertaining to global threats) and the ontological bioethical pool (ideologies desiring to enhance human beings with genetics or with technology)—and both are parts of the law for future generations.

Professor Gaillard then mentioned that she has previously defended two founding principles for the law of future generations.

First, according to the principle of temporal non-discrimination, the non-existence of future generations does not mean that they do not have the right to be protected by law. Professor Gaillard stated this with deliberate consciousness of the integrity of ecosystems and humankind’s interconnection with all living species, rather than from an anthropocentric point of view.

Second, the principle of dignity of future generations allows a transgenerational approach for all human rights, from the first to the latest generation of rights. For example, the right to freedom of movement under the first generation of human rights. There are some places where even now we no longer have freedom of movement—around Fukushima, around Pripjat, around every place where there is nuclear contamination at a high level, there is no more freedom to come and go. This issue also arises from disposal of nuclear waste on the ground.

Freedom of thought is another example. With new technological devices, such as the Neuralink brain chip, will the future generations’ freedom to think still be protected?<sup>8</sup>

On the second generation of human rights, there is the right to health and access to social security. For future generations, the right to health is something very concrete, with babies being born now with pesticide residues in their blood. Similarly, endocrine disruptors can have effects throughout our lives—immediately at birth in the form congenital defects; five years later through precocious puberty; at 15, 20, or 30 years old, to cause cancer. Thus, there is a very important task at hand to transform politics through transgenerational lenses, in order to promote transgenerational rights.

The third generation of human rights, including the right to a healthy environment, caused the great transformation of all human rights.

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<sup>8</sup> The Neuralink is reportedly a device being developed to be implanted in the brain to enable brain-computer interfaces.

Professor Gaillard emphasized a key concept, “complexity thought” or *pensée complexe*, a new way of thinking which helps us to think out of the box. This means that rights do not have to be one or the other, i.e., individual rights versus collective rights, or present rights versus future generations’ rights. Both rights can exist at the same time.

Professor Gaillard noted that this great transformation is occurring because of the justice system. We had the era of the pioneers, like Professor Edith Brown Weiss and Professor Antonio Oposa, who talked about intergenerational equity, a principle that is now inscribed in national laws.

Professor Gaillard asserted that time has come to recognize and to implement human rights for future generations, which means the recognition of fundamental duties towards future generations.

One concrete example is the German Federal Court decision of April 2021, which recognized this approach.<sup>9</sup> France, on the other hand, has a Charter for the Environment since 2005, but this was considered to have no constitutional or legal value.<sup>10</sup> With a transgenerational approach to rights and duties, all the provisions of the French constitutional charter could serve as key provisions for lawsuits. Professor Gaillard mentioned that she, along with the Normandy Chair for Peace, is training lawyers in France on the transgenerational approach, and they have identified the mobilization of the French constitutional charter as a possible avenue (e.g., through *la question prioritaire de constitutionnalité* or the priority question of constitutionality). Professor Gaillard is convinced that this could be a transformational movement up to the international level.

In closing, Professor Gaillard expressed willingness to engage in further discussions to improve this way of thinking about rights and duties of future generations, for instance in terms of procedure, crimes against future generations, positive obligations for states, and environmental vigilance of companies.



Rights do not have to be one or the other, i.e., individual rights versus collective rights, or present rights versus future generations’ rights. Both rights can exist at the same time.

– **Professor Émilie Gaillard**

Lecturer in Environmental and Human Rights Law,  
Sciences Po Rennes;  
General Coordinator, Normandy Chair for Peace  
(CNRS)

<sup>9</sup> According to *Neubauer v. Germany* ([translation](#)), decided by the German Federal Court on 29 April 2021, “[i]t follows from the principle of proportionality that one generation must not be allowed to consume large portions of the CO<sub>2</sub> budget while bearing a relatively minor share of the reduction effort, if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom....”

<sup>10</sup> France amended its Constitution in 2005 to include a [Charter for the Environment](#).

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### Discussion for Panel Session 1



Top Row (left to right): Professor Jonas Ebbesson, and Professor Émilie Gaillard  
Bottom Row (left to right): Justice Sapana Pradhan Malla, and Judge Anders Bengtsson

After the presentations, **Justice Syed Mansoor Ali Shah** of the Supreme Court of Pakistan posed a question to Professor Ebbesson, expressing interest in the Swedish legal system where anyone is able to express views on a case and assist the court. He asked what underpins such a legal system.

**Professor Ebbesson** clarified that this procedure is with respect to permit applications rather than a civil case. The permitting bodies, including the court, act *ex officio* so they are not bound by the views presented by the applicant company or by the authorities. The permitting bodies should make sure that the rules are complied with and that there is sufficient information at the time that decision is made. As part of that, it has been the case at least since 1969 in Sweden's environmental protection agency, that essentially anyone who would like could provide comments in writing, or come to the hearing if hearings are organized (which is quite often the case). There are practical limitations, depending on how many attend, but in principle, anyone would be able to present his or her views. At the stage of appeal, there are some restrictions, but in principle it is open.

**Judge Anders Bengtsson**, former senior judge of Sweden's Land and Environment Court co-chair of Panel Session 1, then clarified the matter further from the perspective of administrative law, either at the first instance in issuing permits, or when an appeal has been made (as when the license or the refusal to give license is appealed from the authority level). At the first instance, the floor is opened to others. Every court session is open for participants to come in and listen, but in administrative cases relating to permits, they also are allowed to ask questions and give opinions.



But on appeal there is some difference. When it is the operator that has made the challenge, anyone can come to ask questions and give opinions. On the other hand, when it is a neighbor, then the procedure is more restrictive. Anyone can come and listen, but depending on the question, they may not be allowed to make statements. Of course, there is a restriction on who is allowed to appeal a decision from the court—one must be regarded as concerned by the decision, and there is no *action popularis* in that sense.

Professor Ebbesson added that participating in this decision-making process does not mean that one is limited to speaking only of how one is affected directly. A participant may also highlight issues of biodiversity or, indeed, future generations, since that is part of the law. Also, upon appeal, if one has standing because he or she is concerned individually, then issues other than those directly linked to one's own legal interests may also be raised (e.g., nature protection).

Judge Bengtsson added that often participants raise questions that the applicant did not raise, so it could be very rewarding in the sense the case is opened in a much broader way than foreseen by the applicants.

**Justice Benjamin** remarked that the Latin American approach to participation of outside parties is similar. In administrative procedures, anybody—even a foreigner—is able to present scientific evidence, not as a victim but to contribute to the knowledge of the agency. More recently, in judicial cases, a new phenomenon in Brazil has arisen: the possibility of international NGOs serving as *amicus curiae*, which courts have accepted.

Judge Bengtsson commented, on the other hand, that Swedish law does not accept foreign NGOs, but they will be accepted in courts, because domestic law is read in light of the commitments that Sweden has made in international conventions such as the Aarhus Convention and the Espoo Convention, which has an implementation committee in Sweden (of which Judge Bengtsson is a member).<sup>11</sup>

Professor Ebbesson expressed his hope that, if foreign NGOs were to come to the Swedish judiciary, Swedish courts would interpret national legal provisions in light of the Aarhus Convention on non-discrimination, i.e., grant access to foreign NGOs if they meet the Swedish criteria about members and environmental interest. He noted that they could not be expected to have three years of activity in Sweden, but Professor Ebbesson opined that this condition should be set aside as the courts have done in some other cases on standing.

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<sup>11</sup> [Convention on Environmental Impact Assessment in a Transboundary Context](#). 1991.

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### JUDGE ANDERS BENGTSSON

*Former Senior Judge, Land and Environment Court, Växjö, Sweden*

Judge Anders Bengtsson, co-chair of Panel Session 1, then made some final remarks. Judge Bengtsson referred to certain trends that he gathered from the speakers' contributions. Globalization trends affect the political level, as well as judges and legal practitioners. When these environmental problems are global, the solutions are often global or international, i.e., treaties and agreements, that in turn affect the work of the judge when applying domestic law. This is a trend that is evident all over the world, where judges apply domestic law in light of these commitments. The experience exchanged and the knowledge shared between and among judges in networks and conferences (such as this symposium) are therefore very important—they are opportunities for judges to come across new ideas that could be applied to meet future problems that tend to be very complex.



“When these environmental problems are global, the solutions are often global or international, i.e., treaties and agreements, that in turn affect the work of the judge when applying domestic law.

– **Judge Anders Bengtsson**  
*Former Senior Judge, Land and Environment Court, Växjö, Sweden*

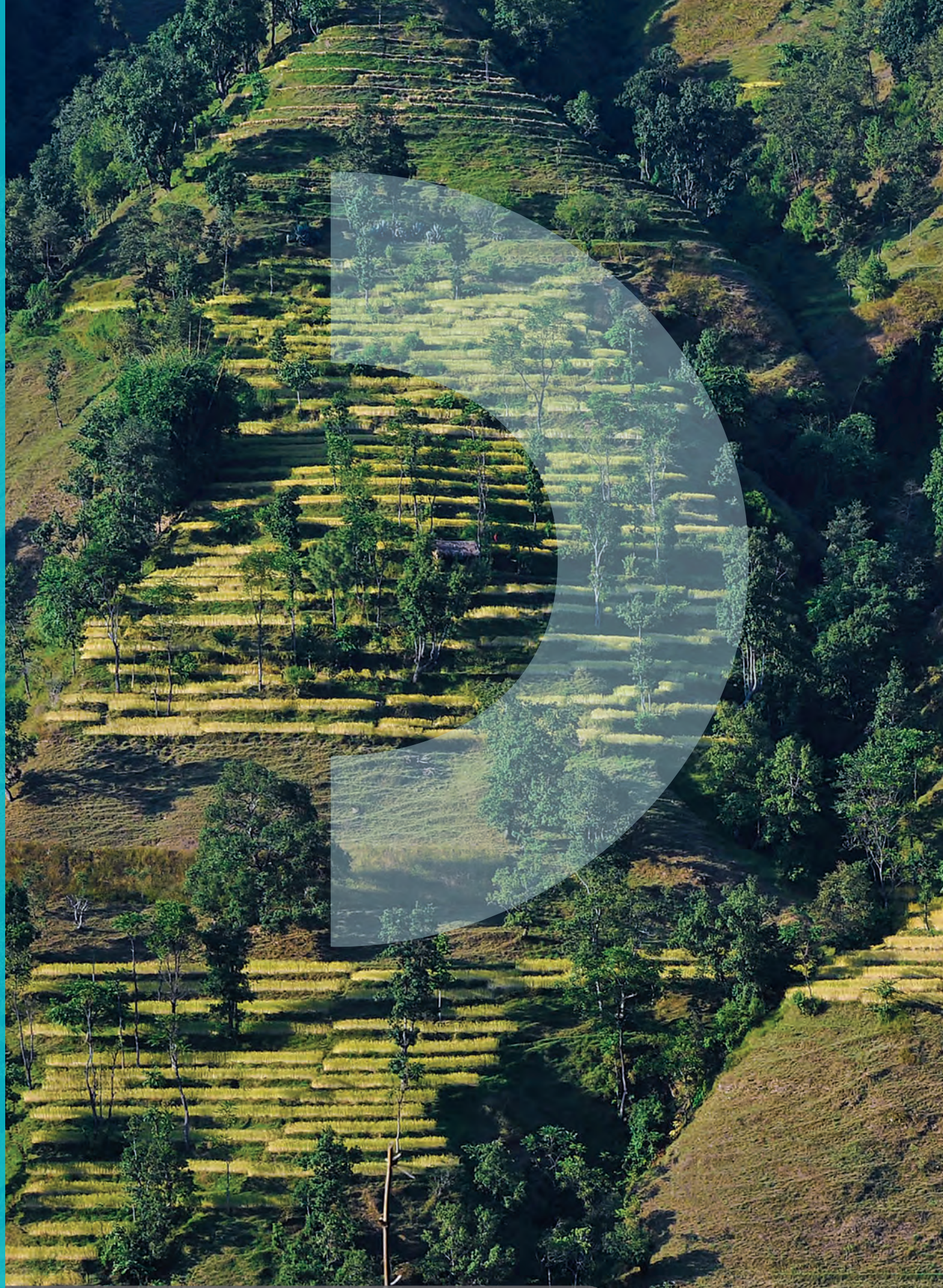
The transgenerational question on caring for our environmental heritage is also an obvious trend. There is some frustration among younger generations because our environmental heritage was not cared for in the best of ways. Children are not just engaging in protests, but also suing in courts. There is in fact a case going on right now in Sweden, where the children have taken responsibility to sue states.

Judge Bengtsson likewise mentioned that he has also been involved in a project

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to revise different legal systems entirely, or to look at the possibilities of access to justice mechanisms that children may use. According to him, this is very interesting because the children rely on the power of the law and the courts, particularly that the courts and the judges apply the law. For Judge Bengtsson, this is a very positive trend, and judges should be proud that the younger generation have this confidence in judges.





Terraced fields carved along the slopes of Nepal's mountains (photo by Ariel Javellana/ADB).





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**DAY 1**  
**MORNING**  
**SESSION**  
**CLOSING**  
**KEYNOTE**  
**ADDRESSES:**

The Environmental Rule  
of Law, Climate Change  
and Ecocide



## MORNING SESSION CLOSING KEYNOTE ADDRESSES

### JUSTICE AMBENG KANDAKASI

*Deputy Chief Justice, Supreme and National Courts of Papua New Guinea*

Justice Kandakasi began the session on a note of gratitude that the symposium participants—some very involved deeply in environmental rule of law, others just coming into the scene—are able to share their experiences in the field. Hailing from Papua New Guinea, Justice Kandakasi recognized the reality of climate change as a matter of survival. Some parts of the country will sink unless something is done urgently and immediately. This is also true for neighboring countries, which shows how pressing the issue is for the region. Justice Kandakasi therefore agreed with the United Nations (UN) that climate change is the defining moment of our times and unless we do something drastic in terms of adaptation and mitigation, we will have a catastrophic scenario.<sup>1</sup>

Under Section 57 of Papua New Guinea's Constitution, anybody concerned with any imminent or likely breach of a human right can come to court.<sup>2</sup> When the issues on climate change, environmental rule of law, and environmental rights came to the fore for the Pacific, the Papua New Guinea judiciary responded and invoked Section 57 of the Constitution—in a few cases on its own motion—to stop activities that have adverse environmental impacts. Thus, for Papua New



<sup>1</sup> United Nations. [Climate Change](#).

<sup>2</sup> Section 57(1) of the Papua New Guinea Constitution provides:

57. (1) A right or freedom referred to in this Division shall be protected by, and is enforceable in, the Supreme Court or the National Court or any other court prescribed for the purpose by an Act of the Parliament, either on its own initiative or on application by any person who has an interest in its protection and enforcement, or in the case of a person who is, in the opinion of the court, unable fully and freely to exercise his rights under this section by a person acting on his behalf, whether or not by his authority.



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Guinea, the question on standing has been answered by the Constitution. The challenge is for the judges to undertake their key role in this scenario, and for parties to come to court.

Justice Kandakasi also referred to a climate pandemic, akin to the COVID-19 pandemic, which is likely to occur and affect everybody unless necessary mitigation and adaptation measures take place. While the courts of Papua New Guinea are open to everyone, the courts cannot do it alone. The courts need expertise on the subject.

Justice Kandakasi noted that in this session, the participants would hear from eminently qualified experts, Professor Christina Voigt and Ms. Jojo Mehta. Justice Kandakasi is convinced that judges cannot go wrong if they listen to the experts. With this, he gave the floor to Professor Christina Voigt.



A climate pandemic, akin to the COVID-19 pandemic, is likely to occur and affect everybody unless necessary mitigation and adaptation measures take place.

– **Justice Ambeng Kandakasi**

*Deputy Chief Justice, Supreme and National Courts of Papua New Guinea*

### PROFESSOR CHRISTINA VOIGT

*Professor, University of Oslo School of Law*

*Chair, IUCN World Commission on Environmental Law*

### ***Environmental Law Priorities and Challenges after Stockholm+50***

Professor Voigt gave a brief review of what has taken place in the past 50 years after the Stockholm Declaration. In those 50 years, the world has seen enormous growth in the number of multilateral environmental agreements, as well as bilateral agreements and regional agreements. In addition to the growing number of global agreements, many laws (both international and domestic) have come about since 1972, with increasing normative density (i.e., degree of detail in the legislation) as well. Some even talk about “treaty congestion”, a term coined by Edith Brown Weiss.

Legislative developments are paralleled by developments in the judicial systems. Environmental courts and tribunals have been established in many places all over the world such as Sweden and New Zealand. There is now a vast corpus of environmental jurisprudence recognizing the right to

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a clean and healthy environment, which has likewise been included in many constitutions. An international movement is now going forward with discussions at the United Nations General Assembly.<sup>3</sup> Rights of nature have been recognized in several courts, as well as rights of an intergenerational or transgenerational nature.

Yet, has the quality of the environment improved in those 50 years? From scientific reports, the picture does not look very positive. Drastic reductions of greenhouse gas emissions are needed to hold climate change well below two degrees or even at 1.5 degrees, but global peaking of greenhouse gas emissions has not even been reached.

There is a decline of nature. An Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) report says that half of the species are under threat by extinction.<sup>4</sup> There are unprecedented levels of ocean, air, soil, and freshwater pollution. There have been some successes, but overall, the picture does not look very optimistic.

The question, for now, may be what to prioritize against this picture. There are many grassroots movements, youth, concerned citizens, nongovernment organizations, and even some companies, taking voluntary actions. This will, however, not be enough without robust, ambitious, and effective government interventions through law. Professor Voigt underscored that the world needs law that lives up to these expectations of society, children, and youth, and is commensurate with what science tells us.

Law is the government tool to guide societies and individual behavior. Law is the government tool to bring about systemic, sustained, and transformative changes. Law is needed—and needed quickly—to address the triple global crisis of biodiversity loss, climate change, and pollution. Transformative changes across all sectors, values, and paradigms are needed, and law and legal regulation can help achieve this. Law is the lever, identified by the IPBES report, that has the most impact to bring about these transitions.



<sup>3</sup> The UN General Assembly has since recognized the right to a clean, healthy, and sustainable environment as a human right. See General Assembly, [Resolution on The Human Right to a Clean, Healthy and Sustainable Environment](#), A/76/L.75 (28 July 2022).

<sup>4</sup> IPBES. 2019. *Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*. E.S. Brondizio, J. Settele, S. Diaz, and H.T. Ngo (eds.). IPBES Secretariat, Bonn, Germany.

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Professor Voigt clarified that more laws are not needed. The existing ones must only be effectively implemented, complied with, and enforced. Unfortunately, difficult challenges are encountered, such as capacity constraints, constraints in effective enforcement, and in some cases, missing political will.

This is where courts have an extremely important role to play. To protect the environment, perpetrators must be held accountable—be they governments, private companies, or individuals. The law should be applied with diligence and rigor, informed by sound and best available science, and with the conviction that the benefit of doubt needs to be given to nature.

Courts have applied established rules on duty of care, environmental impact assessment, and rights and freedoms in the context of climate challenge. In these cases, the courts do not make new law. What they do is apply the rules that they have in a new, complex, and very challenging context.



The law should be applied with diligence and rigor, informed by sound and best available science, and with the conviction that the benefit of doubt needs to be given to nature.

– **Professor Christina Voigt**

*Professor, University of Oslo School of Law*

*Chair, IUCN World Commission on Environmental Law*

Professor Voigt rounded up by speaking of the direction humankind is headed towards. We are currently in an interesting phase of international environmental lawmaking. It has stagnated for several years, with few treaties adopted since the Paris Agreement in 2015, but many international agreements are now being negotiated. There is a new wave in multilateral treaty-making with ongoing negotiations on (i) an agreement to protect biodiversity beyond national jurisdiction under the United Nations Convention on the Law of the Sea,<sup>5</sup> (ii) a new global biodiversity framework under the Convention on Biological Diversity,<sup>6</sup> (iii) a new internationally and legally

<sup>5</sup> In its [resolution 72/249](#) of 24 December 2017, the UN General Assembly decided to convene an Intergovernmental Conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. A fifth session of the Conference is being convened from 15 to 26 August 2022 pursuant to General Assembly [decision 76/564](#). See also United Nations. [Further revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction](#). A/CONF.232/2022/5. New York. 2022.

<sup>6</sup> Established by the 14th meeting of the CBD COP (COP 14), the Open-ended Working Group on the post-2020 global biodiversity framework (WG2020), was charged by the Conference of the Parties (COP) to the Convention on Biological Diversity (CBD) with developing a new set of global goals and targets to guide parties towards a nature-positive future. The WG2020's fourth meeting convened in hybrid format in Nairobi, Kenya, from 21-26 June 2022. See also United Nations Environment Programme. [First draft of the post-2020 global biodiversity framework](#). CBD/WG2020/3/3. Online. 2022.



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binding agreement to end plastics pollution,<sup>7</sup> and (iv) a legally binding agreement to address illicit wildlife trafficking.<sup>8</sup> There are also negotiations on an international instrument on pandemic preparedness and response and an initiative on ecocide, although treaty negotiations have not yet been reached on the latter.

The challenge will be the design of these new treaties, particularly to find effective and fair ways to bring the world together to adopt these new agreements. The world has become much more complex in the last 50 years. Since 1972, in Stockholm, there have been emerging economies contributing to the environmental stresses but also to the solutions. Poverty, war, and developmental needs also must be taken into account and balanced against environmental interests. Major players are no longer the G7 (i.e., Canada, France, Germany, Italy, Japan, United Kingdom, United States)—Beijing, India, New Delhi, Brasilia, and Cape Town now also play a major role. This leads to negotiations that focus on the need for financial support, conditionality, flexibility, and moving away from rigid standards and rules.

Professor Voigt emphasized that these international agreements are needed to set a global playing field to address global challenges and encourage cooperation. This means that eventually, it is the legal force that will be given to domestic laws and domestic implementation that will give strength and the means to address these challenges. It will then be a matter for the courts, the third pillar of power, to look after whether behavior is within the law or not, and then hold accountable those outside of the law.

### MS. JOJO MEHTA

*Co-Founder and Executive Director, Ecocide International*

### *The Establishment of Ecocide as an International Crime*

Ms. Jojo Mehta comes from a background of on-the-ground activism, communications, and advocacy. Since 2014, and more publicly since 2017, Ms. Mehta championed the concept and strategic legal initiative to criminalize ecocide at the highest level, alongside genocide and war crimes. Along with pioneering United Kingdom barrister, the late Polly Higgins, Ms. Mehta co-founded the public campaign now known as Stop Ecocide International, which is rapidly becoming the heart of a global movement. The organization works to develop a global cross-sector support for ecocide to become an international crime alongside genocide, war crimes, crimes against humanity, and the crime of aggression.

<sup>7</sup> On 2 March 2022, UN Member States endorsed a resolution at the UN Environment Assembly (UNEA-5) in Nairobi to end plastic pollution and forge an international legally binding agreement by 2024. See United Nations. [Resolution adopted by the United Nations Environment Assembly on 2 March 2022](#). UNEP/EA.5/Res.14. Nairobi. 2022.

<sup>8</sup> In May 2022, the United Nations Commission on Crime Prevention and Criminal Justice (CCPCJ) adopted [Resolution 31/1](#) formally inviting submission of views on the potential of an additional protocol to the United Nations Convention against Transnational Organized Crime (UNTOC), to address any gaps that may exist in the current international legal framework to prevent and combat illicit trafficking in wildlife.

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Ms. Mehta underscored that the first reference on the world's diplomatic stage to severe environmental destruction as ecocide was made right in Stockholm at the first UN conference of the human environment, courtesy of then Prime Minister Olof Palme of Sweden. He said that such destruction required urgent international attention. Today, it still requires urgent international attention. Ms. Mehta then opined that this symposium, as well as the Stockholm+50 conference, is therefore particularly pertinent, but also particularly poignant.

Reading the full text of the Stockholm Declaration, Ms. Mehta was impressed by “the beautiful document urging respect for protection and restoration of the natural environment”.<sup>9</sup> Yet she was also deeply shocked because virtually everything in it is as relevant today as it was then, if not more so. None of the environmental principles appear to have been taken with adequate seriousness by the world's governments. Realizing that things have not changed, Ms. Mehta felt a sense of vertigo. The phrases “we live in unprecedented times” or “humanity is at a crossroads,” both often used today to refer to the global crisis of climate and ecological breakdown, are not new at all. They are just more urgent because they have not been truly heeded, despite the considerable body of environmental law and jurisprudence that has developed around the world over the last 50 years through the dedicated work of lawyers, policymakers, and judges.

Ms. Mehta noted that it is deeply important that such a body of environmental law exists. It is also important that the body of law is constantly developed and improved along with the other treaties being discussed. Yet when words from the Stockholm Declaration are read in our time— “[M]an's capability to transform his surroundings, if used wisely, can bring to all peoples the

<sup>9</sup> United Nations. 1973. *Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972*. A/CONF.48/14/Rev.1. New York. pp. 3–5.

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benefits of development and the opportunity to enhance the quality of life...Wrongly or heedlessly applied, the same power can do incalculable harm to human beings and the human environment [...]—one cannot help but feel that “wrongly or heedlessly applied” has been largely the case. It appears that those with the power to strategically improve human relationship with nature and curb the destructive impacts of economic development have spectacularly failed to do so. Those wanting to profit from that relationship seem to have been given free rein and plenty of subsidies. Ms. Mehta believes that the reason for this lies ultimately, not in any individual fault, but in a deeply ingrained mindset of separation and competition between ourselves as people and the natural living world that sustains us. It is a mindset of treating nature—illogically—as an infinite bank of resources.

This mindset has come to dominate the globe through the Western canon of thought developed over centuries. From Plato’s concepts of the ideal versus the real, right through the Catholic division of spirit and body, straight on into the Enlightenment pitting reason against nature or reason against emotion, that dualism is deeply ingrained in our culture and its logical result can be seen.

The western model of education exported this mindset all over the world, along with colonization which came to profoundly define the geopolitics of today. Now, in 2022, mankind is crossing irreversible tipping points. Ms. Mehta observed that in retrospect, Olof Palme may have been on to something 50 years ago that could have made, and maybe still make, all the difference. Can we even imagine what world we would be living in now, if the international community had taken Mr. Palme’s word seriously, if a generation later in the 90s, ecocide had made its way into the Rome Statute, along with war crimes?





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The truth is that it is criminal law that draws the moral red lines, not civil regulation. While genocide, war crimes, crimes against humanity, and the crime of aggression are the strongest of those red lines, the one red line which should have been drawn for the successful continuation of the entire civilization has been ignored. There is a gap here. One who advocates for human rights knows that the worst violations—torture, forced displacement, mass murder—are recognized as deeply serious crimes. There is a deep moral and legal foundation to that advocacy at the global level. However, that foundational piece is conspicuously missing in the environmental arena. It is a gap that is rapidly becoming a chasm into which vulnerable and vital ecosystems, and the communities dependent upon them, are falling due to continued impunity for mass damage and destruction.



The truth is that it is criminal law that draws the moral red lines, not civil regulation. [...] The correct criminal law parameters can act as a kind of creative constraint, particularly when fiduciary duties lead corporate decision-makers to prioritize profit as a matter of obligation. With the right limitations, those rules can provoke urgently needed new thinking and innovation.

– **Ms. Jojo Mehta**  
*Co-Founder and Executive Director,*  
*Ecocide International*

Recognizing ecocide as an international crime has the potential to fill that gap, strengthening and shoring up existing laws that address organized crime as well as civil regulations on environmental protection. At the same time, it shifts norms to recognize the simple fact of humanity's dependence upon healthy ecosystems for mankind's own survival. After all, humans cannot eat, drink, or breathe without them.

Ms. Mehta asserted that putting ecocide alongside genocide gives a sense that damaging the living systems all around is as dangerous, as bad, and as problematic as damaging people. It ultimately damages everyone. Putting this kind of outer boundary framework in place also serves to stimulate strategic change in the right direction, something that has hitherto been proving very difficult. There is a rise in frustration at all levels—from grassroots to corporations, nongovernment organizations, and policymakers—with the failure to actually implement the multilateral and environmental agreements and pledges that already exist.

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Human beings are creatures of habit, and industrial practice tends not to change without changing the rules. Ms. Mehta mentioned an interesting study done at Colorado University a few years ago, looking at what happens to corporate behavior when environmental law is changed.<sup>10</sup> They discovered that when regulation is changed, corporate budgeting is also changed. When a criminal element is introduced, corporate behavior is changed. The correct criminal law parameters can act as a kind of creative constraint, particularly when fiduciary duties lead corporate decision-makers to prioritize profit as a matter of obligation. With the right limitations, those rules can provoke urgently needed new thinking and innovation.

All of these explain the mounting pressure for international recognition of ecocide, now coming from widely diverse voices—from the Global Youth Movement which made the international crime of ecocide its primary demand at Stockholm+50; from European states, notably Belgium where a strong majority of the parliament voted in favor of legislating nationally and internationally for ecocide; from Pacific Island states such as Vanuatu, which first brought up ecocide for consideration at the International Criminal Court (ICC) in 2019;<sup>11</sup> and the global investment community, including the International Corporate Governance Network, an investor-led network of banks and financial firms responsible for over half the world's managed assets of some \$59 trillion.

Ms. Mehta recalled that an important milestone was reached last year when an independent panel of legal experts from around the world was convened by Stop Ecocide International and reached a consensus on a legal definition of ecocide. The core text conceived is concise and balanced: “ecocide means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.”

The definition addresses threatening the worst harm to the environment. Rather like directing an attacker to a civilian population—it is the direction of the attack rather than the results on the population that is critical. This is important in environmental crimes since we do not want to wait until half the ecosystems of the world are destroyed to find who is at fault. However, this definition also acknowledges that existing bodies of law may vary between jurisdictions with the second threshold, “unlawful or wanton acts.” It recognizes different levels of development between different countries.

Ms. Mehta realized that it is very important that this definition engages and meshes with the existing body of laws. When particular areas of environmental law are improved, this definition will also be

improved. This is in effect future-proofing. Ms. Mehta also realized that nobody wants their work to be suddenly trodden on by something new. It is neither fair nor right, and it disregards incredible work that has previously been done. Having the additional threshold of “unlawful or wanton acts” in place acknowledges that there are areas of law that are constantly in development. It also pulls those people and their past work forward rather than treading on their toes.

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<sup>10</sup> See [Proceedings of Corporate Environmental Behavior and the Effectiveness of Government Interventions](#).

<sup>11</sup> [Statement delivered by H.E. John Licht, Ambassador of Vanuatu to the European Union](#) at the General Debate of the Assembly of the State Parties to the Rome Statute of the International Criminal Court.

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The definition has gained significant political traction around the world. Indeed, discussions are now on public record, at the parliamentary level or government level in no fewer than 21 states that are parties to the Rome Statute—and that number is increasing. The European Law Institute is also working on a European Union (EU) specific definition, and ecocide is being brought up in the context of revising the EU environmental crime directive.

In Stockholm, due to the strong resonance with the 50-year legacy of 1972, there is an opportunity to highlight and accelerate the initiative to criminalize ecocide, and preparatory meetings have shown significant support, including among the regional consultations and the conclusions to the working groups on the leadership dialogues.

In closing, Ms. Mehta underlined that the audience of the symposium has particular credibility on this issue, and she hopes that the participants will bring the weight and standing of their judicial roles to bear in supporting this rapidly growing global conversation. Everyone's future might depend on it. When today's children look back in 50 years' time on what emerges from Stockholm+50, Ms. Mehta hopes that they will not do so with a sense of vertigo but with acknowledgments from a future and from a living world that we have genuinely helped to protect.

## Discussion on the Closing Keynote Session Addresses



**Justice Syed Mansoor Ali Shah** of the Supreme Court of Pakistan raised several questions for Professor Voigt, in connection with her view that laws are important and give governments the teeth to implement what is needed. He asked her to imagine countries such as his, where existing



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laws are not implemented. As a result, laws have been totally ineffective as far as such countries are concerned. In Pakistan, the entire environmental jurisprudence that has been developed has been under the constitutional right to life. With just one article and without need for any law, there is a plethora of judgments. His first question is, considering countries such as Pakistan, would laws solve the problem?



For his second question, Justice Shah referred to jurisprudence on climate change, which he described as split into two sets: mitigation and adaptation. He therefore asked, for Pakistan, what kind of laws should be proposed? Under the adaptive approach, courts must look into numerous items including agriculture, health, energy, and disaster management. As far as adaptive jurisprudence vis-à-vis climate change is concerned, there are multiple dimensions. Should there be laws on all sectors to do this? Justice Shah remarked that, in countries such as Pakistan, perhaps laws might not be an answer.

Justice Shah also remarked that he is all for criminalizing environmental violations. However, in his home country, they have numerous laws which, for instance, punish even felling a tree. Yet, the government does not implement them, and people need to go to the courts for enforcement. Even if one is able to criminalize environmental offenses, how can those laws be implemented?

**Professor Voigt** responded that Justice Shah's question, in a way, proves her point. She believes that the answer to environmental issues is the "law" (i.e., the legal system), rather than "laws." This is exactly what is happening in Pakistan. In the absence of specific regulations, they used the constitution and went to the courts. It was the legal system from which particular answers have arisen through the interpretation of the constitution, the right to life, and eventually through the jurisprudence by the Supreme Court of Pakistan.

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Of course, laws would help. Many jurisdictions have specific laws and regulations that address particular issues. In the absence thereof, as Justice Shah described in the case of Pakistan, one should still go to the law, but this time to the courts using the constitution.

On Justice Shah's second point on adaptation, Professor Voigt replied that she believes many courts deal with both adaptation and litigation. The issues are often nuanced and cannot be neatly divided into two different issues. Professor Voigt remarked that the Leghari case in Pakistan, which was incidentally penned by Justice Shah, was an interesting development because in the absence of specific regulation, the court established a commission which was to report to the court.

There are creative ways in which courts can deal with a situation where there is no national legislation. Nevertheless, with the complex issues involved in adaptation (and to a certain extent, mitigation), it would help to have laws in place that could deal with the complexity. There are of course limitations inherent in democratic systems where some interests may be stronger than others, but she believes it is always helpful to have the laws to regulate these complex issues.

**Ms. Mehta** responded that when talking about ecocide, one frequent remark is the large number of laws regulating environmental issues. In this context, some people fear that an international ecocide statute may not make a difference. However, the key gap is the foundational level of how seriously environmental law is taken. Reports show that existing environmental crimes are now the fourth most lucrative criminal area in the world, and yet, they are not treated with the seriousness as other crimes.

Therefore, there is a symbolic and also a very practical value in the particular route being pursued at the ICC. At the symbolic level, there is a very immediate impact from considering the damage to ecosystems in its worst form as an international crime. In fact, the mere existence of a definition for ecocide is already producing an impact—investors and insurers are changing current approaches, or at least making inquiries.

From a practical perspective, there is nothing like having one's personal freedom on the line. This is the effect of going to the ICC which deals



[W]e are all on the same Titanic. We may have different cabin levels, but we are all going down together and fairly soon, according to intergovernmental reports that are increasingly fierce and stark.

– **Ms. Jojo Mehta**  
*Co-Founder and Executive Director,  
Ecocide International*

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with individuals rather than corporations and governments. What we are after is for the pen to pause above the dotted line when the holder of that pen knows that their signature is going to imply serious harm. That is a huge value in and of itself. There is also coherence in the unique mechanism of the ICC that lends direct access to the criminal justice systems of its member states in a way that other separate courts perhaps cannot do.

Furthermore, there is a very natural tendency for judiciaries and lawyers to think about how this would play out in practice—for instance, how prosecutions would take place. Ms. Mehta noted that this, however, disregards the window for strategic change which happens even before the law comes into play. It happens now, with the growing conversation. It is now that the investors themselves are asking governments to criminalize ecocide because they want to see stability and manage their risks. There are examples where extractive companies, on reading the definition that may be coming into play, have signed environmental agreements that they would not otherwise have signed. There are practical implications in real time of this conversation happening.

The importance of approaching this from an international level is also due to safety in numbers. Very few governments want to do this alone because they might lose their competitive edge or antagonize the corporate sector. It is politically safer to back an international crime because we are all on the same Titanic. We may have different cabin levels, but we are all going down together and fairly soon, according to intergovernmental reports that are increasingly fierce and stark. Thus, when we move, we should all move together. Ultimately, that is what we need.


**Justice Kandakasi** then gave his remarks to close the session. He noted that there is a proliferation of international treaties and national laws domesticating some of the best international declarations, conventions, treaties, and protocols. The problem lies in the enforcement. Nevertheless, some

judiciaries have taken a stand and, as suggested by the comments and questions, when there is little room provided in the law, it is that little room that is utilized by the very people in the room—the judges.



When judges take up a particular point that was developed by activists or specialists in the subject matter, that point becomes precedent. Such precedent then helps shape the development of the law, and ultimately leads to the setting of global standards. Judges may not be negotiators like Professor Voigt, or activists like Ms. Mehta, but in the judgment rooms, judgments can be informed by the international developments around us. Justice Kandakasi concluded that, together, we could shape our world and hopefully meaningfully contribute to addressing climate change for the sake of future generations.



 Fishermen exploring the waters for a catch in Malekula, Vanuatu  
(photo by Eric Sales/ADB).







Fish of different kinds provide wonderful colors to marine life in Batangas, Philippines (photo by Brian Manuel/ADB).





# 7

## PANEL SESSION 2: Emerging Environmental Law Principles Since the Stockholm Declaration



## PANEL SESSION 2

### Emerging Environmental Law Principles Since the Stockholm Declaration

#### JUSTICE MICHELLE WEEKES

*High Court of Barbados*



Justice Michelle Weekes opened the session by recalling that the 1972 United Nations Conference on the Environment in Stockholm was the first world conference that recognized the environment as a major issue. Environmental jurisprudence has grown in importance since the Stockholm Declaration, which can be regarded as the catalyst for the proliferation of environmental law.<sup>1</sup> The United Nations Environment Programme (UNEP) was a direct and major result of the Stockholm Conference.



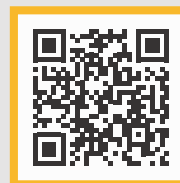
The 1972 United Nations Conference on the Environment in Stockholm was the first world conference that recognized the environment as a major issue. There is no doubt that environmental jurisprudence has grown in importance since the [Stockholm] Declaration, which can be regarded as the catalyst for the proliferation of environmental law.

– Justice Michelle Weekes  
*High Court of Barbados*

<sup>1</sup> United Nations. 1973. [Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972](#). A/CONF.48/14/Rev.1. New York. pp. 3–5.

Justice Weekes introduced the speakers, noting their extensive knowledge and experience in environmental law. Professor David Boyd is the UN Special Rapporteur for human rights and the environment. He has a doctorate in resource management and environmental studies, and is a prolific author of books, reports, and articles. Justice Antonio Herman Benjamin—Judge of the National High Court of Brazil, professor, mentor, and author of environmental legislation—encapsulates, personifies, and embodies all things environmental. He is the lead founder of the Global Judicial Institute on the Environment (GJIE). Justice Ricardo Lorenzetti from the Supreme Court of Argentina is a founding member of the GJIE and his book entitled “Environmental Law” has been published in Argentina and the United States, among other countries.<sup>2</sup>

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Justice Weekes invited the first speaker, Justice Lorenzetti, to commence his presentation.

### JUSTICE RICARDO LORENZETTI

*Supreme Court of Argentina*

Justice Ricardo Lorenzetti put forward that an analysis of the impact of the Stockholm Declaration on global environmental law can reveal the important trends of the last 50 years. One of the most important trends is the evolution from the concept of the environment as an individual right to a more systemic approach based on the concept of the environment as a collective good and the emergence of an environmental paradigm.



Justice Lorenzetti further elaborated that, for a long time, environmental law largely operated in the sphere of fundamental individual rights, the theory of which is linked to the notion of person and subjective rights. This has changed—for example, the Argentine Supreme Court ruled that the environment is a collective and indivisible good that belongs to the community, for common use.<sup>3</sup> This emergence of “collective goods” represents a fundamental shift in the culture of human rights, and therefore requires a more elaborate theory to explain its features:

- (i) Collective goods cannot be divided among those who use it. There is no ownership, and the right to use can only be diffuse or collective.
- (ii) There should be sustainable common use. Traditionally, the holder of ownership rights may exclude, by contract, third parties that seek to appropriate the asset. Collective

<sup>2</sup> P. Lorenzetti, and R. L. Lorenzetti. 2018. *Derecho Ambiental*. Rubinazal-Culzoni Editores.

<sup>3</sup> *Kersich, Juan Gabriel y otros c/ Aguas Bonaerenses S.A. y otros s/ amparo*, K.42.XLIX, Corte Suprema de Justicia de la Nación, 2 December 2014.



When we analyze the impact of the Stockholm Declaration in shaping global environmental law, we can identify important trends in the last 50 years.

I think one of the most important is the evolution from the individual right to a healthy environment toward a more systemic approach based on the concept of the environment as a collective good, and the emergence of an environmental paradigm.

– **Justice Ricardo Lorenzetti**  
*Supreme Court of Argentina*

goods do not grant these rights; exclusion is not possible and the legal burden to restrict access falls on whoever decides to do so. However, common use produces the tragedy of the commons—the absence of individual incentives to protect goods and avoid overuse. This leads to the overuse and, in turn, the depletion or destruction of the environment.

- (iii) There needs to be a system not only of rights, but also of duties and restrictions to protect the collective goods. Duties to protect collective goods and to limit the abusive exercise of individual rights on these collective goods already exist—but they need to be harmonized. Under Article 14 of the Argentine Civil Code, the law does not protect the abusive exercise of individual rights that affects the environment or collective rights in general.<sup>4</sup> Article 240 of this code states that the exercise of individual rights or goods must not affect the development or sustainability of flora and fauna, ecosystem, biodiversity, water, cultural values, and landscape, among others, under the criteria envisaged in the special legislation.
- (iv) Actions must imperatively follow a sequence: first, prevention; then restitution; and finally, compensation. Preventive or precautionary principles apply first because the environment is very fragile, therefore solutions must focus not only on past problems but also on future sustainability. This requires a major change in judicial decision-making, which has traditionally been based on the past rather than the future. This requires more capacity building.
- (v) Conflicts have a polycentric nature, since multiple rights are involved. Therefore, courts need to change from the traditional two-party approach to a polycentric one. The Argentine

<sup>4</sup> Government of Argentina. 2014. *Código civil y comercial de la nación*.



Supreme Court applied this approach in several environmental cases, notably water law cases. For instance, the court acknowledged individual rights to water while also recognizing that it is a collective good that is part of nature. It also considered its capacity for regeneration and resilience. This was a change from an anthropocentric model that considers water in terms of the private utility for a person or the public utility for the state, to an environmental paradigm that is eco-centric and systemic and that considers private or state interests, along with the system's interest. The court underscored that the resolution of the case required adopting measures that considered the entire river basin and the entire water cycle, regardless of political, jurisdictional, or territorial divisions.

Justice Lorenzetti then spoke of another major issue in the field of complex judicial remedies. The many environmental laws made since the Stockholm Declaration are often directed at awareness rather than behavior—they expose the conflict but do not resolve it. This highlights the role of the judiciary and the courts, and the two positions that they can take:

- (i) Courts traditionally practice self-restraint, limiting their role and leaving the executive accountable for executing national and international laws.
- (ii) Courts can opt to hand down judgments and orders to another branch of the government for implementation. However, in this case, courts should respect administrative discretion, and refrain from specifying the means since doing so is beyond judicial discretion. For instance, the Argentine Supreme Court ordered that a plan to clean up a river be prepared but did not specify how it should be done.<sup>5</sup> The courts may then assume the role of controlling compliance themselves, or delegate it to another court.

Justice Lorenzetti linked the second position and another major change: courts taking a greater role in the implementation of environmental law. He warned that this would be a big challenge for the judiciary, because judicial remedies in environmental law require a forward-looking perspective, since prevention and restoration look towards the future. However, establishing processes to restore the environmental goods that were damaged requires foresight, and deciding who would be best placed to prevent harm and restore damage is very difficult. Therefore, judicial remedies must have flexibility because a rigid decision will lose its effectiveness when circumstances change, which is usually the case in the environmental field.

Justice Lorenzetti concluded by acknowledging the significant changes that had occurred in the past 50 years, so he endeavored to discuss the most important ones in the field of the collective good and judicial attention.

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<sup>5</sup> *Mendoza, Beatriz S. y otros v. Estado Nacional y otros s/daños y perjuicios (daños derivados de la contaminación ambiental del Río Matanza - Riachuelo)*, 1569. XL, Supreme Court of Justice of Argentina, 7 August 2008. ([translation](#))

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### PROFESSOR DAVID BOYD

*United Nations Rapporteur for Human Rights and the Environment*  
*Professor, University of British Columbia*

Professor Boyd began by acknowledging the profound influence of the 1972 Stockholm Declaration on not only environmental law but also human rights law and constitutional law over the past 50 years. He then enumerated environmental law principles that have their roots in the Stockholm Declaration:

- (i) the more obvious principles of prevention and precaution, and the polluter pays principle;
- (ii) the principle of *in dubio pro natura*—when in doubt, side with nature—which is seen in court decisions throughout Latin America; and
- (iii) the newer planetary boundaries principle, which recalls the Stockholm Declaration’s limits on human activity. These principles are now being used by courts around the world. For example, in the Neubauer climate case, Germany’s Constitutional Court talked about Germany’s fair share of the global carbon budget, which implicitly recognizes this concept of planetary boundaries.<sup>6</sup>



Professor Boyd emphasized the need to acknowledge the shortcomings of environmental law in addressing global challenges, particularly in light of earlier symposium presentations discussing the mixed state of environmental law (i.e., on environmental law being either a glass half full or half empty<sup>7</sup>) and the escalating triple global environmental crisis.<sup>8</sup> He stressed that since environmental law alone could not solve environmental problems, solutions should also incorporate elements from other legal fields and disciplines.

<sup>6</sup> *Neubauer, et al. v Germany*, BVerfG, 1 BvR 2656/18, Federal Constitutional Court of Germany, 24 March 2021 ([translation](#)).

<sup>7</sup> Earlier in the symposium, presentations by Professor Jeffrey Sachs and Professor Nicholas Robinson alluded to the metaphorical glass being either: half empty, in that humankind has failed to change the trajectory of the planet in the 50 years since the Stockholm Declaration was made; or half full, in that there were some extraordinary new developments in laws and courtrooms in the past 50 years.

<sup>8</sup> Climate change, pollution and biodiversity loss. United Nations Framework Convention on Climate Change. 2022. [What is the triple planetary crisis?](#) News Blog. 13 April.

Professor Boyd, drawing from his role as the UN Special Rapporteur on Human Rights and the Environment, discussed five principles rooted in human rights and/or human rights law that are being synthesized with environmental law to tackle global fundamental challenges:

- (i) Coming from human rights law, the principle of non-regression stipulates that protection for human rights cannot be weakened in the absence of a very compelling legislative objective. Courts in Belgium, France, and several Latin American jurisdictions have applied non-regression in environmental law cases to prevent states from weakening environment-related standards and legislation.
- (ii) The principle of sustainable development balances the rights of the present generation and future generations.
- (iii) Related to this second principle is the concept of the rights of future generations. More than 40 constitutions around the world refer explicitly to the rights of future generations, which is encouraging because constitutions are the highest and strongest laws and play an under-recognized role in influencing culture.
- (iv) The rights of nature have roots going back thousands of years in customary indigenous legal systems. However, Ecuador was the first to recognize them officially. It integrated the rights of *Pachamama*—Mother Earth in the Quechuan language—into its 2008 Constitution and subsequently into 75 of its laws, regulations, and policies.<sup>9</sup> In a case where mining activities were approved in a protected forest, the Constitutional Court of Ecuador ruled that mining activities were inconsistent with the constitutionally protected rights of the forests in that region.<sup>10</sup> The rights of nature are recognized by the constitutions of Bolivia and Ecuador; by legislation in Mexico, Uganda and other countries; and by courts in Bangladesh, Colombia, and India.<sup>11</sup>
- (v) The right to a clean, healthy, and sustainable environment was introduced in Principle 1 of the Stockholm Declaration.<sup>12</sup> In 2021, the United Nations Human Rights Council passed a resolution recognizing this right.<sup>13</sup> The UN General Assembly (UNGA) is deliberating

<sup>9</sup> Article 71 of the [Constitution of Ecuador](#) states, “Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate. The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.”

<sup>10</sup> Caso No. 1149-19-JP/20, Quito D.M., 10 de noviembre de 2021, Corte Constitucional del Ecuador.

<sup>11</sup> For example, Article 33 of the [Constitution of Bolivia](#) states, “Everyone has the right to a healthy, protected, and balanced environment. The exercise of this right must be granted to individuals and collectives of present and future generations, as well as to other living things, so they may develop in a normal and permanent way.” Furthermore, Article 34 states, “Any person, in his own right or on behalf of a collective, is authorized to take legal action in defense of environmental rights, without prejudice to the obligation of public institutions to act on their own in the face of attacks on the environment.”

<sup>12</sup> Principle 1 of the [Stockholm Declaration](#) states, “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.”

<sup>13</sup> United Nations, General Assembly, Human Rights Council. 2021. [The human right to a safe, clean, healthy and sustainable environment](#). A/HRC/48/L.23/Rev.1. 5 October.



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on doing so as well.<sup>14</sup> While UN resolutions are considered soft law and thus neither legally binding nor enforceable, they could still influence constitutions, legislation, and court decisions. In any case, 156 countries have already recognized this right in their constitutions, in their legislation, or in regional human rights treaties to which they are party. Judges in twelve countries have ruled that a healthy environment is an essential part of the right to life. The right to a healthy environment is already part of decades of jurisprudence, legislation, and policy.

Professor Boyd further discussed the right to a clean, healthy, and sustainable environment. He explained that it has procedural elements and substantive elements—such as clean air, safe and sufficient water, healthy and sustainably produced food, a safe climate, healthy ecosystems and biodiversity, and a non-toxic environment where people can live, work, study, and play.

Courts have relied on these substantive elements. Professor Boyd recalled Justice Lorenzetti's example of *Mendoza vs. Argentina*. In that case, the Argentine Supreme Court ruled that the constitutional right to a healthy environment had been violated by pervasive pollution in Riachuelo River's watershed, and then supervised the implementation of its ruling to ensure that the government complied (footnote 5). Professor Boyd praised this approach, citing the difficulty of enforcing environmental and international law, and the need for legislation,

“These principles that I’ve mentioned here today are beautiful principles on paper. But, we really need to breathe life into them through legislation, regulations, and government actions, programs, and policies—to make those principles actually have an impact on this crisis that we face.

– **Professor David Boyd**  
*United Nations Rapporteur for Human Rights and the Environment*  
*Professor, University of British Columbia*

<sup>14</sup> Shortly after the symposium, on 28 July 2022, the United Nations General Assembly adopted a resolution that “[r]ecognizes the right to a clean, healthy and sustainable environment as a human right” and “[c]alls upon States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.” United Nations, General Assembly. 2022. [Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms](#), A/76/L.75. 28 July.

regulations, government actions, programs, and policies to support these principles, for them to have an impact.

Professor Boyd shared that the right to a healthy environment had been criticized for being anthropocentric. However, he argued that jurisprudence originating primarily from Latin America effectively merges these two concepts by viewing humans as an integral part of nature. For example, the Inter-American Court of Human Rights considers the right to a healthy environment as a human right distinct from others, in the sense that it also includes the rights of rivers, forests, and oceans.<sup>15</sup> In Mexico, the Supreme Court ruled that the destruction of mangroves violated the constitutional human right to a healthy environment, which includes the health of nature as well as the health of human beings.<sup>16</sup>

Professor Boyd concluded by saying that one of the most powerful tools to address the triple planetary crisis is the right to a clean, healthy, and sustainable environment. He added that courts in over 50 countries have ruled in favor of this right, while more than 150 countries recognize this right in their laws. This indicates a significant implementation gap that creative lawyers can help bridge through innovative approaches, and there is potential for groundbreaking judicial decisions to be rendered in the future.

### **JUSTICE HERMAN ANTONIO BENJAMIN** *National High Court, Brazil*

Justice Herman Antonio Benjamin noted that other speakers had already discussed the Rio Declaration and that his colleagues would discuss specific Brazil-related topics in the following panels.<sup>17</sup> He therefore focused on what judges could take from the Stockholm Declaration:

- (i) The declaration places the environment at the center of the legal system, which also puts the environment at the center of what judges do, rather than at the periphery. This point has normative and political implications for the judiciary.



<sup>15</sup> Inter-American Court of Human Rights. 2017. [Advisory Opinion OC-23/17](#). 15 November.

<sup>16</sup> *Tala del Manglar de la “Laguna del Carpintero” por Construcción de Parque Ecológico*. Amparo en Revisión 307/2016, Supreme Court of Justice of the Nation, Mexico, [decision](#) of November 14, 2018, Mexico ([summary](#)).

<sup>17</sup> See *Symposium Introduction by the Academic Coordinators*, p. 29 of this booklet.

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- (ii) The declaration gives judges a foundation to judicially restrict property rights. The combination of principles in the document gives judges the legitimacy to say that property rights and private ownership do not give people a right to destroy the environment.
- (iii) The declaration produced explicit and implicit principles, such as those mentioned by Professor Boyd, that are still evolving to this day.<sup>18</sup> These principles guide judges in understanding how to effectively fulfill their judicial roles within the framework of the law.

Justice Benjamin then pivoted to the fundamental challenges:

- (i) Judges often see implementation as somebody else's problem, when they themselves should also be part of the solution. In this sense, judges bear some responsibility for the inadequate or nonexistent implementation of laws.
- (ii) While most environmental law is grounded in rights, it should also be equally grounded in duties. The essence of the rule of law lies not only in the laws themselves but also in the rights and obligations associated with future generations and the rights of nature, among other considerations.
- (iii) Environmental law goes beyond procedure and substance into the creation of a new hermeneutics of law. It is about the interpretation of the legal system as a whole. Both normative and non-normative aspects are important—for example, when judges use the *in dubio pro natura* principle, there are both normative and hermeneutic implications. Ecologically-oriented procedural laws or ecologically-oriented substantive laws are insufficient; interpretations of the law should be ecologically-oriented as well.
- (iv) There is usually a clear distinction between international and national law—except in environmental law. The Asian Development Bank's Climate Change, Coming Soon to a Court Near You report series showed that among the most cited documents in judicial cases in Asia and the Pacific are the Stockholm Declaration and the Rio Declaration, rather than hard laws or more binding conventions such as the Convention on Biological Diversity, Convention on International Trade in Endangered Species of Wild Fauna and Flora, or the Ramsar Convention.<sup>19</sup> Judges cite the Stockholm Declaration, although it is not legally binding, because the boundaries between soft and hard environmental international law have been diluted. In environmental law, judges are not only national, but planetary in scope—when judges protect the environment within their jurisdiction, they protect the bigger picture; judges in jurisdictions on different sides of a river are protecting the same river. This recognition has a tremendous impact on how judges see international norms and on how courts organize themselves.

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<sup>18</sup> In his presentation, Professor Boyd referred to the preventive and precautionary principles, polluter pays principle, *in dubio pro natura*, planetary boundaries principle, principle of non-regression, principle of sustainable development, the rights of future generation, and rights of nature. See p. 84 of this booklet.

<sup>19</sup> See [Climate Change, Coming Soon to a Court Near You](#), Report 2, p. 33 which refers to the use by Asian courts of environmental constitutionalism which traces its roots to the Stockholm Declaration; [Convention on Biological Diversity](#). Rio de Janeiro. 5 June 1992. United Nations Treaty Series, Vol. 1760, No. 30619; [Convention on International Trade in Endangered Species of Wild Fauna and Flora](#). Washington. 3 March 1973. United Nations Treaty Series, Vol. 993, No. 14537; and [Convention on Wetlands of International Importance Especially as Waterfowl Habitat](#). Ramsar. 2 February 1971. United Nations Treaty Series, Vol. 996, No. 14583.





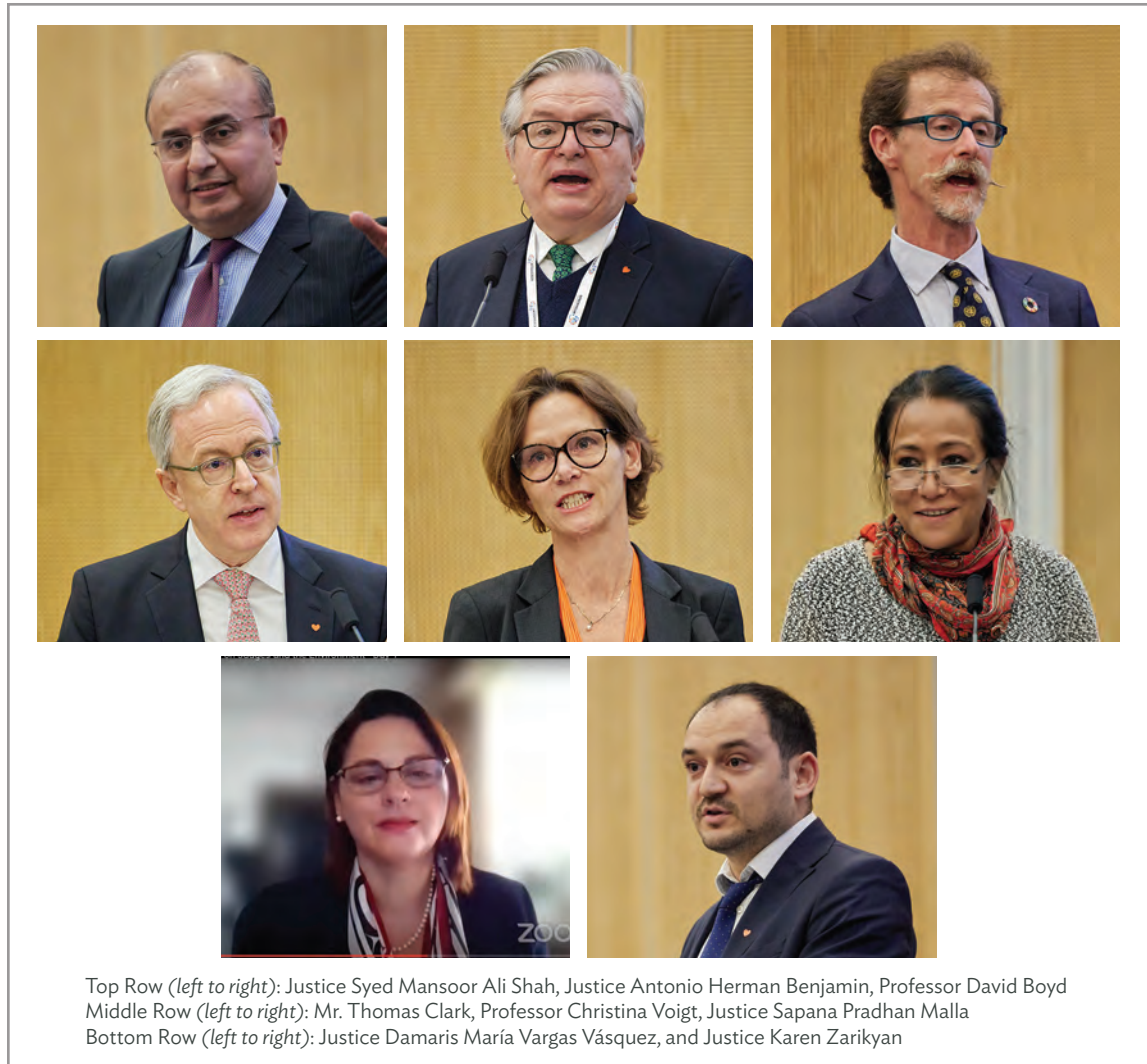
We judges are not international judges. We are not national or subnational judges. We are planetary judges. When we protect the little environment within our little jurisdiction, we are protecting something that is part of a much bigger picture. The judge that is on one side of the river with jurisdiction, and another judge on the other side of the river with jurisdiction [...] they are basically protecting the same thing. This recognition has tremendous impact on how we see international norms and how we see the way the courts organize themselves.

– **Justice Antonio Herman Benjamin**  
*National High Court, Brazil*

Justice Benjamin concluded by urging caution against hasty negative judgments regarding the achievements of environmental law, judges, and the legal system overall. He clarified that, except in cases of significant errors, the success or failure of judges in environmental law is challenging to assess. For example, it is difficult to determine definitively whether environmental damage has been reduced due to a judicial decision. However, he recommended acknowledging the substantial changes that environmental law has brought to the legal system in terms of substance, procedure, right to participate, standing to sue, evidence, *res judicata*, and the statute of limitations.

## Panel Session 2

### Panel Session 2 Discussion



**Justice Syed Mansoor Ali Shah** of the Supreme Court of Pakistan brought up the situation where judges intervene in environmental cases—for example, directing certain acts and ensuring that these directives are implemented— even though such actions may not fall within their traditional judicial role. Justice Shah asked about the appropriate limits of judicial intervention, particularly in cases where the executive branch is failing to fulfill its responsibilities.

**Justice Benjamin** acknowledged that it is unrealistic to think that judges can solve all environmental problems and that they will be able to replace the efforts of the government, private sector, and civil society. Nevertheless, judges are part of the solution to the world’s environmental problems and should not be excluded from governance. He then addressed Justice Shah’s question on the limit to a judge’s role: he said that, in environmental law, we have to be careful in labeling judges as activist judges. The real activist judge is the judge who does less than

what the constitution and legal provisions provide; it is the passive judge that keeps applying old precedents that no longer have foundation in the legal system or in the constitutional provisions.

**Professor Boyd** agreed with Justice Benjamin's response and added that one of the fundamental roles of courts is to uphold human rights, which is why an approach integrating human rights and environmental law is so powerful. He noted that the European Court of Human Rights receives hundreds of environmental cases and a few climate-related ones as well, because there is a rampant violation of human rights during this global environmental crisis. He highlighted the fact that courts have an important role to play in environmental matters, but that courts in some countries are dismissing environmental cases because of the political question doctrine. Professor Boyd regarded this as an abdication of responsibility, especially since these issues have such severe human rights implications.

**Mr. Thomas Clark** agreed with Justice Benjamin's point on activism, but also raised the point that there is a spectrum. On one end, the mandate is clearly defined in the national legislation or in a constitutional provision; at the other end, there are no specific national laws on the topic and constitutions only have high-level general principles, like the right to life. Therefore, a judge might have to find prescriptive rights to environmental compensation or well-being from general provisions about the right to life. Mr. Clark believes this to be a courageous decision, particularly in jurisdictions that do not have a strong rule of law. He asked what practical guidance could be given to judges in those difficult areas, and if there are principles of natural justice or other bases that could help those judges explain and justify environmental matters to their constituencies.

**Professor Boyd** responded that there are more than 20 countries around the world where courts have found an implicit right to a healthy environment in the constitutional right to life. Some of them are from Asia, including India and Pakistan.

Professor Boyd noted that Australia, Canada, China, Japan, New Zealand, the United Kingdom, and the United States do not explicitly recognize the right to a healthy environment. In these countries, there are two pathways towards legal recognition of the right to a healthy environment. One is through constitutions and legislation, the other is through judicial interpretation.

In Canada, for instance, there is a constitutional doctrine called the "living tree" doctrine, which states that the Canadian Constitution is meant to be interpreted progressively. There are already precedents that the Supreme Court of Canada can use. Similarly, there are precedents in Argentina, Costa Rica, Israel, and Malaysia and two dozen countries where courts have said that any contemporary interpretation of the right to life should include the right to breathe clean air, the right to safe and secure drinking water, and the other elements of the right to a healthy environment.

There is also soft law jurisprudence. For example, the UN Human Rights Committee in General Comment 36 on the right to life states that environmental degradation is one of the largest contemporary threats to the right to life.<sup>20</sup> The pending climate change case against Australia brought before the UN Human Rights Committee by Torres Strait Islanders could be

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<sup>20</sup> United Nations Human Rights Committee. 2019. *General Comment No. 36: Article 6, Right to life*. CCPR/C/GC/36. 3 September.



## Panel Session 2

a breakthrough in connecting climate change to the right to life.<sup>21</sup> The case of a Peruvian farmer who sued a German utility company for knowingly contributing to climate change also has the potential to be groundbreaking.<sup>22</sup>

**Justice Benjamin** noted that there are countries where protection of the environment is based on the protection of the right to life. There are also other countries whose constitutions refer to the protection of the environment vaguely, either as a right or a statement of public policy. Clearly stated or not, these rights do not exist in isolation; therefore, the legal system can still fill the gaps or the vagueness of those constitutional provisions protecting the environment.

**Professor Christina Voigt** recalled that the Human Rights Council resolution on the recognition of the right to a safe, clean, healthy, and sustainable environment links this right to other human rights (footnote 13). She inquired of Professor Boyd whether this interconnection enhances or poses a risk to this right, given its existing recognition as an independent right in 156 constitutions. She also asked him if recognition by the UNGA adds value to this right (footnote 14).



<sup>21</sup> *Daniel Billy and others v Australia (Torres Strait Islanders Petition)*, United Nations (UN) Human Rights Committee, 2019, CCPR/C/135/D/3624/2019. N.B. After the symposium, on 23 September 2022, the UN Human Rights Committee found that “the information before it does not disclose a violation by the State party of the authors’ rights under article 6 of the Covenant.” The Committee took note of the adaptation measures taken by Australia to reduce existing vulnerabilities and build resilience to climate change-related harms on the islands (para. 8.7). The Committee also held that the authors “have not indicated that they have faced or currently face adverse impacts on their own health or a real and reasonably foreseeable risk of being exposed to a situation of physical endangerment or extreme precarity that could threaten their right to life, including their right to a life with dignity” (para. 8.6). Still, the Committee expounded on how climate change considerations interface with the right to life in para. 8.5:

With respect to the State party’s position that article 6 (1) of the Covenant does not obligate it to prevent foreseeable loss of life from climate change, the Committee recalls that the right to life cannot be properly understood if it is interpreted in a restrictive manner and that the protection of that right requires States parties to adopt positive measures to protect the right to life. The Committee also recalls its general comment No. 36 (2018) on the right to life, in which it established that the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death (para. 3). The Committee further recalls that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life. The Committee considers that such threats may include adverse climate change impacts and recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The Committee recalls that States parties should take all appropriate measures to address the general conditions in society that may give rise to direct threats to the right to life or prevent individuals from enjoying their right to life with dignity.

See *Views Adopted by the Committee Under Article 5 (4) of the Optional Protocol, Concerning Communication No. 3624/2019*, UN Human Rights Committee, 2022, CCPR/C/135/D/3624/2019.

<sup>22</sup> *Luciano Lliuya v. RWE AG.*, 2015, Essen Regional Court Case, No. 2 O 285/15. (case information and documents).

**Professor Boyd** replied that the paragraph in the UN Human Rights Council resolution referred to by Professor Voigt was unfortunately weakened over the course of the negotiations (footnote 13). There was an effort to reinsert the stronger language—the right to a clean, healthy, and sustainable environment is inextricably related to the right to life and the highest attainable standard of health—in the resolution that would come from the UNGA.<sup>23</sup> He explained that this stronger language is crucial because it clarifies the foundation of the right to a healthy environment and aligns with the resolution through which the UNGA recognized the right to water in 2010, which employed similar language and logic.<sup>24</sup>

Professor Boyd responded to Professor Voigt's first question by stating that resolutions like the UN Human Rights Council resolution have no adverse effects on the right to a healthy environment. These resolutions are designed to catalyze positive change and can only lead to progress. For instance, after the UN General Assembly recognized the right to water in 2010, Costa Rica, Mexico, Slovenia, Tunisia, and other jurisdictions added the right to water to their constitutions. Additionally, other countries—including Colombia and France—incorporated the right into legislation.

Professor Boyd emphasized that, beyond legal reform, the ultimate objective is to enhance people's quality of life and safeguard the planet. For instance, following the UNGA recognition of the right to water, Mexico incorporated this right into its constitution and subsequently implemented a program that brought water to a thousand rural communities over a decade. Professor Boyd's native Canada abstained from the 2010 General Assembly vote and had previously sought to undermine recognition of the right to water. However, upon UNGA recognition, Canada reversed its stance and also acknowledged this right. Over the past seven years, the government worked with more than 130 indigenous communities to provide safe drinking water and infrastructure (including proper wastewater infrastructure), which significantly improved the lives of hundreds of thousands of indigenous Canadians.

Professor Boyd reiterated that these positive impacts can be traced directly back to the aforementioned UN resolutions and expressed his hope that within a decade, there would be tangible progress in terms of cleaner air, cleaner water, healthier biodiversity, and reduced environmental toxicity. He affirmed that the fundamental purpose of the law is to deliver justice in a world of stark injustice, where environmental injustices and vaccine apartheid affect billions of people. Human rights are a powerful way to bring about more inclusive and sustainable justice.

**Justice Damaris Vargas** added to Justice Benjamin's point on going beyond constitutional provisions. She shared that in Costa Rica, the Constitutional Court established that the international principles of human rights, which include environmental human rights, are above political constitutions—they are supra-constitutional. The Constitutional Court has nullified several laws because they violated key environmental principles, such as progression or non-regression.

<sup>23</sup> Footnote 13, para 1 and 2: "1. *Recognizes* the right to a clean, healthy and sustainable environment as a human right; 2. Notes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law[.]"

<sup>24</sup> "Recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights". United Nations General Assembly. 2010. The Human Right to Water and Sanitation. A/64/L.63/Rev.1 and Add.1. 28 July.

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Justice Vargas, echoing Justice Benjamin, recommended that judges should be mindful that they could be part of the problem, as well as the solution. Judges have to go above and beyond, in that they should revitalize the use of [human rights] principles and international conventions, especially binding ones, in their rulings. She also reminded participants that these conventions could be applied as guides to interpret national laws.

Justice Vargas recalled Justice Lorenzetti's statement that judges should be progressive, rather than stagnate in the past. Judges have to consider new rules and new demands of environmental law. They have to be increasingly aware that they are part of the solution in areas which may deviate from their traditional functions.

Finally, she echoed Justice Benjamin and underscored that judges are planetary—and not just national or local—and must render rulings in accordance with international conventions.

**Justice Sapana Malla** shared that she had been hearing that many judges in different parts of the world have expanded jurisprudence in delivering judgments. However, most of the time, the violator is a powerful entity. She asked if Professor Boyd—in his role as UN Special Rapporteur—had any findings regarding the challenges of implementing judgments. She also added that in South Asia and other parts of Asia, there is no regional mechanism or court for environmental cases, and violators are often international companies or foreign governments. Justice Malla inquired about the existing accountability mechanisms and whether they have gaps or challenges.

**Professor Boyd** acknowledged that many countries face significant challenges in implementing court judgments. In some cases, courts can directly address these issues. However, in other countries, fundamental problems with the rule of law, such as corruption or weak government institutions, hinder the implementation of judgments unless underlying societal issues are first resolved.

In some instances, courts have employed a continuing mandamus, retaining jurisdiction over cases even after judgments have been issued. In the Philippines, the Supreme Court has continued to oversee the enforcement of its judgment in a pollution case involving Manila Bay.<sup>25</sup> In Argentina's Mendoza case, the Supreme Court issued a strong and highly prescriptive ruling that mandated the federal, provincial, and local governments to construct a billion dollars' worth of safe drinking water infrastructure, including wastewater treatment facilities, and report on progress quarterly (footnote 5).

There are also many examples around the world where the right to a healthy environment continues to be violated. For instance, in Nigeria's Niger Delta, oil extraction sites continue to flare gas, despite a ruling 17 years ago that this practice violates the right to a healthy environment.<sup>26</sup> In terms of regional decision-making, the African Commission on Human Rights issued a groundbreaking judgment regarding the impacts of oil pollution in Nigeria, but there has been no action or follow-up since 2002.<sup>27</sup>

<sup>25</sup> *Metro Manila Development Authority, et al. v. Concerned Residents of Manila Bay*, et al., G.R. Nos. 171947–48, Supreme Court of the Philippines, 18 December 2008.

<sup>26</sup> *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. and Others*, FHC/B/CS/53/05, Federal High Court of Nigeria, 14 November 2005.

<sup>27</sup> African Commission on Human Rights. 1996. Communication 155/96: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria.



If domestic remedies have been exhausted, countries can utilize global mechanisms in the absence of regional ones. For example, countries that are parties to the International Covenant on Civil and Political Rights and the Optional Protocol on the communications procedure can bring cases before the UN Human Rights Committee, which will adjudicate and make recommendations to the governments involved.<sup>28</sup> Various processes are also available under specific human rights treaties, including the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.<sup>29</sup> While all countries except the United States are parties to the latter convention, only a few have actually ratified the protocol, which allows citizens from their countries to bring cases to the Committee on the Rights of the Child.



**Professor James May** asked what the role of judges is in delineating adjectives such as “healthy,” “sustainable,” “clean,” and “safe.” For example, what constitutes a “healthy environment” for a litigant and a jurist? He also asked what should be proven and when is it considered proven, to determine whether something is indeed healthy or sustainable or clean or safe.

**Justice Benjamin** noted that unlike many languages, adjectives in legal contexts often obscure rather than clarify meaning. To determine what constitutes a “healthy” environment, for example, judges often have to rely on domestic standards for water or environmental quality, or on previous court rulings when there is no specific World Health Organization standard. He emphasized the need for further discussion regarding the term “ecological,” as in ecological balance. He added that the legal system would at least show the path, although not necessarily the solution; however, the solution should always be reasonable.

Another question was raised as to whether issuing decisions based on jurisprudence from other countries, especially when there is a limited domestic legal foundation, could be characterized as judicial activism.

**Justice Benjamin** reiterated that, in most countries, the activist is the legislator, not the judge. Therefore, the judge must not be blamed just for applying a specific piece of legislation or

<sup>28</sup> *International Covenant on Civil and Political Rights*. New York. 16 December 1966. United Nations Treaty Series, Vol. 999, No. 14668.

<sup>29</sup> *Convention on the Rights of the Child*. New York. 20 November 1989. United Nations Treaty Series, Vol. 1577, No. 27531.

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constitutional provision. However, judges do sometimes have to decide based only on legal principles, but usually long-established ones, such as principles for the protection of property. For instance, the proper nature of property rights—which has existed since the Middle Ages and is in use today in mortgage law—could block the defense of statute of limitations. Justice Benjamin concluded by clarifying that environmental judges are often unfairly labeled as ‘activist’ when they are simply applying constitutional provisions, laws, or administrative rules.

**Justice Karen Zariyan** of the Administrative Court of Armenia noted that the Armenian Constitution originally explicitly recognized the right of every individual to a clean environment. However, in 2015, the provision was amended to say that the state shall protect the environment, opening arguments on whether the right is still recognized.<sup>30</sup> He asked if this could be a violation of the non-regression principle and whether this constitutional change could be interpreted as a ban for judges to recognize a clean environment as a constitutional right.

**Professor Boyd** acknowledged the 2015 amendment to the Armenian Constitution, noting that Armenia is unique in having once recognized the right to a healthy environment and subsequently removing it. In 2021, he inquired about this change with the Armenian government. The government responded that there was uncertainty regarding the intent behind the removal and it had formed a committee to review the matter. Professor Boyd has not received any further updates.

Regarding the potential violation of the non-regression principle, Professor Boyd stated that it would depend on several factors. First, he emphasized the need to examine whether related rights and duties remained in place, as they might still imply a right to a healthy environment. Second,

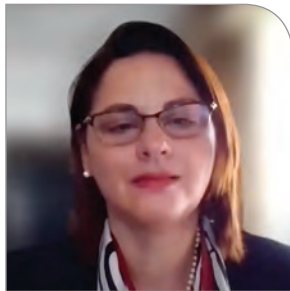
<sup>30</sup> Article 12(1) of the [Constitution of Armenia](#) states, “The State shall promote the preservation, improvement and restoration of the environment, the reasonable utilization of natural resources, guided by the principle of sustainable development and taking into account the responsibility before future generations.”

he highlighted the importance of determining whether the removal was intentional. An analysis of the working papers behind the constitutional amendment could provide clarity on this issue.

**Justice Benjamin** expressed doubt that it was an intentional change. He recognized that the historical intent behind such changes can be significant in legal systems like the United States and Canada. However, in other jurisdictions, the actual text of the law is more important than *mens legislatoris* (the intent of the lawmakers). Justice Benjamin suggested that a comparative study of these different approaches could be beneficial for Armenia.

### JUSTICE DAMARIS VARGAS

*Supreme Court of Costa Rica*



Justice Vargas summarized the learnings from the session. Judges should be more globally responsible and ready to adapt to changes. Stockholm+50 has given judges solid foundations and principles, but they need to close the gaps that opened up over time. Environmental principles, especially the newer international conventions, can guide interpretation of domestic law. She closed the session by thanking all participants and speakers.

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Judges should be more globally responsible and ready to adapt to changes. Stockholm+50 has given judges solid foundations and principles, but they need to close the gaps that opened up over time. Environmental principles, especially the newer international conventions, can guide the interpretation of domestic law.

– **Justice Damaris Vargas**  
*Supreme Court of Costa Rica*





Mont Blanc, the Alps' highest mountain and one of the highest in Europe. Global warming has caused glaciers to melt at an alarming rate (photo by Jochen Bückers/Unsplash).



A large white number 8 is positioned on the left side of the page. The background is a blue gradient with a semi-circular shape on the right. The left side of the page features a photograph of a rugged, snow-capped mountain peak under a cloudy sky, with a rocky foreground in the lower left corner.

# 8

## PANEL **SESSION 3:**

Climate Change and Courts—  
A Global Dialogue

## PANEL SESSION 3

### Climate Change and Courts—A Global Dialogue

Justice Antonio Herman Benjamin started the session by introducing the co-chairs for Panel Session 3. Ms. Andrea Brusco of the United Nations Environment Programme (UNEP) for Latin America and the Caribbean in Panama is a well-known environmental law expert in the region. Justice Beibut Shermukhametov is a member of the Supreme Court of the Republic of Kazakhstan.

Justice Benjamin then introduced the panel speakers: Chief Justice Brian Preston of the Land and Environmental Courts of New South Wales, Australia; Justice Fabien Raynaud, of the Conseil d'État in France; Justice Michael Wilson of the Supreme Court of the State of Hawai'i; Justice Liu Zhumei, chief judge of the Environment and Resource Division of the Supreme People's Court of the People's Republic of China (PRC); Justice Syed Mansoor Ali Shah of the Supreme Court of Pakistan; and Ms. Maria Cecilia T. Sicangco, senior legal officer at the Asian Development Bank (ADB).



#### MS. ANDREA BRUSCO

*Environmental Governance Regional Coordinator  
United Nations Environment Programme*



Ms. Andrea Brusco opined that the dimensions of the current environmental crisis—with its trilogy of accelerated climate change, mega-pollution, and biodiversity loss—need no further emphasis. Earlier in the symposium, Professor Jeffrey Sachs reminded the audience that the global community is failing to meet internationally agreed environmental goals and objectives.<sup>1</sup>

For this reason, judges' work in the courts plays an increasingly critical role in addressing this crisis, especially as climate change

<sup>1</sup> Opening Keynotes: Stockholm+50—Reflections About the Past, Present, and Future, p. 33 of this booklet.





Judiciaries around the world are increasingly playing a critical role in addressing this crisis. People—including children, youth, indigenous communities—are turning to the courts to access justice and exercise the right to a healthy, clean and sustainable environment, compelling governments and businesses to respect and accelerate commitments on climate change, both in mitigation and adaptation. In the coming years, we expect climate to be even more present. There is no doubt that this is a matter of urgency [...] and you are making extraordinary contributions to address this crisis.

– **Andrea Brusco**

*Environmental Governance Regional Coordinator,  
United Nations Environment Programme (UNEP)*

comes to the forefront of a global environmental rights movement. Children, youth, indigenous communities, and others are turning to the courts to seek justice and exercise their right to a healthy, clean, and sustainable environment. They are demanding that governments and businesses respect and accelerate commitments on climate change, both in mitigation and adaptation. In the coming years, the environmental crisis will be even more present and urgent, and judges will continue making extraordinary contributions to address it.

Ms. Brusco highlighted the exceptional caliber of the panel and invited Justice Brian Preston to take the floor.

Scan the QR code  
to watch Panel Session 3  
on YouTube.



## Panel Session 3

### JUSTICE BRIAN PRESTON

Chief Justice, Land and Environment Court, New South Wales, Australia



Justice Brian Preston spoke about the causes of the climate crisis, with governments and the corporate sector often cited as the main culprits. He then outlined various types of litigation that seek to hold these entities accountable for their inaction or inadequate action in addressing the climate crisis.

Justice Preston opined that a government must take the lead in setting and implementing the strategic policy and legal frameworks needed for effective climate action. Each of its branches is accountable for a specific climate-related action: the legislature enacts effective laws that will require climate action; the executive must then execute these laws and implement relevant policies; and the judiciary must hold the legislature and executive accountable for discharging their climate-related responsibilities.

Justice Preston classified the legislature's accountability into two categories:

- (i) **Failure to make legislation as required by law.**
  - (a) This is illustrated by a recent case in South Africa, the *Trustees for the Time Being of Groundwork Trust v Minister of Environment Affairs*, which concerned the preparation of an air quality management plan in an area with high levels of pollution from mining and combustion of fossil fuels.<sup>2</sup> An environmental nongovernment organization challenged the air quality management plan and the failure of the government to enact implementing legislation. The High Court of South Africa found that the levels of air pollution were in breach of the constitutional right to an environment that is not harmful to health or well-being and that the environment minister had a legal duty to promulgate regulations to reduce pollution. The High Court directed the minister to prescribe the necessary regulations within 12 months of the decision and set several issues that the minister had to consider when making those regulations.
  - (b) In *Massachusetts v. Environmental Protection Agency*, the State of Massachusetts petitioned the Environmental Protection Agency (EPA) to prescribe regulations—as delegated under the Clean Air Act—to reduce greenhouse gas emissions from new motor vehicles.<sup>3</sup> The EPA did not do so because they had misinterpreted the law and believed that greenhouse gas emissions were not air pollutants, and therefore did not need to be regulated. The Supreme Court corrected this mistake of the EPA.
- (ii) **Making legislation that is contrary to the law.** In the Neubauer case in Germany, the constitutional court ruled that the then Climate Change Act was inconsistent with

<sup>2</sup> *Trustees for the Time Being of Groundwork Trust v Minister of Environment Affairs*, Case No. 39724/2019, High Court of South Africa, 18 March 2022.

<sup>3</sup> *Massachusetts vs. Environmental Protection Agency*, 549 U.S. 497 (2007).

the German constitution.<sup>4</sup> The court said that the right to future freedoms protects the complainants against the consequences of this generation unilaterally offloading its burden to reduce its greenhouse gas emissions to future generations. The court ordered the federal government to update the 2030 emission reduction targets set by the Climate Change Act, and to set targets for years beyond 2031. The law was updated, but the constitutionality of the updated law is now being challenged in the Steinmetz case.<sup>5</sup>

The accountability of the executive may be divided into three categories:

(i) **Policy issues, including inadequate policy or failure to make policy.**

- (a) The failure to adopt a climate policy is illustrated in *Bushfire Survivors for Climate Action Incorporated v Environment Protection Authority*, a decision penned by Justice Preston.<sup>6</sup> A pollution law imposed a duty on the New South Wales Environment Protection Authority (NSW EPA) to develop policies to protect the environment in New South Wales. The petitioner claimed that the NSW EPA's policy failed to protect the NSW environment, which it is duty-bound to protect from climate change. Justice Preston agreed with the claim, holding that climate change posed a threat of sufficiently great magnitude and sufficiently great impact from which the New South Wales environment should be protected. Accordingly, he issued a mandamus compelling the NSW EPA to develop a policy to protect the environment from climate change. The government issued a press release that it accepted the court's decision and was preparing the policies at the time of the symposium.
- (b) A case of a policy adopted but in an unlawful manner is *Friends of the Irish Environment v Ireland*.<sup>7</sup> The case involved a national mitigation plan, which sought to transition to a low carbon economy by 2050. The plan was challenged for violating primary statutes, the Climate Action and Low Carbon Development Act, the Constitution and obligations under the European Convention on Human Rights. The Irish Supreme Court held that the plan fell short of the specificity that the primary statutes required, and a compliant plan had to be sufficiently specific as to the policy over the whole period up to 2050. In England, there was another relevant case: *Friends of the Earth v Secretary of State for Business, Energy and Industrial Strategy*.<sup>8</sup> This case challenged the various government policies for greenhouse gas reductions that deal with climate change because these infringe on the primary act, the Climate Change Act, among other acts.
- (c) The *Leghari* case is an example of a national government having an existing policy—a climate change adaptation policy in this case—which it did not implement.<sup>9</sup>

<sup>4</sup> *Neubauer, et al. v Germany*, BVerfG, 1 BvR 2656/18, Federal Constitutional Court of Germany, 24 March 2021 ([translation](#)).

<sup>5</sup> *Steinmetz, et al. & Deutsche Umwelthilfe v Germany* ([case summary and link to petition](#)).

<sup>6</sup> *Bushfire Survivors for Climate Action Incorporated v Environment Protection Authority*. [2021] NSWLEC 92, Land and Environment Court, New South Wales.

<sup>7</sup> *Friends of the Irish Environment v the Government of Ireland*, Supreme Court of Ireland, Appeal No. 205/19, 31 July 2020.

<sup>8</sup> After the symposium, a decision was issued on 18 July 2022 in *Friends of the Irish Environment v Ireland*, [2022] EWHC 1841 (Admin).

<sup>9</sup> *Leghari v. Federation of Pakistan*, PLD 2018 Lahore 364.



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The court found that the government breached constitutional and other rights, and ordered it to implement the adaptation policy.

- (d) When a government implements a policy, it may breach laws, although not the primary statute. An example would be the *Urgenda* case.<sup>10</sup> The case started in The Hague District Court, where the Dutch government was found to have breached the Dutch Civil Code—specifically, the duty of hazardous negligence—by setting insufficiently ambitious reduction targets. Afterward, the Court of Appeal and the Supreme Court held that the government also breached the European Convention on Human Rights.<sup>11</sup>

(ii) **Climate action independent of policy.**

- (a) Failure to take adequate climate action is demonstrated by *Notre Affaire à Tous v France*.<sup>12</sup> In this case, the government was found to have breached its legal obligations to address climate change. These obligations stemmed from the Charter for the Environment, the European Convention on Human Rights, and a general principle of law that every individual has the right to live in a preserved climate system.<sup>13</sup> The Administrative Court of Paris ruled that France was liable for failing to meet its climate and carbon budget goals, both under European Union regulations and domestic laws. As a result, the court ordered the state to take concrete measures to rectify this situation.
- (b) In common law jurisdictions, a duty to take climate action can be a common law duty attached to a statutory duty. The *Sharma* case in Australia illustrates this point. When the federal minister considered approving a new coal mine, which would emit greenhouse gases, there was a common law duty to assess the potential consequences for children, the present and future generations.<sup>14</sup> The action was successful in the first instance, although it was overturned on appeal.

- (iii) **Enforcement of the law.** In cases where the government fails to enforce a law, it may itself be considered a breach of the law. An English case, *The Queen on the Application of Richards against the Environment Agency*, provides a relevant example. A landfill site in this case was emitting hydrogen sulfide, and possibly methane or greenhouse gases.<sup>15</sup> The High Court held that the Environment Agency had violated its statutory duty under the Human Rights Act to protect children's rights to life and private family life. The court determined that the agency had a positive operational obligation to enforce laws being breached by the landfill's emissions.

Justice Preston subsequently addressed corporate accountability. Since the corporate sector is responsible for most global greenhouse gas emissions, climate litigation aims to influence corporate action to reduce these emissions. These actions may fall within the categories below:

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<sup>10</sup> *The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Urgenda Foundation*, Case No. 19/00135, ECLI:NL:HR:2019:2007, Supreme Court of the Netherlands, 20 December 2019 ([translation](#)).

<sup>11</sup> Council of Europe. 1950. *Convention for the Protection of Human Rights and Fundamental Freedoms*. 4 November. France.

<sup>12</sup> *Notre Affaire à Tous v France* ('*L'affaire du siècle*'), Nos. 1904967, 1904968, 1904972, and 1904976/4, Administrative Court, Decision of 14 October 2021. ([summary and links to case documents](#))

<sup>13</sup> Footnote 12; Government of France. 2004. *Charter for the Environment of France*. Paris.

<sup>14</sup> *Sharma and others v Minister for the Environment*. VID 389/2021, Federal Court of Australia, 8 September 2020.

<sup>15</sup> *The Queen (on the Application of Matthew Richards) v the Environment Agency*, [2021] EWHC 2501 (Admin), High Court of Justice, Queen's Bench Division, Administrative Court, 16 September 2021.



### (i) Corporations' activities.

- (a) Justice Preston discussed a case he penned—the *Gloucester Resources* case—where a new open-cut coal mine was expected to increase greenhouse gas emissions.<sup>16</sup> The question was whether this coal mine would fall within the 10% coal extraction limit allowed under the Paris Agreement targets.<sup>17</sup> Justice Preston held that an open-cut coal mine in that part of Gloucester Valley would be in the wrong place because of environmental and social impacts, and at the wrong time because generally agreed climate targets require a rapid and deep decrease in greenhouse gas emissions. He ruled that the project should be refused.
- (b) Regarding carbon-intensive businesses, in the *Milieudefensie et al. v Royal Dutch Shell* case, the district court in the Netherlands ruled that Shell must reduce its greenhouse gas emissions by a certain percentage.<sup>18</sup> Additionally, ClientEarth has filed a case against Shell's Board of Directors for breach of their responsibility to manage climate risk.<sup>19</sup>
- (c) There is a growing trend of climate-related risk litigation against pension fund or superannuation fund managers. In *McVeigh v Retail Employees Superannuation Trust*, members sued the fund for failing to disclose or manage climate-related business risks.<sup>20</sup>

<sup>16</sup> *Gloucester Resources v Minister for Planning*, [2019] NSWLEC 7, Land and Environment Court New South Wales, 8 February 2019.

<sup>17</sup> United Nations Framework Convention on Climate Change. 2015. [Paris Agreement](#). United Nations Treaty Series, No. 54113. 12 December. Paris.

<sup>18</sup> *The Association Vereniging Milieudefensie v Royal Dutch Shell PLC*, Case No. C/09/571932 / HA ZA 19-379, The Hague District Court, 26 May 2021. ([translation](#))

<sup>19</sup> Subsequently, the High Court dismissed the claim against the Shell Board of Directors, stating that “evidence adduced in support of [ClientEarth’s claim] do not disclose a prima facie case for giving permission to continue the claim.” *ClientEarth v Board of Directors of Shell*, EWHC 1137 (Ch), The High Court of Justice Business and Property Courts of England and Wales. 2023, 24 July 2023. In November 2023, the Court of Appeal refused ClientEarth a permission to appeal.

<sup>20</sup> *McVeigh v Retail Employees Superannuation Trust Pty Ltd.*, NSD1333/2018, Federal Court of Australia, 2 November 2020.

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### (ii) **Corporation's supply or value chains.**

- (a) The Casino supermarket chain in France faces a lawsuit for its involvement in the cattle industry in Brazil and Colombia. Plaintiffs argued that the deforestation caused by the cattle industry destroys carbon sinks, which are essential for the regulation of climate change, thereby violating human and environmental rights.<sup>21</sup>
- (b) Another case penned by Justice Preston concerned a coal seam gas operation.<sup>22</sup> He ruled that coal mine and gas operators have a responsibility to manage both upstream and downstream emissions. For upstream emissions, operators can choose their electricity suppliers, either green energy or coal-fired. For downstream emissions, control depends on the value chain. If there is vertical integration—e.g., the product is sold to a subsidiary of the operator—then the operator has control down the value chain.

Justice Preston concluded by saying that the judiciary upholds not just the law, but also the rule of law, when it holds governments and the corporate sector to account. In this way, the judiciary also facilitates effective climate action, especially where the law promotes the reduction of greenhouse gas emissions and the use of carbon sinks to remove more greenhouse gases.

“By performing this role in holding governments and the corporate sector to account, the judiciary upholds the law [and] also the rule of law. Where the law promotes taking action to reduce greenhouse gas emissions by sources and increase removal of greenhouse gases by sinks, the judiciary's actions facilitate the achievement of effective climate action.

– **Justice Brian Preston**  
Chief Justice, Land and Environment Court,  
New South Wales, Australia

<sup>21</sup> *Envol Vert et al v Casino (Saint-Étienne Judicial Court)*, filed 2 March 2021.

<sup>22</sup> *Mullaley Gas and Pipeline Accord Inc. v Santos NSW Pty Ltd.* [2021] NSWLEC 100, Land and Environment Court New South Wales, 18 October 2021.



### JUSTICE FABIEN RAYNAUD

*Conseil d'État, France*



Justice Fabien Raynaud reflected that the intersection of justice and climate change has become increasingly prominent in recent years. He attributed this trend to the growing number of associations, communities, and individuals who have chosen to pursue legal action to compel public authorities and companies to take more decisive steps to combat climate change and achieve greenhouse gas emission reduction objectives.

To illustrate this point, Justice Fabien Raynaud discussed the *Grande-Synthe* case in France. In this case, a municipality, supported by other municipalities, associations, and individuals, challenged the French state before the Conseil d'État over the issue of limiting greenhouse gas emissions.<sup>23</sup>

The municipality of Grande-Synthe initially requested the government to take additional actions to reduce greenhouse gas emissions in order to meet the 2030 targets. The government, through the prime minister, remained silent, hence rejecting the application. The municipality then appealed to the Conseil d'État to annul this rejection and order the government to implement additional measures. As of 2022, the Conseil d'État has issued at least two decisions in this case, although the matter was not yet fully resolved at the time of the symposium.

The first decision in November 2020 held three important things:

- (i) It ruled that the action of the municipality was admissible.

<sup>23</sup> *Municipality of Grande-Synthe and Damien Carême v. France*, Decision No. 427301, Conseil d'Etat, 19 November 2020.

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- (ii) It clarified the legal framework of the dispute, indicating that the court would verify whether the prime minister's refusal to take additional measures was compatible with achieving the greenhouse gas emissions reduction trajectory set by the French Parliament and the European Union for 2030.
- (iii) It gave the parties three months to send any useful information that might affect the decision on the merits of the case.

The second decision, issued in July 2021, was in favor of the municipality.<sup>24</sup> The court noted the government's failure to take additional measures to reduce greenhouse gas emissions and gave the government nine months to implement these measures. A third decision will then be made to determine whether the additional measures taken by the government and the Parliament are sufficient to comply with the 2030 targets.<sup>25</sup> Beyond its particularities, the *Grande-Synthe* case raises three interesting points at the international level.

- (i) **Access to justice.** While climate change concerns everyone, the judge cannot open the courtroom to everyone without being overwhelmed. The court must focus on those most directly concerned with and affected by the issue. In *Grand-Synthe's* case, its coastal location made it particularly vulnerable to marine submersion

“[T]he Paris agreement is not only the only global legal instrument we have at our disposal, but it is also based on the logic of [...] differentiated but shared efforts. It means that it can achieve its goal only if each signatory respects the commitment it has taken to implement the agreement. And since we do not have any international court to verify its proper application, we think that this task must be ensured by national judges.

– Justice Fabien Raynaud  
*Conseil d'État, France*

<sup>24</sup> *Municipality of Grande-Synthe v. France*, Decision No. 427301, Conseil d'Etat, 1 July 2021.

<sup>25</sup> On 10 May 2023, the *Conseil d'Etat* issued its third decision which held that its previous decision could not be considered to have been executed. It issued a new injunction to the Government, ordering it to take all necessary measures, by 30 June 2024, to achieve the -40% emission reduction target in 2030. *Municipality of Grande-Synthe and Damien Carême v. France*, Conseil d'Etat, 10 May 2023.

- (ii) **The substance of the law.** The Conseil d'État sought to give the full possible effect to the Paris Agreement in this decision, even though France is a monistic country. However, following the logic of differentiated but shared efforts, the Paris Agreement can achieve its goal only if each signatory respects its commitment to implement the agreement. Since there is no international court to verify its proper application, this task falls to national judges.
- (iii) **The role and the mission of the judge.** The Conseil d'État annulled the refusal to take additional measures to reduce greenhouse gases, and instead required that these measures be taken within nine months. However, it left the government and the Parliament, which have democratic legitimacy, to decide on what these measures should be. The judge's task is neither to set the targets nor to determine the measures. It is to verify whether the measures taken by the public authorities appear sufficiently convincing—here and now, since the judge cannot wait until 2030—to be compatible with the 2030 objectives. By doing this, the judge gives full effect to the commitments arising from the Paris Agreement, without replacing the political authorities responsible for implementing the country's commitment.

Justice Raynaud concluded by stressing that the approach taken by the Conseil d'État in the Grand-Synthe case and the implementing measures taken at the national level could be readily replicated in all signatory countries of the Paris Agreement. This approach will give the greatest possible legal scope to the Paris Agreement, which remains the only global legal act for combating climate change with optimal efficiency.

### JUSTICE SYED MANSOOR ALI SHAH

*Supreme Court of Pakistan*

Justice Syed Mansoor Ali Shah reflected upon the prescient nature of the Stockholm Declaration of 1972. The conference theme, "Only One Earth," was echoed by the host, then-Swedish Prime Minister Olof Palme, who said, "In the field of the human environment, there is no individual future, neither for human beings nor for nations. Our future is common. We must share it. We must shape it together." Justice Shah expressed that this sentiment feels as relevant as ever.

Justice Shah underscored the urgent need for climate action, and to act as





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if, to quote Greta Thunberg, “the house is on fire.” He recalled an earlier discussion during the symposium about the metaphorical glass being half empty or half full, expressing his concern that the glass might disappear altogether if inaction or insufficient action persisted.<sup>26</sup>

Justice Shah then proceeded to give an overview of how Pakistan deals with climate change. He noted that addressing climate change is primarily a policy matter, and clearly the domain of the executive and the legislative. However, in Pakistan, the courts are not just dealing with adversarial climate change cases, because the government may have other political priorities and perhaps vested interests in corporations. For example, the Leghari case serves as an example where the court intervened to compel the government to implement a policy that was being neglected.

Justice Shah put forward that climate change litigation is all about the inertia of the government or of the executive branch. He argued that judges are uniquely suited to address climate change due to their lack of political constituencies or vested interests, their neutrality and impartiality, and their oath to uphold human rights. He asserted that judges are ideal for executing climate change policy, particularly when governments fail to honor commitments or when human rights are compromised, regardless of the balance of power. Justice Shah emphasized that Pakistani judges, sworn to protect fundamental human rights, have been compelled to intervene in cases where climate change-related human rights violations occurred.

Justice Shah reiterated that the principles of the Stockholm Declaration reverberate today. He quoted from the declaration, stating, “Man has the fundamental right to freedom, equality and

<sup>26</sup> In the presentations by Professor Jeffrey Sachs and Professor Nicholas Robinson earlier in the symposium, they respectively alluded to the metaphorical glass being half empty—that we have failed to change the trajectory of the planet from 1972—and that it is half full—that in the past 50 years, we have filled the glass of law and the courtrooms with some extraordinary new developments. See *Opening Keynotes: Stockholm+50—Reflections about the Past, Present, and Future*, p. 33 of this booklet.

adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”

In the 50 years since the Stockholm Declaration, Pakistan and other jurisdictions have worked on environmental laws and come up with environmental justice and environmental jurisprudence. However, Justice Shah sees environmental justice only as an amalgam of constitutional principles, human rights, and international environmental principles.

Justice Shah proposed transitioning to the concept of climate justice, which he considered a more elevated level than environmental justice. Environmental justice incorporates international environmental principles such as sustainable development, the precautionary principle, environmental impact assessment, intergenerational equity, and the public trust doctrine, which are also intertwined with constitutional rights.

Climate change necessitates two primary approaches: mitigation and adaptation. Justice Shah observed that industrialized countries tend to prioritize mitigation efforts, while countries like Pakistan, which suffer from rather than contribute to climate change, focus more on adaptation. Jurisprudence on mitigation often relies on existing environmental principles to reduce emissions. In contrast, adaptation demands a broader approach that extends beyond environmental justice to embrace multiple dimensions such as health security, food security, energy security, water security, human displacement, human trafficking, and disaster management.

Consequently, mitigation can still be addressed within the framework of environmental justice. In contrast, adaptation requires a climate justice approach that involves courts in building adaptive capacity and climate resilience through engagement with multiple stakeholders and the application of a multidisciplinary approach to adjudication.

In climate litigation, the government is always the main contestant, whether due to its inaction or inertia. Courts are often tasked with compelling governments to enforce fundamental rights and fulfill their international obligations under the Paris Agreement, as well as the Glasgow Pact.<sup>27</sup> If governments fail to uphold their international commitments or provide nationally determined contributions, and this negatively impacts fundamental rights, courts can direct governments to commit to controlling greenhouse gas emissions. This represents a convergence of international law and domestic law. Ideally, international law would first be ratified and become national domestic law. However, courts sometimes choose not to wait and hold governments accountable for signed commitments.

Justice Shah then shifted to the concept of the dignity of nature, which Pakistani judges are increasingly incorporating into their decisions. He expressed gratitude to South Africa for its rich jurisprudence on dignity, which Pakistan has adopted into its own jurisprudence and climate change litigation. He explained that the concept of dignity acknowledges the interconnectedness between humans and the natural world, and therefore covers dignity of nature as well. Climate change impacts all essential aspects of human life, including water, food, health, and energy security, weakening

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<sup>27</sup> Footnote 17; United Nations Framework Convention on Climate Change. 2021. [Glasgow Climate Pact](#). 13 November.

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Post-climate change democracies have to be redesigned and restructured to become more climate resilient. The fundamental principle of rule of law must now be centered around nature. Human rights need to be expanded to respect all forms of life and must not promote rights of humans alone. We, as judges of the planet, need to rise to the occasion and actually try to guard the nine planetary life support systems through [a] robust and forward looking judicial approach.

– Justice Syed Mansoor Ali Shah  
*Supreme Court of Pakistan*

individuals' ability to shape their lives. Climate change can diminish both individual and collective quality of life, thereby affecting human dignity. Consequently, enhancing human dignity necessitates recognizing the dignity of nature.

Justice Shah suggested that the anthropocentric approach to environmental rights should evolve into a biocentric approach that recognizes the rights of nature. In the D.G. Khan Cement case, Pakistan's Supreme Court held that the environment needs to be protected in its own right.<sup>28</sup> Recognizing nature as an entity and expanding our perspective beyond human-centric concerns are essential for driving significant change.

Justice Shah transitioned to the topic of intergenerational justice, noting the tragic reality that future generations cannot challenge the pillaging of their inheritance today. Therefore, judges should be mindful that their decisions also adjudicate upon the rights of these voiceless future generations. Judges should ask themselves what legacy will be left for these future generations, and be clear about the need to restore, repair, and care for the planet, for children, their children, and all those yet to come. Justice Shah quoted from the Supreme Court's decision in the D.G. Khan Cement case: "[t]hrough our pen and jurisprudential fiat, we need to decolonize our future generations from the wrath of climate change, by upholding climate justice at all times."

<sup>28</sup> *D.G. Khan Cement Company Ltd. v. Government of Punjab through its Chief Secretary, Lahore, etc.*, C.P. 1290-L/ 2019, Supreme Court of Pakistan, 15 April 2021.



Justice Shah then shared that Pakistan was also developing the concept of climate democracy. He opined that post-climate change democracies need to be redesigned and restructured to become more climate resilient. The fundamental principle of rule of law must be centered around nature, and human rights need to be expanded to respect all forms of life. Justice Shah then called upon judges to protect the nine planetary life support systems through a robust and forward-looking judicial approach, and to prevent their destabilization. He advocated for a transition from environmental and climate justice to planetary justice.

Justice Shah concluded by urging his fellow judges to unite, discuss their ideas, and share their jurisprudence. He emphasized the urgent need for such collaboration and highlighted the potential role of the Asian Development Bank (ADB) in building a network for this purpose. He advised his fellow judges to prepare for the significant challenges ahead, as there is much work to be done.

### **JUSTICE MICHAEL WILSON**

*Supreme Court of the State of Hawai'i*



Justice Michael Wilson began by giving some perspective on Hawai'i. He shared that the state has a population of approximately 1.4 million people, which is roughly equivalent to the number of attorneys in India. He emphasized Hawai'i's small size and its distinction as the most remote landmass on Earth. He described how magical and sacred it was to hike on a mountain by the beach as a young boy, deeply inspired by the pristine natural beauty and lack of human-made development.

He then recalled that Sir David King—one of the leading atmospheric scientists of the world—talked about how 140 to 160 million people would have to leave Bangladesh in about 40 years. This is the bond shared by the symposium participants: climate anxiety. Referencing Justice Kandakasi's earlier remarks, he emphasized that people in regions like Hawai'i and Papua New Guinea experience the most severe impacts of climate change, as their parts of the world are already facing the threat of submersion.

Justice Wilson acknowledged the consensus among participants that climate change is a significant problem, but one with potential solutions. However, he emphasized the lack of fulfillment of the duty to provide remedies.

Justice Wilson proposed a two-pronged approach for judges to address this issue. The first part involves judges developing the law by utilizing international treaties and principles such as the polluter pays principle, the principle of deferring to nature in decision-making, and the principle of intergenerational equity. However, he recognized that during a climate emergency, focusing on intellectual development for judges to make decisions for environmental protection becomes less relevant. Therefore, the second part of the approach pertains to the necessary actions during this climate emergency.

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Justice Michael Wilson recalled the powerful speech made by the United Nations Secretary-General at Columbia University. He had said that the world was able to come together as a community and do something incredible to develop a vaccine for COVID-19.<sup>29</sup> However, Justice Wilson noted that even this pandemic pales in comparison to the triple planetary threat of pollution, climate change, and biodiversity loss.

Justice Wilson then asked how judges use the rule of law to respond to emergencies threatening mankind. He gave examples from the United States:

- During World War II, the Supreme Court upheld the internment of Japanese Americans,<sup>30</sup> a decision later recognized as a mistake but nevertheless was a bold remedy.
- In *Brown v. Board of Education*, courts ruled to desegregate schools, arguing that they were engaging in an unequal application of the law.<sup>31</sup>

Justice Wilson then posed a question—where is the world now in terms of bold remedies?

Justice Wilson called for a discussion of the remedies necessary during a climate emergency. He acknowledged that judges could order governments at the national or state level to create climate plans. However, he questioned what a judge could do when, for example, the United States provides over \$100 million of subsidies every year to the fossil fuel industry. Justice Wilson suggested that aside from ordering an end to these subsidies, a judge

“[T]he emergency that faces us is so extreme, it allows us to exercise power. We have one of the greatest duties in the world—the duty to protect the environment, which everybody in this room recognizes. It is a beautiful privilege to have that sworn duty. At the same time, we preside over a magnificent planet that is suffering, that is sick; we have a duty to a certain extent to provide therapy, too.

– Justice Michael Wilson  
Supreme Court of the State of Hawai‘i

<sup>29</sup> United Nations. 2020. *The State of the Planet*. Speech by the UN Secretary-General at Columbia University. 2 December.

<sup>30</sup> *Korematsu v. United States*, 323 U.S. 214 (1944).

<sup>31</sup> *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

should call for restoration, as a judge's duty extends beyond merely declaring violations. He then posed the question of how restoration could be achieved at that point, and what industry should be utilized. Should oceans be mined or clouds be placed over the Arctic? Should courts mandate a different type of agriculture?

Justice Michael Wilson referred to a decision written by Judge Ann Aiken in the United States that affirmed humanity's right to a stable climate capable of supporting human life. While this decision would not surprise most judges in other parts of the world, it was subsequently overruled by the federal court in the United States.<sup>32</sup>

The US Supreme Court is now taking positions on climate that are diametrically opposed to most of the world. Justice Wilson therefore asked how judges in the US should deal with these issues.

He responded that they must decide these issues at the state level, based on their respective state constitutions. He cited the case of a Hawai'i's court, whose judge, after participating in the Global Judicial Institute on the Environment (GJIE), ADB conferences, and other events, recently issued a decision recognizing the right of the citizens of Hawai'i to a stable climate capable of supporting human rights, echoing Judge Ann Aiken's ruling. Hawai'i is now progressing in the direction of this decision, supported by a provision of the Hawai'ian constitution.

Justice Wilson concluded by saying that while judges need to continue developing legal theories, it is imperative to shift into a realm of solutions and remedies. He argued that the extreme nature of the climate emergency facing humanity empowers judges to exercise their power and fulfill one of the greatest duties in the world: protecting the environment. At the same time, he reminded judges that they are presiding over a planet that is ailing and suffering, and therefore they also have a duty to provide treatment.

In closing, Justice Wilson thanked GJIE and ADB for their contributions to advancing solutions and empowering judges to exercise independence, courage, and unity in their efforts toward restoration.



<sup>32</sup> *Juliana v. United States*, No. 18-36082 (9th Cir. 2020).



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### JUSTICE LIU ZHUMEI

*Supreme People's Court of the People's Republic of China (PRC)*



Justice Liu Zhumei acknowledged the Stockholm Declaration as the first international instrument for defending and improving the environment, and for fostering a global consensus on environmental protection. She declared that the People's Republic of China (PRC) is a proactive advocate, staunch practitioner, and dedicated supporter of the Stockholm Declaration. The PRC has promoted ecological civilization, advanced its modernization drive towards harmonious coexistence between humans and nature, and continued to address people's aspirations for a better life. The PRC is deeply engaged in global environmental governance, striving to bring the benefits of green development to people of all countries more equitably.

In September 2021, President Xi Jinping proposed the Global Development Initiative at the United Nations, which focuses on addressing climate change and promoting green development. The initiative also calls on the international community to accelerate the implementation of the UN 2030 Agenda for Sustainable Development to achieve a greener, more robust, and more balanced global development landscape.<sup>33</sup>

People's courts in the PRC have attached great importance to the judicial protection of the environment, viewing clear waters and green mountains as invaluable assets. The PRC has established a specialized environment and resources adjudication system with Chinese characteristics, and the Supreme People's Court has also established over 2,000 specialized environment and resources

<sup>33</sup> United Nations General Assembly. 2015. *Transforming our world: the 2030 Agenda for Sustainable Development*. A/RES/70/1. 21 October.

adjudication agencies across the country. These agencies allow centralized and unified hearings of criminal, civil, and administrative cases on resources and the environment. Moreover, people's courts have implemented cross-regional jurisdictions and judicial cooperation, fostering stronger coordination between courts and specialized environmental administrative agencies in various ecosystems (e.g., watersheds, forests, and wetlands) and ecological function zones (e.g. national parks).

To enhance judicial efficiency, information technology is being used to create a nationwide environmental and resources trial information platform. This platform covers people's courts at all levels across the country and provides scientific and technological support for case hearings and policymaking.

Justice Liu highlighted the people's courts' strict adherence to ecological and environmental protection laws. Continuous efforts have been made to refine the legal framework and safeguard environmental rights and interests. The 2020 Civil Code, the first to incorporate the green principle, has been implemented through judicial interpretations and normative documents on environmental public interest litigation and punitive damages for ecological and environmental infringements. These measures aim to ensure the people's right to a healthy, comfortable, and beautiful living environment through judicial processes.



In the future, people's courts in the PRC will—based on the Kunming Declaration of the World Judicial Conference on Environment—work with courts in all countries and international organizations to continuously deepen exchanges and mutual learning in environmental justice, improve the international rule of law, and contribute judicial wisdom and strength to build a beautiful world with harmonious co-existence between man and nature.

– **Justice Liu Zhumei**  
*Supreme People's Court of the People's Republic of China*

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The PRC has made prevention a priority, with preventive public interest litigation cases like the Green Peafowl case handled accordingly.<sup>34</sup> Judicial measures such as injunctions and preservation orders have been actively used to prevent or mitigate environmental damage. The concept of restorative justice has been implemented, accompanied by innovative adjudication and enforcement methods. Measures like replanting and species release have been employed to protect and restore the environment to the greatest extent possible.

Over the past three years, people's courts at all levels have resolved 730,000 environmental and resources-related cases, underscoring the critical role of justice in ecological and environmental protection. Justice Liu added that people's courts in the PRC have actively engaged in international cooperation and exchanges, and have established a platform for sharing environmental jurisprudence and judicial experiences.

In May 2021, the *Kunming Declaration* was announced at the World Judicial Conference on Environment, held by the Supreme People's Court and UNEP.<sup>35</sup> According to the declaration, the principle of equity, common but differentiated responsibilities and respective capabilities, the principle of protection and sustainable use of natural resources, and the polluter pays principle should be upheld in environmental justice. This is done with preventive judicial measures, restorative judicial measures, public interest litigation, and diversified dispute resolution being proactively applied, continuously making environmental justice more professional, informed, and global. Such efforts have offered a practical judicial solution to global environmental governance.

Climate change is a significant global environmental governance agenda and a crucial area for environmental justice to promote ecological civilization and green development in the PRC. People's courts in the PRC have handled cases related to carbon emissions, energy use, and green finance, developing specialized concepts and adjudication rules for climate change cases.

Importantly, the Supreme People's Court is preparing to issue guidelines on carbon emissions peaking, carbon neutrality in judicial services, and adjudication rules for carbon-related disputes, including market-based carbon emissions trading and ecological carbon sinks. Judicial interpretations on civil matters related to forest resources will also be released, encouraging reforestation and restoration efforts to enhance ecosystem carbon sink capacity. The PRC will continue to deepen theoretical study, strengthen innovation, and improve adjudication rules to effectively address and mitigate climate change through judicial measures.

In closing, Justice Liu quoted the Stockholm Declaration: "Man is both creature and molder of his environment." In the future, people's courts in the PRC will work with courts worldwide and international organizations to deepen exchanges and mutual learning in environmental justice, based on the Kunming Declaration of the World Judicial Conference on Environment. This will contribute to strengthening the international rule of law and providing judicial wisdom and support to build a harmonious world where humans and nature harmoniously coexist.

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<sup>34</sup> *Friends of Nature Institute v Xinping Development Co. Ltd, Intermediate Court of Kunming Municipality*, No. 824, High Court of Yunnan, 2020.

<sup>35</sup> World Judicial Conference on the Environment. 2021. *Kunming Declaration of the World Judicial Conference on Environment*. 27 May. Kunming.



### MS. MARIA CECILIA T. SICANGCO

Senior Legal Officer, Asian Development Bank

Ms. Maria Cecilia T. Sicangco spoke of ADB's series of four reports entitled *Climate Change, Coming Soon to a Court Near You*. The reports show what the climate change litigation landscape looks like in Asia and the Pacific—it has a slightly different flavor from the rest of the world. The report also highlights the jurisprudence coming from the region, which judges and lawyers from all around the world can learn from and use in their practice.

Report 1 discusses climate science to provide judges and lawyers an accessible entry point into climate change.<sup>36</sup>

Report 2 discusses climate litigation and the usual types of lawsuits in Asia and the Pacific.<sup>37</sup> It looks at global jurisprudential cases and trends, and compares each category of lawsuits in the region with approaches from the rest of the world.

Report 3 provides a holistic synthesis of the climate legal and policy frameworks of 32 countries in Asia and the Pacific.<sup>38</sup> National frameworks underpin international climate action because they are the backbone of the domestic response to the climate emergency. A key learning in the past two decades is that international climate change law and national climate change law have a symbiotic relationship, and they mutually reinforce each other. Even though legal professionals can only work within their jurisdiction, there is massive cross-pollination between and across jurisdictions. For this reason, Report 3 makes a comparative constitutional analysis.



Ms. Sicangco presented, from Report 3, a table of South Asian countries as an example. (The same exercise was done for Pacific countries and Southeast Asian countries.) She explained that the table indicates whether the countries have climate-relevant rights—the right to life, the right

<sup>36</sup> Asian Development Bank. 2020. *Report Series Purpose and Introduction to Climate Science*. *Climate Change, Coming Soon to a Court Near You*. December. Manila.

<sup>37</sup> Asian Development Bank. 2020. *Climate Litigation in Asia and the Pacific and Beyond*. *Climate Change, Coming Soon to a Court Near You*. December. Manila.

<sup>38</sup> Asian Development Bank. 2020. *National Climate Change Legal Frameworks in Asia and the Pacific*. *Climate Change, Coming Soon to a Court Near You*. December. Manila.

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CONSTITUTIONAL RIGHTS, OBLIGATIONS, AND STATE DIRECTIVES												
Country	Life	Environment	Food	Water	Health	Housing	Cultural Identity	Property	Biodiversity	Public Participation	Information	Sustainable Development
Afghanistan	✓ <sup>b</sup>	✓ <sup>c</sup>	–	–	✓ <sup>d</sup>	✓ <sup>e</sup>	✓ <sup>f</sup>	✓	–	✓	✓	✓ <sup>g</sup>
Bangladesh	✓ <sup>h</sup>	✓ <sup>i</sup>	✓ <sup>j</sup>	✓ <sup>k</sup>	✓ <sup>l</sup>	✓ <sup>m</sup>	✓ <sup>n</sup>	✓	✓ <sup>o</sup>	✓	–	✓ <sup>p</sup>
Bhutan	✓ <sup>q</sup>	✓ <sup>r</sup>	–	–	✓ <sup>s</sup>	–	✓ <sup>t</sup>	✓	✓ <sup>u</sup>	✓	✓	✓ <sup>v</sup>
India	✓ <sup>w</sup>	✓ <sup>x</sup>	✓ <sup>y</sup>	✓ <sup>z</sup>	✓ <sup>aa</sup>	✓ <sup>ab</sup>	✓ <sup>ac</sup>	✓ <sup>ad</sup>	✓ <sup>ae</sup>	✓	✓ <sup>af</sup>	✓ <sup>ag</sup>
Maldives	✓	✓ <sup>ah</sup>	✓	✓	✓	✓	✓ <sup>ai</sup>	✓	✓ <sup>aj</sup>	✓	✓ <sup>ak</sup>	✓ <sup>al</sup>
Nepal	✓	✓ <sup>am</sup>	✓ <sup>an</sup>	✓	✓ <sup>ao</sup>	✓ <sup>ap</sup>	✓ <sup>aq</sup>	✓ <sup>ar</sup>	✓ <sup>as</sup>	✓	✓	✓ <sup>at</sup>
Pakistan	✓ <sup>au</sup>	✓ <sup>av</sup>	✓ <sup>aw</sup>	✓ <sup>ax</sup>	✓ <sup>ay</sup>	✓ <sup>az</sup>	✓ <sup>ba</sup>	✓	–	–	✓	✓ <sup>bb</sup>
Sri Lanka	✓ <sup>bc</sup>	✓ <sup>bd</sup>	✓ <sup>be</sup>	–	✓ <sup>bf</sup>	✓ <sup>bg</sup>	✓ <sup>bh</sup>	✓ <sup>bi</sup>	✓ <sup>bj</sup>	✓	✓	✓ <sup>bk</sup>

to biodiversity, the right to sustainable development, and the right to a healthy environment—explicitly in the constitution. If they are, the table indicates whether they are in the Bill of Rights and therefore self-executing, or in the statement of declarative principles and state policies. If these rights are not in the constitution, the table indicates whether the country nevertheless inferred that right in its jurisprudence. This table would allow judges to have cases and legal frameworks of other comparable jurisdictions at hand, and therefore help inform their own decisions in their jurisdiction.

Ms. Sicangco then moved on to Report 4, which explores the nature of the Paris Agreement, its history, and the framework of international instruments and international legal principles that support global and domestic climate action.<sup>39</sup> It also looks at multilateral environmental treaties, regional agreements, and rights-based instruments, and how these instruments impact climate litigation.

Ms. Sicangco also clarified that the report goes into the procedural aspect of domesticating these international legal norms, and the roadmap of how and when a state becomes bound. For example, if a dualist state signs a treaty but has not yet ratified it, is there any state obligation? Ms. Sicangco mentioned that there is such an obligation—under Article 18 of the Vienna Convention on the Law of Treaties, that state has the interim obligation not to defeat the object and purpose of that treaty.<sup>40</sup>

Ms. Sicangco noted that since the report series was released in December 2020, there have been quite a few exciting cases in Asia. She discussed two good examples of how international legal norms find their way into domestic litigation.

- (i) *Bangladesh Environmental Law Association (BELA) v. Minister* is a July 2021 case from the Bangladesh Supreme Court.<sup>41</sup> BELA sued the government and various other

<sup>39</sup> Footnote 17; and Asian Development Bank. 2020. *International Climate Change Legal Frameworks*. Climate Change, Coming Soon to a Court Near You. December. Manila.

<sup>40</sup> United Nations. 1969. *Vienna Convention on the Law of Treaties*. United Nations Treaty Series, Vol. 1155, No. 18232. 23 May. Vienna.

<sup>41</sup> *Bangladesh Environmental Lawyers Association (BELA) v. Bangladesh and others*, Writ of Petition 1683 of 2014, High Court of Bangladesh. 2 December 2020.

parties concerning illegal occupation and dumping of sand in agricultural land and wetlands, allegedly violating the Bangladesh Economic Zone Act.<sup>42</sup>

The court ruled that since Bangladesh is party to the Ramsar Convention,<sup>43</sup> the government has the legal obligation to formulate a national policy and pass a law to protect Bangladesh's wetlands, but did not specify what should be in the law and the policy. The court considered the need to protect freshwater, not just for human use and consumption, but also for the survival of animals, the dignity of nature, and protecting nature for its rights. Recognizing the crucial role of education, the court ordered the Education Ministry to conduct regular hour-long tutorials on wetland importance, local governments to raise awareness, and law schools and judicial academies to take note of the decision.

- (ii) In *D.G. Khan Cement v. the Government of Punjab*, the Supreme Court of Pakistan upheld the decision of the government to ban the construction or expansion of cement plants in environmentally fragile

“National frameworks underpin international climate action because they are the backbone of the domestic response to the climate emergency. If there is anything we have learned in the past two decades, it is that international climate change law and national climate change law are mutually symbiotic and have a mutually reinforcing relationship. At the end of the day, we can only work within our own jurisdiction and within our own soil. The massive cross-pollination between and across jurisdictions, which was referenced earlier today, is why [the Asian Development Bank] conducted a comparative constitutional analysis.

– **Maria Cecilia T. Sicangco**  
Senior Legal Officer, Asian Development Bank

<sup>42</sup> Government of Bangladesh. 2010. *The Bangladesh Economic Zones Act, 2010*. Act No. 42 of 2010. 1 August.

<sup>43</sup> United Nations Educational, Scientific and Cultural Organization. 1971. *Convention on Wetlands of International Importance Especially as Waterfowl Habitat*. United Nations Treaty Series, Vol. 996, No. 14583. 2 February. Ramsar.



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zones.<sup>44</sup> A cement company challenged this decision based on its constitutional right to freedom of trade, business, and profession. However, the supreme court disagreed and said that allowing cement plants could further deplete groundwater and cause other harmful environmental impacts. Ms. Sicangco noted that this case is an example of a court deciding a case from a climate perspective, especially because climate change was not directly pleaded by the parties. The court emphasized the need to consider climate change and intergenerational justice in government decisions, and introduced the concept of “climate democracies.”

Ms. Sicangco suggested that the D.G. Khan case shows what the next turn of climate litigation could look like, raising important questions about operationalizing the right of participation, its scope, and its requirements. Given the disproportionate impact of climate change on women, children, the elderly, indigenous people, and future generations, future litigation might focus on procedural rights and ask who specifically has the right to participate in decision-making processes and how they can meaningfully exercise this right. This would necessitate judges communicating with community members in a language that they can understand and providing adequate time for consideration of all impacts.

### **JUSTICE BEIBUT SHERMUKHAMETOV**

*Supreme Court of the Republic of Kazakhstan*



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<sup>44</sup> See footnote 28 of this chapter.

Justice Beibut Shermukhametov commended the symposium for its valuable dialogue and exchange of new ideas, which were particularly beneficial for his country. He believed that many of the insights could be applied to Kazakhstan's legal system and judicial practice.

Justice Shermukhametov observed that there is a clear trend toward more climate-related fields around the world, particularly following the adoption of the Paris Agreement. Nongovernment organizations and individuals are using courts to hold governments, public authorities, and private entities accountable for climate plans, commitments, and inaction. Courts are playing increasingly significant roles in securing climate action and shaping global policy. Given the complex and global nature of climate change, courts will need to draw on a wide range of legal principles, other areas of law, and innovative remedies. Domestic decisions will have global implications, potentially influencing judges' decisions worldwide.

Justice Shermukhametov reminded participants that while complex cases require rigorous assessment, courts must not overlook the urgent nature of climate change and their responsibility for immediate action. Courts must be cognizant of the climate crisis, its costs, and its consequences. They must consider the rights of those most affected by climate change and their decisions, both present and future. This awareness will inform their decisions and choices in interpreting and applying the law in climate cases.

Justice Shermukhametov expressed optimism about the significant role that the courts will play in combating climate change. While challenges exist, cooperation with the global judicial community would surmount these challenges. He also highlighted the influence of courts on legislation and ecological policy. He shared that, in Kazakhstan, court decisions have led to the recognition of



As the climate is a complex and global phenomenon, our courts will be required to draw from a wide collection of legal principles to adjudicate climate litigation, take inspiration from other areas of law, and consider novel remedies, like the Stockholm Declaration. It must be recognized that domestic decisions will have global impacts and may influence judges' decisions everywhere in the world.

– **Justice Beibut Shermukhametov**  
*Supreme Court of the Republic of Kazakhstan*

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international norms, such as those in the Stockholm Declaration and Aarhus Convention, so that these norms can now be applied in litigation.<sup>45</sup> He reiterated that the result of this symposium will be useful for everyone, especially for judges in Kazakhstan.

### Discussion for Panel Session 3



**Professor Denise Antolini** facilitated questions for the panel. A virtual participant asked the panelists to comment on the opportunities for engaging the United States Supreme Court in climate issues.



Justice Wilson responded that people have been actively attempting to draw the attention of the United States Supreme Court, particularly regarding future generations, through various means. For instance, law professors and students have organized demonstrations against the court's decision to halt the Juliana case, which is unusual for a trial-level case. Individuals and groups have also filed amicus briefs on climate issues, and the media has been actively discussing climate-related topics.

Justice Wilson thinks that this growing momentum comes at a crucial time because the United States Supreme Court has not yet made its definitive decision on climate. He believes that civil society will be effective in drawing the attention of the court and influencing it to be more careful around climate issues.

**Professor Nicholas Robinson** also remarked that since the United States has a federal system, the state courts have their sovereign jurisdiction. States like Hawaii, Montana, and New York have amended their constitutions to acknowledge the individual right to clean air, clean water, and health.

<sup>45</sup> United Nations. 1998. *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*. United Nations Treaty Series. 2161 (447). 25 June. Aarhus.



He then shared a humorous observation that when the diplomats in New York vote on these human rights provisions coming before them from the UN Human Rights Council, they will already be entitled to that right.

Professor Robinson then asked the panel to elaborate on the concept of the dignity of nature, its connection to human dignity, and its foundation in jurisprudence. He shared that his colleagues in the United States are exploring the concept of dignity as a means to advance environmental jurisprudence and would benefit from understanding its fundamental basis.



**Justice Shah** responded that the right to dignity is a fundamental right guaranteed under Pakistan's Constitution. This fundamental right is non-negotiable and not subject to law or any public interest, unlike other fundamental rights. Pakistan has expanded its jurisdiction on this previously underutilized constitutional article, drawing heavily from South Africa.

Pakistan defines dignity as the “humanness” of an individual. Justice Shah expressed the belief that dignity is the crown jewel of human rights because all human rights lead toward it. He further stated that neglecting nature compromises human dignity; thus, honoring the dignity of nature automatically protects human dignity. This perspective led to Pakistan's expansion of the concept of the dignity of nature, rooted in the constitution.

Via **Professor Antolini**, a virtual participant asked how the right to dignity could be replicated in other jurisdictions.

**Justice Shah** reiterated that Pakistan “borrowed” heavily from South Africa, and asserted that if something is logical, expands human rights, and is progressive, then it should be followed. He was impressed by South African jurisprudence connecting the right to life with the right to dignity, finding it applicable to Pakistani courts given the existing constitutional right to dignity. He advocated for a network and platform for judges to engage in constant dialogue, rather than relying solely on international conferences like Stockholm, to facilitate cross-fertilization of ideas.

**Justice Wilson** added that the sharing of ideas—through ADB and the World Commission on Environmental Law—has positively impacted the Global Judicial Institute in Hawaii. He shared that they had discussed in their court the *Leghari* case, over which Justice Shah presided, and the *Urgenda* case. He expressed gratitude for symposiums that facilitate the dissemination of intellectual power, exemplified by the judges who adjudicated these two cases.



**Justice Nambitha Dambuza-Mayosi** responded to Justice Shah's praise for her native South Africa's jurisprudence on the dignity of nature. She clarified that this concept is not unique to South Africa and draws significantly from the respect for nature held by indigenous societies in countries like Australia, Canada, and the United States. South Africa's distinction lies in its constitutional instruction to integrate customary practices and customary law into jurisprudence. This inevitably involves considering the relationship between indigenous societies and nature, including their spiritual connection to forests, water, and the natural environment.

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### JUSTICE BRIAN PRESTON'S PRESENTATION

## Climate litigation: government and corporate accountability

The Hon Justice Brian Preston, Chief Judge of the Land and Environment Court of NSW  
Symposium on Judges and the Environment: UN Stockholm+50 Conference (31 May 2022)  
Panel Session 3: Climate Change and Courts: A Global Dialogue

## The need for climate action

- ▶ Tackling the existential crisis of climate change requires ambitious action by governments and corporations to reduce greenhouse gas (GHG) emissions from human activity.
- ▶ The goal is to achieve net zero emissions – a balance between anthropogenic emissions by sources and removals by sinks.
- ▶ Emissions reductions need to be deep and rapid to limit global warming to the agreed temperature target of well below 2°C above pre-industrial levels (Article 2(1)(a) of the Paris Agreement) by the time target of the second half of this century (2050) (Article 4(1) of the Paris Agreement).

## Government and corporate accountability

- ▶ Government and corporate actors need to be held to account for the adequacy of their climate action or inaction.
- ▶ Climate litigation enables the courts to hold governments and corporations to account.



Photo Credit: Corporate Knights

## Government accountability

- ▶ The government of a polity needs to take the lead in setting and implementing the strategic, policy and legal frameworks needed for effective climate action.
- ▶ The legislature needs to enact laws to require climate action.
- ▶ The executive needs to execute these laws and implement policies for climate action.
- ▶ The judiciary needs to hold the legislature and executive accountable for discharging these responsibilities.



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### The legislature's accountability

- ▶ The legislature may:
  - Fail to make legislation as required by law; or
  - Make legislation contrary to law.
- ▶ The judiciary may hold the legislature accountable for these breaches of law.



Photo Credit: OpenGlobalRights

### Failure to make legislation

- ▶ The legislature may fail to make delegated or subordinate legislation (such as regulations) in breach of a legal duty to do so.
- ▶ Example: *Trustees for the Time Being of Groundwork Trust and Another v Minister of Environmental Affairs and Others* [2022] ZAGPPHC 2
  - This case concerned the 'Highveld Priority Area' in South Africa, a region with high levels of air pollution from, among other sources, the mining and combustion of fossil fuels.
  - In 2012, an air quality management plan (the Highveld Plan) was prepared by the Minister of Environmental Affairs for the area with the "sole objective... to reduce ambient air pollution to a level that complies with the National Standards" ([19]).
  - The applicants, two non-governmental environmental organisations, challenged the unsafe levels of ambient air pollution in the Highveld Priority Area in two ways:
    - First, they argued that the poor air quality was in violation of s 24(a) of the Constitution of South Africa, which provides that "everyone has the right to an environment not harmful to their health or wellbeing" ([23.1]); and
    - Second, they argued that the Minister of Environmental Affairs "is obliged to create regulations to implement and enforce the Highveld Plan" ([23.2]).

## Failure to make legislation

- ▶ The High Court found in favour of the applicants and held that the levels of air pollution were in breach of the environmental constitutional right: ([241.1]); and that the Minister had a legal duty to set regulations to reduce the pollution under the Highveld Plan ([241.2]).
- ▶ The Court directed the Minister to prescribe such regulations within 12 months of the decision and set out a number of issues for the Minister to consider when doing so ([241.4]-[241.5]).



Photo Credit: The Conversation

## Failure to make legislation

- ▶ The legislature may fail to make delegated or subordinate legislation (regulations) because of a misunderstanding or misdirection as to power.
- ▶ Example: *Massachusetts v Environmental Protection Agency* 549 US 497 (2007)
  - Massachusetts petitioned the US EPA to make a regulation (delegated legislation) under the *Clean Air Act* 1963 to regulate GHG emissions, including carbon dioxide, from new motor vehicles. The US EPA denied the petition in the erroneous belief that it had no authority to regulate GHGs from new motor vehicles as they were not an “air pollutant” under 42 US Code § 7602(g) of the *Clean Air Act*.
  - The US Supreme Court held that GHGs fit well within the Act’s “sweeping” and “capacious” definition of “air pollutant” (26, 29-30). The EPA is authorised by s 202(a)(1) of the *Clean Air Act* to regulate GHG emissions from new motor vehicles if the EPA forms a judgment that such emissions contribute to climate change (25, 30).
  - The Court remanded the proceedings for the EPA to determine the rule-making petition consistent with the Court’s decision.

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### Making legislation unlawfully

- ▶ The legislation passed by the legislature may be unconstitutional or otherwise legally invalid.
- ▶ Example: *Neubauer et al v Germany* (2021) 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20
  - Youth claimants challenged the constitutionality of Germany's *Climate Protection Act* that set inadequate GHG emissions reduction targets.
  - The German Constitutional Court found that the Act's provisions placed an unreasonable burden on future generations.
  - The German Constitution enshrined a right to future freedoms that protected the complainants against threats to freedoms caused by GHG reduction burdens being unilaterally offloaded onto the future.
  - The failure of the *Climate Protection Act* to set emissions targets beyond 2030 limits these intertemporal guarantees of freedom.
  - The Court ordered the federal government to remake the emissions reduction targets in the Act and determine targets for the years beyond 2031 by the end of 2022.
- ▶ See also: Petra Minnerop, 'The 'Advance Interference-Like Effect' of Climate Targets: Fundamental Rights, Intergenerational Equity and the German Federal Constitutional Court' *Journal of Environmental Law* (2022) 34(1) 135.



Photo Credit: National Public Radio

### Making legislation unlawfully

- ▶ Example: *Steinmetz et al v Germany* (German Constitutional Court, filed 24 January 2022)
  - Building on the Court's orders in *Neubauer v Germany*, on 24 January 2022, a group of youth plaintiffs filed another constitutional challenge against Germany's updated *Climate Protection Act*.
  - The updated Act, which commenced on 31 August 2021, amended Germany's emissions reduction goals in the following ways:
    - Raised the reduction target for 2030 from 55% to 65% as compared to 1990 levels;
    - Updated the reduction path for 2031-2040;
    - Expanded legislative involvement in the determination of sectoral budgets from 2031 onwards; and
    - Brought forward the target year for achieving carbon neutrality from 2050 to 2045.
  - Relying on developments in international climate science and the strengthened targets in the Glasgow Climate Pact, the plaintiffs argue that the amended goals in the updated Act are now insufficient.
  - The plaintiffs seek to have parts of the updated Act declared unconstitutional and the legislature ordered to re-regulate the reduction goals in light of scientific and factual updates.



### The executive's accountability

- ▶ The executive government may:
  - Fail to adopt a climate policy required by law;
  - Adopt a climate policy contrary to law;
  - Fail to implement a climate policy as required by law;
  - Inadequately implement a climate policy;
  - Implement a climate policy contrary to law;
  - Fail to take adequate climate action;
  - Fail to perform a duty to take climate action; or
  - Fail to enforce the law.
- ▶ The judiciary may hold the executive accountable for these breaches of law.



Photo Credit: Governance Institute of Australia

### Failure to adopt climate policy

- ▶ Legislation may require the executive government to adopt policies to mitigate or adapt to climate change.
- ▶ Example: *Bushfire Survivors for Climate Action Incorporated v Environment Protection Authority* (2021) 250 LGERA 1
  - A climate action group sought an order in the nature of mandamus to compel the NSW Environment Protection Authority to perform a statutory duty to develop environmental quality objectives, guidelines and policies to ensure the protection of the environment from climate change.
  - The Land and Environment Court of NSW held:
    - The statutory duty to develop environmental quality objectives, guidelines and policies to ensure environment protection includes a duty to develop instruments to ensure the protection of the environment from climate change ([16], [68]).
    - At the current time and in the place of NSW, the threat to the environment of climate change is of sufficiently great magnitude and sufficiently great impact as to be one against which the environment needs to be protected ([16], [69]).
    - The EPA had not fulfilled this duty to develop instruments of the kind described to ensure the protection of the environment from climate change ([17], [18], [144], [145]).



Photo Credit: Environmental Defenders Office

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### Adopting unlawful climate policy

- ▶ The executive government may adopt a policy that is contrary to legislation.
- ▶ Example: *Friends of the Irish Environment CLG v Ireland et al* [2020] IESC 49
  - Friends of the Irish Environment (FIE) challenged the Irish Government's approval of the National Mitigation Plan which sought to transition to a low-carbon economy by 2050. FIE argued that the Plan violated Ireland's *Climate Action and Low Carbon Development Act 2015*, the Constitution of Ireland and obligations under the European Convention on Human Rights (ECHR), particularly the right to life (Article 2) and right to private and family life (Article 8).
  - The Irish Supreme Court held that the Plan fell short of the sort of specificity that the Act required because a reasonable reader of the Plan would not understand how Ireland will achieve its 2050 goals and a "compliant plan must be sufficiently specific as to policy over the whole period to 2050" ([6.32]).

### Adopting unlawful climate policy

- ▶ Example: *R (on the application of Friends of the Earth) v Secretary of State for Business Energy and Industrial Strategy* (UK High Court, filed 12 January 2022)
  - Friends of the Earth (FoE) filed a claim against the UK Secretary of State for Business Energy and Industrial Strategy (SOS), arguing that two strategies adopted by the UK Government in October 2021, the Net Zero Strategy (NZS) and the Heat and Buildings Strategy (HBS), are insufficient to address climate change and reach net zero emissions by 2050.
  - The NZS is the UK Government's economy-wide decarbonisation strategy and the HBS is a specific strategy for decarbonising heating systems and homes.
  - In respect of the NZS, FoE alleges that the SOS has failed to comply with his duties under the *Climate Change Act 2008* (UK) as, among other things, the NZS does not quantify the impact of its policies on emissions reductions and the timescales for their implementation.
  - In respect of the HBS, FoE argues that the SOS has failed to discharge the 'public sector equality duty' in the *Equality Act 2010* (UK) on the basis that no assessment has been done of the impact of the HBS on the needs of people in protected groups, such as age, race, sex and disability.
  - ClientEarth and the Good Law Project filed separate challenges to the NZS in January 2022.
  - All claims have received permission to proceed to a full hearing in the UK High Court and will be heard together on 8-9 June 2022.



Photo Credit: GOV.UK

## Failure to implement climate policy

- ▶ The executive government might adopt climate policies according to law, but fail to implement them.
- ▶ Example: *Leghari v Federation of Pakistan* [Lahore High Court], WP No 25501/2015, 4 September 2015
  - Pakistan had adopted policies for adaptation to climate change, but the government had not implemented them. Leghari submitted this inaction violated his fundamental rights, read with constitutional principles and international environmental principles.
  - The Lahore High Court held that the government's inaction in implementing the climate policies had breached Leghari's fundamental rights.
  - The Court ordered the establishment of an ad hoc Climate Change Commission to effectively implement the climate policies.

## Inadequately implementing climate policy

- ▶ The executive government may have adopted a climate policy but taken insufficient action to advance its implementation.
- ▶ Example: *Gaurav Kumar Bansal v Union of India* [National Green Tribunal], Original Application No 498 of 2014, 23 July 2015
  - The Indian national government had adopted the National Action Plan on Climate Change (NAPCC) that promotes "development objectives while also yielding co-benefits for addressing climate change effectively." Its effectiveness, however, was being hampered by it not being implemented by each state government.
  - The National Green Tribunal of India directed the state governments to submit their climate action plans in consonance with the NAPCC and obtain approval from the Ministry of Environment, Forest and Climate Change.



### Unlawfully implementing climate policy

- ▶ The executive might adopt a climate policy or take climate action, such as in setting and implementing the level and rate of GHG emissions reductions, that breaches the law.
- ▶ Example: *Urgenda Foundation v The Netherlands* (ECLI:NL:RBDHA:2015:7145); (ECLI:NL:GHDHA:2018:2610); (ECLI:NL:HR:2019:2007)
  - Urgenda Foundation and 900 Dutch citizens challenged the sufficiency of the Dutch Government's climate policy and action, arguing that the government's failure to require deeper and more rapid reductions in GHG emissions breached its duty of care under the Dutch Civil Code and its obligations under the ECHR.



Photo Credit: Urgenda / Chantal Bekker

### *Urgenda* (2015): District Court

- ▶ The Hague District Court found in 2015 that the emissions reductions targets were insufficient and ordered the government to limit GHG emissions by 25% below 1990 levels by 2020.
  - ▶ "... due to the severity of the consequences of climate change and the great risk of hazardous climate change occurring – without mitigation measures – the court concludes that the state has a duty of care to take mitigation measures. The circumstances that the Dutch contribution to the present global greenhouse gas emissions is currently small does not affect this" ([4.83]).
  - ▶ The Court concluded that "the state... has acted negligently and therefore unlawfully towards Urgenda by starting from a reduction target for 2020 of less than 25% compared to the year 1990" ([4.93]).

### *Urgenda* (2018): Court of Appeal

- ▶ The Hague Court of Appeal in 2018 dismissed the Dutch Government's appeal on the negligence grounds and upheld the District Court's ruling on the human rights grounds. The Court concluded that by failing to reduce GHG emissions by at least 25% by end of 2020, the Dutch Government acted in breach of its duty of care under Articles 2 and 8 of the ECHR.
- ▶ Dangerous climate change threatens the lives, well-being and environment of citizens in the Netherlands and worldwide. Climate change threatens the enjoyment of citizens' rights under Articles 2 and 8 of the ECHR ([5.2.2]-[5.3.2], [5.6.2]).
- ▶ Articles 2 and 8 create an obligation for the state to take positive measures to contribute to reducing emissions relative to its own circumstances ([5.9.1]).

### *Urgenda* (2019): Supreme Court

- ▶ The Supreme Court of the Netherlands in 2019 upheld the Court of Appeal's decision that the ECHR imposed a positive obligation on the Dutch Government to take measures to prevent climate change.
- ▶ These measures require the state to meet a GHG emissions reductions target of 25% compared to 1990 by the end of 2020.
- ▶ Even though the Netherlands was only a minor contributor to climate change, it had an independent obligation to reduce emissions.



Photo Credit: Urgenda / Chantal Bekker

### Failure to take adequate climate action

- ▶ The executive government may fail to take adequate climate action, thereby breaching the law.
- ▶ Example: *Notre Affaire à Tous et al v France* [Administrative Court of Paris], No 1904967, 1904968, 1904972, 1904976/4-1, 14 October 2021
  - Four NGOs brought administrative proceedings claiming that the French Government's failure to implement proper measures to effectively address climate change violated a statutory duty to act.
  - The plaintiffs argued that the government has legal duties to act on climate change stemming from the French Charter for the Environment, the ECHR and the general principle of law providing the right of every person to live in a preserved climate system.
  - On 3 February 2021, the Administrative Court of Paris held that France could be held responsible for failing to meet its own climate and carbon budget goals under EU and national law. The Court recognised that France's inaction has caused ecological damage from climate change and awarded the plaintiffs one euro for moral prejudice caused by this inaction.
- On 14 October 2021, the Court ordered the state to take immediate and concrete actions to comply with its commitments on cutting carbon emissions and repair the damages caused by its inaction by 31 December 2022.

### Failure to take adequate climate action

- ▶ The executive government may be found not to have failed to take adequate climate action if it has had considerable regard to climate change factors when adopting policy or making decisions.
- ▶ Example: *R (on the application of Cox) v The Oil and Gas Authority* [2022] EWHC 75 (Admin)
  - On 18 January 2022, the UK High Court dismissed a challenge brought by campaigners to a revised strategy issued by the state-owned Oil and Gas Authority (OGA), which sets out plans to support ongoing efforts to exploit oil and gas reserves in the North Sea.
  - The claimants argued, among other things, that the strategy was irrational and inconsistent with the UK Government's Net Zero target as it would lead to more oil and gas being extracted than would otherwise be the case.
  - The Court rejected the claimant's argument, finding that:
    - The revised strategy would not necessarily result in increased emissions ([126]-[135]); and
    - The OGA already had "considerable regard to UK domestic action on climate change" ([121]-[124], [136]).



### Failure to perform duty to take climate action

- ▶ The executive government may be under a duty to exercise statutory powers to protect people from climate change.
- ▶ Example: *Sharma v Minister for the Environment* [2021] FCA 560; [2021] FCA 774
  - Eight Australian children brought proceedings against the Australian Minister for the Environment arguing that, in deciding under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) whether to approve an extension of a coal mine in NSW, the Minister had a duty to protect the young people from the devastating effects of climate change.
  - The Court held that “the Minister has a duty to take reasonable care to avoid causing personal injury to the Children when deciding, under s 130 and s 133 of the EPBC Act, to approve or not approve the Extension Project” ([491] and [513]). In establishing that duty, the Court found that the foreseeable harm of the Project, should the risk of harm crystallise, is “catastrophic” and the Children should be regarded as persons who are so closely and directly affected that the Minister ought to consider their interests when making the approval decision ([257]). A reasonable Minister for the Environment ought to have the Children in contemplation when facilitating the emission of GHGs into the Earth’s atmosphere ([491]).
  - The Court later declared: “The first respondent has a duty to take reasonable care, in the exercise of her powers under s 130 and s 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) in respect of referral EPBC No. 2016/7649, to avoid causing personal injury or death to persons who were under 18 years of age and ordinarily resident in Australia at the time of the commencement of this proceeding arising from emissions of carbon dioxide into the Earth’s atmosphere” ([2021] FCA 774 [58]).

### Failure to perform duty to take climate action

- ▶ The primary judge’s decision was overturned on appeal by the Full Federal Court (*Minister for the Environment v Sharma* [2022] FCAFC 35).
- ▶ While the three judges of the Court unanimously held that a duty of care should not be imposed, each wrote separate reasons explaining why this conclusion should be reached.
- ▶ In summary, a duty of care should not be imposed as it:
  - is unsuitable for judicial determination as it raises policy considerations about the proper response to climate change ([8]-[17], [233]-[266]), which makes it unfeasible to establish an appropriate standard of care for the Minister ([837]-[868]);
  - is inconsistent and incoherent with the text and objects of the EPBC Act (including the Minister’s duties under the Act), and the wider government framework of responsibility for the protection of the environment ([267]-[272], [837]-[852]);
  - is not appropriate given the Minister’s lack of control over the harm ([334]-[337]), the absence of the plaintiffs’ “special vulnerability” ([339]-[340]), the indeterminacy of the class of individuals that would be affected by a hypothetical breach of the duty ([341]-[343], [701]-[747]), and the insufficient closeness between the Minister’s exercise of statutory power and the risk of harm to the plaintiffs ([678]-[701]); and
  - does not cause a reasonably foreseeable risk of personal injury to the plaintiffs as the principles of causation in negligence would not be established ([869]-[886]).
- ▶ Notably, the Court did not contest the primary judge’s findings of fact on climate change and the dangers it poses to the world and humanity.

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### Failure to perform duty to take climate action

► Example: *Pabai Pabai and Guy Paul Kabai v Commonwealth of Australia* (Federal Court of Australia, filed 22 October 2021)

- On 22 October 2021, Pabai Pabai and Guy Paul Kabai, First Nations' leaders from the Gudamalulgal nation of the Torres Strait Islands, commenced representative proceedings against the Australian Government.
- The applicants argue that the government owes a duty of care to Torres Strait Islanders to take reasonable steps to protect them, their culture and traditional way of life, and their environment from the impacts of climate change.
- The applicants allege that the government breached this duty as its emissions reduction targets are not consistent with the best available science.



Photo Credit: ABC News

### Failure to enforce climate law

- The executive government has police powers to enforce compliance with the law, including climate law, but may have failed to do so.
- Example: *R (on the application of Richards) v Environment Agency* [2021] EWHC 2501
  - Proceedings were brought by a 5 year old boy who lives nearby to a landfill site and is badly affected by hydrogen sulphide emissions from the landfill.
  - The UK High Court held that the Environment Agency was in breach of its statutory duty under the *Human Rights Act 1998* (UK) to protect the child's right to life (Article 2) and right to private and family life (Article 8).
  - A positive operational duty was triggered under Article 2 and Article 8 ([45], [55], [57]).
  - The positive operational duty required the Environment Agency to take action to implement public health advice as expressed in a risk assessment, by designing and applying, and continuing to design and apply, measures to reduce hydrogen sulphide emissions from the landfill ([64]).

## Corporate accountability

- ▶ The corporate sector is primarily responsible for global GHG emissions.
- ▶ Climate litigation aims to influence corporate action to reduce GHG emissions:
  - From the corporation's own activities;
  - In their supply chain; and
  - In their value chain.

## Influencing corporate behaviour

- ▶ Climate litigation seeks to influence corporate behaviour directly or indirectly.

Corporation's high-emitting projects  
e.g. *Gloucester Resources v Minister*

Corporation's carbon-intensive business  
e.g. *Milieudefensie v Shell*

Corporation's climate-related risks  
e.g. *McVeigh v REST*

Corporation's supply and value chains





### Accountability for high-emitting projects

- ▶ Climate litigation may challenge projects that will be a major source of GHG emissions, such as a new coal mine or coal-fired power station.
- ▶ Example: *Gloucester Resources Ltd v Minister for Planning* (2019) 234 LGERA 257
  - The Land and Environment Court of NSW refused development consent to a new open cut coal mine partly for its unacceptable GHG emissions that would result from the extraction and combustion of the coal mined (scope 1, 2 and 3 emissions).
  - “In short, an open cut coal mine in this part of the Gloucester valley would be in the wrong place at the wrong time. Wrong place because an open cut coal mine in this scenic and cultural landscape, proximate to many people’s homes and farms, will cause significant planning, amenity, visual and social impacts. Wrong time because the GHG emissions of the coal mine and its coal product will increase global total concentrations of GHGs at a time when what is urgently needed, in order to meet generally agreed climate targets, is a rapid and deep decrease in GHG emissions. These dire consequences should be avoided. The Project should be refused” ([699]).

### Accountability for carbon-intensive business

- ▶ Climate litigation may challenge the business model and activities of “carbon majors”.
- ▶ Example: *Milieudefensie et al v Royal Dutch Shell plc* (ECLI:NL:RBDHA:2021:5337)
  - Milieudefensie/Friends of the Earth Netherlands and six other plaintiffs alleged Royal Dutch Shell (RDS) had violated its duty of care under Dutch law by emitting GHG emissions that contributed to climate change.
  - The plaintiffs sought a ruling from the Court that Shell must reduce its GHG emissions by 45% by 2030 compared to 2010 levels, and to zero by 2050 in line with the Paris Agreement.



Photo Credit: Friends of the Earth International

### Accountability for carbon-intensive business

- ▶ The Hague District Court held that:
  - RDS has an obligation to reduce GHG emissions. This stems from an unwritten standard of care laid down in the Code which means that acting in conflict with what is generally accepted according to unwritten law is unlawful ([4.4.1]).
  - The standard of care includes the need for companies to take responsibility for Scope 3 emissions, especially where these form the majority of a company's emissions, as is the case for companies that produce and sell fossil fuels ([4.4.19]).
  - RDS is obliged to reduce the CO<sub>2</sub> emissions of the Shell group's activities by net 45% at end 2030, relative to 2019, through the Shell group's corporate policy. This reduction obligation relates to the Shell group's entire energy portfolio and to the aggregate volume of all emissions. It is up to RDS to design the reduction obligation, taking account of its current obligations. The reduction obligation is an obligation of result for the activities of the Shell group. This obligation includes the business relations of the Shell group, including the end-users, in which context RDS may be expected to take the necessary steps to remove or prevent the serious risks ensuing from the CO<sub>2</sub> emissions generated by them, and to use its influence to limit any lasting consequences as much as possible ([4.4.55]).
- ▶ Shell appealed this decision on 20 July 2021.
- ▶ See also: Otto Spijkers, 'Friends of the Earth Netherlands (Milieudefensie) v Royal Dutch Shell' (2021) 5(2) *Chinese Journal of Environmental Law* 237.

### Accountability for carbon-intensive business

- ▶ Example: Foreshadowed ClientEarth shareholder litigation against Shell's Board of Directors
  - In March 2022, ClientEarth announced that it intends to take legal action against Shell's Board of Directors, arguing that their failure to properly prepare the company for net zero puts them in breach of their legal duties.
  - The action is by way of a 'derivative' claim, which means that ClientEarth is bringing the action on behalf of Shell and in its capacity as a shareholder of the company.
  - ClientEarth alleges that the directors' failure to adopt and implement a climate strategy that aligns with the Paris Agreement is in breach of their duties under the *Companies Act 2006* (UK), in particular, their duties to promote the success of the company, and exercise reasonable care, skill and diligence.
  - According to ClientEarth, the directors are mismanaging Shell's climate risks as the company's inadequate climate strategy threatens its long-term commercial viability, including by putting its assets at risk from extreme weather events (physical risks) and increasing the threat of its assets becoming stranded (transition risks).
  - This claim is the first attempt to hold a company's directors personally liable for mismanaging a company's climate risks.
  - ClientEarth has notified Shell of its claim and is waiting for a response before seeking permission from the UK High Court to proceed with its claim.
- See: 'ClientEarth shareholder litigation against Shell's Board: FAQs', *ClientEarth* (Web Page, March 2022) <<https://www.clientearth.org/media/puojzyv/clientearth-shareholder-litigation-against-shell-s-board-faqs.pdf>>.

### Accountability for climate-related risks

- ▶ Climate litigation may challenge corporate identification, management and disclosure of climate-related risks.

*"The COVID-19 pandemic has elevated a focus on how firms and sectors prepare and act in respect of other foreseeable systemic risks like climate change. In our opinion, it is no longer safe to assume that directors adequately discharge their duties simply by considering and disclosing climate-related trends and risks; in relevant sectors, directors of listed companies must also take reasonable steps to see that positive action is being taken: to identify and manage risks, to design and implement strategies, to select and use appropriate standards, to make accurate assessments and disclosures, and to deliver on their company's public commitments and targets."*

Mr Noel Hutley SC and Mr Sebastian Hartford Davis, *Climate Change and Directors' Duties: Further Supplementary Memorandum of Opinion* (Centre for Policy Development, 23 April 2021)

### Accountability for climate-related risks

- ▶ Example: *McVeigh v REST* (Federal Court of Australia, filed 23 July 2018)

- A superannuation fund member, Mark McVeigh, commenced proceedings against his superannuation fund, Retail Employees Superannuation Pty Ltd (REST), for failing to adequately disclose climate related business risks and strategies. The plaintiff, who will be unable to access his superannuation until the second half of the century, contended that REST failed to provide adequate information relating to:

- "(a) knowledge of REST's Climate Change Business Risks;
- (b) opinion of Climate Change, the Physical Risks, the Transition Risks and REST's Climate Change Business Risks;
- (c) actions responding to REST's Climate Change Business Risks;
- (d) compliance with the [company and directors' duties] with respect to REST's Climate Change Business Risks."

- In November 2020, the parties settled, with REST stating "that climate change is a material, direct and current financial risk to the superannuation fund", and "that REST, as a superannuation trustee, considers that it is important to actively identify and manage these issues."



Photo Credit: ABC News



## Accountability for supply and value chains

- ▶ Climate litigation may focus on corporate responsibility for GHG emissions in their supply and value chains.
- ▶ Example: *Envol Vert et al v Casino* (Saint-Étienne Judicial Court, filed 2 March 2021)
  - An international coalition of eleven NGOs sued the French supermarket chain Casino for its involvement in the cattle industry in Brazil and Colombia, which plaintiffs allege cause environmental and human rights harms. The alleged environmental harms include destruction of carbon sinks essential for the regulation of climate change resulting from cattle industry-caused deforestation. The plaintiffs seek to compel the Casino group to comply with its obligations under the French duty of vigilance law of 27 March 2017.



Photo Credit: Mighty Earth

## Accountability for supply and value chains

- ▶ Example: *Mullaley Gas and Pipeline Accord Inc v Santos NSW (Eastern) Pty Ltd* [2021] NSWLEC 110
  - The NSW Land and Environment Court held that a coal mine or gas operator may have control to reduce scope 2 (upstream) emissions by its choice of electricity suppliers (in the supply chain) and scope 3 (downstream) GHG emissions by its control over end users (in the value chain) ([105]-[107]).



Photo Credit: ABC News



### Achieving climate action

- ▶ By performing its essential role in holding governments and the corporate sector to account, the judiciary upholds the law and the rule of law.
- ▶ Where the law promotes taking action to reduce GHG emissions by sources and increase removal of GHGs by sinks, the judiciary's actions facilitate the achievement of effective climate action.

JUSTICE MICHAEL WILSON'S PRESENTATION



Judicial Response to the Existential Threat of  
Climate Change: Remedies

Justice Michael D. Wilson  
Supreme Court of the State of Hawai'i



Hawaiian Islands From Space





## Panel Session 3



Sir David King  
Sea level rise / Existential Threat  
160 million Bangladesh climate refugees



If we fail to meet these goals, the disruption to economies, societies and people caused by COVID 19 will pale in comparison to what the climate crisis holds in store

<https://www.youtube.com/watch?v=2BpFEoGK4jU>



Climate Change:  
UNLIKE ANY OTHER SOCIAL  
ISSUE: **Impending Solution**  
**Horizon**  
**“ 1.5 degrees= existential threat”**

### Intergovernmental Panel On Climate Change

- \* **Greenhouse Gas Emissions Must Peak in 2025 and decline by 45-50% by 2030 and reach net zero by midcentury. Net Zero means there is no longer an increase in fossil fuel emissions. Any additional emissions are offset by sequestration.**
- \* It is unequivocal that human influence has warmed the ocean atmosphere and land.
- \* With continued greenhouse gas emissions, the ocean and land carbon sinks will grow less effective.
- \* Many changes to our world are now irreversible for centuries to millennia.
- \* **Climate resilient development** combines adaptation and mitigation with human equity and protection of nature.

- \* On track for 3 degrees Celsius this century which would displace roughly half of humanity.
  - \* Today .8% of Earth's surface is too hot for human habitation.
  - \* At 3 degrees C 20% of Earth's land surface will be too hot for human habitation.



## Economic Impacts: Loss of Waikiki Beach Due to Sea Level Rise



- \* Loss of Waikiki Beach could lead to annual loss of \$2 billion in visitor expenditures by mid century



One of the world's most acclaimed environmental jurists, Brazil Supreme Court Justice Antonio Benjamin, has described climate change as the **single most important legal issue facing judges globally.**

## Rule of Law Inoperative in fifty years

**Climate change may pose threat to rule of law  
says New South Wales Supreme Court judge  
Francois Kunc:**

“At its worst, inadequately mitigated climate change could undo our social order and the rule of law itself. Some commentators have proposed that only a ‘war footing’ will be an adequate response.”



"Maybe it isn't going to be so bad."

## Greta Thunberg Final Stand in Face of Emergency



Greatest  
Intergenerational  
Injustice in History





### Judges Wield the Rule of Law to Define the Limits of Emergency Limitation of Rights



### India Constitution Article 21: Right to Life and Personal Liberty

- \* “Right to live is a fundamental right under Art. 21 of the Constitution
- \* and it includes the right of enjoyment of pollution free water and air for full enjoyment of life.
- \* If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art. 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.”
- \* *Kumar v. State of Bihar*, A.I.R. 1991 S.C. 420, <http://www.globalhealthrights.org/wp-content/uploads/2013/10/Kumar-India-1991.pdf>.

## Recent Climate Decisions Protecting the Earth and Future Generations

- [European Commission v. Federal Republic of Germany](#) (2021, Germany)
- [Milieudefensie et al. v. Royal Dutch Shell plc.](#) (2021, Netherlands)
- [Sharma et al. v. Minister for the Environment](#) (2021, Australia)
- [Duarte Agostinho and Others v. Portugal and Others](#) (filed 2020, European Court of Human Rights)
- [Commune de Grande-Synthe v. France](#) (2020, France)
- [Neubauer, et al. v. Germany](#) (2020, Germany)
- [Urgenda Foundation v. State of the Netherlands](#) (2019, Netherlands)
- [In re Greenpeace Southeast Asia and Others](#) (2019, Philippines)
- [Future Generations v. Ministry of the Environment and Others](#) (2018, Colombia)
- [Luciano Lliuya v. RWE AG](#) (filed 2016, Germany)

## United States Supreme Court Rogue?

*“The Supreme Court this week [handed the world’s largest fossil fuel companies a victory](#) in one of the landmark cases seeking to recover the costs of climate-change-related damages.”*

**Justices Say 4th Circ. Review In Climate Suit  
Was Too Narrow**

## Our Children's Trust Climate Litigation Seeks Remedies

\* “Exercising my reasoned judgment I have no doubt that **the right to a climate system capable of sustaining human life is fundamental to a free and ordered society** . . . a stable climate system is quite literally the foundation of society, without which there would be neither civilization nor progress.” Judge Ann Aiken

\* Juliana v. United States, 217 F. Supp. 3d 1224, 1250 (D. Or. 2016).

“Federal courts too often have been cautious and overly deferential in the arena of environmental law, and the world has suffered for it.”

Juliana v United States, 217 F. Supp. 3d at 1262.



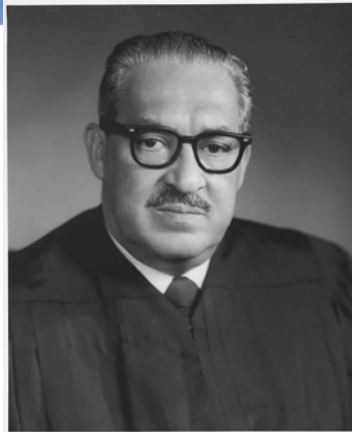
## United States Court of Appeals: Future Generations have No Right to a Stable Climate Capable of Supporting Human Life

- \* Dissent: In these proceedings, the government accepts as fact that the United States has reached a tipping point crying out for a concerted response—yet presses ahead toward calamity. **It is as if an asteroid were barreling toward Earth and the government decided to shut down our only defenses. Seeking to quash this suit, the government bluntly insists that it has the absolute and unreviewable power to destroy the Nation.**
- \* My colleagues throw up their hands, concluding that this case presents nothing fit for the Judiciary.
- \* Juliana v. United States

## No Remedy to Future Generations in the United States Re: Climate Change

- \* Nonjusticiable Political Question (notwithstanding Massachusetts vs EPA)
- \* Not a fundamental substantive due process right
- \* Damages not susceptible to calculation
- \* Federal Law preempts state regulation
- \* Immunity for fossil fuel companies

## Associate Justice Thurgood Marshall



*Violation of Equal Protection: Brown v. Bd. of Education, 347 U.S. 483 (1954)*

## Emergency Suspension of Rights Korematsu v. United States

Compulsory exclusion of large groups of citizens from their homes, except under circumstances of **direst emergency and peril**, is inconsistent with our basic governmental institutions. **But** when under conditions of modern warfare our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger.

Toyosaburo Korematsu v. United States, 323 U.S. 214, 65 S. Ct. 193, 89 L. Ed. 194 (1944)

Justice Murphy dissenting: Thus, like other claims conflicting with the asserted constitutional rights of the individual, the military claim must subject itself to the judicial process of having its reasonableness determined and its conflicts with other interests reconciled.



### Future Generations and the United States Supreme Court-October 29, 2018

Earth Guardians Youth Director Xiuhtezcatl Martinez, one of the plaintiffs in the *Juliana v. US* climate lawsuit, speaks outside the US Supreme Court. In a surprising move, the [Supreme Court](#) stepped in to pause *Juliana v. US* last year just days before the trial was set to begin.



*Juliana v United States*  
Demonstrations outside the  
Supreme Court of the  
United States: "We  
demand a climate recovery  
plan"

October 29, 2018

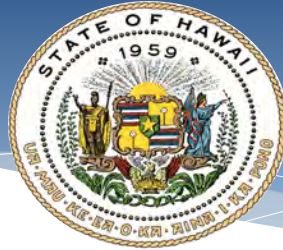


### Hawaii Supreme Court Recognizes Constitutional Right to a Life-Sustaining Climate System

- \* Article XI, section 9's "clean and healthful environment" right as defined by HRS chapter 269 subsumes **a right to a life-sustaining climate system**. The need to mitigate the catastrophic effects of anthropogenic climate change underlies HRS chapter 269; it in turn shapes and defines the right to a clean and healthful environment.
- \* In the MATTER OF the Application of MAUI ELECTRIC COMPANY, LIMITED For Approval of Power Purchase Agreement for Renewable Dispatchable Generation with Paeahu Solar LLC., March 3, 2022

### Washington Supreme Court Holds Future Generations Have No Right to a Stable Climate Capable of Supporting Human Life

- \* Dissent: **This case is an opportunity to decide whether Washington's youth have a right to a stable climate system that sustains human life and liberty.** We recite that we believe the children are our future, but **we continue actions that could leave them a world with an environment on the brink of ruin and no mechanism to assert their rights or the rights of the natural world. This is our legacy to them described in the self-congratulatory words of judicial restraint.** Today, the court declined the important responsibility to seriously examine their claims. I respectfully dissent
- \* *AJI v State of Washington*, October 4, 2021



## Hawaii's Environmental Court: New Global Model for Environmental Rule of Law and Remedies



THE SENATE  
TWENTY-SEVENTH LEGISLATURE, 2013  
STATE OF HAWAII

S.B. NO. 102  
S.D. 2  
H.D. 1  
C.D. 1

### A BILL FOR AN ACT

RELATING TO THE ENVIRONMENTAL COURTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that environmental  
disputes are currently dealt with in a variety of courts. This  
organizational structure inadvertently promotes inconsistent  
application of the wide variety of environmental laws.  
The legislature also finds that the continued maintenance  
and improvement of Hawaii's environment requires constant  
vigilance and continued stewardship to ensure its lasting  
beauty, cleanliness, uniqueness, and the stability of its  
natural systems, all of which enhance the mental and physical  
well-being of Hawaii's people.  
The legislature further finds that Hawaii's natural  
resources are compromised every day resulting in numerous  
violations of the law. An environmental court will better  
ensure that the State upholds its constitutional obligation to  
protect the public trust for the benefit of all beneficiaries.  
The purpose of this Act is to promote and protect Hawaii's  
natural environment through consistent and uniform application  
of environmental laws by establishing environmental courts.

2014-2273 SB632 CD1 SMO-2.doc  
[Barcode]

... Hawaii's natural resources are  
compromised every day resulting in  
numerous violations of the law.

An environmental court will better ensure  
that the State upholds its constitutional  
obligation to protect the public trust for the  
benefit of all beneficiaries.

The purpose of this Act is to promote and  
protect Hawaii's natural environment through  
consistent and uniform application of  
environmental laws by establishing  
environmental courts.

### Global Judicial Institute for the Environment

- \* Justice Antonio Benjamin, Chair Emeritus IUCN World Commission on Environmental Law Chair
- \* Initiative to educate judges on the legal issues involved in environmental challenges.
- \* Build capacity of courts to adjudicate environmental issues.



### Edwin Chota

- \* **Illegal loggers blamed for murder of Peru forest campaigner**





Justice Luis Tolosa and Ms. Margoth Quiseppe  
with Diana Ríos Rengifo  
Pucallpa, Peru



The Final Stand  
<https://thefinalstand.in/>



## Right to Life/Emergency

India closed 5000 New Delhi schools April 2017



Climate Change. Greenhouse gas emissions. 2 billion children





## Aloha and Namaste






## Panel Session 3





### MARIA CECILIA T. SICANGCO'S PRESENTATION





**Climate Change, Coming Soon to a Court Near You**

Four Reports:  
<https://www.adb.org/publications/series/climate-change-coming-to-court>



**REPORT SERIES PURPOSE**

**INTRODUCTION TO CLIMATE SCIENCE**





ASIAN DEVELOPMENT BANK



HOLDING  
GOVERNMENTS  
ACCOUNTABLE

PERMITTING &  
JUDICIAL REVIEW

CASES AGAINST  
PRIVATE PARTIES

ADAPTATION

PEOPLE WHO ARE  
VULNERABLE TO CC

TRANSBOUNDARY  
LITIGATION



ASIAN DEVELOPMENT BANK




NATIONAL LEGAL  
& POLICY  
FRAMEWORKS

CONSTITUTIONAL  
RIGHTS SURVEY

TRENDS & GAPS  
IN LAWS




## Panel Session 3



### CONSTITUTIONAL RIGHTS, OBLIGATIONS, AND STATE DIRECTIVES

Country	Life	Environment	Food	Water	Health	Housing	Cultural Identity	Property	Biodiversity	Public Participation <sup>a</sup>	Information	Sustainable Development
Afghanistan	✓ <sup>b</sup>	■	–	–	■	■	■	✓	–	✓	✓	■ <sup>c</sup>
Bangladesh	✓ <sup>b</sup>	■ <sup>d</sup>	■	✗ <sup>e</sup>	■	■	■ <sup>g</sup>	✓	■	✓	–	✗ <sup>f</sup>
Bhutan	✓ <sup>b</sup>	■ <sup>g</sup>	–	–	■	–	■ <sup>g</sup>	✓	■	✓	✓	■
India	✓ <sup>b</sup>	✗ <sup>h</sup>	■ <sup>i</sup>	✗ <sup>i</sup>	■ <sup>k</sup>	✗ <sup>i</sup>	✓ <sup>g</sup>	✓ <sup>h</sup>	✗ <sup>h</sup>	✓	✗ <sup>o</sup>	✗ <sup>p</sup>
Maldives	✓	✓ <sup>b</sup>	✓	✓	✓	✓	✓ <sup>g</sup>	✓	■	✓	✓ <sup>b</sup>	■
Nepal	✓	✓ <sup>b</sup>	✓ <sup>b</sup>	✓	✓ <sup>b</sup>	✓ <sup>b</sup>	✓ <sup>b</sup>	✓ <sup>b</sup>	■	✓	✓	■
Pakistan	✓ <sup>b</sup>	✗ <sup>r</sup>	■	✗ <sup>s</sup>	■ <sup>t</sup>	■	✓ <sup>g</sup>	✓	–	–	✓	✗ <sup>w</sup>
Sri Lanka	■ <sup>u</sup>	■ <sup>u</sup>	■	–	✗ <sup>x</sup>	■	✓ <sup>g</sup>	△ <sup>y</sup>	✗ <sup>z</sup>	✓	✓	■ <sup>z</sup>





- INTERNATIONAL CLIMATE CHANGE LEGAL FRAMEWORKS
- MULTILATERAL ENVIRONMENTAL LEGAL INSTRUMENTS
- REGIONAL ENVIRONMENTAL & CLIMATE CHANGE INSTRUMENTS
- RIGHTS-BASED INSTRUMENTS











**Updates since then:  
Seminal Jurisprudence from Asia and the Pacific**

- *Bangladesh Environmental Law Association v Minister*
- *D G Khan v. Government of Punjab*

14







Emissions from coal-fired power plants contribute to air pollution in Ulaanbaatar, Mongolia (photo by Ariel Javellana/ADB).



A nighttime photograph of a cityscape, likely San Francisco, with lights from buildings and hills visible under a dark sky with some clouds. A large blue semi-transparent shape covers the right side of the image, containing the text.

# 9

## DAY 1 **CLOSING KEYNOTE ADDRESS:**

UNEP and the Three Planetary  
Crises (Climate, Biodiversity,  
and Pollution)



## CONCLUDING SESSION OF DAY 1

### Keynote Address: UNEP and the Three Planetary Crises (Climate, Biodiversity, and Pollution)

**JUSTICE ALFREDO GUTIÉRREZ ORTIZ MENA**

*Supreme Court of Mexico*

Justice Alfredo Gutiérrez, jointly with Justice Antonio Herman Benjamin, introduced the keynote speaker, Ms. Inger Andersen.



Ms. Andersen, as a young lady, stayed in Sudan for six years as a development worker. She then went on an extraordinary professional journey, which includes stints as vice president of the World Bank, director-general of the International Union for Conservation of Nature, and now executive director of the United

Scan the QR code to watch  
the Closing Keynote Address  
of Day 1 on YouTube.



## Day 1 Closing Keynote Address

Nations Environment Programme (UNEP). Ms. Inger Andersen immediately saw what was being planned within the World Commission on Environmental Law (WCEL) and, from day one, provided all the support that was needed.

Justice Benjamin expressed deep admiration for Ms. Andersen, for her integrity and depth of knowledge on environmental matters. Justice Gutiérrez then welcomed Ms. Andersen with great pleasure and gave her the floor.

### INGER ANDERSEN

*Secretary-General, Stockholm+50 International Meeting  
Executive Director, United Nations Environment Programme*

Ms. Inger Andersen, in her keynote, recognized that the gathering in Stockholm is owed to the vision, fifty years ago, of lawyers, political leaders, scientists, and economists, to bring together the world and consider the nexus among environment, development, and poverty.

The world at that time was dealing with bubbling rivers and acid rain. Environmental pollution was something the world was just beginning to understand, and there were no tools with which to address these challenges. There were also the beginnings of an understanding that environmental pollution is something that transcends borders; that even if one nation does what it can, this would not necessarily guarantee that citizens would be free from pollution. And there was an understanding that the biodiversity upon which we all rely was not infinite. The understanding that carbon dioxide emissions would impact our future also began to emerge. So, in 1972, the United Nations Conference on the Human Environment set the stage for this fifty-year journey.



This journey had some important stops along the way. In 1992, in Rio de Janeiro, the world enshrined the concept of sustainable development in its thinking and embarked on the three Rio treaties: desertification,<sup>1</sup> biodiversity,<sup>2</sup> and climate change.<sup>3</sup> There were also other precedents

<sup>1</sup> [United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa](#). Paris. 14 October 1994. United Nations Treaty Series, Vol. 1954, No. 33480.

<sup>2</sup> [Convention on Biological Diversity](#). Rio de Janeiro. 5 June 1992. United Nations Treaty Series, Vol. 1760, No. 30619.

<sup>3</sup> [United Nations Framework Convention on Climate Change](#). New York. 9 May 1992. United Nations Treaty Series, Vol. 1771, No. 30822.

## Day 1 Closing Keynote Address

set by way of the World Heritage Convention, the Convention on Migratory Species, and many more.<sup>4</sup>

In the two decades between Stockholm and Rio, over 1,100 international legal instruments on environmental issues were conceived. The Rio Conference moved environmental law even further, and in the three decades since, environmental laws have grown dramatically. According to UNEP's First Global Report on the rule of environmental law, 176 countries now have environmental laws.<sup>5</sup> Furthermore, 164 countries created cabinet-level bodies responsible for environmental protection. Some 156 countries have also enshrined the right to a healthy environment in their constitutions or in other national frameworks.

Ms. Andersen noted that while the growing number of environmental laws is important, those who sit on the bench know that law does not necessarily mean justice. The concern should be for justice, not about winning or losing. On this front, law and justice have some way to travel. Despite a 38-fold increase in environmental laws, fully implementing and enforcing these laws is one of the greatest challenges in addressing the triple planetary crisis—the crisis of climate change, the crisis of nature and biodiversity loss, and the crisis of pollution and waste.

Ms. Andersen underscored the role played by science in revealing the sheer scale of the triple planetary crisis. The immense pressures faced by communities today can be seen through charts,



<sup>4</sup> [Convention Concerning the Protection of the World Cultural and Natural Heritage](#), Paris, 16 November 1972, United Nations Treaty Series, Vol. 1037, No. 15511; and [Convention on the Conservation of Migratory Species of Wild Animals](#), Bonn, 23 June 1979, United Nations Treaty Series, Vol. 1651, No. 28395.

<sup>5</sup> United Nations Environment Programme. [Environmental Rule of Law: First Global Report](#). 24 January 2019.



## Day 1 Closing Keynote Address

graphs, and projections. Science has outlined how the most vulnerable or those who live on the other side of the proverbial railroad track will suffer the most. According to the Intergovernmental Panel on Climate Change (IPCC), global warming has caused climate injustice and dangerous disruption to the natural world.<sup>6</sup> According to the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), nature and biodiversity loss are undermining efforts to reach the Sustainable Development Goals.<sup>7</sup> According to scientists and researchers, pollution and waste are killing tens of millions of people each year.

Ms. Andersen then asked, why is it then, when science has held up the evidence for 50 years to the world, that regulations, laws, and policies have not kept pace? Why is this the case when the science, for more than 30 years—with ever greater precision from the IPCC—has rung the alarm bell?



Judges must know what science is saying, and also know that the justice system, if not informed by science, does not deliver what it needs to.

– **Ms. Inger Andersen**  
*Secretary-General, Stockholm+50  
International Meeting  
Executive Director, United Nations  
Environment Programme*

She then posited that a frank discourse on issues around the science-to-policy interface is required. This interface has not translated into enforcement or moved into institutional structures. It has been, Ms. Andersen believes, at best a meandering road. As such, there needs to be a stronger understanding that the laws of the land have to be informed by science. Yet, these two communities do not speak enough to each other. Nevertheless, the judges in Stockholm must know what science is saying, and also know that the justice system, if not informed by science, does not deliver what it needs to.

Ms. Andersen then emphasized the critical role of the judiciary. Laws are put in the books by parliaments. Unfortunately, parliamentarians' views are often limited to four-year electoral

cycles. They are not thinking about future generations. This is where the law comes in, to be able to call out the imperatives of having these elements on the books so that justice can be delivered and the future secured.

Ms. Andersen then noted some of the exciting developments taking place.

<sup>6</sup> Intergovernmental Panel on Climate Change. *Climate Change 2022: Impacts, Adaptation and Vulnerability*. 27 February 2022.

<sup>7</sup> E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo, eds. 2019. *Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*. Bonn: Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services.

## Day 1 Closing Keynote Address

In October 2021, the Human Rights Council recognized the human right to a healthy, safe, and sustainable environment.<sup>8</sup> The recognition is a cause for celebration, since these rights are under massive pressure. According to a 2020 Global Witness report, 227 environmental defenders were killed in 2020, averaging almost four people every week of the year.<sup>9</sup> The year 2020 was the most dangerous year on record for people defending their homes, their environment, their lands, their livelihoods, and their ecosystems—which are vital for biodiversity and the climate.

The past fifty years have also seen the genesis of many multilateral environmental agreements. There are, in fact, over 500 multilateral environmental agreements, with some 200 or so that are treaty-based institutions established since the Stockholm Conference. Yet, the question remains—are these agreements enough? Is more of the same going to fix the challenges faced today? Is there just a need to add more multilateral environmental agreements to the docket? In Ms. Andersen's view, there is significant scope for more legal imagination to find effective ways that laws can integrate these developments and inform citizens and politicians alike.

Environmental rule of law is a powerful concept, which, she noted, was first referenced in 2013 in a UNEP Governing Council resolution that looked at advancing justice, governance, and the law for environmental sustainability.<sup>10</sup> In that resolution, member states agreed that environmental rule of law matters. Since 2013, the terms and importance of environmental rule of law have been acknowledged by member states in a number of fora. These include the UN Environment Assembly resolution that adopted the Fifth Montevideo Programme and the political declaration by member states at the commemoration of UNEP@50 in March 2022 in Nairobi, Kenya.<sup>11</sup>

To be effective, environmental rule of law must deliver on seven key elements:

- (1) It must be fair, clear, and incremental;
- (2) There must be public participation in decision-making and access to justice and information;
- (3) Accountability and integrity of institutions and decision-makers are critical;
- (4) Mandates and roles must be clear and coordinated;
- (5) There must be accessible, fair, impartial, timely, and responsive dispute resolution mechanisms;
- (6) The relationship between human rights and the environment must be recognized; and
- (7) There must be specific criteria for the interpretation of environmental rule of law.

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<sup>8</sup> United Nations, General Assembly, Human Rights Council, *The Human Right to a Safe, Clean, Healthy and Sustainable Environment*, A/HRC/48/L.23/Rev.1.5 October 2021.

<sup>9</sup> Global Witness. *Last Line of Defence*. 2021.

<sup>10</sup> Governing Council of the United Nations Environment Programme, *Proceedings of the Governing Council/Global Ministerial Environment Forum at its first universal session*, UNEP/GC.27/17, p. 34–35, 18–22 February 2013.

<sup>11</sup> United Nations Environment Assembly, *Fifth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V): delivering for people and the planet*, UNEP/EA.4/Res.20. 15 March 2019; United Nations Environment Programme, *Political declaration of the special session of the United Nations Environment Assembly to commemorate the fiftieth anniversary of the establishment of the United Nations Environment Programme*, UNEP/EA.SS.1/4, 3 March 2022.

## Day 1 Closing Keynote Address



Environmental rule of law as a concept provides a good basis for re-imagination and innovation. Ms. Andersen called on judges—whom she believes have an urgent need and desire—to really think about the concept of intergenerational justice, particularly what it means, how to adjudicate for it, and how to ensure that it is guaranteed beyond the fancy words and declarations that ministers so often sign up to. That is not what delivers justice. It is now understood that the very trajectory followed currently is delivering injustice. Understanding and deepening the conversation around justice in an intergenerational setting is critical for the legal community.

A second point to consider is the need for reimagination—to explore, deepen, and develop the rights of the environment. Judges know very well that there are cases where legal identities have been granted to rivers and mountains and other inanimate objects. This matters especially for indigenous people. It also matters on the issue of understanding that humans cannot live on this planet as if living on a linear economic model, taking out of the planet what they want and discarding into the planet what they feel like.

Ms. Andersen proposed to think about the planet as a spaceship the people are on. All that humans use and consume is on this spaceship, but so is waste and destruction. Humans travel with it and it is all that they have. There is also a need to think, therefore, about the environment's rights.

A third area to think about is the proposed global instrument to end plastic pollution, which member states agreed to begin work towards at the fifth session of the UN Environment Assembly in Nairobi.<sup>12</sup> With the commencement of the new negotiation round, Ms. Andersen

<sup>12</sup> United Nations. [Resolution adopted by the United Nations Environment Assembly on 2 March 2022](#). UNEP/EA.5/Res.14. Nairobi. 2 March 2022.



## Day 1 Closing Keynote Address

wondered if it is only a matter of looking at the old treaty. In seeking to deliver on this ambitious mandate in under two years, there is a real opportunity to re-imagine multilateralism, moving towards what the UN Secretary-General calls modern, inclusive, and networked multilateralism.

Ms. Andersen underscored that the UN Charter is a reminder that this is about “we the peoples”—i.e., this is not just about states.<sup>13</sup> If only states are allowed to be heard in treaties, has something been missed? To live up to the spirit of these words, people’s voices must be heard in the deliberations on treaties and such global instruments. For example, in deliberating on the contours of the treaty to end plastic pollution, it would be good to hear from waste pickers—many of whom live in the informal economy. They want decent jobs and are bound to have strong opinions on, and indeed an understanding of, how to succeed in current efforts.

Similarly, it is important to hear from businesses in this journey to solutions. Excluding these voices will simply not work.

Ms. Andersen asked, is there a willingness to dream of a new kind of environmental multilateralism?

More than a hundred years ago, the International Labor Organization (ILO) was formed. The ILO was based on tripartism—with the States, the labor unions, and the employers. She then posited that if it was possible, a hundred years ago, to think like that, then surely today, that should be an inspiration and not a limitation. What would a treaty that takes other forms of accession,



The triple planetary crisis is a very complex and global issue. It does not necessarily respect legal boundaries, or the space of academia. As such, judges may be required to draw on this wide set and collection of principles to educate environmental cases, and take inspiration from areas of law that may enable the application of the law in new ways.

– Ms. Inger Andersen

*Secretary-General, Stockholm+50 International Meeting*

*Executive Director, United Nations Environment Programme*

<sup>13</sup> United Nations. *Charter of the United Nations*. San Francisco. 26 June 1945. United Nations Treaty Series, Vol. 1, No. XVI.

## Day 1 Closing Keynote Address

involvement, and sign-up actually look like? Ms. Andersen then expressed her hope that, during the negotiations, negotiators would dream a little before they dwell on setting the fences around the agreement.

Ms. Andersen again emphasized the critical role of the judiciary. Judges have a key role to play in all of these because people are increasingly turning to the law for justice. On climate alone, UNEP analysis revealed that in 2017, there were 884 cases brought in just 24 countries, and as of July 2020, the number of cases nearly doubled to 1,550 cases filed in 38 countries.<sup>14</sup> The 2022 update will point to a further explosion.

The work of the Global Judicial Institute on the Environment (GJIE) and specialized environmental courts and tribunals is crucial in this regard—so that judges today are equipped with the knowledge and insights necessary to advocate fairly for people and the climate, and to truly understand the importance of toxicity, intergenerational justice, climate change, and actions, among others. The triple planetary crisis is a very complex and global issue. It does not necessarily respect legal boundaries, or the space of academia. As such, judges may be required to draw on this wide set and collection of principles to educate environmental cases and take inspiration from areas of law that may enable the application of the law in new ways. Here, cooperation is key.

In closing, Ms. Andersen said that she is humbled to stand before the judges because the work they do is so critical. The work of the law matters, more than what most people think—for communities, for scientists, political leaders, and many others. Law lays the very foundation, and the norms, of society. The creation of GJIE and the work that judges are doing is absolutely critical to strengthen these foundations.

Ms. Andersen, on behalf of UNEP, then expressed her hope that judges would support making the fifth Montevideo National Environmental Law Programme a reality, and indeed a success. Fifty years after the Stockholm Conference, Ms. Andersen urged that the conference's slogan—"Only One Earth"—be inscribed in everyone's hearts.

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<sup>14</sup> United Nations Environment Programme, *Global Climate Litigation Report: 2020 Status Review*, 26 January 2021.





Lalitpur metropolitan city workers disinfect Patan Durbar Square, a UNESCO world heritage site, during a nationwide emergency lockdown in Nepal. While COVID-19 lockdowns reduced emissions, this is likely a temporary short-term effect, unless the global economy rethinks its way of doing business (photo by Narendra Shrestha/ADB).





10

# PANEL SESSION 4: Official Launch of the Global Judicial Environmental Portal

## Panel Session 4

# DAY 2: ACCESS TO JUSTICE AND JUDICIAL EDUCATION ON ENVIRONMENTAL LAW

Mr. Nicholas Bryner, professor at the Louisiana State University School of Law and academic coordinator for the symposium, began Day 2 by giving a brief recap of the first day of the symposium. He mentioned the inspiring and cautionary messages from Day 1, which reflected on the 50 years since the 1972 Stockholm Declaration. He highlighted Professor Jeffrey Sachs' discourse that, in many respects, the self-destructive trajectory of the planet has not changed in the last 50 years. Law has proven to be a double-edged sword—on the whole being less helpful than helpful in the work towards environmental conservation, but also presenting many great opportunities to ensure an equitable transition towards a more sustainable future. United Nations Environment Programme (UNEP) Executive Director Inger Andersen also spoke of a new and more inclusive multilateral approach to environmental protection.

## PANEL SESSION 4

### Official Launch of the Global Judicial Environmental Portal

#### JUSTICE LUC LAVRYSEN

*President, Constitutional Court of Belgium  
Chair, European Union Forum of Judges for the Environment*



Justice Luc Lavrysen, as co-chair, opened Panel Session 4, which served as the official launch of the Global Judicial Environmental Portal (Judicial Portal).

Justice Lavrysen recognized that the Judicial Portal is an important initiative of the Global Judicial Institute on the Environment (GJIE) and UNEP, as it provides an opportunity for judges from all over the world to share information and experiences about environmental adjudication, as well as promote access to justice.

Justice Lavrysen introduced the speakers, the first of whom was Justice Antonio Herman Benjamin from the National High Court of Brazil and concurrently GJIE president, who took the initiative to develop the Global Judicial Environmental Portal.

Scan the QR code  
to watch Panel Session 4  
on YouTube.







The second and third speakers were Ms. Eva Duer and Mr. Peter Speelman, legal officer and associate legal officer, respectively, from the UNEP Information on Multilateral Environmental Agreements' (InforMEA) Collective Intelligence for Environmental Governance Unit.

The fourth speaker was Judge Marc Clément, presiding judge of the Administrative Court of Lyon, member of Autorité Environnementale in France, and member of the Aarhus Convention Compliance Committee. He has developed various websites for different associations of judges, including the first website of the European Union Forum of Judges for the Environment.

### **JUSTICE ANTONIO HERMAN BENJAMIN**

*National High Court of Brazil (STJ)*

Justice Antonio Herman Benjamin began by recalling that GJIE was established in 2016, after preliminary discussions among its founding members to put together a judicial board. GJIE then decided to build a judicial portal by judges and for judges, given the critical importance of preserving the independence of judges—in terms of both how they see themselves and how others perceive them.

Shortly after, Justice Benjamin had the opportunity to meet Ms. Eva Duer, who was part of a UNEP team that had already created a platform for multilateral environmental agreements (MEAs) and their linkages to related jurisprudence. At the same time, the International Union for Conservation of Nature (IUCN), Food and Agriculture Organization of the United Nations (FAO), and UNEP had by then established ECOLEX, a web-based information service that focuses on legislation and jurisprudence. This context marked the beginning of a partnership with UNEP to create the Judicial Portal.



## Panel Session 4

On the side of GJIE, Justice Benjamin, Justice Lavrysen, and Judge Clément took the lead in collaborative work with UNEP.

Less complete versions of the Judicial Portal had been launched regionally, but its official launch during the symposium was for a fully operational version, with the exception only of the component reserved for judges. The next step is to finalize a memorandum of understanding with UNEP to formalize its rich and important collaboration with GJIE.

In closing, Justice Benjamin emphasized that the Judicial Portal provides judges with good knowledge and information, both legal and non-legal, and with means of communication to safely and securely discuss concrete cases and issues faced by judges.



### **EVA DUER**

*Legal Officer and Team Leader, Collective Intelligence for Environmental Governance, UNEP InforMEA, Geneva*

Ms. Eva Duer, together with Mr. Peter Speelman, discussed the Judicial Portal in greater detail. Initially, Ms. Duer gave an overview of the milestones in the development of the Judicial Portal.

- (i) GJIE first approached UNEP in March 2018, followed by several brainstorming discussions that led to GJIE being welcomed as a partner to the InforMEA Initiative in June 2018. From the outset, UNEP was very enthusiastic about the project as it gave an opportunity to pilot and test a system that allows different knowledge sources to independently connect to each other and share information.
- (ii) A first prototype was then developed and presented in August 2018.
- (iii) After addressing maturity and development issues, as well as a series of discussions with GJIE, the first beta version was presented to the 3rd General Assembly of GJIE on 8 December 2021.

Ms. Duer noted that the GJIE remained independent in managing the networking and other elements of the Judicial Portal. At the same time, the interests of UNEP and GJIE converged with respect to (i) the Judicial Portal's value in terms of jurisprudence collection and capacity building



for non-members or the public at large; and (ii) enabling linkages among different products, such as the Judicial Portal, ECOLEX, the InforMEA portal, and their respective materials / content (e.g., online courses, as well as glossary or tagging support in the InforMEA portal, are made available to the Judicial Portal, and vice-versa).

Since the first beta version was made available at the end of 2021, over 50,000 people had already found the Judicial Portal online, even without any outreach efforts. In fact, even though not all its services are fully functional, and its networking section is still being developed, a recent review of its performance showed that those familiar with the Judicial Portal already considered it very useful.

Ms. Duer closed by demonstrating in real time how one can use the Judicial Portal. She highlighted the Resources section, which includes e-learning courses for the judiciary, and the Glossary section, which is also linked to related treaties and legislation on other platforms, such as UNEP's Law and Environment Assistance Platform (LEAP). With this brief overview of the Judicial Portal,

### **PETER SPEELMAN**

*Associate Legal Officer, Collective Intelligence for Environmental Governance,  
UNEP InforMEA, Geneva*

Ms. Duer turned over the discussion to Mr. Speelman.

Mr. Speelman then proceeded to discuss the key features of the Judicial Portal, including its links to other platforms, interoperability, and digitization.

## Panel Session 4



The Judicial Portal can be roughly divided into three main sections:

- (i) Its backbone component is the *Jurisprudence* or case law section, in contrast to other portals that focus on legislation, MEAs, or treaty decisions. This component consists of:
  - (a) a *Browse* section that features a publicly available library; and
  - (b) a *Submit* section that allows authenticated users to contribute content to the platform and access its *Judicial Network* component. The idea is for judges and members of the judicial network, as well as other contributors (such as prosecutors, UNEP and GJIE partners, and regional staff members), to populate this section.

For the *Browse* section, search results can be filtered based on tags (or labels) appearing in the *Glossary* component. Clicking on a specific search result will then show tags connected to it and a discussion of the relevant case(s).

For the *Submit* section, initial access requires the creation of an account, which prompts content managers to authenticate the user. A similar authentication is required for cases sought to be uploaded. These authentication measures build quality control squarely into the platform.

Once a user logs in the *Submit* section and attempts to upload a case decision:

- (1) The platform will flag any duplicate entry previously submitted or a related case to which it can be linked.
- (2) A set of fields about the case decision must be completed. If a Portable Data Format (PDF) file is uploaded, clicking “get tags” will prompt the platform to scan the file and extract key words or subject matter tags from the *Glossary* component. The text entered into the “key environmental legal questions” and “abstract” fields can likewise be scanned and utilize the “get tags” functionality.



- (3) How the case decision relates to other fields (such as MEAs, legislation, other decisions in the portal, and sustainable development goals) is also considered, prompting the Judicial Portal to create links with related records in other platforms.
  - (4) The Judicial Portal provides an option to publish or import the case decision uploaded to other related platforms as well. This streamlines content contribution across platforms, dispensing with the need to recreate the content types on several platforms when their focuses differ—i.e., legislation for ECOLEX and LEAP, MEAs for the InforMEA portal, and jurisprudence for the Judicial Portal. The hope is that Judicial Portal contributors will choose to forward case decisions to these other judicial platforms.
- (ii) The second component is the *Judicial Network*, which consists of a *Members Directory* section and a *Discussions* section. This is a space exclusively for GJIE members and judges to find each other, network, and discuss.
- (a) For the *Members Directory* section, one can search using filters, such as name or a specific type of law that a member indicated interest in. A user's profile can indicate excerpts of one's biography and links to decisions uploaded.
  - (b) The *Discussions* section consists of three levels—the first level of broad topics is called “forum,” which can be broken down into “topics,” that in turn can be further detailed as “questions.” For example, a forum on *Human Rights and the Environment* may include a topic on *Human Rights and Climate Change*, on which specific questions may be asked to spur back-and-forth discussions.
- (iii) The third main component is Resources, which functions as a library of information. There are six sections under Resources:
- (a) The *E-Learning* section, which offers (1) courses that may be of interest to judges, accessible via the Judicial Portal, the InforMEA portal, and other e-learning platforms; and (2) access to video lectures of GJIE members;
  - (b) The *Training Materials* section, which makes available PDF copies from training outfits like UNEP and GJIE;
  - (c) The *Reports* section, which includes documents similar to *Training Materials* but are not specifically geared towards capacity building;
  - (d) The *Partners* section, which links to similar platforms, avoiding replication of materials and duplication of effort;
  - (e) The *Universities* section; and
  - (f) The *Legislation* section, which directs to other tools that are more specifically engineered to navigate legislation.

To cap it off, the Judicial Portal has a Glossary component, which creates linkages between cases found in the InforMEA portal and Judicial Portal, although tags in the former are MEA-specific while tags in the latter are litigation- or adjudication-specific.

**JUDGE MARC CLÉMENT***Presiding Judge, Administrative Court of Lyon, France*

Judge Marc Clément discussed three reasons why judges ought to share case law and leverage networks in the environmental law domain.

First, there is an international dimension to environmental issues: the planet is only one ecosystem that needs to be protected everywhere. Judges face common issues, such as climate change and pollution. At the same time, while there are many international conventions, judges across the world use the same body of international environmental laws. Therefore, exchanges among judges—and venues such as the annual conference of the European Union Forum of Judges for the Environment, where judges compare the resolution of cases—are very important.

Second, knowledge sharing allows judges to find inspiration from solutions elsewhere. For example, the landmark *Urgenda* decision of the Supreme Court of the Netherlands applied human rights in the domain of climate change.<sup>1</sup> Likewise, the German Constitutional Court issued an important decision on climate change based on constitutional rights and courts, moving in the same direction as the Dutch court but using different reasoning.<sup>2</sup> The French *Conseil d'Etat* delivered a similar resolution based on a European directive and national laws.<sup>3</sup> In a similar vein, case decisions related to air pollution or protection of biodiversity are found in many countries. Given this global intersection of cases and decisions, the Judicial Portal's ability to link relevant materials is very useful. Third, the Judicial Portal is a way for each jurisdiction to promote their respective landmark cases. There are many interesting judgments that are not covered by academic discussions, especially

<sup>1</sup> *The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Urgenda Foundation*, Case No. 19/00135, ECLI:NL:HR:2019:2007, Supreme Court of the Netherlands, 20 December 2019 (translation).

<sup>2</sup> *Neubauer, et al. v Germany*, BVerfG, 1 BvR 2656/18, Federal Constitutional Court of Germany, 24 March 2021 (translation).

<sup>3</sup> *Notre Affaire à Tous and Others v. France*, No. 1904967, 1904968, 1904972, 1904976/4-1, Paris Administrative Court, 3 February 2021 (unofficial translation); See also *Conseil d'Etat* press release.

“

There are many interesting judgments that are not covered by academic discussions, especially when the tendency is to focus on very specific countries. However, the Judicial Portal presents an opportunity for each country to promote and upload its significant judgments, thereby providing a more evenly distributed global perspective.

– Judge Marc Clément

*Presiding Judge, Administrative Court of Lyon, France*

when the tendency is to focus on very specific countries. However, the Judicial Portal presents an opportunity for each country to promote and upload its significant judgments, thereby providing a more evenly distributed global perspective.

Judge Clément concluded his intervention by imploring the Supreme Court in every country to upload case judgments onto the Judicial Portal, as these will be very useful for judges across the globe.

## **DONALD KANIARU**

*Former Director, Division of Environmental Policy Implementation and  
Division on Environmental Conventions, UNEP*

To close the session, Mr. Donald Kaniaru, co-chair of Panel Session 4, sought questions and comments in the spirit of sharing knowledge, learning, and moving forward together. This has been the objective since the first Global Judges Symposium in 2002 in Johannesburg. In this regard, he acknowledged a number of those who have taken part in the initiative from the beginning, namely, Justice Benjamin, Mr. Scott Fulton, and Professor Dan Magraw.

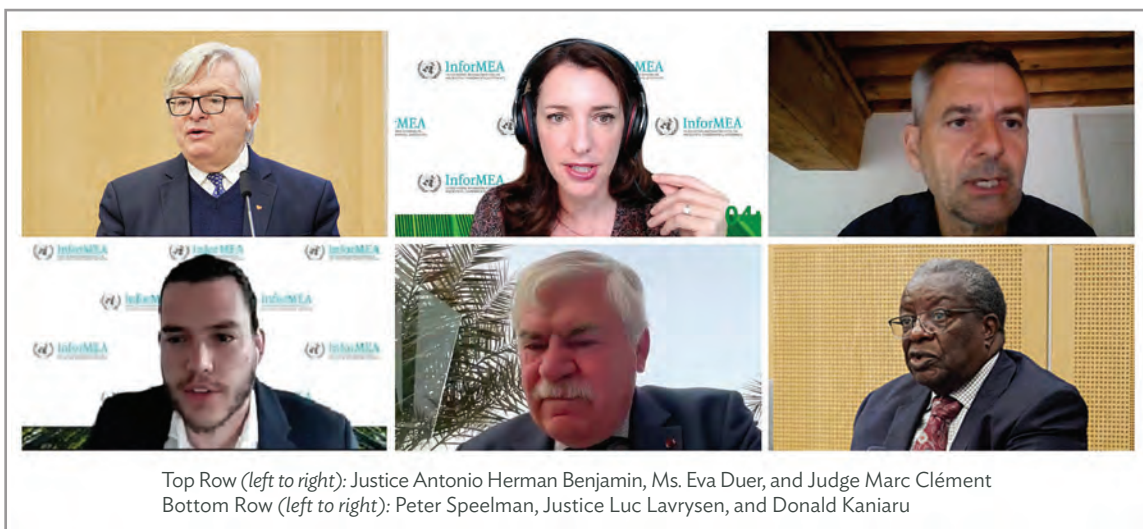




## Panel Session 4

This acknowledgment was complemented by Justice Benjamin, who recognized the amazing work on the Judicial Portal and congratulated colleagues, both on the UNEP and GJIE sides. Specifically, on the GJIE side, he expressed thanks to members of the GJIE board who have been supportive since the inception of the idea—Justice Lavrysen, Judge Clément, Justice Ragnhild Noer, Justice Michael Wilson, Justice Brian Preston, Justice Syed Mansoor Ali Shah, and Justice Ricardo Lorenzetti. From the UNEP side, he thanked Inger Andersen, Elizabeth Mrema, Arnold Kreilhuber, Andrew Raine, Patricia Mbote, and the partnership of Ms. Duer and Mr. Speelman.

### Discussion for Panel Session 4



**Justice Brian Preston**, Chief Judge of the Land and Environment Court of New South Wales, Australia, sought clarification on the languages to be used in the Judicial Portal. He recognized the



importance of having representative judgments from all over the world—all jurisdictions and all languages—in the Judicial Portal. However, it would be difficult to access and understand a judgment written in a lesser known language. For this purpose, sometimes courts produce an unofficial English version of the judgment. Could both versions (i.e., the original decision and the unofficial translation) be uploaded so that those who are not fluent in the relevant foreign language would still be able to read the judgment? Related to that question, is there a way to flag the need to translate certain judgments for which an English translation is not yet available?

**Justice Lavrysen** responded by mentioning the increasing availability and improved quality of automatic translation programs, which are helpful tools enabling access to other languages.

**Ms. Duer** clarified that the system is multilingual and can recognize the official United Nations (UN) languages, i.e., Arabic, Chinese, English, French, Russian, and Spanish. However, the platform becomes dependent on the case summary submitted for a judgment that comes in a non-UN language. Because translating is a task that requires a high level of understanding, it is crucial to have vetted contributors from universities. Similarly, another possible option is for the Judicial Portal to assign a contributing role to certain individuals through an institution, then have GJIE vet these individuals before they commence with preparing translations.

An online participant then asked whether non-judges or non-lawyers could create accounts in the Judicial Portal, or if this is even envisioned. If not, how would a non-judge interested in looking at Judicial Portal resources for research purposes gain greater access?

**Justice Benjamin** highlighted that, as the name indicates, the core of the Judicial Portal is by judges, for judges. It is therefore not envisioned to give portal “accounts” to other than sitting judges (i.e., not even retired judges), although the open part of the Judicial Portal is in fact open to everyone. After all, it is also in the judges’ interest that the public—especially researchers and subject matter experts—know what is going on in different jurisdictions.

**Justice Michael Wilson** of the Supreme Court of Hawaii then asked whether the Judicial Portal has a relationship with established databases for legal research, such as Westlaw. Justice Lavrysen clarified that the Judicial Portal is an open-source database. As such, it will not copy jurisprudence from commercial databases. Instead, the intention is to harvest information from databases of the courts themselves.

Justice Benjamin added that this question was raised early on, as the Judicial Portal was being developed. The standing suggestion is to contact Westlaw and other similar databank companies once the Judicial Portal is fully operational, to see whether member-judges of GJIE could be granted free access to the databank via the Judicial Portal (i.e., without importing cases from the databank to the Judicial Portal).



## Panel Session 4



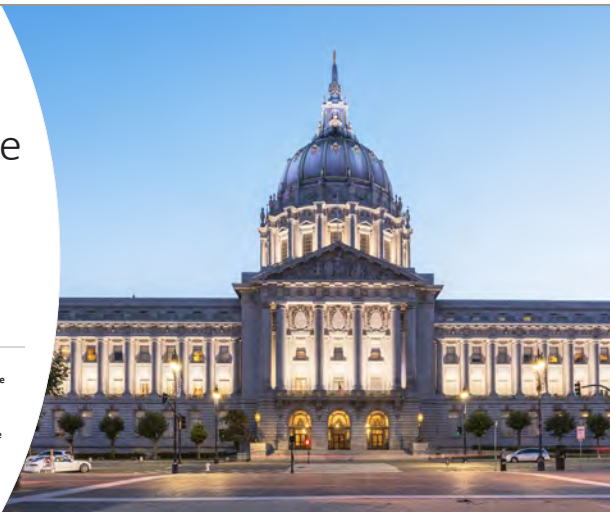
### EVA DUER'S AND PETER SPEELMAN'S PRESENTATION



#### Overview of the Global Judicial Portal

Eva Duer (Legal Officer and Team Leader, Collective Intelligence for Environmental Governance, UNEP InforMEA)

Peter Speelman (Associate Legal Officer, Collective Intelligence for Environmental Governance, UNEP InforMEA)



#### A brief timeline of the Judicial Portal

Initial Meeting with Judges in Brazil, Switzerland and Austria 2018 (March, April and July - pics)

Prototype Presentation to OAS Symposium on Judiciary and environment

June 2018

Dec. 2021

2018

Aug. 2018

GJIE welcomed to InforMEA Initiative: June 2018 (pic)

Live Presentation to the 3rd General Assembly of the Global Judicial Institute





## Overview of the Global Judicial Portal

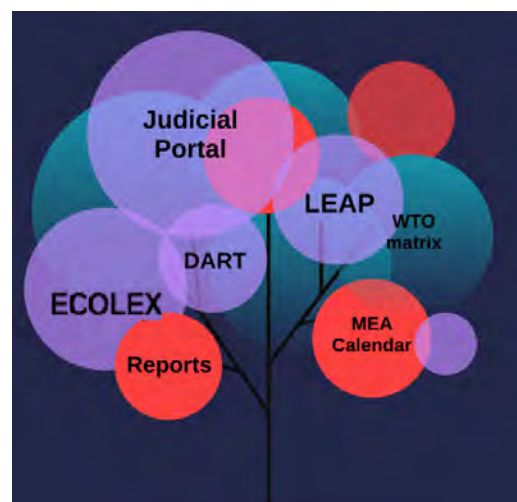
Countries: over 50,000 users since soft-launch/pre-launch



8	Bangladesh
9	Kenya
10	South Africa
11	Pakistan
12	Sri Lanka
13	Netherlands
14	Malaysia
15	China
16	Uganda
17	France
18	Italy
19	Ireland
20	Nepal
21	Ghana

## Overview of the Global Judicial Portal

- The Judicial Portal is a key part of the fully linked and interoperable system of Portals in support of Collective Intelligence for Environmental Law and Governance



## Panel Session 4

**UN environment programme**

**Global Judicial Institute on the Environment**  
Institut Judiciaire Mondial de l'Environnement  
Instituto Judicial Mundial del Ambiente

JURISPRUDENCE JUDICIAL NETWORK GLOSSARY RESOURCES English LOG IN

**Global Judicial Portal**  
For judges by judges in support of environmental issues

**Three Main Components:**  
Jurisprudence Database  
Judicial Network  
Additional Resources

**ABOUT THE JUDICIAL PORTAL**

The Judicial Portal is a platform that promotes and provides greater access to judges and the global environmental law community with environmental law information and jurisprudence. The portal is an innovative project developed by a Joint Working Group comprised of the World Commission on Environmental Law (WCEL), the Global Judicial Institute on the Environment (GJIE), and United Nations Environment Programme (UNEP).

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United Nations Human Rights Committee | New Zealand | January 7, 2020  
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**Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen**  
Constitutional Court | Belgium | March 5, 2020  
**Tagging:** Environmental Impact Assessment, Evidence, Standing, Access, Air pollution, Protected Areas, Permits

**Ramendra Prasad vs. Total (Fiji) Ltd**  
Court of Appeal | Fiji | February 26, 2020  
**Tagging:** Damages, Polluter Pays, Evidence, Tort, Contract, Property, Appeals, Inspections, Remedies

**Morua vs. China Harbour Engineering Co (PNG) Ltd [2020]**  
National Court | Papua New Guinea | February 7, 2020  
**Tagging:** Damages, Environmental Impact Assessment, Right to Clean and Healthy Environment, Contract, Standing, Permits

**FILTERS**

**Glossary terms**

- + Legal Substantive Issue Area
- + Legal Procedural Issue Areas
- + Regulatory Tools
- + Environmental Issue Area
- + International Law and Policy
- + Free Terms



**Country**

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- Andorra (1)
- Angola (1)
- Antigua and Barbuda (1)
- Argentina (53)
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## Panel Session 4

Global Judicial Institute on the Environment  
 Institut Judiciaire Mondial de l'Environnement  
 Instituto Judicial Mundial del Ambiente

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**Peter Speelman**

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**UPLOADED JURISPRUDENCE**

People's Procuratorate of Sanyuan County, Shaanxi Province vs. People's Government of Dacheng Town, Sanyuan County, Shaanxi Province for Failure to Perform the Statutory Duties of Environmental Protection and Pollution Prevention and Control



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Beihai Naizhi Marine Science and Technology Co., Ltd. v. Beihai Marine and Fisheries Bureau (Case of Marine Administrative Penalty)


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## Panel Session 4

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+ Legal Substantive Issue Area




**Judge Luc Lavrysen**

Constitutional Court of Belgium • Belgium



**Judge Marc Clement**

Administrative Court of Lyon • France



**Judge Luc Lavrysen**

Constitutional Court of Belgium  
Belgium

**Topics of interest**

Constitutional  
Human Rights

**Expertise**


Luc Lavrysen is an environmental law professor at Ghent University, where he leads the Centre for Environmental and Energy Law. He is also the president of the EU Forum of Judges for the Environment and has worked with UNEP on the role of the judiciary. Professor Lavrysen is a Founding Member of the Global Judicial Institute on the Environment and he is currently on the Interim Governing Committee.

**Additional Information**



For example, contact information for other judges to see publicly

**UPLOADED JURISPRUDENCE**


Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen

Constitutional Court • Belgium • Maria X. Jorral • Christophoros Kourdis 

## Panel Session 4



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### Global Judicial Portal Discussions



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1 topic - 2 posts - By Peter Speelman - 6 months 1 week ago


#### Human Rights and the Environment

0 topics - 0 posts - n/a

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### Human Rights and the Environment

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Peter Speelman - 6 months 1 week - 1 replies

#### Human Rights and Climate Change



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## Peter Speelman

Submitted by [Peter Speelman](#) on Tue, 05/25/2021 - 13:53

Besides Ioane Teitiota, are there examples of cases brought based on the right to life being violated due to the effects of climate change? Are there cases based on climate-impacted rights in other human rights treaties?

## Answers

By [Peter Speelman](#) on 6 months 1 week ago

Check xyz case on the right to life from xyz court...


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## Panel Session 4


### COURSES FOR THE JUDICIARY




**Introductory Course On Climate Rights Litigation**




**Introductory Course On International And National Environmental Law And Governance In Thailand**




**Introductory Course On SDG 16 And Access Rights, The Aarhus Convention, And The Escazú Agreement**



**Introductory Course To International Environmental Law**



**Introductory Course To The Convention On Biological Diversity (CBD)**



**Introductory Course To The Convention On International Trade In Endangered Species Of Wild Fauna And Flora (CITES)**



#### E-Learning

- [Training Materials](#)
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### VIDEO LECTURES

**Freshwater Regulation in International Environmental Law**  
Dr. Francesco Sindico  
Co-Director, Strathclyde Center for Environmental Law and Governance, University of Strathclyde, Glasgow


**Nationally Determined Contributions under the Climate Change Regime**  
Robert Ondhove  
Legal Officer, National Environmental Law Unit, Law Division, UN Environment


### OTHER E-LEARNING PLATFORMS

[EU Environmental Law Training Package](#)

On this page you can access training tools which have been developed by the European



## Judicial Handbook on Environmental Law



This handbook is intended to enable national judges in all types of tribunals in both civil law and common law jurisdictions to identify environmental issues coming before them and to be aware of the range of options available to them in interpreting and applying the law. It seeks to provide judges with a practical guide to basic environmental issues that are likely to arise in litigation. It includes information on international and comparative environmental law and references to relevant cases. Judges in each particular country will supplement this overview with more detailed information drawn from national experiences, laws and traditions.

E-Learning

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## Judicial Training Materials on Environmental Law : Application of Environmental Law by national Courts and Tribunals



UNEP's Global Judges Programme was conceived in the context of strengthening the Rule of Law in the area of sustainable development. The Rule of Law comprises an intricately inter-linked chain of fundamental ideas including equality before the law, the independence of the judiciary, transparency, consistency and accountability in the administration of law and the notions of equity, justice and fairness. The Rule of Law is also essential for the realization of sustainable development, which itself is founded on equitably balancing environmental, social and economic considerations in decision-making at all levels.


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## Environmental Law Institute Judicial Education Program Publications and Resources





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## Global Judicial Handbook on Environmental Constitutionalism (Second Edition)



This Handbook, and its companion, is designed to provide jurists with an overview of environmental constitutionalism: we address what it is, the peculiar practical and procedural issues it presents, and how courts have responded to these issues across the globe.

## Assessing Environmental Impacts: A Global Review of Legislation



This report provides an overview of the current status of national legislation and institutional arrangements of relevance to EIAs and SEAs across the globe, as well as emerging issues and trends. It does this primarily through providing examples from a wide selection of countries of their EIA/SEA arrangements and in relation to the different steps of the EIA/SEA processes. These steps include: (1) Screening; (2) Scoping and Impact Analysis; (3) Review of the EIA/SEA report; (4) Decision-making; (5) Follow-up and Adaptive Management and (6) Public Participation as a cross-cutting issue.

E-Learning

Training Materials

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## UNEP Compendium on Human Rights and the Environment: Selected international legal materials and cases



The Compendium on human rights and the environment takes stock of the normative and jurisprudential developments in the field of human rights and the environment. It describes international instruments that relate to human rights and the environment, such as multilateral environmental agreements, international human rights treaties, and international resolutions and declarations.




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## Compendium of Global Environmental Constitutionalism: Selected Cases and Materials 2019 (Second Edition)







## Panel Session 4

 <p>World Commission on Environmental Law</p>	<p>World Commission on Environmental Law</p>	<p>The World Commission on Environmental Law (WCEL) advances environmental law around the globe by providing specialized knowledge and assistance to strengthen the legal foundations of the conservation of nature and sustainable development through the conceptual advancement of environmental principles, norms, and laws, and by building the capacity of communities to benefit from the environmental rule of law.</p>	<a href="#">E-Learning</a>	<a href="#">Training Materials</a>	<a href="#">Reports</a>	<a href="#">Partners</a>	<a href="#">Universities</a>	<a href="#">Legislation</a>
	<p>IUCN Academy of Environmental Law</p>	<p>The IUCN Academy of Environmental Law is an international network of approximately 200 environmental law faculties and research centres from 60 countries. For information on the Academy's conference, publication and capacity-building programs see <a href="http://www.lucnael.org">www.lucnael.org</a>. The Academy Secretariat is currently located at the University of Maryland, USA.</p>						
	<p>European Union Forum of Judges for the Environment (EUJFE)</p>	<p>Created in 2004, the objective of the Forum is to contribute to better implementation and enforcement of national, European and international environmental law:</p> <ul style="list-style-type: none"> <li>• by contributing to a better knowledge of environmental law among judges,</li> <li>• by sharing case law, and</li> <li>• by sharing experience in the area of training of the judiciary in environmental law.</li> </ul>						


	 <p>Global Judicial Institute on the Environment Institut Judiciaire Mondial de l'Environnement Instituto Judicial Mundial de Ambiente</p>	<a href="#">JURISPRUDENCE</a> - <a href="#">JUDICIAL NETWORK</a> - <a href="#">GLOSSARY</a> - <a href="#">RESOURCES</a> - <a href="#">English</a> - <a href="#">LOG IN</a>						
<h1>Universities</h1>								
	<p>The Graduate Institute Geneva</p>	<p>FOR EXAMPLE ONLY. Text about partnership between GJIE and Graduate Institute, or their work on environment and the judiciary. FOR EXAMPLE ONLY</p>	<a href="#">E-Learning</a>	<a href="#">Training Materials</a>	<a href="#">Reports</a>	<a href="#">Partners</a>	<a href="#">Universities</a>	<a href="#">Legislation</a>
	<p>University of Geneva</p>	<p>FOR EXAMPLE ONLY. Text about partnership between GJIE and University of Geneva, or their work on environment and the judiciary. FOR EXAMPLE ONLY</p>						

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## Legislation



**InforMEA**  
INTERNATIONAL INFORMATION PORTAL ON MULTILATERAL ENVIRONMENTAL AGREEMENTS

**InforMEA Legislation Explorer**


The United Nations Information Portal on Multilateral Environmental Agreements (InforMEA) has a wide set of legislation, in part fed from ECOLEX and FAOLEX. Users can search and filter the legislation, and explore the connection between legislation and Multilateral Environmental Agreements, environmental thematic areas, key glossary terms, more.



**MONTEVIDEO ENVIRONMENTAL LAW PROGRAMME**  
Law and Environment Assistance Platform

**LEAP Legislation Explorer**

The same set of legislation can be explored on the UNEP Law and Environment Assistance Platform (LEAP) with different filtering options and in connection with the Montevideo Environmental Law Programme.



**MONTEVIDEO ENVIRONMENTAL LAW PROGRAMME**  
Law and Environment Assistance Platform

**LEAP Toolkits**

In addition to the Legislation Explorer, the LEAP platform features a set of toolkits which further break down legislation according to specific environmental issue areas, for instance lead paint, or climate change.

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[Training Materials](#)  
[Reports](#)  
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<p><b>Environmental Issue Area</b></p> <ul style="list-style-type: none"> <li>Forest</li> <li>Wetland</li> <li>Wildlife</li> <li>Air pollution</li> <li>Climate Change</li> <li>Biodiversity</li> <li>Chemicals and Waste</li> <li>Climate and Atmosphere</li> <li>Land and Agriculture</li> <li>Marine and Freshwater</li> <li>Land-based pollution</li> <li>Marine Pollution</li> <li>Water Pollution</li> </ul>	<p><b>International Law and Policy</b></p> <ul style="list-style-type: none"> <li>Access to information</li> <li>Access to Justice</li> <li>Public Participation</li> <li>Multilateral Environmental Agreements</li> <li>Principles of Environmental Law</li> <li>Sustainable Development Goals</li> <li>Common but Differentiated Responsibilities</li> <li>Cooperation</li> <li>Environmental Democracy</li> <li>Non-Regression and Progression</li> <li>Polluter Pays</li> <li>Precaution</li> <li>Prevention</li> </ul>
<p><b>Legal Procedural Issue Areas</b></p> <ul style="list-style-type: none"> <li>Burden of Proof</li> <li>Admissibility</li> <li>Evidence</li> <li>Jurisdiction</li> <li>Remedies</li> <li>Res Judicata</li> <li>Standing</li> <li>Statutes of Limitation</li> <li>Damages</li> <li>Declaratory Relief</li> <li>Fines or Sanctions</li> </ul>	<p><b>Legal Substantive Issue Area</b></p> <ul style="list-style-type: none"> <li>Environmental Defenders</li> <li>Right to Clean and Healthy Environment</li> <li>Rights of the Environment</li> <li>Access and Benefit Sharing</li> <li>Free, Prior Informed Consent</li> <li>Administrative</li> <li>Civil</li> <li>Constitutional</li> <li>Contract</li> <li>Criminal</li> <li>Human Rights</li> </ul>

## Panel Session 4

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[Climate and Atmosphere](#)
[Climate Change](#)

### Climate Change

[...] The change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods. (Source: UNFCCC, Art 1)

**RELATED JURISPRUDENCE**

**Ioane Teitiota vs. New Zealand**  
Genève (New Zealand) | January 7, 2020

**Joined Cases C-546/11, C-567/11, C-580/11, C-591/11, C-620/11 and C-640/11**  
Iberdrola, SA and Others v Administración del Estado and Others

**Kennedy v NSW Minister for Planning**  
Sydney (Australia) | July 24, 2010

**Almaviva Pty Ltd & Anor v Southern Rural Water & Ors.**  
Melbourne (Australia) | April 13, 2010

**Wildlife Protection Association of Australia Inc. and Minister for the Environment, Heritage and the Arts and Director-General of the Department of Environment and Climate Change (NSW)**  
Sydney (Australia) | August 15, 2008

**London Borough of Hillingdon & Ors, R (on the application of) v Secretary of State for Transport & Anor.**  
London (United Kingdom) | March 26, 2010

**Greenspace New Zealand Incorporated v Northland Regional Council and Mighty River Power Limited**  
Auckland (New Zealand) | September 20, 2006

**Keller v Information Commissioner (EA/2011/0152)**  
Utrecht (Netherlands) | January 16, 2012

**Secretary of State for Energy and Climate Change v Friends of the Earth & Ors.**  
London (United Kingdom) | January 19, 2012

**Anderson & Anor v Director-General of the Department of Environment and Climate Change & Anor.**  
Melbourne (Australia) | April 9, 2006

### Ocean Acidification

Green Acidification

### Treaty effectiveness in practice - 1972-1994 from Transboundary Air Pollution (RTAP)

Cooperative Programme for Monitoring and Evaluation of a Long-term Transboundary of Air Pollutants in Europe (EMAP)

**Effectiveness and Compliance of Multilateral Environmental Agreements (RTAP)**

**RELATED TREATIES**

[Napoya Protocol](#)

[United Nations Framework Convention on Climate Change](#)

[Kyoto Protocol](#)

[United Nations Convention to Combat Desertification](#)

[Convention on the Transboundary Effects of Industrial Accidents](#)

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**RELATED LEGISLATION**

[\(AO\) 2004 General Petroleum Activities Law](#)

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## About the Judicial Portal

**About the Judicial Portal**

The Judicial Portal is a platform that promotes and provides greater access to judges and the global environmental law community with environmental law information and jurisprudence. The portal is an innovative project developed by a Joint Working Group comprised of the World Commission on Environmental Law (WCEL), the Global Judicial Institute on the Environment (GJIE), and United Nations Environment Programme (UNEP).

The portal is designed to facilitate and promote the exchange of environmental law information and experiences around the world. It contains unbiased legal and scientific content including a database of judicial decisions on environmental issues, online resources on environmental jurisprudence, an interactive mechanism for facilitating secure communication and discussion among judges, and training material on environmental law.


The Portal has three main sections: Information, Judicial Network, and E-Learning. Users will be able to search for environmental jurisprudence and legislation from around the world, access commentaries from judges on landmark decisions, and take online environmental law courses.

Though designed "for judges, by judges", a portion of the portal is open to the public, including content on jurisprudence, legislation, and news. This provides a powerful resource for the global environmental law community and which will ultimately open and advance research across diverse geographic regions leading to the growth of the environmental rule of law.

The portal is an excellent resource to keep up to date with recent developments in the field of environmental law worldwide.



## Latest news and events




**Asia-Pacific Judicial conference on climate change: Adjudication in the time of COVID-19**

**Event** December 9, 2020 - December 11, 2020

The emergence of COVID-19 has brought major challenges to all peoples of the world in unexpected ways. Many point to our unabated abuse of nature as the underlying cause of this pandemic. It has amplified numerous existing challenges such as weak health institutions and lack of social protection for the most vulnerable. It has also added to the already alarming issue of rapid climate change, presenting more complexities for the processes of adjudication and the achievement of climate justice. There are growing calls for the global community to act on climate change with the same rigor and

[Read more »](#)




**2nd World Environmental Law Congress**

**Event** March 23, 2020 - March 27, 2020

The 2nd World Environmental Law Congress will assess the role of environmental law in light of the critical ecological crises that we all face. This high-level event will be held at the Supreme Court of the State of Rio de Janeiro, Brazil from Monday, March 23 through Friday, March 27, 2020. The general theme of the Congress is Environmental Law 2030 and Beyond. The focus on the future and connection with the Sustainable Development Goals (SDGs) is an innovative look forward to the next decades of the legal discipline. The theme is also a departure from the common approach in previous events

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**2nd IUCN World Environmental Law Congress Postponed**

**News**

Notice of Postponement of 2nd World Environmental Law Congress & COVID-19 in light of rapid developments in the global health risks posed by COVID-19 and increasing complications for travel, the organizing committee has decided to postpone the 2nd World Environmental Law Congress, the 3rd General Assembly for the Global Judicial Institute on the Environment, and associated events planned from 23 to 27 March 2020 in Rio de Janeiro, Brazil.

[Read more »](#)

## JURISPRUDENCE

### RECENTLY UPLOADED JURISPRUDENCE

**People's Procuratorate of Sanyuan County, Shaanxi Province vs. People's Government of Dacheng Town, Sanyuan County, Shaanxi Province for Failure to Perform the Statutory Duties of Environmental Protection and Pollution Prevention and Control)**

China | January 1, 2016

**Beihai Naizhi Marine Science and Technology Co., Ltd. v. Beihai Marine and Fisheries Bureau (Case of Marine Administrative Penalty)**

China | January 1, 2018

**Hainan Lingao Yinghai Shipping Co., Ltd. v. the Fisheries Administration Squad of Sansha City for Administrative Penalties**

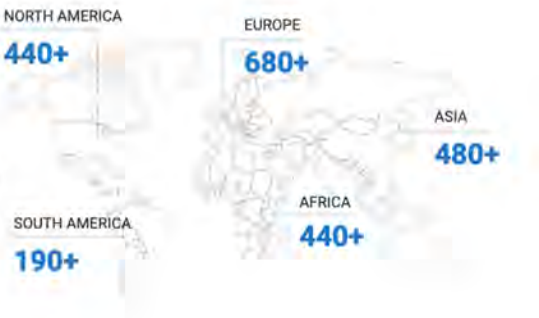
China | January 1, 2019

**Environmental Damage Compensation Case of People's Government of Jiutiang City v. Jiangxi Zhengpeng Environmental Protection Technology Co., Ltd., Hangzhou Lianxin Building Materials Co., Ltd., LI De et al. (7 People)**

China | January 1, 2019

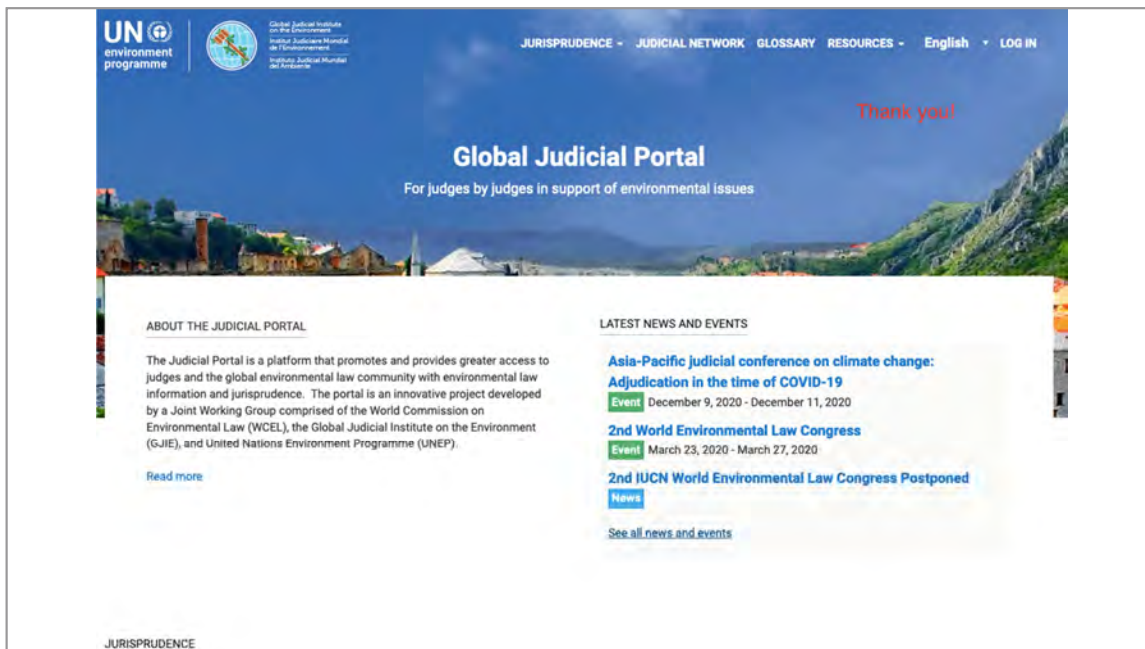
**Beijing Chaoyang District Friends of Nature Environmental Research Institute v. Hydrochina Corporation Xinping Development Co., Ltd., et al. for Civil Public Interest Litigation Concerning Environment Pollution Liability**

China | January 1, 2020



Region	Count
NORTH AMERICA	440+
SOUTH AMERICA	190+
EUROPE	680+
AFRICA	440+
ASIA	480+

## Panel Session 4



Thank you!



Women fetching water during a very dry season in Myanmar. Climate change will affect water security, with up to 3.4 billion people in Asia living in water-stressed areas by 2050 (photo by Myo Thame/ADB).







Fisherfolk across the Pacific rely on their local fish stocks for nutrition and livelihood (photo by Eric Sales/ADB).





# 11

## PANEL SESSION 5:

Theory and Practice of the  
Environmental Rule of Law,  
with Special Emphasis on  
Independence, Integrity  
and the Use of Technology  
in the Judiciary

## PANEL SESSION 5

### Theory and Practice of the Environmental Rule of Law, with Special Emphasis on Independence, Integrity, and the Use of Technology in the Judiciary

#### MS. VESSELINA HARALAMPIEVA

*Senior Counsel, European Bank for Reconstruction and Development (EBRD)*

Ms. Vesselina Haralampieva introduced her co-chair, Mr. Carl Bruch, who is the Director of International Programs of the Environmental Law Institute. She also welcomed each of the panelists for this session: Justice Suntariya Muanpawong, Vice Chief Justice of Region Five of Thailand; Justice Karen Zarikyan from the Administrative Court of Armenia; Justice Samson



Okong'o, presiding judge of the Environment and Land Court of Kenya; and Federal Judge Marcus Livio Gomes from the National Council of Justice (CNJ) of Brazil, who joined virtually.

Scan the QR code  
to watch Panel Session 5  
on YouTube.





## JUSTICE SUNTARIYA MUANPAWONG

*Vice Chief Justice, Region Five of Thailand*

Justice Suntariya Muanpawong shared her ideas on the intellectual integrity of green judges. As context, she talked about the environmental problems in Southeast Asia, especially Thailand.

Thailand following the western direction of industrialization has resulted in an increasing number of industrial problems. Consequently, although the country is rich in natural resources, the need to implement a fair and just allocation of environmental resources becomes ever more critical. This, however, does not seem to be happening. Instead, many kinds of pollution have proliferated, affecting people and wild animals alike. Justice Muanpawong underscored that those who have intersectionality of vulnerabilities—such as minorities and indigenous people in the forest—are most affected.



Thailand's legal framework has responded to the issues highlighted in the 1972 Stockholm Conference.<sup>1</sup> Within six years from the conference, Thailand enacted a law on environmental protection, which established an agency mandated to spearhead efforts to preserve the environment. This environmental protection agency has thus been in existence for more than forty years.

Thailand's constitution recognizes environmental rights in both the individual and community sense. These fundamental rights include the right to access natural resources and to be heard. The constitution also lays down the process for securing environment and health impact assessments. Thailand's green constitution is further supported by many environmental laws and regulations, whose implementation is ensured by various environmental law enforcers, such as executive department environmental officers, police officers, public prosecutors, and courts.

Thailand's judiciary also began to implement reforms more than 15 years ago, through interactions with Justice Reynato Puno (who later became chief justice) of the Supreme Court of the Philippines and Justice Brian Preston (now chief justice of the Land and Environment Court of

<sup>1</sup> United Nations Conference on the Human Environment, 5–16 June 1972, Stockholm.

## Panel Session 5

New South Wales). Justice Preston had shared experiences and lessons learned from Australia's creation of a land and environment court. From that series of exchanges, Thailand proceeded to (i) create a green bench or division in the Supreme Court, appeal courts, courts of first instance, and even administrative courts (which are separate from courts of justice in Thailand); (ii) promulgate green jurisprudence; (iii) develop a green educational program; and (iv) collaborate and network with like-minded individuals and groups, both internally and internationally.

Justice Muanpawong emphasized that the true spirit of judicial activism means that judges must duly consider intellectual integrity, i.e., judges should be active and proactive in protecting the people and the environment. Intellectual integrity means

- the discipline of striving to be thorough and honest to learn the facts or the truth, or to reach the best decision possible in a given situation;
- the driving desire to follow reason and evidence courageously wherever these may lead; and
- valuing objective and evidence-based decision making, as well as courageous, fair-minded, and complete pursuit of the best possible knowledge.

Intellectual integrity should thus prompt a judge to do three things.

First, he or she must be aware of social and economic problems. Environmental justice recognizes that the big gap between the poor and the rich results in differential treatment in terms of criminal justice enforcement. For example, in terms of encroachment of public or forest land, the privileged—e.g., politicians, mafia, or rich—also partake in land encroachment but the poor are the ones who are most often arrested. Recognizing this social situation enables the court to properly set fair sentencing guidelines.

Second, environmental justice recognizes environmental ethics.

Third, the judge must believe in an interdisciplinary approach, navigating the nexus between law, science, and technology. In Thailand, the Enhancement and Conservation of National Environmental and Quality Act, 1992 provides for an ecological compensation scheme that values nature and imposes a penalty on anyone who destroys it. Although the law has been around for more than 20 years, this provision has not been effectively implemented. The initial hurdle is how the term 'value of nature' should be interpreted. In the case of a Thai tycoon charged



The true spirit of judicial activism means that judges must duly consider intellectual integrity, i.e., judges should be active and proactive in protecting the people and the environment.

– **Justice Suntariya Muanpawong**  
*Vice Chief Justice, Region Five of Thailand*

with poaching, particularly the shooting of a black panther, the problem was not only whether he should be arrested, but also the value of the black panther. The public park department wanted THB 12 million (approximately USD 320,000) but the court awarded only THB 2 million (approximately USD 53,400).

Justice Muanpawong also gave another example involving a factory discharging contaminated water onto public land. Both the factory and the relevant government agencies were sued. Justice Muanpawong pointed out that if, in addition to the factory, the government agencies are likewise ordered to provide compensation factory, then the basis for such imposition is anchored not only on the polluter-pays principle but also the taxpayers-pay principle.

In closing, Justice Muanpawong emphasized that a judge with intellectual integrity must realize the vital role that courts play. His or her work is not completed when the decision is written; instead, he or she must dream of a problem-solving court that effectively executes and enforces judgments.

### **JUSTICE KAREN ZARIKYAN**

*Administrative Court of Armenia*

Justice Karen Zarikyan spoke about environmental law and the critical role of judges in securing the planet.

At the outset, he stressed that it is impossible to overestimate the impact of judges on environmental policy on both international and national levels. Judges have the power to control






## Panel Session 5

how environmental rules are made and executed in the context of the rule of law. Indeed, judicial interpretation of legislative rules and executive regulations turns them from soulless texts into truly effective laws and policies. Even international conventions and declarations need to be recognized, interpreted, and implemented in a particular case to become truly part of a legal system. As Professor Robinson mentioned during the first day of the symposium, many international instruments—including the Stockholm Declaration—would remain merely good ideas if courts do not bring them to life in jurisprudence. As such, judges should realize their profound responsibility in the exercise of environmental law and take their rightful place among other actors.

Justice Zariqyan clarified that politicians have the primary position because they make initial political decisions considering environmental issues, many of which do not reach the courts and therefore become conclusive. However, if just one individual or nongovernment organization brings a case to court, the court's resolution might have a crucial impact on the whole subject, i.e., it is up to the courts to decide whether political decisions meet legal standards and principles, protect human rights to a clean environment, and establish a fair balance of interests.

Just and fair monitoring of environmental law is a function that can be performed only by judges due to their independence and impartiality. When deciding on various issues, including environmental matters, politicians cannot ignore pressure coming from public expectations, international relations, and political reality. In most cases, politicians put primacy on the political consequences of their decisions because of the obvious effect on their reelection prospects. This is further complicated by the fact that political decisions on environmental matters do not always become an object of critical public attention, particularly because their technical nature may not be easily understood by laymen. Thus, political decisions on environmental matters may not be properly challenged by members of society—a dangerous trend that may lead to manipulations in the decision-making process. Meanwhile, an adequate and thorough reflection on environmental issues may result in unpopular decisions that politicians are not always willing to make.



Just and fair monitoring of environmental law is a function that can be performed only by judges due to their independence and impartiality. [...] [A]n adequate and thorough reflection on environmental issues may result in unpopular decisions that politicians are not always willing to make.

– **Justice Karen Zariqyan**  
*Administrative Court of Armenia*

In contrast with the political decision-making process, the principles of independence and impartiality that underlie the judicial branch compel judges to act without fear of being criticized—not only by politicians, but also by the public. Acting on behalf of justice and people, judges often go against public opinion to properly protect human rights and establish fair balance among different interests. At the same time, the power to nullify decisions made by political bodies, independent from decision-makers and public opinion, puts an unprecedented responsibility on judges. While political decisions can be modified in case of need, and in the end corrected by the court, judges do not have the same privilege and must act with awareness of the final nature of their decisions. Besides, there may not be public support for decisions being made; thus, judges usually remain alone in their beliefs and priorities.

To handle these difficulties, judges should not be limited solely to legal knowledge of existing environmental regulations. They ought to get acquainted with, among other things, environmental scientific reports, statistics that serve as basis for predictions and forecasts, and conclusions of experts. Dealing with environmental matters and environmental law requires appropriate outlook and knowledge that will allow responsible and balanced decisions that consider global consequences. Simply put, legal knowledge should be supplemented by a humanitarian approach.

Specialized trainings for judges who deal with environmental cases are therefore not just desirable but necessary. Meetings for knowledge sharing should be more frequent, involve law and environmental experts, done on a regular basis, and occur both on national and international levels.

On this point, Justice Zariqyan acknowledged the difficulty of training judges in charge of deciding environmental matters. After all, organizing judicial trainings requires intensive human, financial, and technical resources, not to mention the number of judges that would be involved. In Armenia alone, twenty-three judges deal with environmental cases in the Administrative Court, with ten more judges in the Court of Appeals. It would be nearly impossible to train all of them, especially since cases are distributed electronically in Armenia, making it impossible to predict which judges would handle environmental cases. Justice Zariqyan posited that specialization by judges, currently under discussion in his country, may be an effective solution to this dilemma. If appropriate, a similar approach may be considered in other countries.

### **JUSTICE SAMSON OKONG'O**

*Presiding Judge, Environment and Land Court of Kenya*

Justice Samson Okong'o began by acknowledging that a gap exists between theory and practice of environmental rule of law—while environmental laws exist on the books, they only exist on paper in many countries. Laws and mechanisms for enforcement of environmental rights have not translated into perfect environmental protection: either the government's enforcement of environmental laws is ineffective, or the laws themselves have no structure for effective implementation.

Justice Okong'o then shared how Kenya promotes and upholds the environmental rule of law. It has a very progressive constitution that guarantees the right to a clean and healthy environment

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and makes environmental law treaties and conventions to which Kenya is a party part of domestic law. Kenya also has a framework law on environmental management and coordination, in addition to other sectoral laws. Further, it has a specialized court dealing solely with environment and land disputes, as well as a tribunal established under the framework law that handles disputes relating to development planning.

Justice Okong'o discussed several cases from Kenya and neighboring countries in East Africa that illustrate the environmental rule of law in action:



- (i) In the Serengeti case, the nongovernmental organization Africa Network for Animal Welfare (ANAW) sued the attorney general of the United Republic of Tanzania to challenge the intended construction of a tarmac road across the Serengeti National Park. The applicant contended that the road would have serious environmental effects on the Serengeti National Park and the adjacent Maasai Mara National Park in Kenya.<sup>2</sup> ANAW contended constructing the tarmac road was against the East African Treaty, the Rio Declaration, and the Stockholm Declaration, among others. The Republic of Tanzania argued that it was within its rights as a sovereign nation to make decisions for socioeconomic development. It also contended that it had hired environmental consultants who had advised that the negative environmental impact associated with the project could be mitigated. However, the court found from evidence on record that Tanzania's intended construction of a road across a public national park would have adverse effects that could not be mitigated. Thus, the court restrained the Republic of Tanzania from continuing with the construction of the road.
- (ii) In the Lead Acid case, residents claimed that their right to a clean and healthy environment had been violated by the construction within the residential area of a lead acid factory, the toxic waste from which caused deaths and illnesses in the villages.<sup>3</sup> Consequently, they sued several ministries in Kenya, together with the factory owners. The respondents contended that the slum dwellers exposed themselves to pollution by choosing to stay in the area. However, the court found that the slum dwellers' right to a clean and healthy environment was violated; hence, it awarded the petitioners a sum of 1.3 Billion Kenya shillings (approximately USD 10.7 million).
- (iii) In the Toilets case, the petitioners argued that the respondent government authorities (Council of Governors of Kenya, Kenya National Highways Authority, and Kenya Rural

<sup>2</sup> *ANAW v. The Attorney General of the United Republic of Tanzania*; EACJ Reference No. 9 of 2010; East African Court of Justice; 20 June 2014.

<sup>3</sup> *KM & 9 others v Attorney General & 7 others*; Petition No. 1 of 2016; Republic of Kenya – Environment and Land Court at Mombasa; 16 July 2020; eKLR.



Roads Authority) had infringed on the right to a clean and healthy environment of commuters using Kenyan highways.<sup>4</sup> Specifically, the petitioners alleged that the lack of toilets on the highways forced commuters to relieve themselves in the full glare of the public or in containers that were subsequently flung out of moving vehicles. The court found that a clean and healthy environment included physical infrastructure and road aesthetics. The court also found that the constitution obligates the state to eliminate activities that are likely to endanger the environment, such as people relieving themselves in bushes and other open spaces. The court further found that the road authorities are empowered to provide users of its services and facilities with the necessary amenities. Taking these factors into consideration, the court gave effect to the commuters' right to a clean and healthy environment by ordering that a working group on sanitation be constituted. The working group was mandated to formulate a policy for the provision of toilets and other sanitation facilities on the country's road network.

- (iv) In the Nairobi River and Dandora dumpsite case, the petitioners alleged that the respondents had violated their right to a clean and healthy environment by allowing a dumpsite next to rivers, which in turn polluted the rivers.<sup>5</sup> Petitioners sought orders compelling the respondents to adopt the precautionary principle in preventing the upstream and downstream pollution of the rivers, as well as facilitate the restoration of the rivers. The court found for the petitioners.
- (v) In the Plastics case, the government banned single-use plastic carrier bags in Kenya, which led to the filing of a suit to challenge the ban.<sup>6</sup> The Environment and Land Court of Kenya ruled that the ban did not violate any procedural or substantive law. The court said that the cabinet secretary for environment had the power to issue the gazette notice, as the state was constitutionally required to eliminate processes and activities that are likely to endanger a clean and healthy environment. The court characterized this right as the highest in the hierarchy of constitutional rights—the right to a clean and healthy environment itself is a sustainer of life, from which all other rights gravitate.
- (vi) In *Patrick Kamotho Githinji & 4 others v Resjos Enterprises Ltd. & 4 others*, the petitioners asked the court to stop the construction of a road next to their residence, on the ground that the works were being undertaken illegally without an environmental impact assessment.<sup>7</sup> Petitioners also accused the respondents of indiscriminately cutting down trees that provided shade and fresh air to the residents. In its ruling, the court accepted the petitioners' contention that the respondents had indeed violated their right to a clean and healthy environment. Interestingly, the court agreed with the respondents' contention that the petitioners had submitted no specific scientific proof that the ailments allegedly being suffered by them resulted from the road project. However,

<sup>4</sup> *Adrian Kamotho Njenga v Council of Governors & 3 others*; ELC Petition No. 37 of 2017; Republic of Kenya – Environment and Land Court at Nairobi; 16 January 2020; eKLR.

<sup>5</sup> *Isaiah Luyara Olando & another v National Management Environmental Authority & 2 others, County Government of Nairobi & 5 others (Interested Parties)*; Constitutional Petition No. 43 of 2019; Republic of Kenya – Environment and Land Court at Nairobi; 15 July 2021; eKLR.

<sup>6</sup> *Kenya Association of Manufacturers & 3 others v Cabinet secretary, Ministry of Environment and Natural Resources & 3 others*; ELC Petition No. 32 of 2017; Republic of Kenya – Environment and Land Court at Nairobi; 22 June 2018; eKLR.

<sup>7</sup> *Patrick Kamotho Githinji & 4 others v Resjos Enterprises Ltd. & 4 others*; ELC Petition No. 8 of 2021; Republic of Kenya – Environment and Land Court at Nairobi; 3 March 2022; eKLR.

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the court held that it was appropriate to apply the precautionary principle, *in dubio pro natura*—in case of doubt, matters should be resolved in a way most likely to favor the protection and conservation of the environment. In the final order, the court stopped the construction of the road in question until an environmental impact assessment is undertaken and the petitioners' concerns are addressed.

### FEDERAL JUDGE MARCUS LIVIO GOMES

*National Council of Justice (CNJ) of Brazil*

Federal Judge Marcus Livio Gomes gave an overview of SireneJud, the tool being developed by the National Council of Justice (CNJ) of Brazil in partnership with the United Nations Development Programme (UNDP). SireneJud is an initiative by the judiciary of Brazil that aims to harness technology in the fight against deforestation and illegal mining. It is intended to improve the conduct of hearings and other judicial processes, as well as support prosecutors and other institutions involved in the enforcement of environmental and climate change laws.

The concept of SireneJud flows from Brazil's focus on the 2030 Agenda for Sustainable Development and supports three sustainable development goals (SDGs): climate action (SDG 13), life on land (SDG 15), and peace, justice and strong institutions (SDG 16). SireneJud gathers information from the National Justice Database (Datajud). To put the complexity of this initiative in perspective, Datajud is a centralized database that contains



metadata of 300 million cases, both pending (currently more than 300,000) and closed. Of this number, almost 1 million are environment-related lawsuits filed since 2015. These cases are in turn the source of information for SireneJud.

On the main menu of SireneJud, a user can select several layers of environment data, such as deforestation polygons, indigenous territories, traditional occupied lands, protected and reserved areas, national parks, private sites, mine locations, federal roads, water bodies, and several other information continuously updated by data mining robots, machine learning tools, and data gathering algorithms. Data sets are updated daily and anyone can download the full spreadsheet containing the polygons and attributes. For instance, a screenshot can show a deforestation area (in red and orange) identified by remote-sensing metals, using satellites that periodically monitor Brazilian territory and provide information on forest covers. It can also show judiciary units or courts that handle environment cases (marked with black dots), organized by geographic coordinates.

This platform is open to the public, such that any interested person or citizen can click on a black dot and obtain specific metadata relating to each environment or climate change case. At the same time, SireneJud allows judges and public prosecutors to see the exact location of land being discussed in a judicial case and to identify territories that are relevant or protected by law. This functionality allows these factors to be taken into consideration during the trial and decision-making process, and is particularly useful and convenient for Brazil due to its considerable size.

Judge Gomes then described SireneJud's notable attributes, which include:

- (i) **General features** such as (a) integrating Federal Public Prosecution data about environmental class actions, which allows the judge and federal prosecutors to exchange information remotely and update information online; (b) zeroing in on the area where the environmental damage occurred and where the regional court trying the case is located; and (c) aiding the correct specification of each damage.

With one click, SireneJud displays a mix of judicial and geographical metadata, including the full description of a case. Other attributes—such as environmental claims, the name of the judicial court, the status of the proceedings, timestamps, and the name of juridical parties—are also available.<sup>8</sup> SireneJud likewise allows the use of several filters to refine a search, such as year, the court's acronym, and justice segments. Each attribute can be identified, filtered, and processed individually, as well as in combination with others, so that a user can easily access specific information needed. Further, by clicking on *Data Panel-General* on the lefthand side, statistics from the Datajud database (e.g., total number of processes, number of processes in progress, and number of current cases) can be viewed, in addition to the geographical representation of maps.

Notably, the database was developed using free software. This tool is thus readily available for sharing with other countries. Also, since it allows different data sources through web servers, interoperability of data from different institutions is enabled. The layers are programmatically updated by data mining robots, promoting process

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<sup>8</sup> The system automatically filters information about natural persons to maintain their privacy.



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optimization and reducing human intervention and errors. Moreover, the judiciary data that originates from CNJ is updated daily and is publicly available in table format (.csv file) and geospatial layer format (shapefile) in a machine-readable way. This functionality enhances user convenience.

- (ii) **Automated reports**, which are created using Datajud and provided periodically to courts and judges. This feature helps case management, as it identifies the constraints in the proceedings and excessive delays. Judiciary agents, judges, and prosecution service are the target users. The reports contain various information: the caseload per court and state; aggregate numbers of pending cases in a timeline; average ruling time per court and per judge; average proceeding duration; cases with the longest proceeding duration; nationwide environment-related caseload plotted in a timeline and categorized by month and court level; and many other information.
- (iii) **New layers**, such as integration with a federal prosecution service initiative called *Amazônia Protege*—in English, “protect the Amazon”—consisting of a task force that aims to combat illegal deforestation in the Brazilian Amazon forest. With a new work methodology that uses satellite image and cross-reference of public data, more than six sectors deforested between August 2007 and December 2019 have been mapped. The prosecution service has also filed 1,000 public civil actions for illegal deforestation and illegal mining in the Amazon, against 2,000 defendants, for a total of almost 1 billion dollars in compensation for damage to 200 hectares of degraded forest.
- (iv) **New tools**, such as polygon creation tools, through which damaged areas are clearly identified and complex calculations are easily computed (like the total area currently disputed in the Brazilian judiciary and the average area in the most affected states and municipalities). A user can download and export polygons to be used in other geospatial technology tools or pasted to judicial petitions.

Moving forward, SireneJud is envisioned to further improve and integrate with artificial intelligence (AI) initiatives. These initiatives include:

- (i) **Integration with CODEX**. CODEX is a data management platform that supports the use of AI for judicial information. Currently, the justice AI models are available on the synapse platform, which congregates Brazilian courts’ initiatives to share and leverage solutions. Currently containing more than 41 AI projects, the platform will host other thematic models. More effective, useful, and managed data is essential to sustain good AI models with a consistent degree of accuracy and precision;
- (ii) **Partnership with the Federal University of Rio Grande do Norte** to develop models that can automatically identify environment-related cases; and
- (iii) **Creation of algorithms** that can identify climate change-related cases and decisions.

**Justice Antonio Herman Benjamin** of the National High Court of Brazil capped the presentation of Judge Gomes by underscoring that SireneJud is the most sophisticated judicial system in the world on two fronts: (i) for monitoring where deforestation is happening with real-time satellite data (e.g., location of damage), and (ii) for enhancing transparency about judges

and their cases (e.g., status and how long a case is pending). SireneJud also hosts other critical data, such as the number of suits in São Paulo and Rio protecting the Atlantic forest, which is even more critically endangered than the Amazon; how effective judicial implementation is in the south of Brazil; and the protection of the coast, dunes, and the Atlantic forest in the Northeast. Justice Benjamin concluded by congratulating Federal Judge Gomes, Chief Justice Luiz Fux, and the whole CNJ for making SireneJud a reality.

### **CARL BRUCH**

*Director of International Programs, Environmental Law Institute*

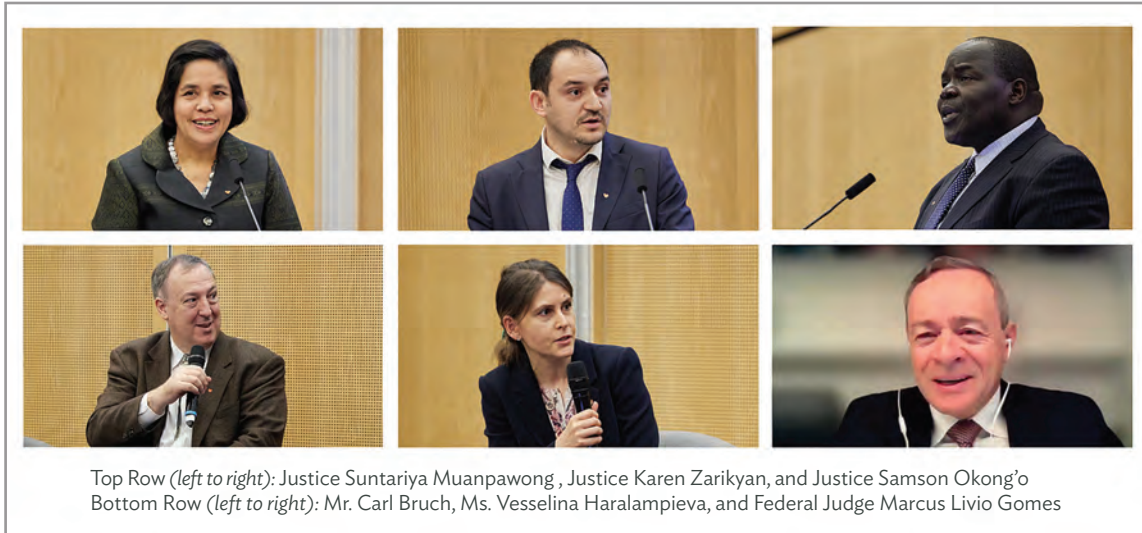
Mr. Carl Bruch, co-chair of Panel Session 5, seconded the sentiment of Justice Benjamin. Acknowledging how truly impressive SireneJud is, Mr. Bruch drew a contrast against the lack of a similar tool in Colombia, where multiple stories have emerged of judges being threatened because instances of deforestation and land grabbing in the Colombian Amazon were allegedly linked to organized crime. In fact, sixty environmental defenders were killed in Colombia from January to March 2022. Considering this, the issue is not just about judicial capacity but also judicial survival—how do we empower a colleague who, in issuing a decision, puts his or her life (or his or her family's life) on the line?

Mr. Bruch asked the panelists' perspectives on this issue, which goes fundamentally to the ability of judges to fulfill their roles with integrity and to achieve environmental rule of law.



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### Discussion for Panel Session 5



**Justice Muanpawong** confirmed that Thailand suffers from the same situation—many environmental defenders are killed. However, Justice Muanpawong asserted that the threshold need is helping people identify what would qualify as an environmental case, as the international trend frequently focuses instead on administrative, civil, or criminal cases.

The role of nongovernment organizations (NGOs) and the work of the communities are therefore of critical importance. To illustrate, sometimes villagers in rural areas cannot even understand the language of environmental justice. Worse, it becomes even more difficult for them to have access to justice. This is where the partnership of NGOs and civil society organizations (CSOs) with the public becomes instrumental.

However, Justice Muanpawong noted that the government sometimes intrudes on the work of NGOs and CSOs. This illustrates how intellectual integrity is critical not only for judges but also for the government. The government must understand the big picture—that people can and do step up to protect the environment when the state or its officials cannot or do not do so on their own. As such, when civil society is weak, the government should provide support.

Turning to Kenya, **Justice Okong'o** explained that revenge killings of judges is thankfully not prevalent in his country, although in 2021 an environmental activist was murdered in Laikipia. In the few instances when the life of a judge was at serious risk—albeit in political cases rather than the environmental sphere—his or her security was strengthened. Justice Okong'o noted that Kenya has a great constitution and environmental laws, but not many environmental cases find their way to court.

Next, **Justice Syed Mansoor Ali Shah** of the Supreme Court of Pakistan emphasized that AI, machine learning, and technology are very important for courts. After all, technology facilitates collection of verified data to enable better judicial reforms and improve governance. Pakistan is



working in this area and Justice Shah posed several questions to Federal Judge Gomes regarding SireneJud:



- (i) Does SireneJud provide information on how long a case takes to be decided, and can it identify the case that has taken the longest to be decided?
  - **Federal Judge Gomes' response:** Federal Judge Gomes first discussed how technology and government support must work hand in hand to effectively tackle deforestation and illegal mining, as well as other illegal activities and special invasion of indigenous areas. This is an especially important factor—although 1/3 of the Brazilian territory is characterized as indigenous and protected areas, agrobusiness movement into the forests has been aggressive. Nevertheless, to answer the question squarely, the average duration of environmental cases in federal courts is three years, but there have been a few cases in the Brazilian National Court of Appeals that have lasted longer.
- (ii) Is there a central repository system where the entire data set collected for the country is housed? Is there a location for that data, is it somewhere that can be visited, and is it central?
  - **Federal Judge Gomes' response:** SireneJud tries to get information from public dataset sources, of which there are currently 85. As such, information search is not centralized in the national courts of justice, although information can be integrated in this system and is updated daily. Notably, the judiciary is creating a data link with more than 300 million lawsuits, including environmental law-related cases.
- (iii) Can data mining robots be explained further? How does that work? Particularly, what are the possible algorithms that may be developed via AI to identify environmental cases? Justice Shah noted that in many environmental cases, people are not articulate enough to explain what the environmental issue is, and it takes time for a judge to identify the same. For example, in Pakistan, plaintiffs in two cases did not mention the climate change dimension, until the judge evaluated the matter and determined that these were climate change cases.
  - **Federal Judge Gomes' response:** One of the CNJ IT teams, the Alpha team, is working on an ongoing project involving AI that will facilitate the classification of class actions/lawsuits. At present, prosecutors in Brazil classify cases (e.g., climate change, environmental law, illegal mining, etc.). However, there have been instances where cases were wrongly classified. Thus, the main idea for the project is that the system—AI, robots, and algorithms—can check the information provided by prosecutors to determine the accuracy of the information and the case classification, and to create layers to make the information more accessible.

Justice Benjamin then offered a few additional comments on SireneJud.

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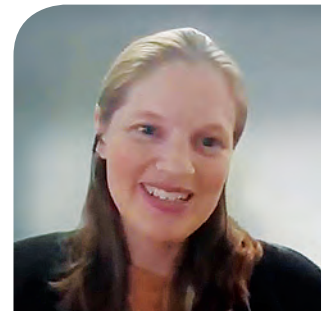
First, the sophisticated system of SireneJud cannot be replicated in countries where courts still work with paper files. In Brazil, 100% of cases (including evidence) are electronic. AI can thus be leveraged to gather information that might not be in the case judgment itself, such as an expert's testimony.

Second, on the duration of cases, Justice Benjamin emphasized that CNJ has disciplinary powers. As such, delays have repercussions, both criminal and civil, especially in instances when delay already achieves the purpose of one of the parties to a case. For example, sometimes the plaintiff (e.g., federal office of the attorney general) does not want immediate restoration but to just block a piece of land out of the market. The mere filing of a suit thus results in the land not getting sold or circulated in the market, as nobody would buy land under litigation.

The most longstanding case of this nature is from São Paulo, against the biggest industrial petrochemical complex. The lawsuit was brought 30 years ago. Because of delays in resolution, the reliefs prayed for by the plaintiffs have now been achieved—several plants in the complex were shut down, restoration was completed, and people were fired.

**Ms. Georgina Lloyd Rivera**, regional coordinator of Environmental Law and Governance at UNEP Asia-Pacific, then asked Justice Muanpawong what must be done in Thailand to encourage judges to ensure execution of a judgment.

Justice Muanpawong replied that in Thailand, the court's role after judgment is unclear due to lack of legislation. Thus, the first step in Justice Muanpawong's view is a review of laws. Another possibility is to mirror the New York model of a problem-solving court like the juvenile court or women's court under domestic violence law.



Justice Okong'o also mentioned that in Kenya, the issuance of structural interdicts to monitor and supervise enforcement is one important measure adopted to deal with difficulties in enforcing a judgment.

**Justice Zarikeyan** added that an effective system ensuring execution of court decisions is extremely important—access to justice and the right to a fair trial are not limited to the ability to file a case and secure a court decision. In Armenia, while there are many problems in execution of decisions, it is not typically a concern in environmental cases.

Federal Judge Gomes further opined that enforcement is not easy in any part of the world. Nonetheless, SireneJud aims to align technology with enforcement. The plan is to enhance the ability of the judge to use data directly in case adjudication by including polygons of lawsuits and class actions (already identified by prosecutors) in the map. As such, expert evidence would not be needed to assess damage, because the damage could be seen online. This is innovative and may change the way decisions in lawsuits regarding environment law and climate change are enforced.

Thereafter, **Justice Ambeng Kandakasi**, deputy chief justice of the Supreme and National Courts of Justice of Papua New Guinea, weighed in on the benefits of going paperless. He mentioned that the judiciary in Papua New Guinea is currently working on an e-judiciary project, in an effort to preserve the environment. He even challenged those present to move



in that direction if they still do not have an e-judiciary. However, he expressed concern over the lack of raw data. To this end, he observed that the satellite base for SireneJud appeared to zoom in on certain areas, and wondered if that technology or ability could be adopted by Papua New Guinea through link-sharing. Technologies like this would empower its judiciary to expedite the process from filing to final disposition, which it aims to complete within 12 months.

Still on information available on the SireneJud database, **Justice Michael Wilson** of the Supreme Court of Hawaii raised anew the issue of killing of environmental defenders. He underscored the concern of the Global Judicial Institute on the Environment (GJIE) and wondered whether SireneJud could be used as a focal point in identifying and resolving murders. Justice Wilson expressed hope for a GJIE working group to explore this idea, applying the rule of law to protect not only the planet but also its people.



In response to Justice Kandakasi and Justice Wilson, **Mr. Bruch** mentioned that in terms of raw data collection, he could refer a colleague who works at the National Aeronautics and Space Administration (NASA). NASA collects a lot of useful data that can be accessed for free. The remaining questions would be how to access and process this data.

In closing, Ms. Haralampieva gave a succinct synthesis of the session topics: intellectual integrity, threats to judges working on environmental matters, upholding environmental rule of law, technology, and enforcement of judgments. She ended by thanking the panelists for their insightful presentations.



## Panel Session 5



### JUSTICE SUNTARIYA MUANPAWONG'S PRESENTATION

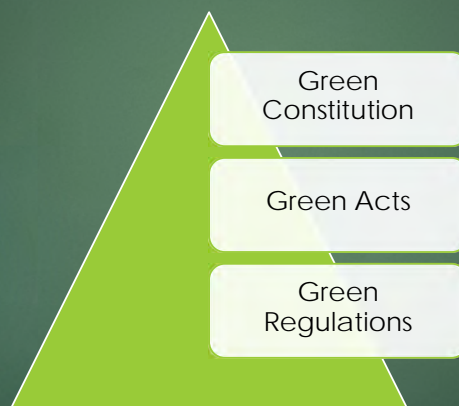
## Intellectual Integrity of Green Judges

JUSTICE SUNTARIYA MUANPAWONG, DR. JUR.  
VICE CHIEF JUSTICE OF THE REGION 5, THAILAND

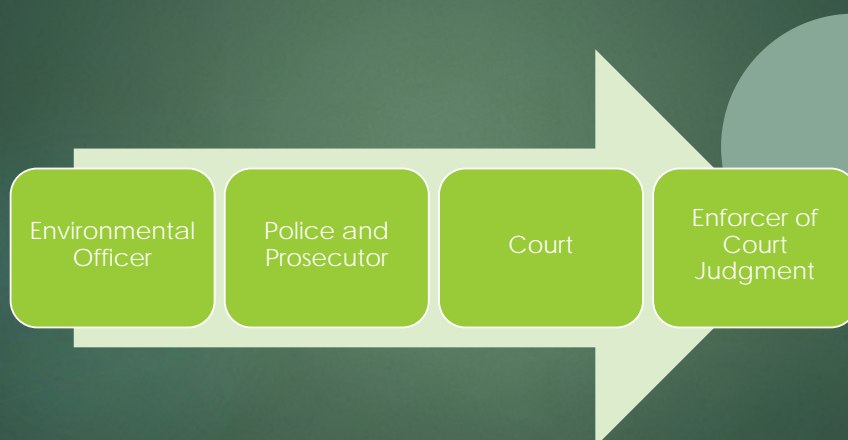
## Environmental Problems in Thailand



## Environmental laws in Thailand



## Environmental Law Enforcers



## The Judiciary and the Environment

- ▶ Green Bench
- ▶ Green Decision
- ▶ Green Education
- ▶ Green Collaboration and Network
- ▶ Etc.

## Intellectual Integrity

- ▶ Intellectual integrity is the discipline of striving to be thorough and honest to learn the truth or to reach the best decision possible in a given situation.
- ▶ A person with intellectual integrity has a driving desire to follow reasons and evidence courageously wherever they may lead.
- ▶ Individuals who strongly manifest intellectual integrity value objectivity, evidence-based decision making, and the courageous, fair-minded, and complete pursuit of the best possible knowledge in any given situation



## Green Judges and Intellectual Integrity

- ▶ Aware of social and economic problems
- ▶ Learn well about environmental ethics
- ▶ Believe in the interdisciplinary approach
- ▶ Ready to use science and technology
- ▶ Realize the vital role of the court
- ▶ Dream of the problem-solving court model
- ▶ Etc.

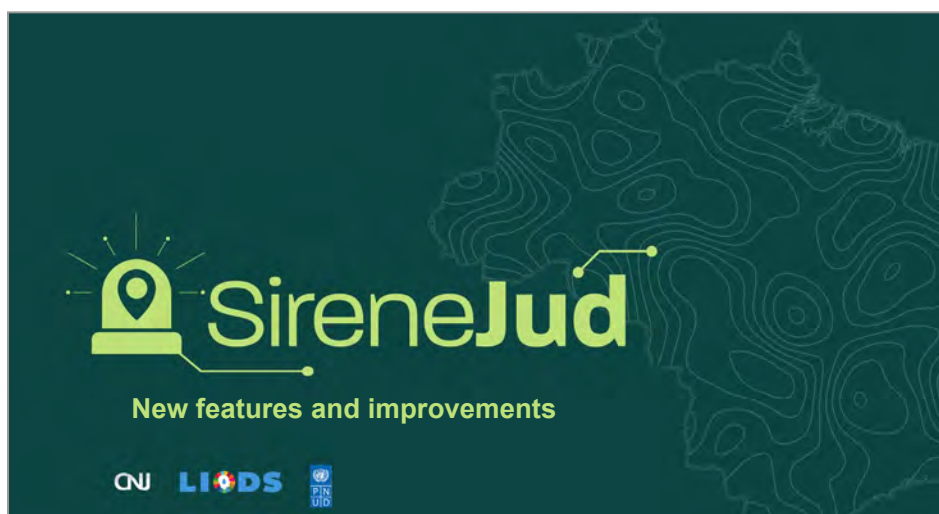
Thank you very much indeed !



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### JUDGE MARCUS LIVIO GOMES' PRESENTATION





## 2030 Agenda for Sustainable Development

Sirenejud observes the following **Sustainable Development Goals**:

- ✓ **SDG 13** – Climate Action
- ✓ **SDG 15** – Life on land
- ✓ **SDG 16** – Peace, Justice and Strong Institutions





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### SireneJud: Environmental Data Panel

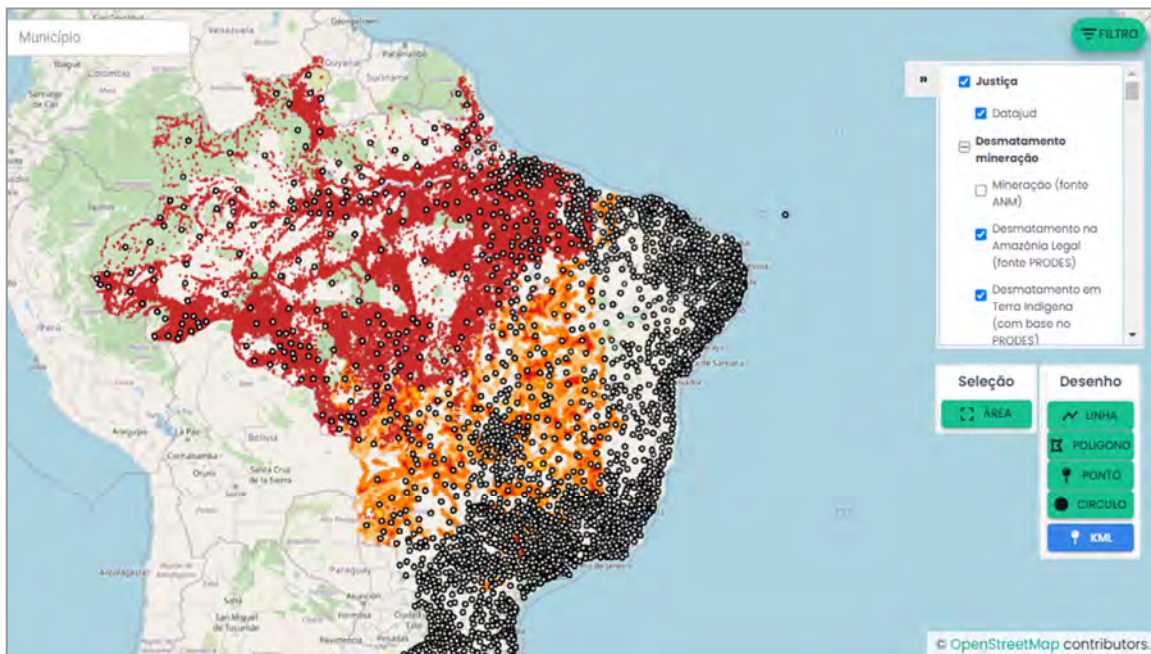
**DATAJUD**

**NATIONAL JUSTICE  
DATABASE**

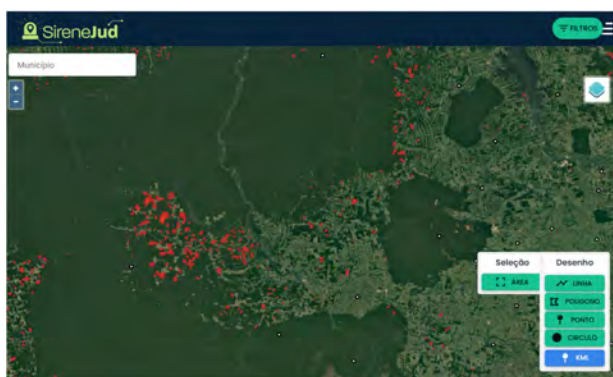
- Sirenejud uses a subset of Datajud
- It automatically identifies cases related to environmental protection by using filters regarding its themes and procedural classes



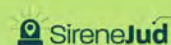
**SireneJud**



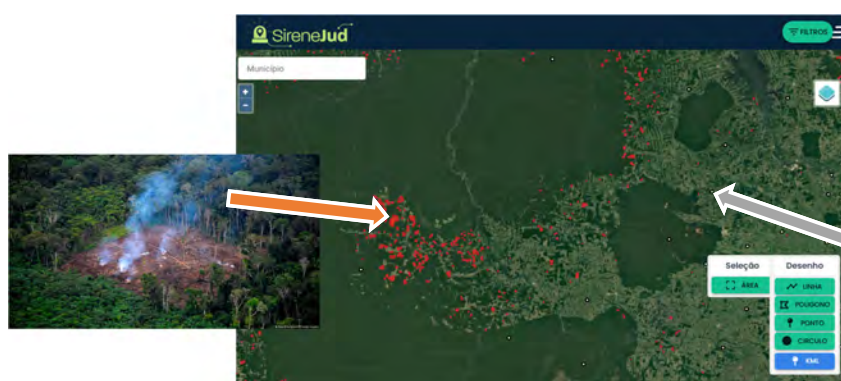
## Deforestation data: new data layers



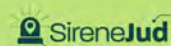
- ✓ Recently integrated with the Federal Public Prosecution data about environmental class actions
- ✓ It is possible to see the regional court location where the case is being held and the area where the environmental damage occurred
- ✓ There is a tool to draw polygons and shapes that can aid the correct specification of the damage



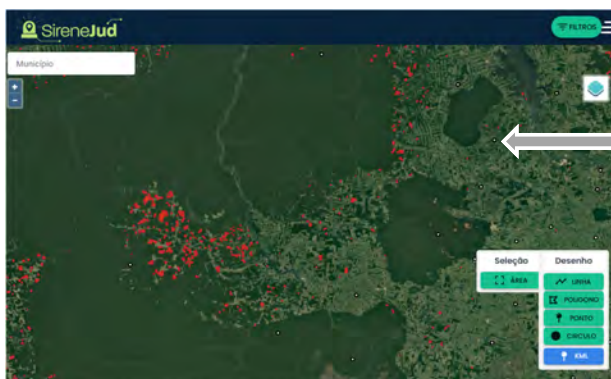
## Deforestation data: new data layers



**Judicial Case Information  
(daily updated)**  
Case number: 0003747-  
38.2019.8.14.0062  
Proceeding type: Criminal  
Court: TJPA



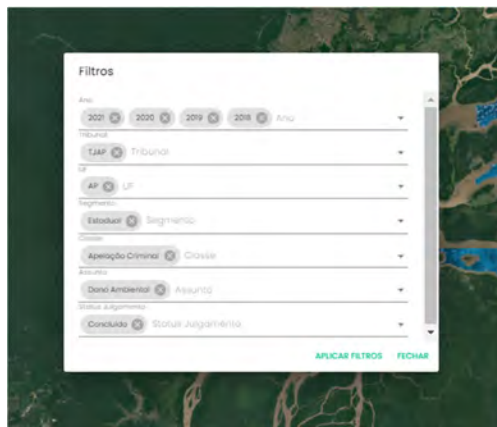
### Example of judicial case attributes



#### Judicial Case Information

Case number: 0003747-38.2019.8.14.0062  
 Proceeding: Criminal – ordinary proceeding  
 Court type: State court  
 Court level: First instance  
 Court id: 6466  
 Court name: TJPA  
 State: Pará  
 Ruling description: Municipality: TUCUMA  
 Topic: Crime against Environment and Genetic Heritage  
 Judge instance: VARA UNICA DE TUCUMÃ  
 Ruling status: Concluded  
 Opening date: 22/07/2019  
 Duration of case in days: 617  
 Plaintiff:  
 Defendants:

### Judicial data handling tools



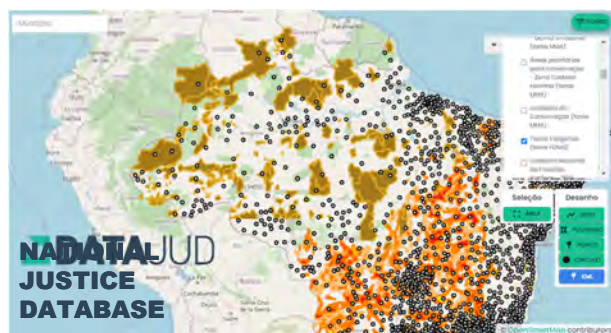
- ✓ Each attribute of the environmental case can be identified, filtered and processed individually
- ✓ It increases the transparency of the judicial case and allows the individuals and institutions to be aware of the Judiciary work
- ✓ The search is public and geospatially oriented
- ✓ The statistics about the Judiciary cases are also publicly available



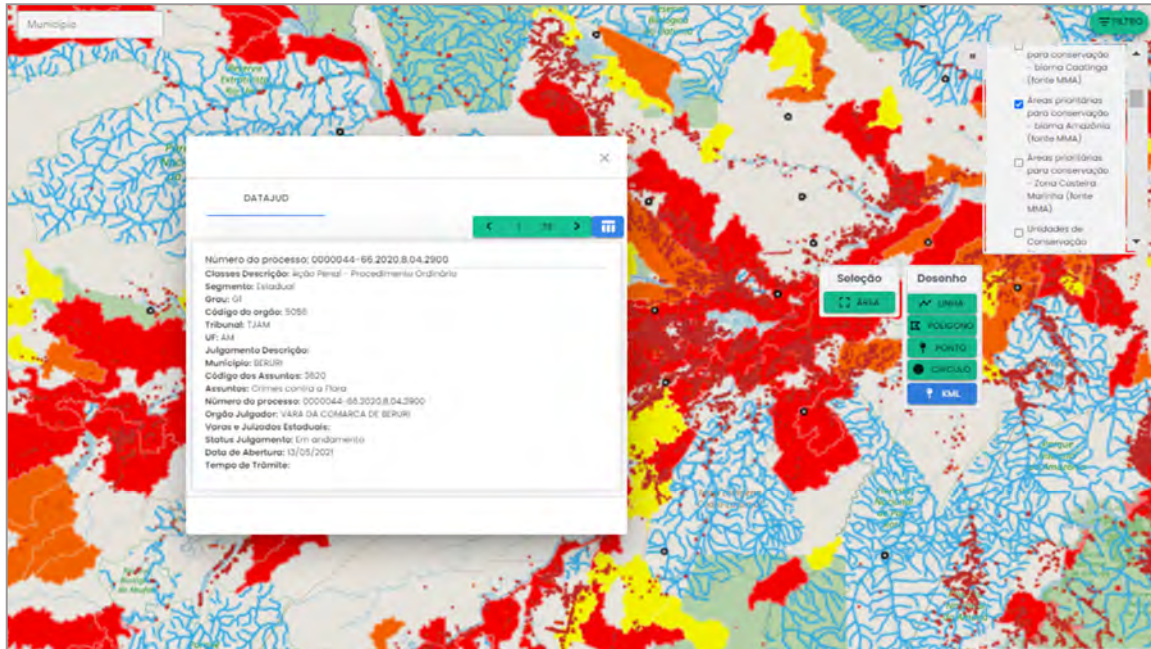


## Interinstitutional integration: API and webservices

- ✓ Some layers are programmatically updated by data mining robots
- ✓ It promotes process optimization and reduces the need of human intervention and errors
- ✓ Also, the data source originated by the Judiciary itself is daily updated and publicly available to the society
- ✓ The Judiciary data originated from the National Council of Justice is available in table format (csv) and in geospatial layer format (shapefile) in a machine-readable way



## Panel Session 5



## Sirenejud Intelligence Report

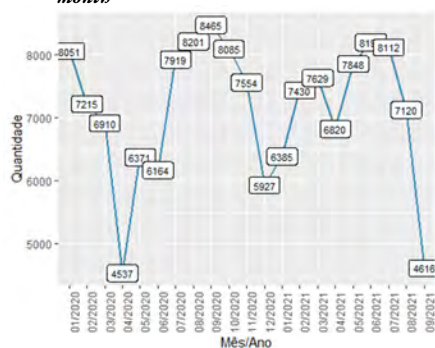
✓ **Judicial report:** shows the environmental caseload and the following information:

1. Caseload per court and State;
2. Aggregated numbers about the pending cases in a timeline;
3. Average ruling time per court and per judge;
4. Ranking comparing court judges by the average proceeding duration;
5. Sample containing the cases with the biggest proceeding duration;
6. Nation-wide caseload about environment plotted in a timeline and categorized by month and court level.

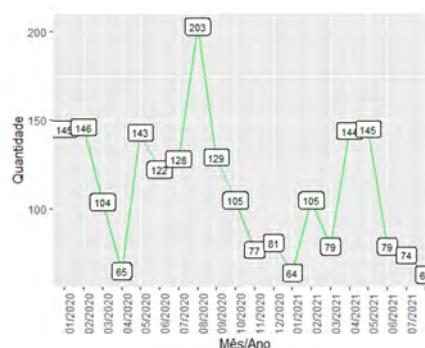


## Judicial caseload timelines: a business intelligence approach

*Plot 1: Timeline containing the sum of environmental cases opened in Brazil per month*



*Plot 2: Timeline containing the sum of environmental cases opened in a specific State Court per month*



## Judicial caseload timelines: a business intelligence approach

**Table 1: Average proceeding time ranked by Court**

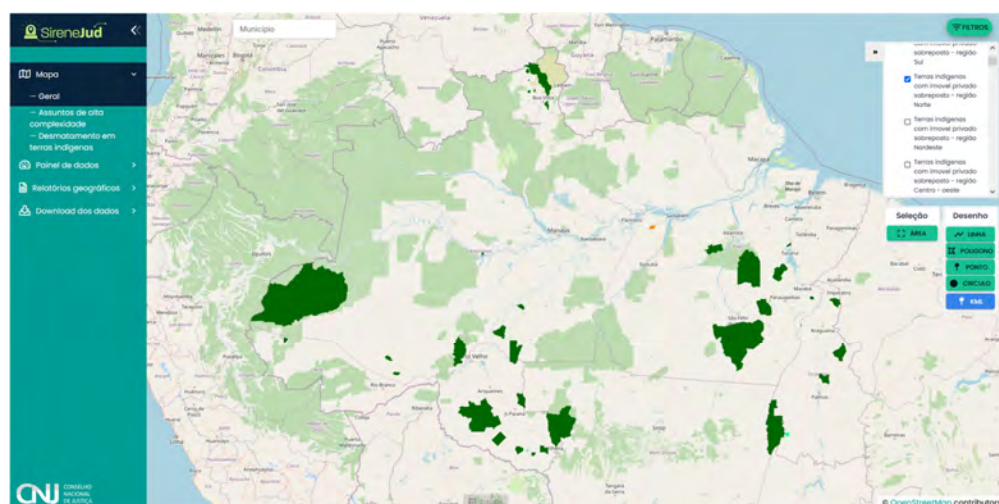
Court	Caseload	Average proceeding time
TJRR	1.588	566
TJRO	4.580	658
TJAP	590	740
TJAC	675	941
TJMT	15.424	965
TJMA	1.132	1.117
TRF1	32.331	1.130
TJAM	5.718	1.154
National Average	574.677	1.188
TJTO	1.769	1.262
TJPA	17.943	1.863



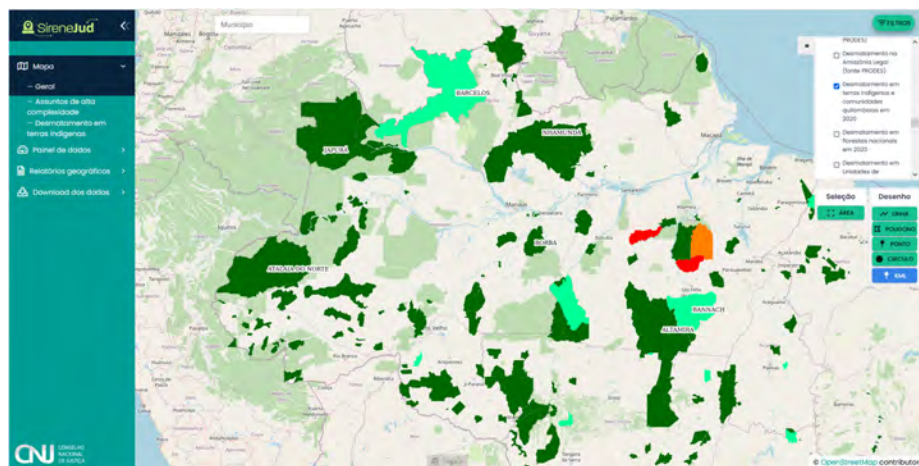
## Federal Prosecution Services Integration



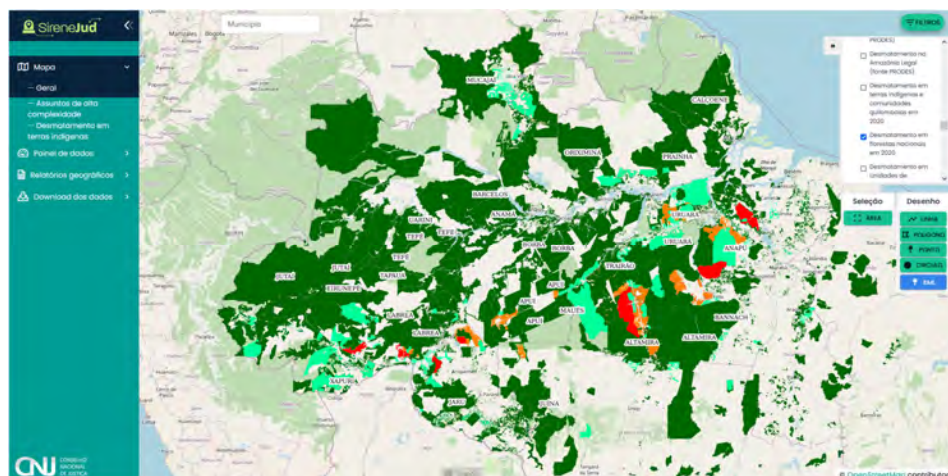
## Self-declared private area irregularly declared in indigenous lands



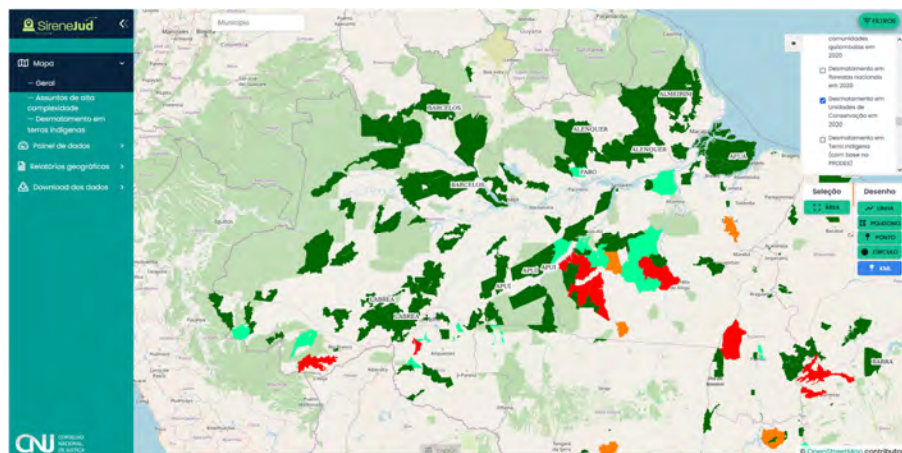
## Heatmap for indigenous lands with the most areas of deforestation



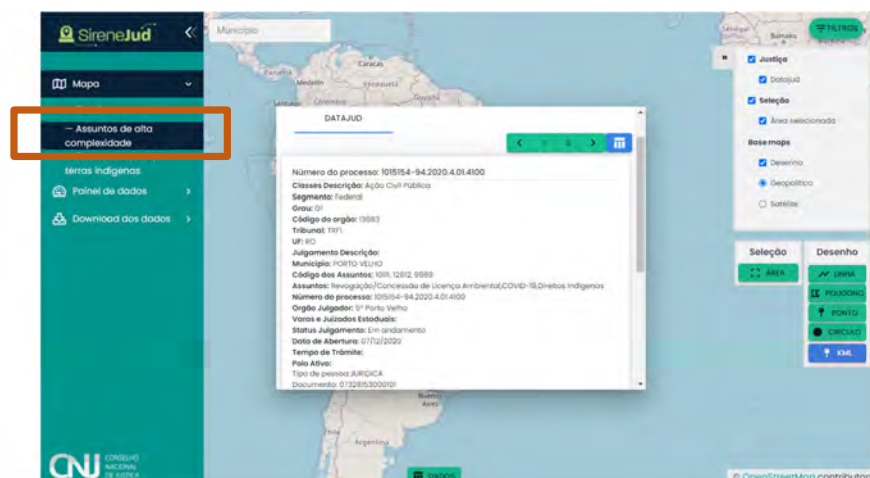
## Deforestation in national forests



## Deforestation in conversation areas



## High complexity environmental issues





## Polygon creation tools

- ✓ Sirenejud allows now the creation of polygons in its own interface
- ✓ The user can download and export the polygons so it can be used in other Geospatial Technology Tools
- ✓ It can be easily pasted to the judicial petitions



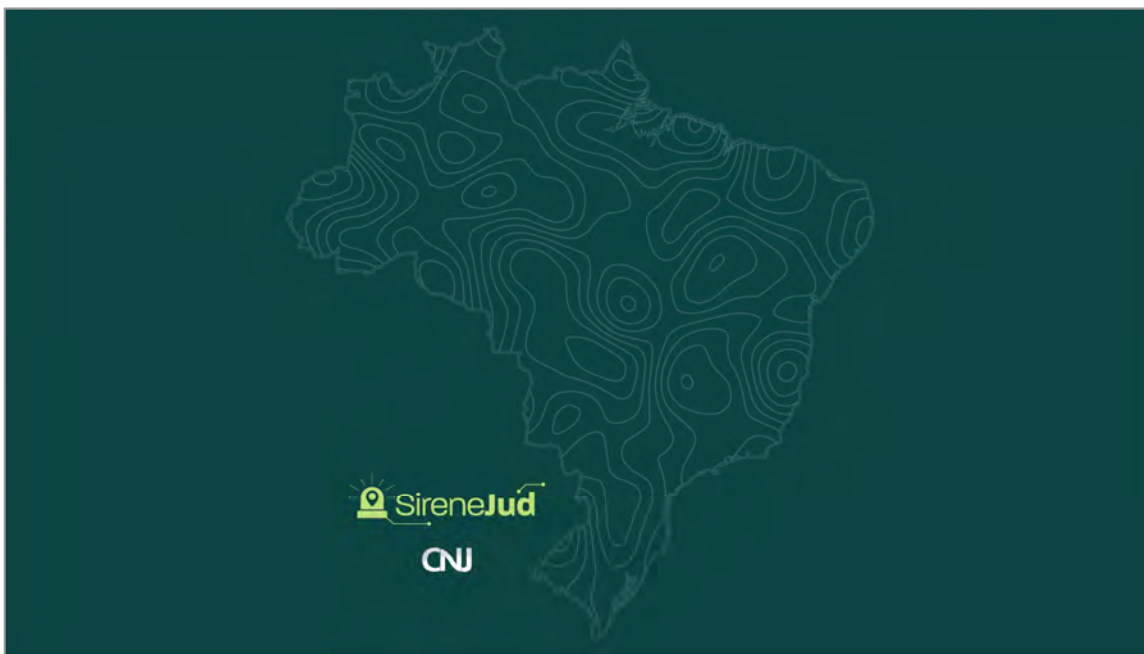
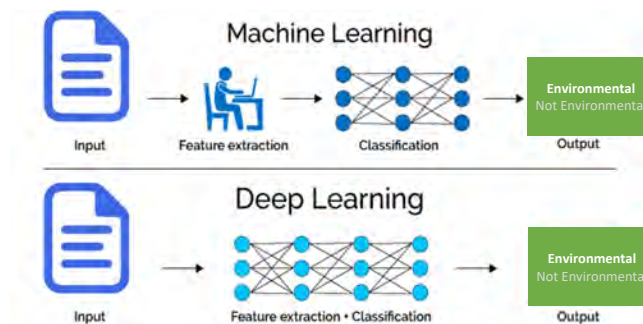
## Polygon and geometrical creation

- Open File format (**KML**)
- It allows many types of shapes:
  - Polygon – useful for deforestation areas
  - Circle – for air quality damages and pollution
  - Lines – for water bodies and streams




### Next steps: evolution and opportunities

- Integration with CODEX: platform to provide judicial information aimed at AI models training
- Partnership with the Federal University of Rio Grande do Norte to create AI models to automatically identify environmental-related cases
- Creation of algorithms that can classify judicial cases and decisions about climate change







A hillside in Da Nhim, Viet Nam shows some evidence of logging. Cutting of trees is still permitted on a very limited scale at the Bidoup Nui Ba National Park, despite its status as a protected area (photo by Lester Ledesma/ADB).





Climate change disproportionately impacts women, children, older adults, indigenous peoples, the poor, and coastal and agrarian societies (photo by Eric Sales/ADB).





# 12

## PANEL SESSION 6:

Access to Justice: Nature,  
Indigenous Peoples and  
Environmental Rule of Law

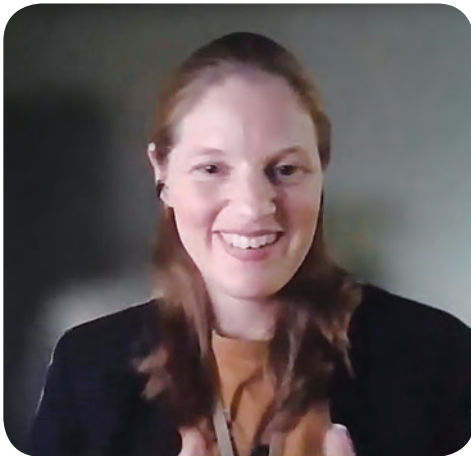


## PANEL SESSION 6

### Access to Justice: Nature, Indigenous Peoples, and Environmental Rule of Law

#### MS. GEORGINA LLOYD

*Regional Coordinator (Asia and the Pacific), Environmental Law and Governance of United Nations Environment Programme (UNEP), Bangkok*



Ms. Georgina Lloyd welcomed participants to the panel session on Access to Justice: Nature, Indigenous Peoples, and Environmental Rule of Law, which she co-chaired with Ms. Maryna Yanush, from the Aarhus Convention Secretariat of the United Nations Economic Commission for Europe (UNECE).

Ms. Lloyd recalled that at the 40th anniversary celebration of the Montevideo Programme for the Development and Periodic Review of Environmental Law, environmental human rights defenders shared their experiences. Many of these defenders are indigenous peoples whose lands, territories, and resources are threatened by relentless unsustainable

development that places profit over the planet's ecosystem health, ultimately threatening the ability of future generations to have access to nature and healthy ecosystems. Some of the threats faced by environmental defenders were discussed in the previous session.

In addition, the failure to reach any of the 2020 Aichi Biodiversity Targets is reflective of the biodiversity crisis.<sup>1</sup> The ongoing harassment, deaths, and intimidation of indigenous peoples and other defenders of environmental human rights are also symptoms of the biodiversity crisis. Thus, this panel session explored the role of access to justice—as a critical component of the environmental rule of law—in addressing the biodiversity crisis, and the serious consequences of nature being threatened that disproportionately impact indigenous peoples.

Sustainable Development Goal (SDG) 16.3 calls on states “to promote the rule of law at the national and international levels and

Scan the QR code  
to watch Panel Session 6  
on YouTube.



<sup>1</sup> United Nations Environment Programme. 2010. Decision adopted by the conference of the parties to the convention on biological diversity at its tenth meeting. UNEP/CBD/COP/DEC/X/2. 29 October. Nagoya.





While everyone should have access to justice, we must work particularly hard to ensure that groups at greater risk of injustice are protected and they are able to exercise their rights, hold duty bearers accountable, and advocate free from intimidation for a clean, healthy, and sustainable environment.

– **Ms. Georgina Lloyd**

*Regional Coordinator (Asia and the Pacific), Environmental Law and Governance,  
United Nations Environment Programme*

ensure equal access to justice for all.”<sup>2</sup> While everyone should have access to justice, more work is required to ensure that groups at greater risk of injustice are protected and able to exercise their rights, that duty bearers are held accountable, and advocacy for a clean, healthy, and sustainable environment is free from intimidation. While the panelists could look to the Escazú Agreement and the proposed post-2020 global biodiversity framework, the question remains—what else should be done to ensure access to justice for those who seek to fundamentally change the trajectory of nature’s destruction?<sup>3</sup>

## **MR. ARNOLD KREILHUBER**

*Deputy Director, United Nations Environment Programme Law Division, Nairobi*

Mr. Arnold Kreilhuber talked about environmental defenders: the protection of rights and lives that courts and laws could provide to them, the support that they need from society, and further actions that promote and strengthen the environmental rule of law to enable their continued participation.

He reiterated that judges play an essential role in analyzing and contextualizing the emerging influence of environmental human rights. This corresponds with the worldwide growth in independent judiciaries or courts with jurisdiction to hear constitutional matters and advance new constitutional rights and access to justice. Courts can ensure the security of environmental

<sup>2</sup> United Nations General Assembly. 2015. *Transforming our world: the 2030 Agenda for Sustainable Development*. A/RES/70/1. 21 October.

<sup>3</sup> 2018. [Regional Agreement On Access To Information, Public Participation And Justice In Environmental Matters In Latin America And The Caribbean](#). Escazú. 4 March. *United Nations Treaty Series*, vol. 3398C.N.195.

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defenders and support the effective continuity of their work. Across all regions, courts are vindicating rights in a wide variety of settings—including mining, water, and air pollution—and continually recognizing new rights.

While many courts have expanded standing in environmental suits to address the significant challenges of environmental protection, they continue to grapple with new issues related to their role in protecting environmental defenders. For example, the upcoming UNEP report on environmental courts and tribunals will outline that

Strategic Lawsuits Against Public Participation (SLAPP) are often brought by claimants on non-environmental grounds. This means that SLAPP cases are heard in general courts, whose judges may lack expertise in environmental matters. This could result in judges overlooking genuine environmental issues and failing to dismiss SLAPP cases on grounds of injustice.



Mr. Kreilhuber warned that this failure to dismiss unjust SLAPP cases leads to dangerous and traumatic consequences for environmental defenders and substantially impedes environmental justice and protection. According to the Business and Human Rights Resource Centre, at least 355 SLAPP cases were filed during 2015–2021. Of this number, 224 involved criminal charges, primarily libel or defamation.<sup>4</sup>

Because environmental defenders play an important role in upholding, implementing, and advancing the environmental rule of law, their legal rights and lives must be vigorously protected by courts. This highlights the need for judges to enhance their understanding of environmental issues. The Global Judicial Institute on the Environment (GJIE) shares this objective, emphasizing that judges must possess the necessary environmental knowledge to effectively handle such cases.

Mr. Kreilhuber opined that the one-week Stockholm+50 celebration was inadequate to honor the many governments, people, and institutions that have contributed to making the Stockholm Declaration a reality for people and the planet over the past five decades. He added that this was also a moment to celebrate environmental multilateralism—its highs and lows, opportunities, and challenges—and to discuss how to continue building upon the impressive record of environmental achievements and lessons learned over the past 50 years, and to shape the future of environmental protection for the next 50 years. If 1972 was the year of bolstering the linkages between human rights and the environment, the task for the global community since then has been to follow through on the commitments taken by all actors.

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<sup>4</sup> Indigenous Human Rights Defenders & Corporate Accountability Program, Water Protector Legal Collective, and the Business & Human Rights Resource Centre. 2021. *SLAPP Suits as a Tactic of Silencing Indigenous Women and Indigenous Human Rights Defenders*. 14 June.

Mr. Kreilhuber cautioned that serious challenges continue to threaten the strides made in the last 50 years, chief among which is the triple planetary crisis. Where gaps exist between law and practice, many actors—grassroots activists, indigenous communities, environmental human rights defenders—have stepped in to secure rights related to the environment and spoken up for environmental action. At times, these groups and individuals have succeeded in improving the protection of natural resources; other times, they have faced persecution, criminalization, violence, and even death.

Mr. Kreilhuber observed that although the framework established at the 1972 Stockholm Conference has been in place for five decades, progress towards creating an enabling environment for environmental justice and action remains incomplete.<sup>5</sup> As environmental conditions throughout the world become more complex, litigants are increasingly using rights-based approaches to environmental protection and access to justice, and courts around the world are responding. The Stockholm Declaration paved the way for these efforts to link human rights and the environment, as evidenced by the achievements of environmental defenders over the last decades. Strengthening more areas of human and environmental rights will better protect environmental defenders and promote the environmental rule of law.

The harms inflicted upon environmental defenders in recent decades violate fundamental rights, including the rights to life, freedom of movement, speech, assembly, petition, due process, and human dignity. These acts constitute criminal offenses. Over the past half century, tools have been developed to safeguard these rights, thereby deterring attacks on defenders and fostering participation in governance:

- (i) Certain international, regional, and domestic laws have gone further to protect the rights of democratic participation in environmental protection, owing partly to the Stockholm Declaration.
- (ii) Regional human rights bodies, through the 1998 Aarhus Convention for Europe and the subsequent Escazú Agreement for the Americas, have underscored the importance of procedural environmental rights, including access to information, public participation, access to justice, and effective mechanisms for implementation and enforcement.<sup>6</sup> Initiatives are underway to explore the need for comparable agreements in other regions.
- (iii) An increasing number of national constitutions protect procedural environmental rights. These provisions usually complement substantive environmental rights and procedural constitutional rights.

Mr. Kreilhuber emphasized that while environmental action has positively impacted human rights and the collective safety of communities worldwide, environmental defenders continue to require support in facing ever-increasing complexities regarding the planet. The environmental rule of law is pivotal in addressing issues of environmental justice and the disproportionate environmental harms borne by communities that are already disadvantaged socially, economically, and politically.

<sup>5</sup> United Nations. 1972. [Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972](#), A/CONF.48/14/Rev.1. New York.

<sup>6</sup> [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#). Aarhus. 25 June 1998. *United Nations Treaty Series*, vol. 2161 (447); and 2018. [Regional Agreement On Access To Information, Public Participation And Justice In Environmental Matters In Latin America And The Caribbean](#). Escazú. 4 March. *United Nations Treaty Series*, vol. 3398C.N.195.2018.



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Defenders risk everything to protect the environment and its inhabitants, perhaps because exercising democratic rights, including the right to a healthy environment, is part of human dignity. The law, in theory, supports and protects those who exercise their democratic rights for this purpose. However, the criminalization of environmental defenders and the growing attacks against them represent clear violations of the environmental rule of law and an affront to the rights, roles, and contributions of indigenous peoples and civil society to protecting the environment.

The year 2020 was the most dangerous year for environmental defenders—227 of them were murdered.<sup>7</sup> Attacks can also be non-violent and take the form of litigation. SLAPP suits are increasingly used to intimidate environmental defenders and to convert public interest matters into private law disputes. Environmental defenders—many of whom are indigenous people—are often sentenced on vague charges of treason, subversion, or even terrorism, and held in harsh conditions. Some are sentenced to death or die in prison after serving long sentences. The widespread impunity and lack of accountability for crimes against environmental defenders underscore the urgent need to bolster the environmental rule of law.

At the national level, several actions have been demonstrated to promote and strengthen the environmental rule of law, thereby enabling the participation and protection of environmental defenders:

- (i) high-level statements recognizing the important and legitimate role of environmental defenders;
- (ii) recognition of the threats faced by environmental defenders and a commitment to their protection;
- (iii) laws to protect environmental defenders, mandating effective protection mechanisms and addressing the specific needs of rural and indigenous defenders;
- (iv) special prosecutors for crimes against defenders;
- (v) effective regulation and accountability for business actors; and
- (vi) consultations with environmental defenders to develop plans addressing the underlying causes of the risks they face.

When countries act on these suggestions, they inspire others to follow suit and emphasize the increasingly vital role of judges in safeguarding environmental defenders. The following are examples of initiatives taken to adopt these suggestions:

- (i) In Colombia, the law on the protection of defenders includes specific provisions within the general criminal code that account for the fact that human rights defenders are frequently attacked because of their work and, thus, are at a greater risk than other groups.
- (ii) In the United Kingdom, the Charities Act of 2011 specifically recognizes the work to advance human rights as an area of public benefit.<sup>8</sup>

<sup>7</sup> Global Witness. 2021. *Last Line of Defence: The Industries Causing the Climate Crisis and Attacks Against Land and Environmental Defenders*. 13 September.

<sup>8</sup> *Charities Act*, 2011 (Canada).

- (iii) The Philippines' Anti-Enforced or Involuntary Disappearance Act and Uganda's Prevention and Prohibition of Torture Act, both promulgated in 2012, impose very clear duties on the respective states to protect human rights defenders.<sup>9</sup>
- (iv) Australia, Canada, India, Mali, and Sierra Leone have specific legislation that addresses the threats faced by environmental defenders.

Mr. Kreilhuber reiterated that over the past five decades, judges have demonstrated their commitment to creating a healthier environment for more peaceful, inclusive, and sustainable societies, and addressing crises such as climate change, biodiversity loss, pollution, and waste. The judiciary has played an increasingly crucial role in safeguarding environmental defenders. National legislation provides additional tools and resources to help judges perform this role, but judges can protect defenders by simply doing what they normally do: adhere to the principles of the rule of law, remain vigilant in situations where people are threatened, and insist on the civil and criminal accountability of those who threaten the defenders.

Mr. Kreilhuber concluded by affirming that the aspirations that gave life to the environmental law movement 50 years ago are continuing to inspire today's generation, many of whom are identifying as environmental human rights defenders. He conveyed a message to today's generation of defenders: environmental challenges demand an intergenerational response, both from those who created the challenges and those who will inherit this planet. He affirmed that UNEP is committed to ongoing engagement with judges worldwide to make environmental rights work for everyone, everywhere, and to contribute to the recognition and protection of environmental defenders.



[J]udges in essence can protect defenders by simply doing what judges do—adhere to the principles of rule of law, remain vigilant in situations where people are threatened, and insist on the civil and criminal accountability of those who threaten them.

– **Mr. Arnold Kreilhuber**  
Deputy Director, United Nations Environment Programme (UNEP) Law Division, Nairobi

<sup>9</sup> [Anti-Enforced or Involuntary Disappearance Act, 2012 \(Philippines\)](#); [Prevention and Prohibition of Torture Act, 2012 \(Uganda\)](#).

## Panel Session 6

### JUSTICE JOE WILLIAMS

*Supreme Court of New Zealand*

Justice Joe Williams discussed the rights of nature and indigenous peoples, as well as justice in the context of the environment. He began by offering a Māori prayer, which he also translated into English:

*Tēnei te ara kei runga,  
te ara o Rangi e tū nei  
te ara o Papa e takoto nei.  
Tēnei te ara o Rangi rāua ko Papa e takoto  
nei.  
Kia rarau te tapuwae o Tāne ki raro  
Nau mai te pō, tēnei te ao.  
Tihei mauri ora.*

This is the path to my father, the sky.  
This is the path to my mother, the earth.  
The words I utter help bind my father,  
the sky, to my mother, the earth.  
I stand before the sacred footprint of my  
uncle, the forest.  
And I bid farewell to the darkness and  
welcome anew the arrival of light and  
understanding.

Justice Williams then explained how the legal system he grew up with in New Zealand was one introduced by settlers from industrialized countries, based on the following fundamental ideas:

- (i) A centralized and impersonal government, unrelated in any familial sense to those it governs;
- (ii) Individual autonomy and separate dignity, leading to individual rights; and
- (iii) Theoretically freely chosen relationships between individuals, established through contracts.

Regarding the third idea, the concept of contract was absolute, to the extent that a promise to marry someone was an enforceable contract until the mid-1970s—breaching the promise could result in legal action. Thus, relationships were arranged and organized through contracts, and relationships between people and the environment were encapsulated in the idea of property.

Consequently, nature was viewed as a separate entity to be subdued and conquered. Colonizers deemed those who did not share these ideas as backward and in need of civilizing and saving. Ironically, in the process of ‘saving’ these people, colonizers also seized their resources.

The contractual approach to human relationships, the deification of the individual, and an impersonal and disconnected government are now seen as deeply problematic philosophies. The killing of indigenous people and other environmental defenders mentioned by Mr. Kreilhuber has been happening since 1492—it is a phenomenon of colonization. The Amazonian peoples of today are not the first to be caught in its trap; they follow in the footsteps of countless indigenous communities who have suffered similar fates over the past 500 years.

Justice Williams contrasted this with the Māori approach to humanity and the environment. To them, an impersonal government, a judge who is not a relative, an entirely autonomous individual with no obligations or connections to a wider community, and relationships based



on contracts rather than kinship are strange ideas.

In Māori culture, the world hangs on the idea of kinship: as in the opening prayer, the sky is the father, the earth is the mother, and the forest is an uncle. Water is an ancestress and the mountain is an ancestor; both their genealogies are well known and can be recited by descendants. The tribes of Whanganui say “*Mai I te kāhui maunga ki a Tangaroa: ko au te awa, ko te awa ko au*”—“From the distant mountains all the way to the sea, I am the river, and the river is me.”



In Māori culture, people are not a disembodied binary, but a single holistic being or a series of beings. What might be called nature in Western culture has certain rights and obligations in Māori culture. While judges consider the rights of nature, indigenous people consider the relationship between humans and the environment as one of mutually negotiated coexistence-based rights and obligations, backed up by rules and values.

These Māori custom law approaches are slowly being integrated into environmental law in New Zealand. Environmental components with which indigenous peoples have deep, intimate, and kin-based relationships have been granted legal personality and, in a sense, a second form of citizenship.

“

[I]t seems to me that if we are to speak of access to justice, then we have to understand what justice is. The process we are going through in my country is redefining justice so that it is not Western colonizing justice, but the integration of indigenous knowledge and values and Western science.

– **Justice Joe Williams**  
*Supreme Court of New Zealand*

## Panel Session 6

This would be a radical idea in Western thinking, but it has been that way for thousands of years in Māori or indigenous thinking. Some examples are:

- (i) The Whanganui River has been recognized as having a legal personality in some legislation.
- (ii) The Waikato, which is New Zealand's largest river system, is jointly managed by the central government and the river tribes.
- (iii) The Te Urewera Forest, one of the densest forests on the northern island, also has a recognized legal personality.
- (iv) The government announced, in 2022, a new policy on water named *Te Mana o Te Wai*—or the dignity of water—a deeply Māori idea that resonates with everyone.

New Zealand is beginning to explore the implications of integrating these Māori customary law approaches into Western forms of environmental management. However, it is too early to say whether that integration will work. Nevertheless, it seems likely that within the next generation, the idea of iconic environmental components having personality will seep into general law, either through the legislature or by judicial pronouncement. The ongoing process in New Zealand seeks to achieve true environmental justice, by redefining justice to integrate indigenous knowledge and values with Western science.

### MS. KRISTEN WALKER

*Chair, International Union for Conservation of Nature (IUCN)  
Commission on Environmental, Economic and Social Policy (CEESP)*

Ms. Kristen Walker, the wife of a Mapuche Indian, introduced herself as someone whose family has experienced firsthand the consequences of environmental activism. Her father-in-law was imprisoned for defending his territory, highlighting the risks faced by those who fight for the environment. She warned that while Stockholm+50 is being celebrated, humanity is on borrowed time and needs to take immediate action.

Ms. Walker shared that IUCN CEESP has launched a campaign to reimagine environmental conservation, which is a Western construct. One aspect of this reimagining involves redefining justice from diverse perspectives. The IUCN



CEESP congress in Marseille in September 2022 aims to answer the question of what justice truly means, a question that Justice Williams also posed in his presentation.

IUCN CEESP and Conservation International, where Ms. Walker is also involved, often encounter issues at the intersection of human rights, particularly the rights of environmental defenders, and conservation. These organizations address a wide range of challenges, including access to information. In Papua New Guinea, for example, a community may not speak the language of the law due to the existence of over 700 languages. Additionally, there are also issues on the implementation of environmental laws and the importance of intellectual integrity in the promulgation and enforcement of decisions, as mentioned by Justice Muanpawong.

These issues and discussions should also be brought to the communities, who are responsible for managing their lands, waters, territories, and other natural resources. To promote a better dialogue between and among judges and communities, judges can take four simple steps:

- (i) **Listen.** Judges can listen more attentively to communities and environmental defenders to understand the challenges they face, thereby expanding dialogue and improving their awareness of underlying social and economic issues.
- (ii) **Look.** Judges can explore problem-solving court models that can be adapted to their jurisdictions.
- (iii) **Imagine.** Judges can imagine ways to overcome hurdles and more effectively support and implement available mechanisms.
- (iv) **Act.** Aside from trying to help each other be more grounded in environmental law, judges can collectively take action.



[F]rom your perspective as judges, how can you imagine? How can you imagine coming over those hurdles and being able to support and implement what is there more effectively?

– Ms. Kristen Walker

*Chair, International Union for Conservation of Nature (IUCN) Commission on Environmental, Economic and Social Policy (CEESP)*



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Ms. Walker shared that IUCN CEESP launched a three-part publication featuring the stories and art of environmental defenders. She subsequently recited a poem entitled *The Supply Chain of Violence*, written by Sam Illingworth:<sup>10</sup>

Illegal logging in community forests,  
oil drilling in indigenous territories,  
mining concessions in native soils,  
these have become our warzones.  
Activists hailed as terrorists,  
while global agribusiness is  
paraded as unchallenged  
and unchosen liberator.  
Forever on the right side of progress,  
writing its history  
with constitutions,  
and cheques,  
and body bags.  
Outsourced consumption,  
underpinned by  
marginalization,  
turn ancestral lands  
into contemporary killing fields.  
Defenders fall in muted protest—  
their deaths the tip  
of melting icebergs,  
as slow violence bleeds  
through faceless communities.  
Trading alms for avarice, we  
wash our hands in waters—  
offering salvation for those  
that we no longer care  
to name.

Ms. Walker asserted that the poem depicted a situation that required transformation and urged participants to consider how they could work with communities, activists, and other stakeholders to reimagine justice.

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<sup>10</sup> S. Illingworth. The Supply Chain of Violence. *Policy Matters. Special Issue on Environmental Defenders 22 (Vol. II)*. p. 65.

**PROFESSOR DANIEL MAGRAW***Johns Hopkins School of Advanced International Studies*

Professor Daniel Magraw began his remarks by expressing his deep respect, as a lawyer and former arbitrator, for the challenging work of judges. He then responded to the points raised by previous speakers:

- (i) Professor Magraw recalled Mr. Kreilhuber's discussion and stated that judges must be aware that the space for civil society to participate in environmental and human rights protection is diminishing due to factors such as SLAPP suits and restrictions on access to information, communications technology, and the internet.
- (ii) He acknowledged the importance of Ms. Walker's broader perspective on judges as part of civil society and the community and the challenge of reimagining justice and taking action.
- (iii) Professor Magraw agreed with Justice Williams' views on reconceptualizing the relationship between humans and nature but focused on another aspect of his discussion: the proper application and importance of rules. He shared that he was able to defend the rights of the Mapuche before the Inter-American Commission on Human Rights because existing human rights laws provided a framework for his work.



Professor Magraw then pivoted to the right to a healthy environment. He noted that over 150 countries are legally bound to respect this right, thanks to the efforts of businesses, children, nongovernment organizations, and about 15 parts of the UN system. He added that on 8 October 2021, this right was recognized in the UN Human Rights Council with 43 votes in favor, zero opposed, and four abstentions.<sup>11</sup> This matter will then be brought to the UN General Assembly, where it is expected to pass, although some countries, such as Russia and the United States, may attempt to block it.<sup>12</sup>

<sup>11</sup> United Nations, General Assembly, Human Rights Council. 2021. [The human right to a safe, clean, healthy and sustainable environment](#). A/HRC/48/L.23/Rev.1. 5 October.

<sup>12</sup> After the symposium, on 28 July 2022, the United Nations General Assembly adopted a resolution that “[r]ecognizes the right to a clean, healthy and sustainable environment as a human right” and “[c]alls upon States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.” United Nations, General Assembly. 2022. [Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms](#), A/76/L.75. 28 July.

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In any case, the recognition of an environmental human right adds value to the existing pantheon of human rights:

- (i) It adds substance. Professor Magraw shared that when he represented the Inuit and the Maldives, he realized that climate change and other environmental harms not only threatened their rights to life and culture but also their right to a healthy environment.
- (ii) It clarifies the scope of countries' obligations. It compels states to consider the interconnectedness of the biosphere. Furthermore, it serves as a capstone, as countries that respect this right tend to have better environmental outcomes and provide greater environmental protections for their people.
- (iii) It can be a hook. Countries, intergovernmental organizations, and agencies can leverage this right to organize programs and secure resources. For example, after the global community agreed to eliminate lead from gasoline in 1996, UNEP was able to obtain funds and implement the initiative, which saved millions of lives. In 2021, Algeria became the last country to phase out lead from gasoline.
- (iv) It can serve as a springboard for the issues that Judge Williams raised. Although the duty is owed to humans, it is still the environment that is being protected. This opens up a discussion about rethinking the relationship between humans and nature.
- (v) It completes the notion of environmental justice, which encompasses several key components:
  - (a) No group, including indigenous peoples or environmental human rights defenders, should bear a disproportionate burden of protecting the environment.
  - (b) All groups should have equitable access to environmental amenities, such as clean drinking water, sanitation, and spiritual and recreational activities.
  - (c) All groups should be able to participate effectively in decision-making processes related to the environment.
  - (d) All groups should have access to justice, leading to just outcomes.



We need to have justice, we need to have an outcome that is just. The way to get to that is with the right to a healthy environment, because that will be a just outcome.

– **Professor Daniel Magraw**  
*Johns Hopkins School of Advanced  
International Studies*



Professor Magraw recalled that as president of the Center for International Environmental Law, he once represented indigenous peoples in the Amazon who did not want to be contacted. This encounter presented challenges that led him to realize that beyond language barriers, indigenous peoples may have distinct perspectives on life and rights.

Nevertheless, the law is dynamic and protects even indigenous peoples with a whole different ontology. Notably, these peoples have rights under the UN Declaration on the Rights of Indigenous Peoples; and the draft principles on protecting the environment during conflict include an article on indigenous peoples' lands and their protection.<sup>13</sup>

### Discussion for Panel Session 6



As co-chair of the session, **Ms. Maryna Yanush** of the United Nations Economic Commission for Europe in Geneva facilitated the discussion.

**Justice Ragnhild Noer** of the Supreme Court of Norway began by expressing gratitude for the insightful presentations that highlighted indigenous peoples and the impact of climate change and environmental degradation on their culture and way of life. She then discussed a recent case in their supreme court where Sami



<sup>13</sup> International Law Commission. 2021. *Draft principles on protection of the environment in relation to armed conflicts*.

## Panel Session 6

people sued the government for constructing windmills—intended to combat climate change—in an area where some of them lived and grazed their reindeer.<sup>14</sup> They argued that the windmills violated Article 27 of the International Covenant of Civil and Political Rights, which recognizes indigenous peoples' right to have their own culture.<sup>15</sup>

The case was challenging because the Sami people, one of the groups most affected by climate change, stood to benefit from these windmills. However, the Supreme Court ruled in favor of the plaintiffs, primarily because the windmills could have been constructed in areas with less impact on the Sami people. Despite the court's decision, the windmills remained in place as of June 2022 due to the high cost of dismantling them.



**Ms. Yanush** commented that there has been an increase in cases related to renewable energy in the region due to the ongoing transition to renewable energy sources. She noted that many established lists of hazardous activities, such as those found in the Espoo Convention, were negotiated 20 years ago when many of today's technologies were not yet widespread, potentially leading to the environmental impact of these activities going unnoticed during the approval stage.<sup>16</sup> Additionally, balancing all interests can be challenging.

**Professor Magraw** reminded participants that it took the international community decades to even acknowledge the connection between climate change and human rights, even though states were already obligated to respect human rights in all their activities, including climate change mitigation and adaptation. He also noted that conflicts could arise when activities are costly, such as replacing windmills. This is why environmental impact assessments are crucial. He emphasized that environmental impact assessments are mandatory when environmental harm may affect human rights, recalling the Espoo Convention.

**Ms. Walker** inquired how the ruling was made only after the windmills had already been constructed. She emphasized that some indigenous peoples, such as Aboriginals and First Nation communities in Australia and Canada, negotiate agreements related to their lands and territories—whether for oil, gas, mining, or conservation—using a combination of traditional practices and Western legal tactics to ensure they can benefit from or reject agreements.

**Justice Noer** clarified that the Sami people attempted to halt the construction of the windmills, but the court initially determined that the construction was legal. The Sami people were also adequately compensated, leading people to believe that the matter would end there.

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<sup>14</sup> I: *Statnett SF v. Sør-Fosen sijte, Nord-Fosen siida and Fosen Vind DA*, II: *Fosen Vind DA v. Sør-Fosen sijte and Nord-Fosen siida*, III: *Sør-Fosen sijte v. Fosen Vind DA*, HR-2021-1975-S, (case no. 20-143891SIV-HRET), (case no. 20-143892SIV-HRET) and (case no. 20-143893SIV-HRET), Supreme Court of Norway, 11 October 2021. ([translation](#))

<sup>15</sup> United Nations. 1966. General Assembly resolution 2200A (XXI). *International Covenant of Civil and Political Rights*. Article 27 provides: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

<sup>16</sup> *Convention on Environmental Impact Assessment in a Transboundary Context*. Espoo. 25 February 1991. *United Nations Treaty Series*. 1989 (34028).

**Justice Williams** shared that in New Zealand and other similar countries, indigenous people's properties are often the first to be compulsorily acquired for roads, dams, or other projects. Historically, procedural safeguards surrounding this practice have been inadequate, which might have been the case in Norway as well. He suggested that negotiated coexistence is the solution, but this can only be achieved through high levels of trust and engagement.

**Mr. Keriako Tobiko**, then the Cabinet Secretary of the Ministry of Environment and Forestry in Kenya, recounted how upon his appointment to his position, everyone was wondering what law had to do with the environment. The symposium has provided an answer to this query.

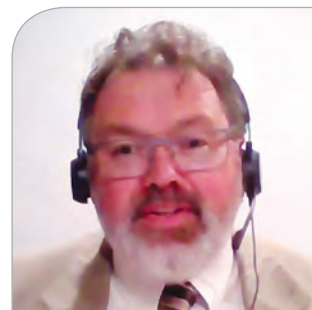
He asserted that Kenya is one of the leading countries in environmental advocacy, as shown by its jurisprudence and legislation. For instance, he shared that his ministry had recently proposed an amendment to Kenya's environmental law, including the recognition and protection of environmental rights defenders and other provisions discussed in the symposium. Moreover, Kenya is one of the countries that acknowledge the right of nature as distinct from human rights and one of the first to recognize the right to a healthy environment. The national assembly was in the process of approving the introduction of the crime of ecocide, a draft law heavily influenced by the International Criminal Court template.

Mr. Tobiko also mentioned that his country was pushing for answers to the question of who bears the greatest responsibility—both historically and currently—for harms, losses, and damages from greenhouse emissions at the 2021 UN Conference of the Parties (COP 26) and other COPs. He inquired whether principles for establishing this liability could be developed at the international level.

Mr. Tobiko shared that he wished he and the other ministers had attended the symposium earlier to better understand how jurisprudence, law, policy, and practice interfaced with each other. He lamented that they, in the executive branch, sometimes have to make decisions without being advised about the most recent jurisprudence and international standards. Therefore, he desired a better platform for interfacing with judges. He then inquired about how to harmonize the jurisprudence established by the subordinate tribunals under the Ministry of Environment and Forestry with that of the high courts under the judiciary.

**Ms. Yanush** noted that Mr. Tobiko's comments highlight how an approach that considers the interconnectedness of the environment, human rights, and good governance can more effectively safeguard the environment. For instance, a digital tool from Brazil showcased in a previous session could advise decision-makers on legal challenges, aiding them in enhancing laws and anticipating potential issues at the appropriate decision-making stage.

**Justice Williams** opined that while frank communication between the executive and the judiciary could be beneficial, it should be done very carefully and maintained at a certain distance—for example, by limiting discussions to case law and statutes—to preserve the judiciary's independence. He expressed interest in understanding how the crime of ecocide is defined in Kenya and





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how prevalent it is. He also conveyed gratitude for the opportunity to exchange ideas and best practices, particularly for judges who must apply the law to specific facts.

**Justice Michael Wilson** of the Supreme Court of Hawaii inquired of Mr. Kreilhuber and Ms. Walker regarding the appropriate manner in which judges should engage with environmental defenders in the context of the recurring pattern of violence perpetrated against these individuals. He cited the example of Justice Luis Tolosa of Colombia, who traveled to Peru in 2016 to express solidarity with the village of the slain indigenous leader, Edward Chota. Justice Wilson suggested that judges and organizations such as the GJIE could provide such support in a coordinated fashion, with the dual objectives of advancing the rule of law and deterring the use of murder as a means of intimidation. However, he acknowledged that judicial independence could impose limitations on the extent to which judges could become involved or be perceived as involved in such activities.



**Mr. Kreilhuber** emphasized that judges must be more cognizant of environmental issues, including the challenges faced by environmental defenders, such as SLAPP suits, and the critical role that they play in the administration of environmental justice. Mr. Kreilhuber stressed the significance of Stockholm+50 and the GJIE in raising awareness of these issues among legal professionals. This increased awareness, in turn, would help safeguard environmental defenders from intimidation, threats, and harassment during court proceedings. However, Mr. Kreilhuber noted that other stakeholders—including members of the entire enforcement chain, and the parliamentarians who provide the proper legal basis—must come together with judges to protect environmental defenders.

**Ms. Walker** emphasized the importance of understanding the reasons behind the deaths of 227 environmental defenders in 2020 and integrating this knowledge into decision-making processes.<sup>17</sup> She agreed that protecting the environment requires a system-wide approach and advocated for reimagining justice to ensure a more effective response to environmental issues. Ms. Walker concluded by suggesting that judges should cultivate awareness and understanding of these issues and then assess how the system is functioning in the future.

**Professor Magraw** suggested that the GJIE could play a role in setting standards for the protection of environmental defenders. He cited a case in the Americas that outlined guidelines on how a country should treat environmental defenders: do not interfere with them; adopt and implement measures to protect them; and investigate, prosecute, and punish those who harass them.<sup>18</sup>

Professor Magraw noted that harassment of environmental defenders can take various forms, including murder. He recalled a case described by Justice OKong'o involving lead batteries,

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<sup>17</sup> See Global Witness, *supra* footnote 7.

<sup>18</sup> *Kawas-Fernandez v. Honduras*; Inter-American Court of Human Rights, 3 April 2009.

where a woman's partner's child was kidnapped in retaliation for her bringing the case to court.<sup>19</sup> The child was only released after the head of UNEP and the Special Rapporteur on Human Rights and Environment intervened and asked the president of Kenya for help.

Professor Magraw reiterated the importance of investigating and prosecuting harassment. He concluded that once standards for dealing with environmental defenders are set, the GJIE could train judges on these standards, contributing to the prevention of future problems.

**Ms. Yanush** summarized the key points from the panel discussion. The Stockholm Declaration laid the groundwork for multilateral environmental agreements, and judges play a crucial role in interpreting domestic laws in alignment with these agreements.

Furthermore, these agreements establish common standards in certain regions. For countries in Europe, the Caucasus, and Central Asia, the Aarhus Convention's access to justice pillar has influenced environmental case law and established legally binding standards, empowering individuals to seek justice when public authorities or private persons deny access to information or have flaws in their decision-making or compliance with environmental law. The Escazú Agreement has embedded access to justice provisions for Latin America and the Caribbean. Both these treaties, along with other human rights instruments and initiatives, protect environmental defenders from murder, harassment, and other forms of retaliation. However, SLAPP suits, other abuses of litigation, threats, and impunity hinder access to justice. Special legal and practical measures are necessary to detect and prevent them.

Indigenous people, rural residents, informal settlers, the poor, and other marginalized groups disproportionately exposed to environmental injustices face additional challenges in accessing justice. These challenges include geographic distance from courts, limited access to legal and environmental expertise, and language barriers. To address these disparities, these groups require special assistance based on good practices and solutions that facilitate access to justice.

Environmental cases involve complex legal, scientific, technical, and social dimensions. Judges and other stakeholders need to specialize, have access to advanced training programs in environmental law, have independent environmental expertise, and conduct thorough assessments to effectively handle such cases. Fostering judicial cooperation at national, regional, cross-regional, and global levels remains essential for leveraging good practices and innovative tools.

Ms. Yanush concluded the session by expressing her commitment to ongoing collaboration with all present partners. She highlighted the importance of translating knowledge into concrete actions that would facilitate access to justice, protect environmental defenders, and advance environmental rights and the rule of law.

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<sup>19</sup> *KM & 9 others v Attorney General & 7 others*, Petition No. 1 of 2016, eKLR. Environment and Land Court at Mombasa, Kenya. 16 July 2020.



The sun sets over traffic on a bypass road in Zhambyl Oblast, Kazakhstan. According to the United Nations Environment Programme (UNEP), transport accounts for around 25% of all greenhouse gas emissions (photo by Igor Burgandinov/ADB).



# 13

## VIDEO **PRESENTATION** ON THE RULE OF LAW IN KAZAKHSTAN



# THE NEW ADMINISTRATIVE CODE OF PROCEDURE OF KAZAKHSTAN

Justice Beibut Shermukhametov of the Supreme Court of Kazakhstan showed a video presentation on the new Administrative Code of Procedure (ACP) of Kazakhstan, which took effect on 1 July 2021.

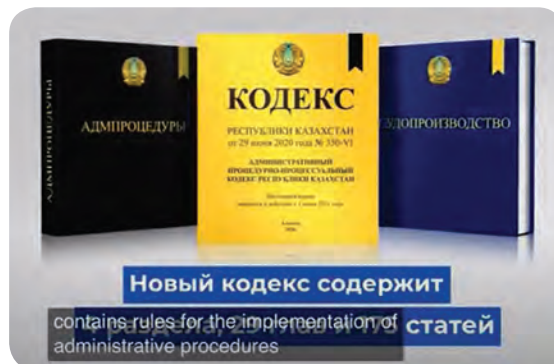


Administrative justice is important for establishing the rule of law. The new ACP reformed key areas of administrative law, and with its adoption Kazakhstan hopes to embark on a fundamentally progressive path for legal development.

With their resources not commensurate with those of the state apparatus, citizens are often on unequal footing when appealing against decisions and actions of authorities in public law disputes. It is this lacuna that the ACP seeks to address by providing an effective mechanism for protecting the rights and freedoms of citizens and legal entities in disputes with government agencies.

Approved by the Venice Commission, the ACP enables consideration of public law disputes based on the best international practices and standards. Administrative bodies must now be guided by new principles of this national legislation. The ACP provides for the “principle of the protection of the right to trust” by which an administrative act is presumed to be legitimate and justified, and consequently losses incurred by bona fide participants of an administrative procedure as a result of the cancellation of an administrative act are subject to reimbursement. The ACP also contains:

- the “principle of priority rights,” whereby ambiguities that arise during the implementation of the administrative procedure



Scan the QR code to watch the Video Presentation on the Rule of Law in Kazakhstan on YouTube.



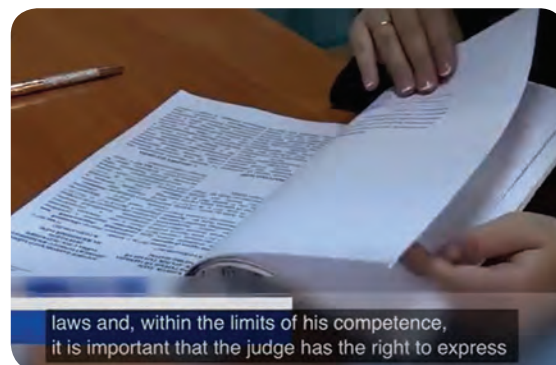
are interpreted in the applicant's favor, if this does not affect the interests of other participants;

- the “principle of proportionality,” which requires that measures restricting the rights, freedoms, and legitimate interests of participants of the administrative procedure should be suitable, necessary, and proportionate;<sup>1</sup> and
- the “principle of the prohibition of abuse of formal requirements,” whereby administrative bodies are prohibited from (i) imposing upon the participants of the administrative procedure obligations, or (ii) refusing to exercise any right, solely for the purpose of satisfying formal requirements, including intra-organizational ones, which are not provided for by the legislation of Kazakhstan.

Under the new principles of administrative proceedings, the active role of the court is especially important. The inequality of the parties in relation to each other in the conduct of administrative proceedings is fundamentally different from the civil process that is based on the adversarial principle. The active behavior of the judge should not be regarded as a predisposition in favor of one of the parties—as a rule, helping the plaintiff as a potentially weaker side strive towards objective truth, contributes to the achievement of justice. The state body is obliged to prove in court that its actions and laws are within the limits of its competence.

It is important that the judge has the right to express his preliminary opinion on legal grounds connected to the case in question. This is not a preliminary decision, but a preliminary opinion on certain legal issues, allowing the parties to be better prepared to provide additional information. In general, this improves the quality of judicial discussion, i.e., when the judge explains the legal issues. The trust of the parties in the court is also enhanced when they understand and accept innovations in the administrative process.

The ACP considers the standards of foreign jurisdictions with a longstanding history of administrative justice. It also provides for innovations in the administrative process. For instance, recognition of the effectiveness of protection and restoration of rights and freedoms depends on the correct choice of claim.



<sup>1</sup> Article 17(2) of the ACP defines “suitable,” “necessary,” and “proportional” as follows: “A measure is considered suitable if it is aimed at achieving the goal established by the Constitution of the Republic of Kazakhstan and laws. A measure is considered necessary if it minimizes the rights and freedoms of participants of the administrative procedure to the least extent. A measure is considered proportional if the public good obtained as a result of restrictions on the rights and freedoms of participants in the administrative procedure is considered greater than the harm caused by these restrictions.”



## Video Presentation

The court will not be limited by the wording of the claim submitted. The ACP gives the court the right to assist the party in formulating or changing the claims with a preliminary explanation of the legal consequences. A person has the opportunity, with the help of administrative proceedings, to check any form of action of the authorized body. Reconciliation of the parties in administrative proceedings is also possible, unless the public prosecutor represents the plaintiff.<sup>2</sup>



The ACP also provides for several measures of procedural coercion, which can be applied repeatedly if the previously selected measure of procedural coercion did not produce results.<sup>3</sup>



In general, there are three grounds for imposing a monetary penalty: manifestation of contempt of court, abuse of procedural rights and obligations, and non-execution of a court decision. Thus, the court itself controls and ensures the execution of its decision. The plan is for 21 new specialized inter-district administrative courts to be formed in 17 administrative centers and an additional 4 cities. Administrative disputes can be reviewed in the regional and supreme courts.

Justice Beibut Shermukhametov added that Kazakhstan has retained elements of the Soviet system—such as the priority of the interest of the state over the interests of individuals—for almost 30 years since its independence. People had to go to court on various instances, for many years, to protect their rights. The time, anxiety, and legal costs became exorbitant.

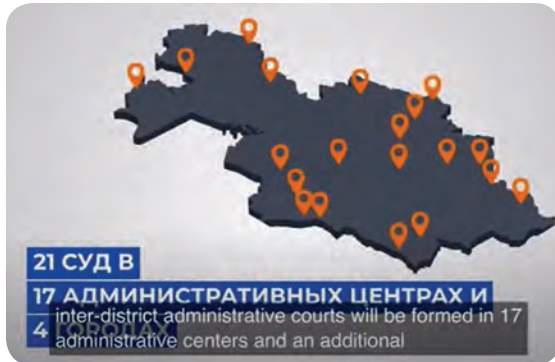
<sup>2</sup> Article 48 of the ACP provides: “The public prosecutor who has filed an administrative claim enjoys all the procedural rights and duties of the plaintiff’s representative, except for the right to enter into a mediation agreement or reconciliation agreement.”

<sup>3</sup> Article 139 of the ACP provides:

Article 139. Grounds and procedure for the application of procedural coercive measures

1. The application of measures of procedural coercion provided for in subparagraphs 1) and 2) of Article 138 of this Code shall be entered in the record of the court session.
2. The court issues an interim order on the application of procedural coercive measures provided for in subparagraphs 3) and 4) of Article 138 of this Code. The appeal of this interim order does not suspend the enforcement of procedural coercion measures. The filing of a private complaint about the use of fine is allowed after the execution of the imposed penalty.
3. If the selected measure of procedural coercion has not led to the results, another measure of procedural coercion is permissible. Measures of procedural coercion can be applied repeatedly.
4. The application to the person of measures of procedural coercion does not relieve this person from the performance of the corresponding duties established by this Code.
5. If there are signs of a criminal offense in the actions of the offender in the court session, the court sends the materials to the prosecutor to resolve the issue of initiating a pre-trial investigation.

## Video Presentation



This situation was untenable and could not continue indefinitely. The public, businesses, and even judges themselves demanded reforms.

Thanks to the perseverance of the President of Kazakhstan, the ACP was enacted. It took several years of hard work and enormous efforts, amid fierce debates among legal scholars, heads of ministries, and departments. It was necessary to break through the wall of misunderstanding and disruption to see progress and enjoy the advantages of administrative justice for Kazakhstan.





Rice, a staple in many parts of the world, is vulnerable to heat stress, causing lower yields. Rising temperatures are reaching critical levels for this essential crop (photo by Xaykham Manilasit/ADB).





# 14

## PANEL **SESSION 7:** Global Panorama of Judicial Environmental Law Education

## PANEL SESSION 7

### Global Panorama of Judicial Environmental Law Education

#### JUSTICE C. ADÈLE KENT

*Chief Judicial Officer Emerita, National Judicial Institute–Canada*



Justice C. Adèle Kent began by emphasizing that being a good judge—fair and impartial to all who enter the courtroom—requires more than a strong understanding of the law. Judges must understand the world, be capable of weighing and comprehending complex scientific principles, and appreciate the profound impact that change and disruption can have on citizens.

This is particularly relevant in environmental law, as climate change affects everyone, including workers, families in crisis, youth, and businesses. At the National Judicial Institute (NJI), judges are asked to identify an area of the law where the fundamental principle of equality does not apply; they consistently struggle to find such an example. This trend persists today and, Justice Kent observed, would likely continue in the future as climate change issues become increasingly pressing.



To be a good judge—to be fair and equitable to people who come into our courtrooms—requires more than a solid understanding of the law. Judges must understand the world around us, be able to weigh and understand complex scientific principles, and appreciate the impact that change and disruption can have on our citizens.

– Justice C. Adèle Kent

*Chief Judicial Officer Emerita, National Judicial Institute–Canada*

Justice Kent underscored the importance of effective and rigorous judicial education in ensuring that judges can fulfill their duties fairly. The panelists for this session would provide a comprehensive overview of what constitutes good judicial education.

### **JUSTICE NAMBITHA DAMBUZA-MAYUSI**

*Supreme Court of South Africa*

*President, African Judicial Education Network on Environmental Law (AJENEL)*



Justice Nambitha Dambuzamayusi discussed an initiative to create a platform for African judges to enhance their capacity to evaluate environmental cases. In 2017, heads of several judicial training institutes launched this initiative under the theme “Integrating Environmental Training in African Judicial Education Institutes.” This led to the establishment of the African Judicial Education Network on Environmental Law (AJENEL) in Maputo, Mozambique, in 2018. AJENEL provides training in environmental law for judges in the region and offers ongoing support, both independently and in partnership with other

institutions such as the Global Judicial Institute on the Environment.

AJENEL acknowledges that African communities are disproportionately affected by climate change and environmental degradation. Climate change impacts agriculture and food security, exacerbates extreme poverty, depletes water resources, and increases lake temperatures, negatively affecting fish and other aquatic life. These consequences permeate all aspects of people’s lives.

Justice Dambuzamayusi added that borderless crimes, such as wildlife and human trafficking, highlight the importance of judges maintaining their individual and territorial judicial independence. To effectively fulfill their societal roles and safeguard communities, judges must adopt a systematic and coherent approach.

Judges should possess a solid understanding of relevant scientific principles and common factors to effectively harness joint resources

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We need to understand more about the relevant science [...] and the factors that may be common to our countries. [...] We aim to harness our joint resources in order to determine how best we can be taught so that we become knowledgeable [...] to address the aspects that we need to.

– **Justice Nambitha Dambuzza-Mayusi**

*Supreme Court of South Africa;*

*President, African Judicial Education Network on Environmental Law*

and develop the necessary expertise to address climate change-related cases. Additionally, there is a need for increased discussion regarding the loss and depletion of biodiversity, their impact on communities, and the social contexts in which the effects of climate change are felt.

Justice Dambuzza-Mayusi asserted that judges must direct the course of proceedings to ensure that the most critical issues are addressed comprehensively. For instance, when faced with pleadings that fail to address their concerns or reference relevant international agreements and constitutional imperatives, judges should request additional submissions from the parties involved, similar to the practice in civil proceedings.

To effectively steer proceedings in this manner, judges must receive ongoing training and information, even if they may initially resist the idea of further education. Despite the misconception that education undermines judicial independence, Justice Dambuzza-Mayusi recalled Thomas Clark's opening speech highlighting the importance of judges staying abreast of evolving scientific knowledge. This has been a primary objective of AJENEL.

Justice Dambuzza-Mayusi shared that AJENEL has continued to make progress despite facing challenges, such as the coronavirus disease (COVID-19) pandemic. At the time of the symposium, an online portal was in place and would soon be launched, facilitating communication between AJENEL and its partners, the exchange of judgments among judges, and the integration of international jurisprudence into domestic and regional jurisprudence.<sup>1</sup> AJENEL acknowledges the valuable support and encouragement provided by organizations such as the United Nations Environment Programme (UNEP).

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<sup>1</sup> Africa Judicial Education Network on Environmental Law. <https://ajenel.org/>.

### MR. ROBERT WABUNOHA

*Regional Environment Governance Coordinator, United Nations Environment Programme (Nairobi)*



Mr. Robert Wabunoha discussed the impressive progress being made in developing judicial education systems across the African region, both at regional and national levels. A notable trend in most African judiciaries is the integration of environmental issues into the broader socioeconomic, security, and political landscape.

He noted several challenges:

- (i) Because environmental law is relatively new—having been in the continent for only about three decades—most senior judges did not receive formal legal training on environmental matters during their studies. Consequently, ongoing skill development in interpreting environmental law is crucial.
- (ii) The environmental challenges facing Africa are vast and multifaceted, encompassing issues such as poverty and socioeconomic development. Judges must be equipped to balance these competing concerns.
- (iii) The environmental landscape is complex, with numerous treaties, constitutions, regulations, and institutions. This makes it difficult for judges to stay abreast of existing complexities and emerging developments. For instance, litigating plastic pollution requires judges to understand new concepts like polymers, which may be unfamiliar to them.

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Mr. Wabunoha noted that judicial education, or education in courts of law, moves in tandem with changes in environmental law. He also shared the observation that regional and national courts in Africa are pushing boundaries of judicial interpretation of environmental law, extending into other areas such as commercial law, trade, human rights, and economics.

Mr. Wabunoha recalled Justice Dambuzi-Mayusi's statement that once a sustainable system for training institutions is established, judicial institutions can maintain the necessary capacity. He suggested that AJENEL plays a vital role in driving this process. Mr. Wabunoha added that because judges typically remain in their institutions until retirement, training them contributes to preserving institutional capacity.

Mr. Wabunoha observed that some African judiciaries have struggled to integrate judicial education and environmental matters into their systems. He proposed that non-traditional approaches could encourage this integration. He shared that judiciaries often express a preference for homegrown jurisprudence. UNEP has found that during training sessions, judges tend to be more receptive to learning from their own judgments or other cases from their respective countries. Similarly, the executive branch is also gaining knowledge of environmental laws in this manner.

Despite this preference for domestic jurisprudence, there is a growing trend in the region to learn from cases in the international sphere and other countries. For example, Zambia is domesticating the global standards on addressing environmental damage set by the International Court of Justice's judgment in *Costa Rica v. Nicaragua*, for use by its executive in enforcement and by its judiciary in adjudication.<sup>2</sup>

Mr. Wabunoha concluded by saying that, 50 years after the Stockholm Declaration, today's generation of young lawyers, who will become tomorrow's judges, must receive education and mentorship in environmental law. He stressed the importance of developing sustainable methods of judicial education and mentorship, and of building the capacity of judges to train others. Mr. Wabunoha also noted how senior judges can inspire younger lawyers, as was the case with him and his colleagues.



[A]s we mark 50 years of Stockholm, we need to start to think very strongly of generational change. We need to start mentoring young judges, young lawyers, who will become judges tomorrow.

– **Mr. Robert Wabunoha**

*Regional Environment Governance Coordinator,  
United Nations Environment Programme  
(Nairobi)*

<sup>2</sup> [Certain Activities Carried Out by Nicaragua in the Border Area \(Costa Rica v. Nicaragua\)](#), International Court of Justice, 2018.



### MR. SCOTT FULTON

*President Emeritus and International Envoy, Environmental Law Institute (Washington, DC)*

Mr. Scott Fulton began by noting the inevitability of the 1972 Stockholm Conference progressing into the courts, given the role of judges as guardians of the environmental rule of law.<sup>3</sup> He shared that this awareness of the key role of judges led the Environmental Law Institute (ELI) to start its judicial education program about 30 years ago. This program has reached thousands of judges in numerous countries worldwide through in-country and regional training events.



Mr. Fulton attributed this awareness to the impetus that led UNEP to establish its Global Judges Program in the late 1990s. This program organized regional judicial symposia, including the 2002 Global Judges Symposium on Sustainable Development and the Role of Law in Johannesburg, South Africa. The symposium brought

together over 120 chief justices and senior judges from more than 60 countries.

Mr. Fulton recalled UNEP's theory of change, which posited that judges equipped with an understanding of the significance and nature of environmental challenges could be powerful catalysts for change, helping to bridge the gap left when other government entities fail to protect a country's natural heritage. This idea resonated deeply with many delegates at the 2002 symposium, inspiring their continued engagement with this aspect of the environmental solution in the years that followed.

Ultimately, through the dedication and leadership of Justice Antonio Herman Benjamin and numerous others, judicial cohesion led to the creation of the Global Judicial Institute on the Environment (GJIE).

Mr. Fulton then addressed the question of how to move forward and the pivotal role that education would play. In this context, Mr. Fulton shared how they found a path for the United States (US).

<sup>3</sup> United Nations. 1972. [Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972, A/CONF.48/14/Rev.1](#). New York.

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[W]e can find the root of our conversation here in the awakening that was the Stockholm Declaration, 50 years ago. We should not be at all surprised that the courts would prove to be an inevitable destination in the ensuing progression from that awakening, given their role as guardians of environmental rule of law.

– **Mr. Scott Fulton**

*President Emeritus and International Envoy, Environmental Law Institute (ELI)—Washington, DC*

Mr. Fulton provided some background, highlighting the US' divided stance on climate change. Over the past 20 years, the US has reversed course on climate change four times, and the issue remains highly politicized and debated. The US Supreme Court seems inclined to limit the role of the national government, and judicial activism is often employed as a tool across the political divide. Notably, the US was not even a party of the Human Rights Council Resolution recognizing the right to a clean environment as a human right. This resolution was adopted after former President Trump withdrew from the council and before President Biden rejoined it.<sup>4</sup>

Mr. Fulton pondered how ELI, a think tank and capacity-building organization involved in litigation and lobbying, could contribute to the recognition of climate issues early in the Trump presidency. This reflection led Mr. Fulton to a conversation with Paul Hanle, a leading climate scientist and former head of Climate Central. This conversation inspired ELI to launch an initiative focused on educating judges on basic climate science. This initiative aligns with the idea that judges who fully grasp the climate change phenomenon will be more likely to respond effectively. As Justice Syed Mansoor Ali Shah stated earlier in the symposium, "If they come to see that the building is on fire, they will be more likely to reach for a hose."

Mr. Fulton explained how the Climate Judiciary Project emerged from these efforts. This project works with the Federal Judicial Center and the National Judicial College to offer seminars that provide judges with consensus science relevant to cases with climate implications. The seminars rely on consensus reports, such as those of the Intergovernmental Panel on Climate Change and the US National Climate Assessment, and feature presentations by leading climate scientists. This approach helps bridge the gap between the science and law communities, as highlighted by

<sup>4</sup> United Nations, General Assembly, Human Rights Council. 2021. [The human right to a safe, clean, healthy and sustainable environment](#). A/HRC/48/L.23/Rev.1. 5 October.

UNEP Executive Director Inger Andersen. In the past year alone, ten such seminars have been conducted, reaching approximately 500 US judges.

In addition to these seminars, ELI is working to develop a standardized climate science curriculum for US judges. The curriculum aims to cover basic climate science, the impacts of climate change, potential solutions, and the relevance of these topics to court cases.

The National Judicial College, which trains US State Court judges, asked ELI to develop an in-depth program for a select group of judges under the framework of a construct called Judicial Leaders and Climate Science. The underlying premise is to spread climate science education through judges who have demonstrated proficiency in the subject matter and can share their knowledge within the judicial community. To achieve this goal, 23 judges nominated by their chief judges and their respective states have engaged with ELI for over a year in a program focused on leadership and climate science.

Mr. Fulton shared that the next step forward for ELI is to internationalize the curriculum. The scientific components of the curriculum could serve as a valuable foundation for a module that could be adapted to other countries, aiding judges worldwide in adjudicating climate change cases more consistently. ELI is actively seeking partners, collaborators, and opportunities to implement this next phase of the project and invites interested parties to reach out. Mr. Fulton concluded by emphasizing that judges play a crucial role in addressing the challenges posed by climate change and should be equipped with the necessary tools to be fully effective in this area.

### **JUSTICE BAMBANG HERY MULYONO**

*Supreme Court of Indonesia*

*Head, Research, Development, Education and Training Agency for Law and Judiciary–Indonesia*

Justice Bambang Hery Mulyono discussed how Indonesia's Supreme Court collaborated with the Australian government to train its judges. Between 1999 and 2008, the Indonesian Supreme Court sent judges, including Justice Mulyono, for training on environmental law and enforcement in New South Wales, as well as on land and environment courts in Sydney and Adelaide. Subsequently, there were additional training programs focused on mentorship, with lecturers such as Justice Brian Preston and experts from the University of Sydney and the University of Adelaide.

From 2009 to 2010, Justice Mulyono and his colleagues deliberated on how to train judges to effectively handle environmental cases,





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ultimately deciding on a certification process. In 2011, the Supreme Court chief justice issued a regulation establishing this certification.

They conduct the training in three phases:

- (i) Before training, they prepare the modules, choose expert lecturers, and select participants.
  - (a) They follow Bloom's Taxonomy for the framework and Kirkpatrick's Model of Four Levels of Evaluation for the theory and standard of evaluation.<sup>5</sup>
  - (b) Because the participants will gain a special authority to handle environmental cases, Justice Mulyono and his colleagues choose participants who have at least 10 years of experience as judges.
  - (c) The curriculum and modules are developed, and a trainers' convention is held to strategize and focus on training objectives.
  - (d) They announce the training through various media channels to attract eligible judges, e.g., e-learning systems, YouTube, Instagram, Facebook, and Twitter.
- (ii) During training, participants learn about the role of environmental judges and courts in determining environmental justice, preventing environmental damage, and restoring the environment. Restoration, in this context, extends beyond compensation in civil cases or fines in criminal cases to encompass restoration of the functions of a good ecosystem. The training also covers enhancing participants' competencies in various areas, including:
  - (a) **Environmental science.** A solid foundation in law, biology, chemistry, good governance principles, and scientific evidence is essential.
  - (b) **Environmental ethics.** Participants delve into fundamental ethical principles that guide responsible environmental behavior, as outlined in the judicial code of ethics and the 2002 Bangalore Principles of Judicial Conduct.<sup>6</sup>
  - (c) **Environmental protection and management, and natural resources law.** A deep understanding of laws related to forestry, mining, maritime affairs, natural resources conservation, and the energy industry is crucial.
  - (d) **Environmental law enforcement.** Proficiency in procedural law, including environmental civil and criminal procedures, as well as approaches to address Strategic Lawsuits Against Public Participation, is a key requirement.
  - (e) **Integrity, which includes both moral and performance integrity.** This can be developed through character-building sessions involving the Ethical Control Board under the Chief Justice of the Supreme Court. To quote the Chief Justice: "Integrity is a fixed price that cannot be interrupted. Integrity is like a candle that illuminates the

<sup>5</sup> [Bloom's Taxonomy](#)—created by Benjamin Bloom in 1956—categorizes learning into six levels of varying degrees: Knowledge, Comprehension, Application, Analysis, Synthesis, and Evaluation; B.S. Bloom. 1956. *Taxonomy of Educational Objectives: The Classification of Educational Goals*. David McKay, New York.

[Kirkpatrick's Model of Four Levels of Evaluation](#)—first published in 1959 by Donald Kirkpatrick—consists of Reaction, Learning, Behavior, and Results; D.L. Kirkpatrick. *Techniques for Evaluation Training Programs*. *Journal of the American Society of Training Directors*. 13, pp. 21–26.

<sup>6</sup> Judicial Group on Strengthening Judicial Integrity. 2002. [Bangalore Principles of Judicial Conduct](#).

judge's perspective. But when a judge spills a candle of integrity, the fire [it creates] will burn the house of justice." Accordingly, the Chief Justice has the authority to revoke the certification of judges whose ethical conduct may be compromised.

- (iii) Following the training, participants' competencies and knowledge acquisition are assessed using various indicators, including their ability to calculate environmental losses due to forest and land fires, pollution, and/or mining, and to make decisions following principles of environmental law. Ongoing monitoring and evaluation is conducted through online surveys and on-site observations of how participants handle significant court cases involving environmental issues.

This training program typically spans three months and is divided into three phases:

1. **Self-Study:** Participants engage in independent learning using materials available on the Judicial Technical Education and Training Center website, including comprehensive learning modules and assessment tests.
2. **Online Class:** Participants interact with the lecturer-facilitator in virtual sessions for in-depth discussions and knowledge exchange.
3. **Traditional Class:** Participants attend in-person classes to enhance their skills and competencies through a variety of learning methods such as role-playing, case studies, simulations, and legal reasoning. Occasionally, participants have the opportunity to learn from and be inspired by expert justices from around the globe.

The Judicial Technical Education and Training Center also offers advanced training programs to support ongoing judicial education and development. As an example, in 2021, the center conducted environmental

“[N]ow, we have 1,341 judges [who are] alumni of the environmental training, minus some [who] retired or passed away during the pandemic. But as the head of judicial training, I still have [optimism] and in my mind a vision—I remember that [humans are] part of the environmental problem but I believe that the best environmental judges [are] always part of the solution.

– **Justice Bambang Hery Mulyono**  
*Supreme Court of Indonesia*  
*Head, Research, Development, Education and*  
*Training Agency for Law and Judiciary*

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enforcement training specifically tailored for judges from the Association of Southeast Asian Nations (ASEAN), with a particular emphasis on addressing climate change challenges.

Indonesia boasts a network of 1,341 judges who have completed environmental training programs. While a small number of these judges have retired or passed away during the COVID-19 pandemic, Justice Mulyono, the head of judicial education and training, remains optimistic about achieving the center's vision. He emphasizes that while human beings contribute to environmental challenges, environmental judges are part of the solution.

Ms. Briony Eales began her remarks by quoting Hal Wootten QC, the founding dean of the

### **MS. BRIONY EALES**

*Team Leader (Consultant), Environment and Climate Change Judicial Program,  
Asian Development Bank*

University of New South Wales Law and Justice Faculty, from a 2007 speech: “When the tumult and the shouting dies, and the captains and the kings depart, there stands still the ancient sacrament of the law—the right of everybody to a fair hearing and a reasoned decision according to the facts and the law by an honest and unintimidated judge.”

Ms. Eales noted that a fair hearing and a reasoned decision are often all the law can offer a person, whether individual or corporation, rich or poor, strong or weak. To ensure that justice is served and the law is applied in a just and rational manner, judges must uphold principles of fairness, honesty, and a rigorous assessment of facts. However, she argued that judges of today may need to go beyond these traditional qualities. As Justice Antonio Herman Benjamin observed, applying outdated reasoning may hinder the pursuit of environmental justice.



Ms. Eales asserted that the Asian Development Bank (ADB) consistently emphasizes the need for 21st century solutions to address 21st century challenges. Litigation involving climate, biodiversity, and pollution issues is exceptionally complex due to the involvement of multiple stakeholders, including people from around the world, future generations, and the environment itself. To effectively address these challenges, judicial education must consider the role of judges in environmental, climate, and Earth justice in the coming decades and prepare ahead for the skill sets that they will need.





Significant judicial advancements have often rested on the shoulders of jurists who were willing to apply new consciousness and imagination to existing principles to resolve society's pressing problems. We need new perspectives to create climate and Earth justice. But justice will only be fair when it takes into account these diverse perspectives, principles, and the rights of women, children, elders, indigenous peoples, the differently abled, future generations, and balances them with traditional power structures.

– **Ms. Briony Eales**

*Team Leader (Consultant), Environment and Climate Change Judicial Program,  
Asian Development Bank*

Ms. Eales continued by discussing the qualities judges should possess and cultivate. She cited Albert Einstein's famous quote, "We cannot solve our problems with the same thinking we used when we created them."

Therefore, judges must be capable of applying new consciousness and imagination to existing principles to address society's pressing problems. This includes adopting new perspectives to create climate and Earth justice. Judges will need to consider diverse viewpoints, principles, and the rights of women, children, elders, indigenous peoples, the differently abled, and future generations, while also balancing these concerns with traditional power structures. Only then will justice be fair.

She underscored that judicial education should focus on fostering this behavioral change. Inadequate understanding, imagination, compassion, skills, and resources, coupled with entrenched economic and governance systems, vested interests, and the need for unprecedented change, deter people from acting.

Ms. Eales shared that, over the past decade, ADB has been supporting judiciaries throughout Asia and the Pacific. One initiative is the Asian Judges Network on Environment (AJNE). ADB also assists judiciaries in establishing green benches by helping them develop rules and procedures and by organizing capacity building events and symposiums for judges.

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She acknowledged that these symposiums can be costly and often have limited capacity. To address ADB General Counsel Thomas Clark's belief that all judges in all cities and countries should be well-functioning, ADB has leveraged its experience with online collaboration during the COVID-19 pandemic and shifted to hybrid approaches for educating judges and legal professionals.

In addition to in-person training events and conferences, ADB also published the series "Climate Change Coming Soon to a Court Near You." It also systematically supports judicial training bodies in Asia and the Pacific, including the Council of ASEAN Chief Justices' ASEAN-wide education program, to develop sustainable training on climate change, environment, and biodiversity.<sup>7</sup>

Ms. Eales also discussed a recent innovation: a judicial master class program ADB is working on in partnership with UNEP and the US Agency for International Development's Reducing Demand for Wildlife initiative. She shared that the idea originated during an ADB conference in Lahore, Pakistan, in 2018. While attending a roundtable discussion with junior judges and experts on managing and adjudicating environmental cases, she, Justice Brian Preston, and Justice Syed Mansoor Ali Shah conceived the concept. Inspired by the discussion, ADB created videos featuring expert judges answering hypothetical / what-if questions, similar to those posed by the junior judges. These videos can be incorporated into judicial education curriculums or online workshops.

Furthermore, in response to requests for technical assistance on remedies and enforcement, ADB is also developing a dedicated volume on this topic.

Ms. Eales concluded by highlighting the importance of continuing to live greatly in the law and to educate effectively in a hybrid world. To achieve this, she committed to ongoing dialogue with judges to understand their evolving needs.

### MR. DIMITRI DE BOER

*ClientEarth Chief Representative for the People's Republic of China*



Mr. Dimitri de Boer shared that, since 2013, the People's Republic of China (PRC) has demonstrated a strong political commitment to the environment. Chief Justice Zhōu Qiáng has shown a deep understanding of and dedication to environmental issues. In 2015, the PRC's environmental protection law took effect, enabling public interest litigation. Subsequently, hundreds of environmental courts were established across the country, staffed by specialized environmental judges. To ensure all judges were equipped to handle environmental matters, a decision was made to provide them with relevant training.

<sup>7</sup> Asian Development Bank. 2020. *Climate Change Coming Soon to a Court Near You (Reports 1 to 4)*. December. Manila.

Mr. de Boer shared that, given the PRC's strong commitment to the environment, ClientEarth was invited to cooperate with the Supreme People's Court. In 2016, ClientEarth organized the first training sessions for judges, focusing on climate change and the implications of their rulings. Since then, ClientEarth has trained at least 2,000 environmental judges in the PRC through various methods, including group sessions, high-level seminars, overseas visits, online video lectures, webinars, case collections, and joint studies. Mr. de Boer also expressed a desire to share subtitled recordings of the symposium on the online training platform for judges.

Mr. de Boer further explained that the PRC's Environmental Public Interest Litigation system relies on two primary plaintiffs. The first are qualified nongovernment organizations (NGOs) that can sue polluters to require repair of environmental harm. The second are prosecutors who have the authority to bring environmental public interest cases against both polluters and government agencies. Given their influential position, ClientEarth has chosen to focus on training prosecutors and has initiated a comprehensive environmental law training program for them.

The PRC has made significant strides in a relatively short period. Starting from virtually no public interest environmental cases, prosecutors filed approximately 80,000 such cases in 2020. Notably, a majority of these cases targeted government entities. While NGOs have also been actively involved in litigation, they often face challenges due to limited funding. To address this issue, ClientEarth and a Chinese foundation established a special fund for these NGOs, which is currently the largest of its kind in China.

Mr. de Boer shared several notable environmental adjudication cases from the PRC:

- (i) A recent case involved a Bitcoin mining company, which typically consumes massive amounts of electricity to power computers used for mining.<sup>8</sup> An investor



[W]hat we found in judicial education is that it is very difficult to communicate between different judicial systems with different languages. But the one thing that is easy to communicate is cases, and so we prepared what we call 10 Landmark Cases for Biodiversity from around the world.

- Mr. Dimitri de Boer  
ClientEarth Chief Representative for the  
People's Republic of China

<sup>8</sup> *Beijing Fengfujixun Marketing and Technology Co. Ltd. v Zhongyan Zhichuang Blockchain Co. Ltd.*, (7 July 2022) [(2022) Jing 03 Minzhong No. 3852].



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sued the company's operator for an unpaid debt of USD 18 million worth of Bitcoin. The judge ruled the entire contract void due to the recent ban on Bitcoin trading in the PRC, partly motivated by concerns about its massive energy consumption. This case was groundbreaking as it was one of the first in the PRC where a judge proactively addressed climate change issues.

- (ii) In another case, the government failed to respond to a ship that dumped construction waste into the ocean, despite repeated complaints from a resident. Prosecutors investigated the matter, using drones to catch the ship in the act. Legal action followed, with the operator facing criminal charges and a civil public interest environmental case for ecosystem damage, resulting in a substantial fine. The local administration is also under investigation for its inaction and possible collusion with the perpetrators.
- (iii) The green peacock case involved an NGO that challenged the approval of a hydroelectric dam that threatened the habitat of a critically endangered bird species. The court ruled in favor of the NGO, halting dam construction and preventing habitat destruction. This marked a significant milestone as it was the first major preventive case of its kind in the PRC.<sup>9</sup> The green peacock case is featured in a ClientEarth publication showcasing 10 landmark environmental cases from around the world.<sup>10</sup>

Mr. de Boer noted that the conference had discussed technology extensively, so he wanted to highlight that prosecutors and NGOs in the PRC are increasingly utilizing remote sensing technologies, such as satellite images and drone surveillance, to build cases. These remote sensing technologies can bypass local interests in terms of intentional manipulation of data or omissions of important facts. Courts may also employ technological solutions to investigate facts.

Mr. de Boer further noted that cases challenging government priorities can be complex due to the government's significant role in the PRC system. Nevertheless, judges and courts are progressively being de-linked from the government system, increasing their independence; for example, environmental courts are cross-jurisdictional, which decouples them from local interests. Other challenges include the difficulties associated with bringing preventive litigation and public interest litigation, the limited number of capable environmental NGOs, and the relatively small number of climate cases to date.

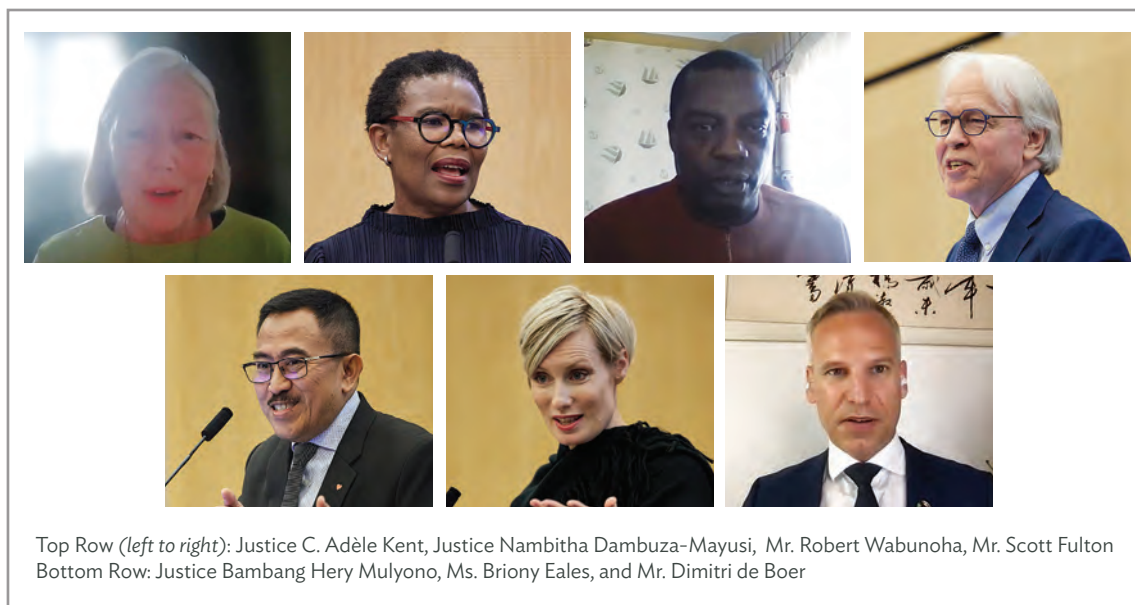
Mr. de Boer shared that ClientEarth used to operate on a tight budget in the PRC, but major foundations have increasingly recognized their work, giving them more resources to grow their teams and programs, especially in Asia. He extended an invitation to those present, including Justice Mulyono and Mr. Fulton, to collaborate with ClientEarth. Additionally, he expressed hope that judicial training centers would continue to invite Chinese judges to participate in programs. ClientEarth, for its part, can assist in overcoming language barriers and administrative formalities.

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<sup>9</sup> *Friends of Nature Institute v Xinping Development Co. Ltd*, Intermediate Court of Kunming Municipality, No. 824, High Court of Yunnan, 2020.

<sup>10</sup> ClientEarth. 2021. [10 Landmark Cases for Biodiversity](#). Prepared for the UN Convention on Biological Diversity COP15 and Global Conference on Environmental Adjudication. United Nations Environment Programme and the Government of the People's Republic of China Supreme People's Court.

## Discussion for Panel Session 7



As co-chair of the session, **Dr. Gomolemo Moshoeu**, Director of the Judicial Academy of South Africa, facilitated the discussion.

**Mr. Katak Malla**, a recently retired educator from Stockholm University, observed that literature often portrays law as anything but neutral, legitimate, or just. He pondered how a judge, lawyer, or teacher might approach teaching law in the context of power asymmetry, a common occurrence in environmental law due to the frequent involvement of the government or its executive branch. However, he observed that since the Stockholm Declaration, no law is beyond environmental law. This provides a common ground for arguing the law in situations characterized by power asymmetry, institutional racism, or even patriarchy.

**Justice Syed Mansoor Ali Shah** of the Supreme Court of Pakistan posed four questions:

- (i) Is there data or software that gauges the performance of judges who have undergone training, to see if the training has made a difference, for example, in improving decision-making or implementation?
- (ii) Is there training specifically for constitutional, high court, and supreme court justices?
- (iii) What is the composition of the faculty that trains judges—are they judges, academics, or private sector experts?
- (iv) Is there a scorecard at the end of training that could go into the service record of the judge, and could be used to determine promotion or elevation to a higher bench?

In response to Justice Shah's question about assessing training effectiveness, **Mr. de Boer** explained that ClientEarth is aware that environmental judges, who are the primary participants in their training, often implement what they learn. However, he acknowledged the inherent difficulty

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in definitively measuring training effectiveness. He expressed interest in exploring more structured training approaches, such as those used in Indonesia.

**Mr. Fulton** confirmed that, based on his experience, measuring the impact of training on jurisprudence is challenging, short of delving into individual cases.

**Ms. Eales** also agreed with the difficulty of measuring training effectiveness, but she shared that ADB frequently comes across anecdotal evidence of the exchange of ideas from ADB-convened conferences. For example, Pakistan's Supreme Court used the writ of *kalikasan*, taken from Philippine jurisprudence, in its *Leghari* decision. Additionally, the Philippines adopted a writ of continuing mandamus in its rules of environmental procedure, inspired by India.<sup>11</sup> She added that ADB is looking into conducting baseline assessments before offering training, both to track progress and to create a database for evaluating the effectiveness of its training programs.

In response to Justice Shah's second question about specific training for constitutional, high court, and supreme court justices, **Mr. de Boer** stated that ClientEarth does indeed train judges and leaders at these levels. In fact, this was the original focus, as supreme court judges are often the most eager to be well-informed and well-educated.

**Justice Dambuzza-Mayusi** noted that the concept of judicial training in environmental law is relatively new in South Africa, with high court judges only recently beginning to participate. Constitutional court judges have yet to engage in such training. Moreover, environmental cases have often been handled by courts from an administrative standpoint, partly due to capacity constraints. For example, these cases frequently focus on whether the circumstances and submissions have been thoroughly examined prior to the issuance of assessments or permits.

**Ms. Eales** mentioned that ADB offers basic training. However, it is working on more advanced curricula, which it could offer to constitutional judges and judges from higher courts.

**Mr. de Boer** also responded to Justice Shah's third question regarding the composition of training faculty, saying that ClientEarth trainers are mainly judges, but some are also academics, scientists, and NGO leaders. **Mr. Fulton** explained that ELI relies primarily on academics and senior

scientists for its faculty, but is considering involving judges to teach climate leadership. **Justice Mulyono** reiterated the importance of having senior judges teach junior ones, for example via case studies, and of having academic experts to complement the judges' inputs.

**Ms. Eales** shared that ADB trainers are judges, lawyers, leaders of NGOs, and other experts in their field. Given its emphasis on diversity and inclusion, ADB makes sure that everyone has a voice, regardless of age or gender. As an example, Ms. Eales mentioned that ADB has sent children to share their experiences and thoughts on climate change with the United Nations (UN) Committee on the Rights of the Child.

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<sup>11</sup> *Leghari v. Federation of Pakistan*, PLD 2018 Lahore 364; The Supreme Court of India coined the term "continuing mandamus" in *Vineet Narain v. Union of India*, (1998) 1 SCC 226; AIR 1998 SC 889.



In response to Justice Shah's final question about the scorecards used at the end of training, which could potentially be included in a judge's service record, **Mr. de Boer** noted that many judges who have participated in ClientEarth training have subsequently been promoted in some capacity.

**Mr. Fulton** asserted that a system for promoting judges based on their training participation does not yet exist. However, once ELI completes its standardized curriculum and the National Judicial College or the Federal Judicial Center integrates it into their programs, it could serve as the foundation for a system that allows climate training to be recognized as a credential for advancement.

**Justice Dambuzza-Mayusi** explained that while AJENEL keeps a scorecard at the end of every training, this is used purely for assessment and not for promotions, especially since judges are not promoted in South Africa. Advancement to a higher court involves a separate assessment process.

**Ms. Eales** noted that ADB could conduct workshops to assist specific courts in incorporating performance into their promotion structures, if they have the appetite for it.



**Justice Antonio Herman Benjamin** spoke about how difficult it is to conduct judicial education in large countries that do not have specialized environmental courts. For instance, while there are specialized courts in India and the PRC, there are only a limited number of such courts in Brazil and none in the US. In such circumstances, the best manner of conducting judicial education becomes a question of balance. Given the heavy workload of judges, it raises the question of whether all of them, potentially numbering in the tens of thousands, should receive training in environmental law, even if many may never encounter an environmental case.

While it is challenging to develop a precise formula, guiding principles can be established. One such principle is that the more remote or abstract a topic is, the less interest or impact it will likely have. Another is that, given cooperation and collaboration among judges across countries, anyone going into another country should consider that nation's constitution and legal system.

The concept of intellectual integrity, emphasized by Justice Suntariya Muanpawong of Thailand, is often considered crucial primarily in the recruitment of judges. However, it should also serve as a guiding principle in the way judicial education is conducted. It must be kept in mind that judicial education is intended not to constrain but to liberate.



### ROBERT WABUNOHA'S PRESENTATION

#### Trends in Greening Judicial education in Africa

*Robert Wabunoha*  
*Regional Environment Coordinator, UNEP, Africa*  
[robert.wabunoha@un.org](mailto:robert.wabunoha@un.org)

#### Trends in Greening Judicial education in Africa

- There is a strong case for strengthening judicial education on environmental law in Africa.
- Trends in most of the judiciaries in Africa show that development of modern environmental law integrates environmental issues with socio-economic, security and political agenda.
- ❖ First, we see that environmental law is a relatively new branch of law, having only recently in the last 3 decades becoming part of the curricula of legal training in universities. However, many judges and magistrates who preside over environmental cases have the basic knowledge and skills to apply or interpret environmental laws.
- ❖ Secondly, the complexity of environmental law that has scientific, technological, economic, social and equity imperatives calls for continuous training of judicial officers with knowledge and skills especially on the ever-evolving environmental issues.
- ❖ Thirdly, recent decades have witnessed a growing proliferation of environmental treaties, constitutions, statutes, regulations, bylaws and new institutions dealing with an ever-changing and developing issues range of environmental management challenges. Again, this calls for continuous education.

### Trends in Greening Judicial education in Africa

- The effectiveness of environmental law in Africa can be seen in the eyes of the Judiciary. From the enactment of the environmental laws in some 30 or so years to how the law is adjudicated in courts of law and enforced one can see how the progress of the development of the law has taken.
- The trend is that African courts are simultaneously pushing the boundaries of judicial interpretation to not only of trade and commerce but also on environmental law and human rights. In fact, the most interesting trend is the willingness of the African courts to adjudicate on environmental, human rights, economic and trade issues more than ever before.
- Many countries now have judicial training institutions. We have over 10 African countries that have since customized regional training toolkits. These countries and others have now retained the necessary capacity in judicial institutions to adequately adjudicate environmental disputes.
- However, many other judiciaries in Africa have not integrated judicial education on environmental law in their systems. The best method is to collaborate with them using non-traditional methods.

### Trends in Greening Judicial education in Africa

- Looking back to today, the initiative to have a regional approach in integrating environmental law through the Africa Judicial Educators Network on Environmental Law (AJNEL) has become the engines of growth of environmental law and is enhancing the effectiveness of environmental adjudication.
- The message we receive from the judiciaries is that there is need for homegrown jurisprudence to support the progressive development and implementation of environmental law in Africa.
- Its not only the judiciary that are learning and impacting on environmental law. Governments are also learning from the courts. The 2018 International Court of Justice judgement in *Costa Rica v Nicaragua*, Judgment on compensation on compensation for environmental damage has generally found itself in Zambia's draft guidelines on award of environmental damages and compensation.



### Trends in Greening Judicial education in Africa

- Africa ought to exploit its potentials and strengthen cooperation among the judiciaries at peer-to-peer levels in the field of environmental protection and advance judicial effectiveness in environmental matters.
- Innovations in imparting knowledge and skills in the judiciaries and ensure long term and sustainable methodologies of equipping the judiciaries is critical. Its imperative to include Judges as well as experts in trainings. Judges like to be trained and mentorship by their own. Have some judges speak to some of the issues. Judges learn by seeing the immediate use of the knowledge. Use legal context such as case studies has been found useful. Breaking down the technical issues also helps the judges in understanding.
- The involvement of Chief Justices, Presidents of Supreme Courts and Judges in these trainings goes a long way to show the interest at the highest levels.
- Through the Montevideo programme on periodic review of environmental law, UNEP has been able to provide that critical catalytic support to African countries and elsewhere
- UNEP acknowledges the cooperation of all the judicial training institutions and programmes that have contributed to the success achieved.

JUSTICE BAMBANG HERY MULYONO'S  
PRESENTATION



**Green Education and  
Training  
for "Green Judges"**



**Role of the Court**



- **Determinants of Environmental Justice**
- **Prevents environmental damage.**
- **Environmental restoration**

### **COMPETENCY IMPROVEMENT**

- 1. Environmental Science**
- 2. Environmental Ethics**
- 3. Environmental Protection & Management**
- 4. Environmental & Natural Resources Law**
- 5. Environmental Law Enforcement  
(Procedural Law)**
- 6. Integrity**



### **INDICATORS OF COMPETENCE ACHIEVEMENT**

- 1. Participants are able to calculate environmental losses due to forest and land fires;**
- 2. Participants are able to calculate environmental losses due to pollution / environmental damage due to mining;**
- 3. Participants are able to calculate environmental losses due to pollution on industrial activities;**
- 4. Participants are able to make decisions whose legal considerations are in accordance with the principles of environmental law.**



## Training flow Environmental Judges Certification



### March

- Announcement,
- Participant recruitment,
- Curriculum & Modul,
- Trainers Convention.



### Week 3 – 4 April

Invitation to  
Participants, participant  
orientation and starting  
material learning  
through E-Learning  
(self study)



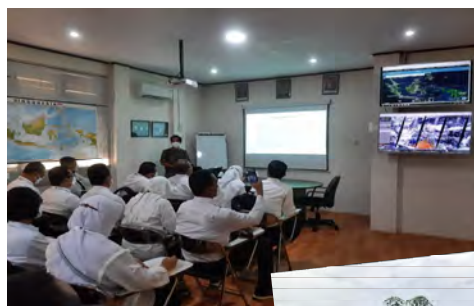
### Week 2-3 May

Online Class



### Week 4 May

case studies,  
simulations, roleplay,  
legal reasoning.  
(classical class)



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### Inspirational Class



2012 – 2022

16 batch of Environmental Judges Training

Alumni : 1,341 judges

- General Court: 1084 judges (Civil & Criminal cases)
- State Administrative Court: 257 judges



**Thank You**  
**Terima Kasih**



## Panel Session 7



### DIMITRI DE BOER'S PRESENTATION



#### UN Stockholm +50 Associated Event Symposium on Judges and the Environment

Dimitri de Boer  
Chief Representative for China  
1 June 2022

**ClientEarth**

June 2016: Seminar on Climate Adjudication



 **ntEarth**

June 2016: Environmental Judges Training



Jan – Mar 2017: Study in USA



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Nov 2016: Visit UK and Sweden



July 2018: Seminar with Supreme People's Court





July 2018: Training Public Interest Prosecutors



**China's System of Environmental Public Interest Litigation**

- Qualified NGOs can bring litigation against polluters to repair environmental harm
- Prosecutors can bring environmental public interest litigation against polluters and government agencies



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### Progress

- Judicial independence
  - Public interest litigation against government agencies
- Environmental adjudication
  - Bitcoin case
  - 80,000 environmental cases by prosecutors in 2020 alone (!)
  - Examples:
    - Illegal dumping of construction waste
    - Green peacock case

9



### 10 Landmark Cases for Biodiversity

- Prepared for UN Convention on Biological Diversity COP15
- And Global Conference on Environmental Adjudication (UNEP and Supreme People's Court of China)
- <https://www.clientearth.org/media/upvbjd4p/10-landmark-cases-for-biodiversity.pdf>

10



## 10 biodiversity cases from all around the world



11



### 1. China: Habitat of Green Peacock Saved from Hydroelectric Dam

High court halts construction to save critically endangered species

Friends of Nature, a Chinese NGO, won a landmark case in the high court of Yunnan Province in South West China, stopping the construction of a partially completed hydropower station on the Jiluo river. At the time of the ruling, tens of millions of dollars had already been spent on the construction of the 270 MW station.

The Jiansa Hydropower Station threatened the country's largest remaining habitat of green peacocks. Rare across its whole range in South East Asia, the green peacock is critically endangered in China.

There are less than 300 wild birds left in the country, and the Jaka dam would have submerged the home of more than half of all of China's peacocks.

Yunnan, China's second largest producer of hydropower electricity prides itself on being the most biodiverse province in the country.

This symbolic ruling prioritized Yunnan's iconic biodiversity over the interests of one of the province's main industries – a testament to China's commitment to protect the environment.

### Legal analysis

After almost three years and several hearings, in March 2020, the Kunming Intermediate People's Court ruled in the first instance that the contractor had to immediately suspend work until a new environmental impact assessment (EIA) was carried out. In December 2020, Yunnan High People's Court issued the final, second-instance judgement upholding the decision of the first-instance trial. The case concerns three leading issues:

### 58 Landmark Cases for Biodiversity

12



## Panel Session 7

### Challenges

- Cases which challenge government priorities are complex
- Preventive litigation is hard to bring
- Lack of capable environmental NGOs
- Few climate cases to date

13



## Thank you

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**ClientEarth**

Diver searching and removing crown of thorns around Datoy Island in Coron, Palawan, Philippines in an effort to conserve the coral reefs (photo by Brian Manuel/ADB).







Villagers from the K'ho ethnic minority patrol a pine forest near the Da Nhim commune in Viet Nam. This is part of the Payment for Forest Environment Services (PFES) rendered for the national park authorities. Forests play an essential role in mitigating climate change by capturing carbon dioxide emitted into the atmosphere (photo by Lester Ledesma/ADB).



A photograph of a forest with tall, thin trees and green undergrowth. A large, semi-transparent blue shape covers the right side of the image, serving as a background for the text.

# 15

## CLOSING SESSION

Keynote Addresses:  
Environment, Biodiversity,  
Law and Development



## CLOSING SESSION

### Keynote Addresses: Environment, Biodiversity, Law and Development

#### JUSTICE ANTONIO HERMAN BENJAMIN

*National High Court of Brazil (STJ)*

*President, Global Judicial Institute on the Environment (GJIE)*

*Chair Emeritus, International Union for Conservation of Nature (IUCN)*

*World Commission on Environmental Law (WCEL)*

In opening this session that signaled the approach of the end of the symposium, Justice Antonio Herman Benjamin highlighted that a gathering of judges may present diverse perspectives and not always reach complete consensus. However, diversity is precisely the beauty of law and humanity. He then welcomed the two co-chairs of the session.



Justice Benjamin first introduced Justice José Igreja Matos, President of the International Association of Judges (IAJ) and sitting judge at the Court of Appeal of Porto in Portugal. Justice Benjamin remarked that Justice Matos understands the importance of environmental law and climate change. He shared that, many years ago, Ms. Elizabeth Mrema, Justice Ricardo Lorenzetti, and Justice Benjamin went to an IAJ conference to ask the IAJ board for help to establish GJIE. To their surprise, Justice Matos—who

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Environment, Biodiversity,  
Law and Development  
on YouTube.



was then president of the Association of European Judges—welcomed them and endorsed their idea to the then president of IAJ. Justice Matos has a long history of collaboration with the GJIE that began even before the institute was founded.

Justice Benjamin then introduced Professor Christina Voigt, a distinguished law professor at the University of Oslo School of Law, and keynote speaker at this symposium. Justice Benjamin believes that she is one of the finest experts on climate law.

Justice Benjamin opined that both co-chairs have integrity and dedication to the public interest, attributes also found in the two keynote speakers who are considered giants in environmental law and development law.

The first speaker was Mr. Achim Steiner, who was the director of the United Nations Environment Programme (UNEP) when GJIE was being formed and has consistently supported GJIE since its inception. The second speaker was Ms. Elizabeth Mrema, who previously led the law program at UNEP. Justice Benjamin recognized their longstanding collaboration in building judicial capacity globally and expressed his gratitude for their participation in the symposium.

“

We can never count on full agreement. But that is the beauty of law, and that is the beauty of humanity: diversity.

– **Justice Antonio Herman Benjamin**  
*National High Court of Brazil (STJ);  
President, Global Judicial Institute on  
the Environment (GJIE);  
Chair Emeritus, International Union for  
Conservation of Nature (IUCN) World  
Commission on Environmental Law (WCEL)*

### JUSTICE JOSÉ IGREJA MATOS

*President, International Association of Judges (IAJ)*

Justice Matos remarked that he felt honored to be invited to this event to represent IAJ. He also thanked Justice Benjamin for his remarkable work and efforts.

Justice Matos posited that environmental climate change is in the future of the planet; therefore, judges—as representatives of state power—cannot afford to stay neutral or turn a blind eye to the problem. This is why he decided to add the environment to his list of priorities for his mandate, when he was elected president of IAJ in Rome in





## Closing Session

“

We are judges, we are the judiciary, we represent the power of the state. We cannot be neutral, we cannot turn a blind eye to the problem.

– **Justice José Igreja Matos**  
*President, International Association of Judges (IAJ)*

September 2021. Justice Matos said that it was a privilege to see judges working on this issue and to have the opportunity to work with them.

### **MS. CHRISTINA VOIGT**

*Professor, Oslo University School of Law  
Chair, International Union for Conservation of Nature (IUCN) World Commission on Environmental Law (WCEL)*



Ms. Christina Voigt introduced Mr. Achim Steiner. He is the administrator of the United Nations Development Programme (UNDP), after being its executive director for several years. He also served previously as the director general of the International Union for Conservation of Nature (IUCN). A long-time friend of the legal community, Mr. Steiner has consistently supported the work of the IUCN World Commission on Environmental Law (WCEL). His combined expertise in environmental and development agendas, both through his professional work and his engagement with IUCN, WCEL, and GJIE, has fostered an appreciation for the role of law in addressing both environmental and development challenges and the need for strong laws, courts, and justice systems.

### MR. ACHIM STEINER

*Administrator, United Nations Development Programme (UNDP)*

Mr. Achim Steiner expressed pride at being called a friend of the legal community. He feels fortunate to be a friend of Justice Benjamin, to whom he owes a great deal of his understanding and appreciation of the rule of law, specifically the environmental rule of law. He praised Justice Benjamin for being one of the great convenors in the world, who not only excites with the vision he has but dares to make his vision happen.

Mr. Steiner argued that although many plans remain unrealized, the community should still honor those who made the 1972 Stockholm Conference happen and those who built on it every year since. He described the conference as a pivotal

moment, elevating environmental concerns from a secondary or tertiary status. Before 1972, people dependent on the environment were often marginalized or viewed as less relevant by those who had become disconnected from nature. In the abundance of the late 20th century—water comes out of a tap, electricity comes out of a socket, food is in the supermarket—many questioned the relevance of the natural world to their technologically driven 21st-century aspirations.

Following the 1972 conference, numerous institutions were established, and environmental agreements evolved and proliferated. Over 500 multilateral environmental agreements have been forged, outlining environmental goals and establishing mechanisms for mutual accountability. These agreements allow sovereign states to collectively agree on necessary actions, individual responsibilities, and accountability measures. This aspect of environmental governance is often codified into the environmental rule of law.

In this way, the Stockholm Declaration has provided vital tracks for countless professionals—at first, environmental advocates then lawyers, attorneys-general, and judges—to follow, allowing them to evolve.<sup>1</sup> Now, there is a new generation of environmentally-informed jurisprudence.



<sup>1</sup> United Nations. 1972. [Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972, A/CONF.48/14/Rev.1](#). New York.

## Closing Session

Stockholm+50 underscores the need for the environmental community to adapt its approach to challenges. Unlike the binary debate of poverty versus environment and privilege versus inaction that characterized the Stockholm Declaration, today's world is more complex. Disputes are no longer over a particular territory but involve entire generations who seek redress through their countries' courts for intergenerational challenges. The judicial system has gained prominence in societal decision-making, and environmental jurisprudence has evolved beyond carbon dioxide and methane emissions. All of this must be covered by jurisprudence that extends beyond individual judges or courts, and which serves as the foundation for an environmental rule of law.

Mr. Steiner emphasized the need for a broader perspective. The convergence of Stockholm+50 and the sustainable development agenda, as codified in the 2030 Agenda for Sustainable Development, highlights the importance of integrating environmental considerations into all aspects of societal decision-making. Society will best understand a right that relates to the environment if that right is within the totality of society's daily decision-making.<sup>2</sup> Individuals must therefore shift from a compartmentalized understanding of environment, society, and economics to recognize the interconnectedness of these elements. A compromised environment inevitably affects all other aspects of life.

"Sustainable development law" may not be the right terminology for it, but the environmental rule of law paradigm must continue to evolve alongside fundamental interpretations of human rights. This evolution should occur not only when human rights or environmental defenders are imprisoned or killed, but also in the interpretation of law and governance in a world where



[Y]oung people [...] were beginning to take the issue of climate change right to the heart of a country's constitutional ruling, namely the supreme courts. We have since then seen [...] many judicial platforms emerge in which people who feel they have nothing left turn to law and jurisprudence to, first of all, be heard, and second of all, be understood.

– Mr. Achim Steiner

*Administrator, United Nations Development Programme (UNDP)*

<sup>2</sup> The [2030 Agenda for Sustainable Development](#) is an action plan for people, planet, prosperity, peace, and partnership. United Nations General Assembly. 2015. [Transforming Our World: 2030 Agenda for Sustainable Development](#). 25 September.



depriving others of access to resources or destroying resources for development or progress becomes a crime against a neighbor or the next generation. It must usher in an era where people increasingly turn to judges, attorneys-general, and courts not to arbitrate but to determine what is defensible or what is constitutionally acceptable, or where constitutional law must also evolve to accommodate the evolution of the environmental rule of law.

Mr. Steiner recalled discussing the growing trend of young people, often excluded from the legal process in many countries, directly appealing to supreme courts on climate change issues during the World Bank's annual environmental law conference in 2017. This practice has gained momentum in numerous countries, including India's green courts. Many judicial platforms have emerged for those who feel they have no other recourse but to seek legal intervention. The evolution of the rule of law in a sustainable development era is largely defined by the failure to achieve turnarounds and breakthroughs. This sometimes literally makes a judge the last person to turn to in society.

Mr. Steiner concluded by sharing that he has to deal with economic imperatives contradicting science, on a daily basis—a tradeoff that should belong to the last century and is simply no longer viable and tenable. He asserted that law and jurisprudence can create new rules and change the game.

### **MS. CHRISTINA VOIGT**

*Professor, Oslo University School of Law  
Chair, IUCN WCEL*

Ms. Christina Voigt expressed gratitude to Mr. Steiner for reminding us of the significant changes that have occurred in the past 50 years. Relations have become more complex, challenges have intensified, and the rule of law is called upon to provide solutions, redefine existing rules, and envision new ones.

Ms. Voigt introduced the second speaker, Ms. Elizabeth Mrema. She is a lawyer and career diplomat who is the executive secretary of the Convention on Biological Diversity.<sup>3</sup> The parties to the Convention were negotiating the global biodiversity framework, which is hoped to be adopted within the year at the Conference of the Parties.<sup>4</sup> This crucial work, often referred to as the “Paris Agreement for nature,” aims to establish a set of global targets to halt the decline of biodiversity loss and nature destruction.<sup>5</sup>



<sup>3</sup> The [Convention on Biological Diversity](#) is the first global agreement on “the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.” United Nations Environment Programme. 1992. [Convention on Biological Diversity](#). 5 June.

<sup>4</sup> On 19 December 2022, the Kunming-Montreal Biodiversity Framework was adopted by the Conference of the Parties to the Convention on Biological Diversity. Convention on Biological Diversity. 2022. [Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity, CBD/COP/DEC/15/4](#). Montreal. 19 December.

<sup>5</sup> United Nations Framework Convention on Climate Change. 2015. [Paris Agreement to the United Nations Framework Convention on Climate Change](#), United Nations Treaty Series, No. 54113. Paris. 12 December.

## Closing Session

### **MS. ELIZABETH MREMA**

*Executive Secretary, Convention on Biological Diversity (CBD)*

Ms. Mrema previously served as the director of the Law Division at UNEP, where she worked for over two decades. She also held the position of executive secretary of the Convention on the Conservation of Migratory Species and is a long-standing member of the steering committee of the IUCN WCEL. In recognition of her contributions to environmental law for nature protection, she was awarded the Nicholas Robinson Award for Excellence in Environmental Law in 2021.



Ms. Elizabeth Mrema recalled that UNEP first began training judges on environmental law issues in Kisumu, Kenya, in 1996. At that time, judges were reluctant to undergo training.

To temper their reservations, succeeding events were called colloquiums, symposiums, or interactives, a practice that continues today. This led to the creation of GJIE and helped develop environmental justice at both the national and regional levels—e.g., with the help of the Asian Development Bank (ADB) in Asia and Brazil in the Americas.

She expressed appreciation for the growth of environmental judicial activism and specialized environment courts in many countries. When UNEP published a compilation of environmental court chambers several years ago, there were already over 1,000 such courts—Ms. Mrema surmised that the number has likely doubled since then. She lauded how far judges have come; despite their reluctance to undergo training, they are now interpreting the law and pushing governments to act. She expressed hope that environmental judicial activism would address the environmental challenges discussed in the symposium.

Ms. Mrema noted that 50 years after the Stockholm Conference, the world continues to grapple with the consequences of multiple environmental crises, including climate change, biodiversity loss, land-sea degradation, and pollution. The problems of 1972—which led to the establishment of UNEP—persist today, and the challenges have intensified. It is imperative to ask what is being done to address these challenges, whether current efforts are on the right track, and how they will impact the next 50 years. Specifically, judges should be asked what happens when those who are responsible for pollution, climate change, and land degradation are brought to the courts.

Ms. Mrema reiterated that multilateral environmental agreements have developed over the past 50 years. She noted that Mr. Steiner's estimate of 500 agreements may be a conservative figure, as some sources suggest there are as many as 1,000. While the number of agreements is substantial, the focus should be on their implementation and enforcement, as the Earth has reached the planetary tipping points of unprecedented scale in the history of humankind.

Ms. Mrema highlighted the existence of strong treaties protecting biodiversity, such as the Convention on Biological Diversity and the Rio Conventions. Despite these efforts, biodiversity loss has reached unprecedented levels, further exacerbated by climate change.<sup>6</sup> The existential threat posed by the loss of mankind's life support system has driven the development of the new global biodiversity framework, which will succeed the Aichi Biodiversity Targets.<sup>7</sup>

The new global biodiversity framework is anticipated to be at par with the Paris Agreement. However, even the Paris Agreement faces implementation challenges. At an event Ms. Mrema attended earlier that day, it was projected that the global temperature would increase by 3.1°C, exceeding the Paris Agreement's ideal target of 1.5°C.

Despite delays caused by the coronavirus (COVID-19) pandemic, UNEP is continuing to advance the development of the new global biodiversity framework. The delays have provided UNEP with more time to consult with all stakeholders, including financial institutions, businesses, the private sector, indigenous peoples, local communities, youth, and women. The new framework will contribute to the implementation of the Paris Agreement and the achievement of the 17 goals of the 2030 Agenda for Sustainable Development, all 17 of which are related to biodiversity.

Ms. Mrema emphasized the crucial role of the judiciary in advancing environmental issues and the biodiversity agenda. The judiciary contributes significantly to ensuring compliance with environmental impact assessment requirements and environmental norms, standards, and procedures, as well as the implementation of biodiversity laws. This is achieved through the prosecution and adjudication of environmental crimes—such as poaching, illegal trading of wildlife, illegal logging, and illegal fishing—and through the judicial review and adjudication of environmental disputes. Research and analysis of case law also contribute to these efforts.

Members of the judiciary are well-positioned to enhance the visibility of environmental stewardship and the success of biodiversity conservation and sustainable use. Their actions and opinions in support of the environmental rule of law contribute to public awareness of the consequences of biodiversity loss and promote the prioritization of biodiversity considerations in all socioeconomic and political activities, including development. In line with this last point,

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<sup>6</sup> The three [Rio Conventions](#) are on Biodiversity, Climate Change, and Desertification. These derive from the 1992 Earth Summit. (United Nations Environment Programme. 1992. [Convention on Biological Diversity](#). 5 June; United Nations. 1972. [Report of the United Nations Conference on the Human Environment](#), Stockholm, 5-16 June 1972, A/CONF.48/14/Rev.1. New York; United Nations, 1993. [Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992](#). A/CONF.151/26/Rev.1 (Vol. I). New York.

<sup>7</sup> United Nations Environment Program. 2010. [Strategic Plan for Biodiversity](#). UNEP/CBD/COP/DEC/X/2. Nagoya. 29 October; and United Nations Environment Programme. 2022. [Kunming-Montreal Global Biodiversity Framework](#). CBD/COP/DEC/15/4. 19 December.




## Closing Session

the upcoming global biodiversity framework will also serve as a guide for local action and foster collaboration among governments, organizations, civil society, and the public.

The world needs the judiciary more than ever. As an independent branch unaffected by short-term political pressures to support unsustainable practices, the judiciary is well-positioned to make difficult but necessary decisions. It may be called upon to find a balance between competing priorities of different public entities or different levels of government, or to reconcile a variety of sector-specific laws and regulations which may not consider the interconnected nature of biodiversity, ecosystems, or production systems. Strengthening judicial independence, integrity, and environmental law education are prerequisites for the prevalence of the environmental rule of law. Ms. Mrema added that this symposium and similar forums are shaping the role of the judiciary as an impartial arbiter in reconciling conservation needs with economic and development interests.

Ms. Mrema appealed to the judges present to continue extending and enhancing their professional support in the compliance and enforcement of international environmental treaties ratified or acceded to by their national governments, including the upcoming global biodiversity framework. She concluded by reiterating that society will rely on judges to interpret and enforce the law, as well as close legal gaps. Through these efforts, judges will contribute to the conservation and sustainable use of biodiversity and the equitable distribution of its benefits to all, particularly vulnerable and marginalized groups.



The judiciary may be called upon to find a balance between competing priorities of different public entities or different levels of government, or reconcile a variety of sector-specific laws and regulations, which may not take into account the interconnected nature of biodiversity or ecosystems or production systems. The world needs the vital role of the judiciary more than ever.

– **Ms. Elizabeth Mrema**  
*Executive Secretary, Convention on  
Biological Diversity (CBD)*

### **MS. CHRISTINA VOIGT**

*Professor, Oslo University School of Law*

*Chair, IUCN WCEL*

Ms. Christina Voigt thanked Ms. Mrema for her insightful words of encouragement and for sharing her current work, particularly on the new global biodiversity framework. She underscored that the new global biodiversity framework's overall vision is to live in harmony with nature by 2050, although mankind cannot afford to wait until then to address emerging problems.

Science says that there is a very small window of opportunity today. To reach the global goals on climate change, biodiversity, and pollution by 2050, transformative and systemic changes should be put in motion now. The law is well-suited to initiate these transformative changes, serving as a governance tool that guides behavior and ensures justice for all. The world needs the new global biodiversity framework and the dedicated work of Ms. Mrema and CBD to make it a reality.



[L]iving in harmony with nature by 2050—that is the overall vision of what is being negotiated now [for the global biodiversity framework]. But we do not have time until 2050 to solve all these problems. We have a very small window of opportunity—this is what science tells us—in order to reach those global goals.

– **Ms. Christina Voigt Professor**

*Oslo University School of Law;*

*Chair, IUCN WCEL*





Farmers harvest wheat crop in Punjab, Pakistan. Climate change threatens crop yields due to temperature increases and increased rainfall. Reduced crop yields undermine availability of and access to food, and adversely affect nutritional value (photo by Sara Farid/ADB).





16

**SYMPOSIUM  
SYNTHESIS  
REMARKS**



# SYMPOSIUM SYNTHESIS REMARKS

Moving towards the delivery of the symposium synthesis, Justice Antonio Benjamin invited Professors Nicholas Bryner and Denise Antolini to the challenging task of synthesizing the extensive discussions that had taken place over the past two days.

### PROFESSOR NICHOLAS BRYNER

*Louisiana State University School of Law*

Professor Bryner expressed his gratitude to all attendees for their dedication and participation in this significant and unprecedented gathering in Stockholm. He then outlined that he and Professor Antolini had decided to focus on five key points.



He began with the first point: the importance of judicial participation in this kind of international forums. He highlighted that judges have played a pivotal role in the success of these gatherings since 1972 and that their contribution to advancing the rule of law is crucial for Stockholm+50. He stressed the need to amplify this message globally and to further strengthen independent and ethical judicial systems.

Secondly, Professor Bryner noted that the global network of judges dedicated to environmental law and the establishment of specialized environmental courts are expanding rapidly. He mentioned that the symposium featured presentations from high court and supreme court justices representing 24 countries across six continents. In order

of appearance, those countries included Sweden, Brazil, Norway, Nepal, Papua New Guinea, Argentina, Barbados, Costa Rica, Australia, France, Pakistan, the United States, the People's Republic of China, Kazakhstan, Mexico, Belgium, Thailand, Armenia, Kenya, New Zealand, South Africa, Indonesia, Canada, and Portugal.

Professor Bryner expressed his gratitude to all participants who had organized and attended similar gatherings in their respective countries and regions.

The third point pertains to the success of judicial decisions that:

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the Symposium Synthesis  
Remarks on YouTube.



- safeguard environmental rights;
- apply environmental laws;
- give practical meaning to constitutional environmental rights;
- give legal relevance to the Stockholm Declaration and all that has followed in the last 50 years;
- recognize the importance of human health and how human life cannot simply be sacrificed;
- acknowledge there is no true development or progress in the destruction of the environment; and
- give meaning to traditional understanding of the relationship between humans and the environment.

Professor Bryner observed that many in the audience had been involved in environmental law as judges, or had been engaging with judges, for over three decades. He shared a personal anecdote, recalling that he was in elementary school during the Rio Summit in 1992 and was therefore part of the 'future generations' referenced in the summit's declaration.

Despite significant advancements, substantial challenges lie ahead:

- (i) Addressing threats to the independence of judiciaries, particularly when environmental decisions have political implications or involve corrupt interests in the exploitation of public resources or the violation of individual or collective rights;
- (ii) Allocating necessary resources to enhance compliance with and enforcement of environmental laws; and
- (iii) Recognizing the vast scope of work that still needs to be accomplished.



As an instrument for maintaining order in society, law has been used in many cultures throughout the world for thousands of years as a way of maintaining the status *quo* and preserving the power and interests of elites. However, that is not the only vision of law. There is also a vision of law for justice, equity, and the rule of law. That vision is possible. You are the ones that make it happen. I am so deeply grateful for your participation here, and for all that you will continue to do in every continent, and every corner of our blue Earth.

– **Professor Nicholas Bryner**  
*Louisiana State University School of Law*

Law has served as a tool for maintaining social order across cultures for millennia, often used to preserve the status quo and protect the power and interests of elite groups. However, there is also



## Symposium Synthesis Remarks

a vision of law as a force for justice, equity, and the rule of law. Professor Bryner believes that this vision is attainable and that the judiciary can play a pivotal role in realizing it.

Professor Bryner expressed his sincere appreciation for the judges' participation in the symposium and for their ongoing efforts to advance environmental justice worldwide.

### PROFESSOR DENISE ANTOLINI

*University of Hawaii School of Law*

Professor Antolini recalled her previous comment likening the symposium to a symphony, with Justice Benjamin as its extraordinary conductor. Her concluding remarks highlighted both the symposium's successes and the challenges that lie ahead.

Professor Antolini outlined the many successes so far:

- (i) The **achievements mentioned by Professor Bryner and Ms. Mrema**, which should be cherished and not taken for granted, given the significant efforts of many individuals.
- (ii) The **capacity of organizations like the Global Judicial Institute on the Environment (GJIE)**, which should be recognized and maximized through events such as this symposium.
- (iii) **The use of technology**, including the creation of online portals that enable judges to connect and collaborate across vast distances. Papua New Guinea's Deputy Chief Justice Ambeng Kandakasi's mention of the transition to e-courts demonstrates the potential of technology, although it requires substantial resources.
- (iv) **The development and evolution of principles**, which are the result of collective efforts and provide a framework for future actions.



- (v) **Groundbreaking jurisprudence**, where significant court decisions inspire and influence others worldwide.
- (vi) **A deeper understanding of the interconnectedness of law, culture, and science.**
- (vii) **The establishment of specialized environmental courts.**
- (viii) **Key leadership**, exemplified by the judges in the room who have actively networked and built capacity. Professor Antolini suggested that each judge identify three potential successors to ensure the continuation of these efforts—to multiply as challenges also multiply.



When one of your courts makes an important decision, and you share it, it is a spark that goes around the world and we all celebrate it.

– **Professor Denise Antolini**  
*University of Hawaii School of Law*

Professor Antolini also acknowledged the challenges:

- (i) **Implementation and enforcement of environmental laws.**
- (ii) **Implementation metrics.** As mentioned by Pakistan’s Justice Syed Mansoor Ali Shah, success has been difficult to measure, even for capacity-building specialists. Current metrics rely on subjective feelings and anecdotal evidence.
- (iii) **Continuity.** Ensuring continuity is crucial, especially in the context of frequent turnover in judiciaries. This makes the recruitment of successors crucial.
- (iv) **The balance between judicial independence and engagement.** Engaging with civil society in an interdisciplinary world while maintaining judicial integrity and independence is difficult.
- (v) **The lack of resources.** Capacity building for judges would be difficult without major partners like the Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), and the United Nations Environment Programme (UNEP).
- (vi) **The slow pace of the law.** Addressing the slow pace of the law—which while not solely the fault of judges—needs to be accelerated. Law needs to be dynamic to keep pace with evolving crises.



Solar panels gather sun power and turbines harvest wind power at the Burgos Wind and Solar Farm in Ilocos Norte, Philippines. Shifting to renewable energy from carbon-intensive energy sources is a key mitigation strategy (photo by Al Benavente/ADB).





# 17

## DAY 2 CLOSING KEYNOTE ADDRESSES

## CLOSING KEYNOTE ADDRESSES

### **JUSTICE NAMBITHA DAMBUZA-MAYOSI**

*Supreme Court of Appeal, South Africa*

*President, African Network of Judicial Academies and the Environment*

Justice Benjamin introduced Justice Nambitha Dambuza-Mayosi of the Supreme Court of Appeal of South Africa, as well as her co-chair Justice Ananda Mohan Bhattarai from the Supreme Court of Nepal. Justice Dambuza-Mayosi, as co-chair, introduced the closing keynote speakers jointly with Justice Benjamin and facilitated the discussion.

The closing keynote speakers included Judge José Igreja Matos of the Court of Appeal of Porto in Portugal, who is also the president of the International Association of Judges (IAJ); and International Union for the Conservation of Nature (IUCN) Director-General Bruno Oberle, who was also a former Minister of the Environment of Switzerland for almost 10 years.



### **JUSTICE ANANDA MOHAN BHATTARAI**

*Supreme Court of Nepal*



Justice Ananda Mohan Bhattarai, drawing on his experience with the Global Judicial Institute on the Environment (GJIE) and the National Judicial Academy of Nepal, addressed the significance of judicial education in environmental discourse. He emphasized that while the Stockholm Declaration does not explicitly mention judicial education, it places human beings at the center of environmental discourse, intertwining environmental protection with human rights. Additionally, the Declaration establishes a common framework of principles and encourages the further evolution of additional ones.

## Day 2 Closing Keynote Addresses

Developing common outlooks requires several prerequisites:

- (i) Common understanding of facts, especially scientific facts, which judges crave to know and understand;
- (ii) Common efforts and tools, including legal tools both at national and international levels, e.g., the commonality between Africa's structural interdictions and South Asia's continuing mandamus;
- (iii) Emerging principles, such as the principle of common but differentiated responsibilities—as was reiterated in the Paris Agreement—that must be deconstructed and applied to the local situation. Another principle concerns compensation and reparation mechanisms that have not been discussed in depth at the local level;
- (iv) Common views on the duty to reconcile the conflict between the needs of development and the need to protect and improve the environment, among policymakers, legislators, environmental actors, and judges. This is essential for achieving what Nepal calls environmentally sustainable development; and
- (v) A common outlook about the future course of action.

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Evolving a common outlook involves several prerequisites [including a] common outlook among policymakers, legislators, environmental actors, and judges on the duty to reconcile conflicts between the needs of development and the need to protect and improve the environment.

– **Justice Ananda Mohan Bhattarai**  
*Supreme Court of Nepal*



## Day 2 Closing Keynote Addresses

### JUDGE JOSÉ IGREJA MATOS

*Court of Appeal of Porto, Portugal*

*President, International Association of Judges (IAJ)*

Justice José Igreja Matos briefly introduced IAJ as an international organization founded in 1953 devoted to the main issues of civilization in the aftermath of the Second World War: the rule of law, human dignity, judicial independence, and all other values that bring judges together. IAJ now includes 94 countries, most of which only joined in the past 12 to 15 years. This sudden growth may be explained by the increasing mondialization—globalization—of judges, where their professional concerns have grown similar and of equal importance. One such shared concern is the environment.<sup>1</sup>

Justice Matos concurred with Ms. Antolini regarding the necessity to strike a balance between judicial independence and engagement. He clarified, however, that the issue does not lie within the judiciary itself, which is under immense pressure from powerful lobbyists, national political authorities, and social media and other public communication channels that are often manipulated by forces seeking to maintain their control and influence. Many scholars detect a shift in the role of the judiciary from spectator to adjudicator, to protagonist, and on to designer, and judges must meet this challenge.

In social media, the most successful people tend to be those who shout the loudest. At the same time, science is not about exhibiting indisputable truths, but about circumscribing doubts. In this context, oversimplification runs the risk of attention loss—simply shouting about the climate crisis, even if accurate, might diminish the message's significance. Even though climate change is already here, prudent rationality is still needed.

Justice Matos suggested that judges should reaffirm their commitment to the United Nations' (UN) aims for environmental protection. The global judicial community should commit to implementing strict merit-based criteria for their appointment procedures, so that impartial and independent judges are the ones appointed to work and specialize in environmental law.



<sup>1</sup> Justice Matos attributed the concept of *mondialization* to Justice Antoine Garapon of France.

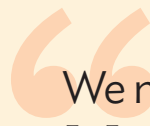
## Day 2 Closing Keynote Addresses

In collaboration with the UN, the global judicial community should establish international guidelines for the professional development of judges responsible for environmental law cases. These guidelines should address judicial appointment processes, ensuring the independence of judges from external influences. This will provide essential international oversight for evaluating the performance of national judiciaries and judges working for organizations like the GJIE, while safeguarding judicial independence and maintaining the appropriate separation of state powers.

Justice Matos warned that a decisive battle must be fought to guarantee a viable future for future generations. To use Nelson Mandela's words, "Together, we will work to support courage where there is fear, foster

agreement where there is conflict, and inspire hope where there is despair." For judges, there is a burden and need to be courageous in circumstances where there is fear, to promote agreements and prudent rationality where there is conflict, and to inspire hope where there is despair. This is the pledge of the IAJ, a strong commitment of 94 countries. Mr. Matos expressed optimism that, together with the GJIE, symposium participants would have the motivation to follow through and work together to support courage, foster agreement, and inspire hope.

Mr. Bruno Oberle described IUCN as a complex, complicated, and vast yet exciting organization.



We need to be courageous [...] where there is fear, to promote agreement where there is conflict [...], and to inspire hope where there is despair. Ninety-four countries, and a strong commitment, this is the pledge of the International Association of Judges.

– Judge José Igreja Matos

*Court of Appeal of Porto, Portugal;*

*President, International Association of Judges*

### MR. BRUNO OBERLE

*Director-General, International Union for the Conservation of Nature (IUCN)*

He also confirmed that his approach is tempered by his experience in the executive branch of Switzerland, a country where citizens are sovereign—they can challenge or initiate laws and elect judges. In the same way, he considers the members of IUCN sovereign and does his best to implement their will. IUCN's mission is to support its members in better managing the planet's natural resources.

Mr. Oberle asserted that the future depends on humanity's ability to confront the intertwined crises of global biodiversity loss and climate change. However, humans are the ones driving these

## Day 2 Closing Keynote Addresses

phenomena. Fifty years ago, humans extracted 30 gigatons of raw materials from the planet. Today, that figure has risen to 90 gigatons, and it is projected to reach 160 gigatons within the next 50 years. Human desires and aspirations dictate their actions and ultimately shape their impact on the planet.

Mr. Oberle asserted that humans can alter their behavior and consumption of natural resources. For example, they can transition to a circular economy, but this requires understanding the process and providing the necessary incentives for the legal system to adapt accordingly.

Another example is the excessive consumption and depletion of natural resources, particularly biodiversity, with humans taking too much and not reinvesting enough in natural capital.<sup>2</sup> This occurs because we have failed to assign a monetary value to nature. To assign a value to nature requires challenging decisions, e.g., taking ownership of assets away from the owner requires institutions to oversee price formation and implementation in the market, which in turn requires an understanding of economic principles and legal regulations.



“Our responses have to come both from science and from law. Both are essential to achieve effective conservation and restoration of nature. For that, laws and policies have to be anchored in science and the link between the scientific community and the legal community must be strong.

– Mr. Bruno Oberle

*Director-General, International Union for the Conservation of Nature*

<sup>2</sup> Government of the United Kingdom, HM Treasury. 2021. *The Economics of Biodiversity: The Dasgupta Review*. London.



## Day 2 Closing Keynote Addresses

Responses should come from both science and law. Both are essential to achieve effective conservation and restoration of nature. Laws and policies should be anchored in science, and the link between the scientific community and the legal community must be strong.

IUCN is a place where natural scientists and legal experts meet to discuss these common challenges. IUCN brings together scientists to promote and enhance conservation by laying out reliable data on the state of biodiversity, e.g., the Red List and the status of protected areas.<sup>3</sup> IUCN also engages policymakers to bring forward ambitious environmental policy frameworks.

Throughout its history, IUCN has played a pivotal role in initiating and drafting significant international agreements. For instance, through the collaborative efforts of the World Commission on Environmental Law (WCEL) and the Environmental Law Center in Bonn, IUCN continues to contribute to the development of international environmental law, including biodiversity, in areas beyond national jurisdiction. A prime example is its involvement in the process of establishing a treaty on the use and management of plastics.

Mr. Oberle concluded by emphasizing that the success of the law hinges on its sound and effective implementation, closing the gap between commitment and enforcement and ensuring responsible use of natural resources. As a member of IUCN, GJIE was acknowledged for its active support of judges, courts, and tribunals in addressing pressing environmental crises and challenges. As the gatekeepers of the law, judges at all levels of the judiciary possess the power to secure effective enforcement of environmental law and to guarantee that the state fulfills its international commitments.

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<sup>3</sup> The IUCN [Red List of Threatened Species](#) is the world's most comprehensive information source on the global extinction risk status of animal, fungus, and plant species while the IUCN [Green List of Protected and Conserved Areas](#) is a global campaign for successful nature conservation.



Mangroves grow along the beach of Tarawa, Kiribati. Mangroves help fight the effects of climate change by protecting shorelines and trapping carbon emissions (photo by Eric Sales/ADB).

A photograph of mangrove seedlings in a nursery bed, with a blue overlay on the right side of the image.

# 18

## FORMAL CLOSING REMARKS AND PARTNER RECOGNITION



## FORMAL CLOSING REMARKS AND PARTNER RECOGNITION

### Speech by **JUSTICE SAPANA PRADHAN MALLA**

*Supreme Court of Nepal*

*Secretary-General of the Global Judicial Institute on the Environment*

We are now at the end of today's program but with the commitment to continue the dialogue. Our dialogue is going to start again tomorrow in a United Nations forum. My responsibility is to thank all the people and organizations who made this happen. What has excited many of us are the commitments we have received from the Asian Development Bank (ADB), the United Nations Environment Programme (UNEP), and different organizations. I also want to thank Earthday.org for making sure that we all can participate.

We must say that this is an extraordinary meeting and numerous substantive issues have been discussed. It is a meeting of extraordinary judges who shared what they have achieved and what they are going through which will [continue].

I have to thank Denise Antolini and Nicholas Bryner who always sit behind us but who, in fact, are the architects of the program, [the ones] who made it happen. From the organizers' side, I would like to thank you, Denise and Nick.

I would also like to thank UNEP, especially Inger Anderson—who really challenged us but also inspired us—for the support she extended to continue the dialogue and strengthen judicial competency.

I would also like to thank you, Thomas Clark, for your leadership, and the whole team—Christina Pak, Maria Cecilia Sicangco, and those people who are not here present but in Manila where they have been making it happen—Angelo Jacinto, and the other team members.



Scan the QR code to watch  
the Formal Closing Remarks  
and Partner Recognition  
on YouTube.



## Formal Closing Remarks and Partner Recognition

### Speech by Justice Sapana Pradhan Malla *(continued)*

I would also like to thank you, Christina Voigt, no matter where in the world, whatever is happening, you are always with us.

I also would like to thank you Nicholas Robinson and David Boyd, our Special Rapporteur on Human Rights and the Environment.

Special thanks also go to Luc Lavrysen, President of the European Union Forum of Judges for the Environment, Michael Strauss of the European Reconstruction and Development Bank, and Elizabeth Mrema of the Convention on Biological Diversity.

And I also want to thank you, Justice Antonio Herman Benjamin, for your leadership and your untiring energy. You have not only founded the Global Judicial Academy, but you made this happen. We have also launched the portal, and that will not only help us to connect but also surely empower us.

Thank you.

### Speech by **CHRISTINA PAK**

*Principal Counsel, Asian Development Bank (ADB)*

Honorable justices, respected guests, development partners, and all the incredible environmental champions in this room:

It has just been an inspiring and amazing two days.

During the symposium, we heard about the progress made since the Stockholm Declaration, but we also heard the emergency sirens that we need to move faster and do more to achieve the Sustainable Development Goals. The gathering of the global judiciary, alongside Stockholm+50, is a response to this call, to bring in the judiciary who is fundamental to achieving the Sustainable Development Goals. We hope this symposium has provided all of you, the global judicial community, with a new opportunity to strengthen your response to the triple planetary crisis, and this event has energized you.

ADB is committed to supporting our judiciaries, along with our partners. We hope



## Formal Closing Remarks and Partner Recognition

### Speech by Christina Pak *(continued)*

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these two days have given you new perspectives and new ideas. We plan to disseminate these valuable sessions widely and we are happy to support any translations so that all the countries, and all the global judiciaries have access to these valuable sessions.

The closing of the symposium is about thanking everyone and being grateful. So I am grateful to the global judiciary for all the incredible work that you do.

In particular, I would like to acknowledge our Asia Pacific judiciaries, the judges that are here with us today, our champion judges—Justice Sapana Pradhan Malla from the Supreme Court of Nepal, Deputy Chief Justice Ambeng Kandakasi from the Supreme Court of Papua New Guinea, Justice Syed Mansoor Ali Shah from the Supreme Court of Pakistan, Justice Suntariya Muanpawong from the Supreme Court of Thailand, Justice Bambang Hery Mulyono from the Supreme Court of Indonesia, and our justices from Central Asia, Justice Beibut Shermukhametov from the Supreme Court of Kazakhstan, and Justice Karen Zariyan from the Administrative Court of Armenia. We are grateful that you have traveled all the way here to contribute to this dialogue. We are also grateful for the contributions made by Justice Bhattarai from the Supreme Court of Nepal and Judge Liu Zhumei, Chief Judge of the Environment and Resources Division of the Supreme People's Court of the People's Republic of China. ADB recognizes the incredible challenges that all the judges face and all the difficult issues that you have to grapple with. We are incredibly grateful for your dedication.

This symposium would not have been possible without the collective efforts of the international development community. I would like to express our deep appreciation to the Global Judicial Institute on the Environment, and the International Association of the Judges, for your vision and initiative in convening this significant symposium.

I would like to acknowledge the amazing Justice Antonio Herman Benjamin. You keep us all inspired and energized and we are grateful for the bridge that you have built to connect our Asia Pacific judiciaries with the global judicial community. Thank you for that.

Finally, I'd like to also acknowledge our development partners. Without all of us working together, this symposium and our work together will not be possible. We really look forward to our continuing collaboration. We are grateful for the new connections that we have made and we look forward to forging new partnerships.

Of course, I have to thank our amazing ADB team again—Cecille, Briony, and Angelo who are here. And, of course, the extraordinary team back in Manila, I have to say their names—Emie, Gladys, Hyacinth, Colleen, Paulo, and Martin. They made this all happen behind the scenes and they were up until midnight. Of course, our General Counsel has been an amazing support since he joined the bank in July 2020. He has helped build our judicial program and expand it. He has been an incredible supporter of our broader Law and Policy Reform Program.

I would also like to thank Denise and Nick. They are now honorary members of the ADB team. We will always work with them and they will be part of our team forever.



## Formal Closing Remarks and Partner Recognition

### Speech by Christina Pak *(continued)*

I hope all of you leave with a sense of optimism, that collectively we can steer our planet in a different trajectory. Again, thank you so much for all your contributions and just for being here, and good luck with the rest of the events.

Thank you.

### Speech by KATHLEEN ROGERS

*President, Earth Day*

Justice Antonio Herman Benjamin, I want to thank you for inviting me. Everyone is right about you. You are truly one of my heroes.

I am coming from civil society now. That is saying something. My own background started out in law. I was actually in the media before I went to law school and I was lucky enough to be a judicial clerk at the district court and the court of appeals in Washington D.C.

My judge was particularly confident in my skills and allowed me to write every single opinion. Only one, in the entire time I was there—which was quite a while—did he ever change the



opinion, and it was on standing. It was a National Wildlife Federation case, and I loved the plaintiff. This was before I became an environmentalist; I had been in the media and worked for the International Olympic Committee. I have done all these things globally, but there was a hint in me that the National Wildlife Federation deserved to have standing in this court.

He read it and completely reversed it. It went to the Supreme Court. He was right. I was wrong. So, I learned a lot about being a judicial clerk and what your minds actually are like.

I then went to the National Audubon Society and became co-manager of our litigation department. I also litigated many

cases and had been in private practice. I learned that perspective as well—how to bring cases, how to negotiate with governments, and most importantly, how to navigate the judicial process from the other side.

## Formal Closing Remarks and Partner Recognition

**Speech by Kathleen Rogers** *(continued)*

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Then I went to Earth Day. My organization is one of the biggest names in the environmental movement. We have almost a billion people participating in Earth Day. We have 150,000 organizations in our network—25,000 mayors, thousands of faith groups, and millions of teachers and students. Our organization works year-round, but we also focus on bringing people into the environmental movement.

As I was sitting here, Elizabeth Mrema brought up [something] which I thought was really important. She talked about two things. First is liberal education, the second was the general public, and the role of both.

Having just finished multiple times various studies on the state-of-the-art liberal education, particularly with respect to climate change, I must say there is not a single country on the planet that gets it right. Not only do they not teach environmental education, which is critically important for all of you, but they do not teach civics. Not a single country teaches civics in any way, shape, or form that can contribute to society.

On the other side is the general public. Bringing them along is my job, so it is difficult for me to say—we have not quite made it. We are not even close. There is disillusionment with multilaterals and there is disillusionment with governments, principally because there is so much compromise that is part of being a diplomat, part of being a multilateral, or part of being a government.

In the state that the world is in now, after having worked in this business for 30 years, we are losing ground. We are not winning. It is partially because we do not have the general public, partially because we do not have the education, partially because our multilaterals are letting us down, and partially because our governments are doing the same thing.

The final thing I would like to say, because it was brought up in some of the concluding remarks, is a question about the status quo. My organization is focused on disrupting the status quo, along with many other environmental groups, faith groups, mayors, and others.

But we are in your hands because, as one of our previous speakers said in summing up the proceedings, you are not here to protect the status quo, although sometimes it feels like it. Your job is to—particularly on the environment—understand the facts, understand the science, and decide the law.

Keep us in mind because the only thing that stands between us, in my view, particularly in the state of education and the general public, the dearth of courage and heroism at the government level, are you. All of you, you are what stands between us and the desecration of the planet. We depend on you, and more important than anything, we thank you.

## Formal Closing Remarks and Partner Recognition

### Speech by **ANDREW RAINE**

*Head of International Environmental Law Unit,  
United Nations Environment Programme (UNEP)*

Hello colleagues, warm greetings from Nairobi. I will be very brief with just three points.

First, congratulations to the team who organized this symposium. I work in the United Nations and I organize many global meetings, so I know how much work it entails. Please let me echo Christina and many others in thanking Justice Antonio Benjamin, the entire Asian Development Bank (ADB) team—Christina, Briony, Cecille, others back in Manila, and everyone else—Denise, Nick, everyone else who played a role in pulling this together.



I am personally very sad that I am not there with you in person. I have been following all of the sessions and it has been a roll call of many of my environmental law or—let me instead use Antonio’s words—planetary law heroes. You truly are icons in this movement.

Second point, whilst you are icons, how do we create more of you? We have heard from many speakers and participants about the critical role of judges. The thing I kept thinking about these two days was—how do we use the platform of the UN, of the ADB, and of the IAJ, to create more of you, to accelerate judicial solutions to our triple planetary crisis? More Antonio Benjamins, more Michael Wilsons, more Liu Zhumeis, more Syed Mansoor Ali Shahs. On this I want to take the opportunity to reaffirm to you in the strongest possible terms, UNEP’s commitment to working with you, the Global Judicial Institute on the Environment, ADB, IAJ, and anyone else at any level who is committed to this mission.

Third and finally, I leave these two days with a sense of optimism. Yes, any objective analysis shows us that the scientific glass is half-empty. Many people have made that point compellingly. It is left less than half-empty; we are in a bad place.

But when it comes to the environmental law movement—or the planetary law movement—and the systemic changes it can tidal wave in, I am 100 percent with Nicholas Robinson, Elizabeth Mrema, and Inger Andersen. I am with all of the other speakers who spoke to that glass half-full philosophy. It is even more than glass half-full because your ideas, your commitment, your creativity, your legal imagination, and your clear-eyed direction of purpose are what is needed and what is happening, and what can happen to truly accelerate environmental rule of law.

That is my purpose, I am committed to it. I know you are. I am very grateful for this symposium, and the many that will come after it. And I thank you.



## Formal **Closing Remarks** and Partner Recognition



As the symposium drew to a close, Justice Benjamin called Mr. Scott Fulton to the podium to serenade the symposium participants.

Mr. Fulton, graciously obliged. In keeping with the focus on future generations during the past two days of the symposium, and as a clarion call to solidarity, he sang *Growing Tomorrow* and *If I Had A Hammer* (*The Hammer Song*) –

### **Growing Tomorrow\***

We are the sun and the water  
We are the seed that is sown  
We are the soil in the garden  
From which tomorrow will grow  
And together we are growing tomorrow  
Together, we're preparing the way  
So tomorrow can rest on the strength of foundations that we lay today

We are the brick and the mortar  
We are the tools and supplies  
We are the nail and the timber  
From which tomorrow will rise  
And together we are growing tomorrow  
Together, we're preparing the way  
So tomorrow can rest on the strength of foundations that we lay today

If we all work together  
If we all act as one  
If we build on each other  
A bright tomorrow will dawn

And together we are growing tomorrow  
Together, we're preparing the way  
So tomorrow can rest on the strength of foundations that we lay today

We grow tomorrow today



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\* Song written by C. Scott Fulton.

## Formal **Closing Remarks** and Partner Recognition

### **If I Had a Hammer (The Hammer Song)\*\***

If I had a hammer  
I'd hammer in the morning  
I'd hammer in the evening  
All over this land

I'd hammer out danger  
I'd hammer out a warning  
I'd hammer out love between my brothers and my sisters  
All over this land

If I had a bell  
I'd ring it in the morning  
I'd ring it in the evening  
All over this land

I'd ring out danger  
I'd ring out a warning  
I'd ring out love between my brothers and my sisters  
All over this land

If I had a song  
I'd sing it in the morning  
I'd sing it in the evening  
All over this land

I'd sing out danger  
I'd sing out a warning  
I'd sing out love between my brothers and my sisters  
All over this land

Well I got a hammer  
And I got a bell  
And I got a song to sing, all over this land

It's the hammer of Justice  
It's the bell of Freedom  
It's the song about love between my brothers and my sisters  
All over this land

It's the hammer of Justice  
It's the bell of Freedom  
It's the song about love between my brothers and my sisters  
All over this land



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\*\* Song written by Pete Seeger and Lee Hays.



Farmers in Khandke, India continue with their planting and farming around the wind farm (photo by Ian Taylor/ADB).





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## **SYMPOSIUM ON THE GROUND:**

Photos from the Radisson Blu  
Waterfront Hotel, Stockholm  
Waterfront Congress Centre

## Symposium on the Ground



▲ **Justice Antonio Benjamin** of Brazil takes the podium as chair for the opening ceremony (photo by Angelo Jacinto/ADB).



**Judge Hanna Werth** of the Swedish Judges Association at the opening ceremony (photo by Angelo Jacinto/ADB).



**Patricia Kameri-Mbote** of the United Nations Environment Program (UNEP) Law Division at the opening ceremony (photo by Angelo Jacinto/ADB).



**Thomas Clark** of the Asian Development Bank at the opening ceremony (photo by Angelo Jacinto/ADB).



**Michael Strauss** of European Bank for Reconstruction and Development at the opening ceremony (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ ADB General Counsel **Thomas Clark** and Justice **Antonio Benjamin** of Brazil chat before the opening of the symposium (photo by Angelo Jacinto/ADB).



▲ EBRD General Counsel **Michael Strauss** delivers his welcome remarks to the attentive audience (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



**Professor Nicholas Bryner** of Louisiana State University, one of the Academic Coordinators of the Symposium, gives an overview of the two day event (photo by Angelo Jacinto/ADB).



**Professor Denise Antolini** of the University of Hawai'i School of Law gives an introduction to the symposium as one of its Academic Coordinators (photo by Angelo Jacinto/ADB).



**Professor Nicholas Bryner** of Louisiana State University, **Professor Denise Antolini** of University of Hawai'i, and **Christina Pak**, ADB Principal Counsel, smile for the camera (photo by Angelo Jacinto/ADB).

## Symposium on the Ground



▲ ADB's Principal Counsel, **Christina Pak**, co-chairs the Opening Keynotes session (photo by Angelo Jacinto/ADB).



▲ **Justice Ragnhild Noer** of Norway delivers her speech as Professor Nicholas Robinson listens closely (photo by Angelo Jacinto/ADB).



## Symposium on the Ground

**Professor Nicholas Robinson** of Pace University laughs as he engages with panel session speakers (photo by Angelo Jacinto/ADB).



**Justice Antonio Benjamin** of Brazil, together with EBRD's **Michael Strauss** and ADB's **Thomas Clark**, intently listens to a presentation (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ **Professor Jeffrey Sachs** of Columbia University delivers his opening keynote virtually as the other panel members and the audience pay attention (photo by Angelo Jacinto/ADB).



▶ **Christina Pak, Nicholas Robinson, and Justice Ragnhild Noer** (photo by Angelo Jacinto/ADB).

## Symposium on the Ground



▲ **Briony Eales**, Team Leader of ADB's Environment and Climate Change Judicial Program, facilitates the opening keynotes session (photo by Angelo Jacinto/ADB).

**Judge Anders Bengtsson** of Sweden chairs the session on emerging trends in environmental law (photo by Angelo Jacinto/ADB).



▲ **ADB's Briony Eales** and **Justice Beibut Shermukhametov** of Kazakhstan are all set to begin the session (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ **Professor Jonas Ebbesson** of the University of Stockholm School of Law responds to a question from the audience as **Professor Émilie Gaillard** of SciencesPo Rennes and **Justice Sapana Pradhan Malla** of Nepal listen (photo by Angelo Jacinto/ADB).



▲ **Jojo Mehta**, co-founder and Executive Director of Stop Ecocide International, listens to **Professor Christina Voigt**, chair of IUCN WCEL (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ **Justice Joe Williams** of New Zealand begins his speech with a prayer (photo by Angelo Jacinto/ADB).

**Justice Syed Mansoor Ali Shah** of Pakistan raises a question for the panel (photo by Angelo Jacinto/ADB).



▲ **Justice Michael Wilson** of the State of Hawai'i, United States, **Justice Syed Mansoor Ali Shah** of Pakistan and **Maria Cecilia T. Sicangco** of ADB (photo by Angelo Jacinto/ADB).

## Symposium on the Ground

**Dr. Kilaparti Ramakrishna and Professor Denise Antolini** of the University of Hawai'i smile for the camera (photo by Angelo Jacinto/ADB).



▲ **Justice C. Adèle Kent** of Canada delivers her speech via Zoom (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ Justice Ricardo Lorenzetti of Argentina begins his speech (photo by Angelo Jacinto/ADB).

A symposium participant, **Katak Malla** of the Stockholm Centre of International Law and Justice, and **Deputy Chief Justice Ambeng Kandakasi** of Papua New Guinea react to the panel discussions (photo by Angelo Jacinto/ADB).





## Symposium on the Ground



▶ Esteemed **Judges Hanna Werth** and **Anders Bengtsson** of Sweden proudly represent the host country (photo by Angelo Jacinto/ADB).

**Patricia Kameri-Mbote**, Director of UNEP's Law Division, **Justice Antonio Benjamin** of Brazil, and **Justice Nambitha Dambuzamayosi** of South Africa deep in discussion even before the symposium commences. (photo by Angelo Jacinto/ADB).



**Justice Nambitha Dambuzamayosi** and **Dr. Gomolemo Moshoeu**, both from South Africa, and **Justice Syed Mansoor Ali Shah** of Pakistan, take a photo for posterity (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ José Igreja Matos, President of the International Association of Judges, delivers his closing keynote address (photo by Angelo Jacinto/ADB).



▲ Maria Cecilia T. Sicangco, ADB Senior Legal Officer, delivers her speech (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ **Robert Wabunoha**, Regional Environment Coordinator of UNEP Africa, speaks about the trends in greening judicial education in Africa (photo by Angelo Jacinto/ADB).



▲ **Justice Michael Wilson** of the State of Hawai'i, United States answers a question, while **Justice Beibut Shermukhametov** of Kazakhstan and **Justice Brian Preston** of Australia look on (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ Judge Marcus Livio Gomes of Brazil joins the panel virtually (photo by Angelo Jacinto/ADB).



▲ Justice Michelle Weekes of Barbados delivers her speech via Zoom (photo by Angelo Jacinto/ADB).

## Symposium on the Ground

Participants to the symposium, including **Professor Jonas Ebbesson** of the University of Stockholm School of Law and **David Boyd**, UN Special Rapporteur for Human Rights and the Environment, intently listen to the presentation (photo by Angelo Jacinto/ADB).



**Inger Andersen**, UNEP Executive Director, passionately delivers her keynote speech on the three planetary crises (photo by Angelo Jacinto/ADB).



**Scott Fulton**, President Emeritus and International Envoy of the Environmental Law Institute, and **Justice Suntariya Muanpawong** of Thailand (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ Ms. Andrea Brusco of UNEP moderates the panel virtually, with panel members **Justice Brian Preston** of Australia, **Justice Michael Wilson** of Hawaii, **Justice Syed Mansoor Ali Shah** of Pakistan, **Maria Cecilia Sicangco** of ADB, and **Justice Beibut Shermukhametov** of Kazakhstan (photo by Angelo Jacinto/ADB).



▲ **Briony Eales**, Team Leader of ADB's Environment and Climate Change Judicial Program, responds to a question as fellow panelist **Scott Fulton**, President Emeritus and International Envoy of the Environmental Law Institute, listens (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ **Justice Fabien Raynaud** of France delivers his speech as the crowd intently listens (photo by Angelo Jacinto/ADB).



▲ **Judge Anders Bengtsson** of Sweden and other symposium participants are engrossed in a presentation (photo by Angelo Jacinto/ADB).

## Symposium on the Ground



▲ **Justice Antonio Benjamin** of Brazil points to a map displayed on the screen (photo by Angelo Jacinto/ADB).



▲ **Justice Nambitha Dambuza-Mayosi**, President of the African Network of Judicial Academies and the Environment, shares her observations. (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



Justice Karen Zariqyan of Armenia, Justice Ambeng Kandakasi of Papua New Guinea, and Justice Beibut Shermukhametov of Kazakhstan during the break (photo by Angelo Jacinto/ADB).



Donald Kaniaru, Managing Partner of Kaniaru & Kaniaru Advocates and former Director of UNEP's Division on Environmental Policy Implementation and Division on Environmental Conventions, closes the panel session on the Global Judicial Environmental Portal as Justice Antonio Benjamin looks on (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



UN Special Rapporteur for Human Rights and the Environment, **David Boyd**, and **Professor Jonas Ebbesson** of the University of Stockholm School of Law (photo by Angelo Jacinto/ADB).

Co-chairs **Vesselin Haralampieva**, Senior Counsel at European Bank for Reconstruction and Development, and **Carl Bruch**, Director of International Programs at the Environmental Law Institute, facilitate the discussion for Panel Session 5 (photo by Angelo Jacinto/ADB).



Environmental law heroes **Justice Syed Mansoor Ali Shah** of Pakistan and **Justice Brian Preston** of Australia pose for the camera (photo by Angelo Jacinto/ADB).

## Symposium on the Ground



▲ The participants find amusement in the middle of the intense discussions (photo by Angelo Jacinto/ADB).



▲ **Bruno Oberle**, Director-General of the International Union for Conservation of Nature, talks about responding to environmental issues from a dual perspective of science and law (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ Judge Liu Zhumei of the Supreme People's Court of the People's Republic of China speaks via Zoom.



▲ Justice Beibut Shermukhametov of Kazakhstan and Justice Karen Zariqyan of Armenia direct their attention to the speaker (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ **Dimitri de Boer**, Chief Representative for ClientEarth's Beijing Office, shares his insights (photo by Angelo Jacinto/ADB).



▲ **Carl Bruch** (Director of International Programs at the Environmental Law Institute) and **Justice Suntariya Muanpawong** of Thailand listen to **Justice Samson Okong'o** of Kenya as he answers a question (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ **Justice Antonio Herman Benjamin** of Brazil speaks with **Kathleen Rogers** (President of Earth Day Network), **Justice Sapana Pradhan Malla** of Nepal, and ADB's **Christina Pak** on-stage (photo by Angelo Jacinto/ADB).



▲ **Justice Bambang Hery Mulyono** of Indonesia gives his presentation on "green judicial training" (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ **Arnold Kreilhuber**, Deputy Director of UNEP's Law Division, expounds on access to justice and the environmental rule of law (photo by Angelo Jacinto/ADB).



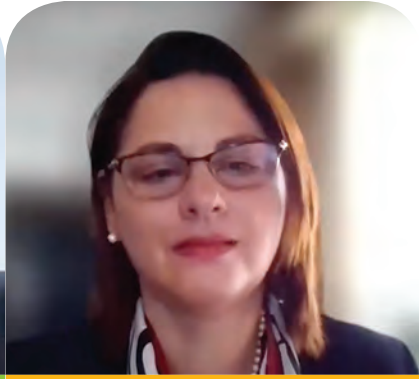
▲ **Daniel Magraw**, President Emeritus of the Center for International Environmental Law, and **Kristen Walker Painemilla**, Chair of the Commission on Environment, Economic and Social Policy of IUCN, listen to inputs from the audience (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



**Justice Luc Lavrysen** of Belgium introduces the Panel Session 4 speakers (photo by Angelo Jacinto/ADB).



**Justice Damaris María Vargas Vásquez** of Costa Rica sums up the salient points of the panel speakers (photo by Angelo Jacinto/ADB).



**Judge Marc Clément** of France speaks of the reasons that judges need to share case law and network in the domain of environmental law (photo by Angelo Jacinto/ADB).



**Georgina Lloyd Rivera**, UNEP Regional Coordinator for Asia and the Pacific, kickstarts the panel session on Access to Justice: Nature, Indigenous Peoples, and Environmental Rule of Law (photo by Angelo Jacinto/ADB).

## Symposium on the Ground



**Eva Duer**, UNEP legal officer, introduces the Global Judicial Environmental Portal (photo by Angelo Jacinto/ADB).



**Peter Speelman**, UNEP associate legal officer, walks the participants through the features of the Global Judicial Environmental Portal (photo by Angelo Jacinto/ADB).



**Andrew Raine**, head of UNEP's International Environmental Law Unit, delivers his closing remarks (photo by Angelo Jacinto/ADB).



▲ **Maryna Yanush**, UNECE Environmental Affairs Officer, invites participants to ask their questions (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ **Justice Ananda Mohan Bhattarai** of Nepal shares his thoughts on judicial education (photo by Angelo Jacinto/ADB).

ADB General Counsel **Thomas Clark** presents ADB's report series "Climate Change, Coming Soon to a Court Near You" to **Inger Andersen**, UNEP Executive Director (photo by Angelo Jacinto/ADB).



▲ **Justice Sapana Pradhan Malla** of Nepal and **Professor Émilie Gaillard** of the Normandy Chair for Peace continue their discussion over coffee (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ Judge Marcus Livio Gomes of Brazil joins the panel virtually (photo by Angelo Jacinto/ADB).



▲ Justice Antonio Herman Benjamin presents ADB's report series "Climate Change, Coming Soon to a Court Near You" to Achim Steiner, UNDP Administrator, and Elizabeth Mrema, Executive Secretary of the Convention on Biological Diversity. They are joined by José Igreja Matos, Christina Voigt, and Briony Eales (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ **Justice Brian Preston** of Australia, **Scott Fulton** (President Emeritus and International Envoy, Environmental Law Institute), and **Justice Bambang Hery Mulyono** of Indonesia take their coffee break (photo by Angelo Jacinto/ADB).



▲ Some symposium participants enjoy an evening out—from left to right: **Maria Cecilia T. Sicangco**, **Justice Nambitha Dambuza-Mayosi** of South Africa, **Justice Ragnhild Noer** of Norway, **Dr. Gomolemo Moshoeu** of South Africa, **Briony Eales**, **Christina Pak**, **Nicholas Bryner**, **Denise Antolini**, and **Justice Antonio Herman Benjamin** of Brazil (photo by Angelo Jacinto/ADB).



## Symposium on the Ground



▲ Participants, speakers, and organizers of the symposium wave joyfully (photo by Angelo Jacinto/ADB).





Boys playing with marine algae in Tarawa, Kiribati. According to the IPCC, Kiribati could lose two-thirds of its land if the sea rises by 1 meter (photo by Eric Sales/ADB).





# 20

## OPENING CEREMONY SPEAKERS

In alphabetical order, by surname.

Affiliations and positions indicated are as of symposium dates  
(31 May–1 June 2022).

## Opening Ceremony Speakers



### THOMAS MICHAEL CLARK

*General Counsel, Asian Development Bank (ADB)*

Mr. Clark holds a Doctor of Laws degree from Columbia University, where he was Notes Editor of the Columbia Law Review, and a Bachelor of Arts degree in Government from Harvard University. He has over 30 years of experience in legal and government affairs practice, spanning the financial services, energy, and infrastructure sectors. After a judicial clerkship on the U.S. Court of Appeals for the D.C. Circuit, and legal practice at the law firms of Sullivan & Cromwell in New York and WilmerHale in Washington, D.C., Mr. Clark joined the General Electric Company, one of the world's largest infrastructure and technology companies. His 22-year career at GE included 16 years based in Japan and covering the Asia-Pacific region, as General Counsel for GE's largest Asian financial services arm, and as Executive Counsel for Government Affairs and Policy, working with regulators and governments throughout the region on key legal and policy initiatives, and holding leadership roles in industry associations and private sector advisory bodies for APEC and ASEAN.

Most recently, Mr. Clark was Managing Director and Co- Head of Americas for the Global Public Policy Group of BlackRock Inc., the world's largest asset management firm, where he drove regulatory policy engagement and thought leadership on infrastructure finance, ESG and sustainability, disclosures related to climate risk and energy transition issues, data privacy and fintech.

As General Counsel at Asian Development Bank (ADB), he is responsible for driving legal strategy and engagement on public policy reforms to support ADB's mission of achieving a sustainable, prosperous, inclusive, and resilient Asia-Pacific region.



### **PATRICIA KAMERI-MBOTE**

*Director, United Nations Environment Program (UNEP) Law Division;  
Professor, University of Nairobi Law School*

Patricia Kameri-Mbote is the Director of the Law Division of the United Nations Environment Programme (UNEP). She leads the division charged with carrying out the functions of UNEP in the field of environmental law, governance, and related policy issues. The division's work focuses on leading the international community in the progressive development of environmental law; supporting States in the development and implementation of legal, institutional and policy measures in response to major environmental challenges; facilitating cooperation and coordination among multilateral environmental agreements and between UNEP and those agreements; working with secretariats of Multilateral Environmental Agreements (MEAs) to support Parties to the respective MEAs in implementing their treaty obligations; and facilitating policy dialogue among States on issues relating to international environmental law and governance.

Patricia has in-depth knowledge of environmental law acquired in research, environmental law and policy making and implementation at local, national, regional, and international levels. She consulted for UNEP in the review of programmes, legal instruments, and the rules of engagement of major groups. She was also engaged in the Montevideo Environmental Law Programme since 2007 and is a member of the Governing Board of the Council on Environmental Law (ICEL).

Previously, Patricia was Founding Research Director of the International Environmental Law Research Centre (IELRC) and was Programme Director for Africa for over 20 years. She is a member of the Senior Counsel Bar in Kenya and has been a Professor of Law at the School of Law, University of Nairobi, where she has taught for over 30 years and served as Dean. She has also taught environmental law at Kansas University, University of Zimbabwe, and Stellenbosch University. She served as chair of the Association of Environmental Law Lecturers in African Universities, an initiative started in collaboration with UNEP to build environmental law capacity through training and research; and has contributed to the development of similar initiatives for North Africa and Middle East and for judges.

Patricia holds Doctorate (1999) and Master's (1996) degrees in law from Stanford University, as well as a higher doctorate from the University of Nairobi (2019). These have focused on environmental law and its interactions with other areas of law such as property



## Opening Ceremony Speakers

**Patricia Kameri-Mbote** *(continued)*

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law and women's law. She also holds a Master's degree from Warwick University (1989) and was awarded an honorary degree in law by the University of Oslo (UiO) in 2017 for her work cutting across established fields of women's law, natural resources law, human rights, and law and development. She has published widely in diverse areas of environmental law and property rights.



### **MICHAEL STRAUSS**

*General Counsel, European Bank for Reconstruction and Development (EBRD)*

Michael Strauss was appointed General Counsel at the European Bank for Reconstruction and Development (EBRD) effective January 2020. In that role, Mr Strauss serves on the Executive Committee and various other committees of the Bank.

Mr Strauss joined EBRD from private practice as a Partner at the Washington-based law firm Harris, Wiltshire & Grannis LLP. Prior to this, he represented the United States on the Board of the Asian Development Bank and served as a Senior Advisor covering international finance at the US Treasury. He has worked as a legal counsel in both the World Bank Group and the International Monetary Fund, primarily focused on sovereign debt, institutional governance, and development in Francophone Africa. He began his legal career in capital markets, mergers & acquisitions, and privatizations in the London and Paris offices of the law firm Cleary, Gottlieb, Steen & Hamilton LLP.

Mr Strauss is a US national. He has a JD from Stanford Law School, a Master's from the Fletcher School of Law & Diplomacy (where he has also taught law as an adjunct professor), and a BA from Williams College. He is admitted to the Bar in New York and Washington, DC.

## Opening Ceremony Speakers

### **JUDGE HANNA WERTH**

*President, Swedish Judges Association*

Hanna Werth currently serves as a judge at the administrative court in Malmö, Sweden. She is the president of the Swedish Association of Judges.

Judge Werth has been a judge since 2011, specializing in taxation law and compulsory care cases. Prior to her appointment as a judge, she served in Sweden's Ministry of Finance where she worked on, among others, taxation of incinerated waste.







Children are disproportionately affected by climate change, which undermines their human rights to life, food, water, education, family life, and culture. Climate justice can address the uneven distribution of climate impacts and help limit the extent of global warming (photo by Abir Abdullah/ADB).





# 21

## KEYNOTE SPEAKERS

In alphabetical order, by surname.

Affiliations and positions indicated are as of symposium dates  
(31 May–1 June 2022).

## Keynote Speakers



### INGER ANDERSEN

*Secretary-General, Stockholm+50 International Meeting;  
Executive Director, United Nations Environment Programme (UNEP)*

Ms. Inger Andersen concurrently serves as the Undersecretary General of the United Nations (UN) and Executive Director of the United Nations Environment Programme (UNEP). She has more than 30 years of experience on international development economics, environmental sustainability, strategy and operations.

Between 2015 to 2019, Ms. Andersen served as the Director General of the International Union for Conservation of Nature. For 15 years at the World Bank, Ms. Andersen held several leadership positions including Vice President of the Middle East and North Africa, Vice President for Sustainable Development, and Head of the Consultative Group on International Agricultural Research Fund (CGIAR) Fund Council. Prior to the World Bank, she worked for 12 years focusing on drought, desertification and water management projects at the UN, including at the UN Sudano-Sahelian Office and the UN Development Programme.

Ms. Andersen holds a Bachelors from the London Metropolitan University North and a Masters in Development Economics from the University of London.

### JOSÉ IGREJA MATOS

*President, International Association of Judges*

José Igreja Matos, a Portuguese national, has been a judge since 1990. In 2021, he became the President of the Court of Appeal Court of Porto (Tribunal da Relação do Porto). He has been a member of the Advisory Board of the Judicial Integrity Network of the United Nations since 2018.

Judge Matos is currently the President of the International Association of Judges, a worldwide organization that represents ninety-two countries. He has been a member of the Consultative Council of European Judges by the Council of Europe since 2020. He was elected as President of the European Association of Judges in 2016 and served until 2021.





**José Igreja Matos** *(continued)*

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Judge Matos is an Associate Researcher of the University of Coimbra. He is an author of several books, articles, and studies on themes regarding the judiciary and has published a Manual of Court Management. He is a lecturer of conferences organized in different countries including Europe, Asia, Africa, and America.



**JOJO MEHTA**

*Co-founder and Executive Director, Stop Ecocide International*

Jojo Mehta co-founded Stop Ecocide International (SEI) in 2017, with the late legal pioneer Polly Higgins. SEI aims to activate and develop global cross-sector support to make ecocide an international crime. As the organization's Executive Director and key spokesperson, Ms. Mehta has overseen the remarkable growth of SEI's global movement. She also coordinates legal developments, diplomatic traction, and the public narrative relating to SEI's advocacy. She is also Chair of the Stop Ecocide Foundation and convenor of the Independent Expert Panel for the Legal Definition of Ecocide.

**ELIZABETH MARUMA MREMA**

*Executive Secretary, Convention on Biological Diversity*

Elizabeth Maruma Mrema is the Executive Secretary of the Convention on Biological Diversity. She has worked with the UN Environment Programme (UNEP) for over two decades and was the Director of the Law Division at UNEP. Prior to joining the Law Division, she was Deputy Director of the Ecosystems Division, in charge of coordination, operations, and program delivery. Prior to these duties, she also served as Executive Secretary of the UNEP/Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals. Her work at UNEP has focused on development, implementation, and enforcement of environmental laws, including multilateral environmental agreements at national, regional, and international levels.



## Keynote Speakers

### Elizabeth Maruma Mrema *(continued)*

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Before joining UNEP, Elizabeth worked with Tanzania's Ministry of Foreign Affairs and International Cooperation. During her time with the Ministry, she also lectured on Public International Law and Conference Diplomacy at Tanzania's Centre for Foreign Relations and Diplomacy.

Elizabeth is a lawyer and career diplomat with LLB (Hons) from the University of Dar-es-Salaam, Tanzania, LLM from Dalhousie University, Canada, and Postgraduate Diploma in International Relations and Diplomacy from the Centre of Foreign Relations and Diplomacy in Dar-es-Salaam, Tanzania.



### BRUNO OBERLE

*Director-General, International Union for Conservation of Nature (IUCN)*

Dr. Bruno Oberle assumed office as Director General of the International Union for Conservation of Nature (IUCN) in July 2020.

He brings over 40 years of experience to IUCN at a time when redefining humanity's relationship with nature is more urgent than ever. Before joining IUCN, Dr Bruno Oberle served in some of Switzerland's most prestigious positions related to the environment. Between 2005 and 2015, as Switzerland's State Secretary for the Environment and Director of the Federal Office for the Environment, he represented Switzerland in leading international institutions and international negotiations, playing a key role in the Global Environment Facility and in the establishment of the Green Climate Fund.

Dr. Oberle is a leading expert in the fields of sustainable resource management and green economy and has explored and shaped the interface between environmental policy, economic development and social equity from the perspective of state regulator, entrepreneur, and scientist.

Prior to joining IUCN, Dr. Oberle served as Chair of the Green Economy and Resource Governance program at the École Polytechnique Fédérale de Lausanne (EPFL) from 2016, where he also headed the International Risk Governance Centre. Since 2019, he has chaired the Global Tailings Review, which aims to establish an international standard for the safe management of tailings storage facilities that can be applied to dams around the world. He was

**Bruno Oberle** *(continued)*

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also the lead author of the Global Resources Outlook 2019, written in his capacity as an active member of the International Resource Panel, which he joined in 2015.

Preceding his academic and government roles, Dr. Oberle founded and managed companies in the fields of environmental consulting and environmental management, using the expertise gained from his doctorate in environmental sciences at ETH Zurich.

**NICHOLAS ROBINSON**

*Professor, Pace Law School; President, International Council of Environmental Law; Chair Emeritus, International Union for Conservation of Nature (IUCN) World Commission on Environmental Law*

Professor Nicholas A. Robinson has developed environmental law since 1969, when he was named to the Legal Advisory Committee of the President's Council on Environmental Quality. He has practiced environmental law in law firms for municipalities and as general counsel of the New York State Department of Environmental Conservation. He drafted New York's wetlands and wild bird laws and was inaugurated as the first chairman of both the statutory Freshwater Wetlands Appeals Board and Greenway Heritage Conservancy for the Hudson River Valley. He has served as legal advisor and chairman of the Commission on Environmental Law of the International Union for Conservation of Nature and Natural Resources, engaged in drafting treaties and counseling different countries on the preparation of their environmental laws. He founded Pace University's environmental law programs, edited the proceedings of the 1992 United Nations Earth Summit in Rio de Janeiro, Brazil, and is author of several books and numerous articles. He teaches a number of environmental law courses.

Professor Robinson served as James D. Hopkins Professor of Law during the 1991–1993 academic years.

On March 2009, the Pace University Board of Trustees conferred the position of University Professor for the Environment on Nicholas A. Robinson for his significant contribution to scholarship in the field of environmental law, both in the USA and abroad.





## Keynote Speakers



### JEFFREY SACHS

*Professor, Columbia University; Director, Center for Sustainable Development at Columbia University; President, UN Sustainable Development Solutions Network*

Jeffrey D. Sachs is University Professor and Director of the Center for Sustainable Development at Columbia University, where he directed the Earth Institute from 2002 until 2016. He is President of the UN Sustainable Development Solutions Network, Chair of the Lancet COVID19 Commission, Co-Chair of the UN Council of Engineers for the Energy Transition, Commissioner of the UN Broadband Commission for Development, academician of the Pontifical Academy of Social Sciences at the Vatican, and Tan Sri Jeffrey Cheah Honorary Distinguished Professor of Sustainable Development at Sunway University. He has been Special Advisor to three United Nations Secretaries-General, and currently serves as an SDG Advocate under Secretary General António Guterres.

Professor Sachs spent over twenty years as a professor at Harvard University, where he received his B.A., M.A., and Ph.D. degrees, and has received 38 honorary doctorates.

In 2021, Sachs received the TÜBA Academy Prize from the Turkish Academy of Sciences, the Legion of Honor by decree of the President of the Republic of France, the Order of the Cross from the President of Estonia, and honorary doctorates from Amrita University in Kerala, India; Macau University of Science and Technology; and the University of Siena, Italy.

His most recent book is *The Ages of Globalization: Geography, Technology, and Institutions* (2020).

## ACHIM STEINER

*Administrator, United Nations Development Programme*

Achim Steiner became UNDP Administrator on 19 June 2017. The United Nations General Assembly confirmed his appointment following his nomination by Secretary-General António Guterres. In April 2021, the General Assembly confirmed his appointment to a second four-year term beginning in June 2021.

Mr. Steiner is also the Vice-Chair of the UN Sustainable Development Group, which unites 40 entities of the UN system that work to support sustainable development.

Over nearly three decades, Mr. Steiner has been a global leader on sustainable development, climate resilience and international cooperation. He has worked tirelessly to champion sustainability, economic growth and equality for the vulnerable, and has been a vocal advocate for the Sustainable Development Goals.



## CHRISTINA VOIGT

*Professor, University of Oslo School of Law;  
Chair, International Union for Conservation of Nature (IUCN)  
World Commission on Environmental Law*

Dr. Christina Voigt is Professor of Law at the University of Oslo, Norway. She is an internationally renowned expert in international environmental law and teaches, speaks and publishes widely on legal issues of climate change, environmental multilateralism, and sustainability.

From 2009-2018, she worked as principal legal adviser for the Government of Norway in the UN climate negotiations and negotiated the Paris Agreement and its Rulebook.

Professor Voigt is Chair of the IUCN World Commission on Environmental Law (WCEL) and Co-chair of the Paris Agreement Implementation and Compliance Committee.







A greenhouse staff member operates a forklift to move tomatoes in Armenia. Agriculture is extremely vulnerable to the effects of climate change. Volatile weather patterns result in lower crop yields, reduced nutritional value, and increased food insecurity (photo by Eric Sales/ADB).





# 22

## CHAIRPERSONS

In alphabetical order, by surname.

Affiliations and positions indicated are as of symposium dates  
(31 May–1 June 2022).



## Chairpersons



### JUDGE ANDERS BENGTSSON

*Former Senior Judge, Land and Environment Court, Växjö, Sweden*

Judge Anders Bengtsson formerly served as a senior judge at the Land and Environment Court in Växjö, Sweden. He has extensive experience in the practice of administrative and environmental law in Sweden. He was a senior legal advisor to the County Administrative Board in Skåne, secretary in the Environmental Code Committee, and a legal expert at the Ministry of Environment and the Swedish National Environmental Protection Agency. From 2020 to 2021, he was appointed as a Special Inquiry Officer for a governmental inquiry on how to implement the 2020 EU-Directive on Drinking Water into Swedish legislation. From 2001 to 2021, he served as judge and rose in rank as senior judge at the Växjö Land and Environment Court of Sweden.

He is a co-chairperson of the Association of European Administrative Judges' working group on environmental law, and a member of the Implementation Committee under the Espoo Convention on Environmental Impact Assessments in a Transboundary Context. Since 2019, he has participated in a project by the Environmental Law Institute which aims to educate Colombian judges on illegal deforestation.

### JUSTICE ANTONIO HERMAN BENJAMIN

*National High Court of Brazil (STJ); President, Global Judicial Institute on the Environment; Chair Emeritus, International Union for Conservation of Nature (IUCN) World Commission on Environmental Law*

Appointed Justice of the National High Court of Brazil (STJ) in 2006 by President Luiz Inácio Lula da Silva, Professor Antonio Herman Benjamin was a career Public Prosecutor of the State of São Paulo for over two decades, where he headed the Environmental Protection Division.

He is the president of the Global Judicial Institute on the Environment (GJIE)—the organization that brings together Supreme Court Justices and judges from around the world who work on environmental law—and Secretary-General of the International Advisory Council for Environmental Justice of the United Nations Environment Programme (UNEP). He is also president of the Brazilian Environmental Forum of



### Justice Antonio Herman Benjamin *(continued)*

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Judges (FONAMA) and director of the LL.M. (Masters degree) Program of the National Judicial Academy of Brazil (ENFAM).

Justice Benjamin is a former president of the International Union for Conservation of Nature (IUCN) World Commission on Environmental Law (WCEL), the Brazilian Fulbright Alumni Association, and member of the UN Secretary General Legal Expert Group on Crimes against the

Environment. He served as co-chair of the International Network for Environmental Compliance and Enforcement (INECE), and president of the Environmental Committee of the Summit of Chief Justices of Ibero-America. During the 2012 Rio+20 Conference, he was the coordinator of the UNEP World Congress on Justice, Governance and Law for Environmental Sustainability

Justice Benjamin was a professor at the Catholic University of Brasília School of Law and has been a visiting professor and lecturer at prestigious academic institutions around the world. He is the founder and emeritus editor-in-chief of the Brazilian Environmental Law Review, published by Thomson Reuters. He has co-drafted several major Brazilian statutes, including the 1990 Consumer Protection Code, the 1992 Anti-Corruption Act, the 1994 Competition Act, the 1998 Crimes Against the Environment Act, the 2006 Forest Concession Act, the 2006 Atlantic Forest Act, and the 2012 Forest Code. Professor Benjamin has authored, co-authored and edited over thirty books and articles in Brazil and abroad.

Justice Benjamin has received several awards, honors, and other recognitions in Brazil and abroad. He is a Knight (*Chevalier*) of the National Order of the Legion of Honour (*Ordre National de la Légion d'Honneur*) of France and a Commander (*Commandeur*) of the Order of King Leopold of Belgium. He is the recipient of the 2015 Elizabeth Haub Prize for Environmental Law, awarded by Stockholm University and considered the most prestigious international distinction conferred upon an environmental legal expert. He is a Goodwill Ambassador for Environmental Justice of the Organization of American States (OAS). In 2020, Brazilian scientists named after him a newly discovered species of orchid from the Amazon Rain Forest: *Bulbophyllum antoniobenjaminii*.



## Chairpersons



### JUSTICE ANANDA MOHAN BHATTARAI

*Supreme Court of Nepal*

Justice Dr. Ananda Mohan Bhattarai currently serves in the Supreme Court of Nepal. Justice Bhattarai holds an M.A. (English & Pol. Sc.) from Tribhuvan University, and LL.M. & JSD degrees from National Law School of India University. He is also a recipient of the Hubert Humphrey Fellowship (2002-03) for research studies at the Massachusetts Institute of Technology, United States of America, and the Alexander von Humboldt Fellowship (2005-06) at the Max Planck Institute of Comparative Public Law and International Law, Germany. He has also authored four books and contributed several dozens of articles on legal issues in national and international journals. His book “Protection of Himalayan Biodiversity” (Sage, 2010) received reviews at home and abroad.

Justice Bhattarai has handed down many landmark decisions on the constitution, human rights, gender justice, criminal justice, heritage protection, and environmental justice from the Supreme Court of Nepal. Among them, decisions on protection of cows (national animal of Nepal), Chitwan National Park (oldest and largest park in Nepal), heritage property of Lord Pashupatinath (world-famous Shiva temple), flood and natural disasters, and prohibition on excavation and export of stones and boulders etc. to India, are much acclaimed for promoting the cause of environmental justice and heritage conservation.

### CARL BRUCH

*Director of International Programs, Environmental Law Institute (ELI)*

Carl Bruch is the Director of International Programs at the Environmental Law Institute (ELI) and the founding President of the Environmental Peacebuilding Association (EnPax). His work focuses on environmental peacebuilding (especially after conflict), environmental governance, adaptation, and environmental emergencies. He has helped dozens of countries—including in many conflict-affected countries—throughout Africa, the Americas, Asia, and Europe strengthen their environmental laws, institutions, and practices. He has edited more than ten books and authored more than 80 journal articles, book chapters, and reports.



### Carl Bruch *(continued)*

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He is an adjunct professor at American University School of International Service. He holds a JD from the Northwestern School of Environmental Law of Lewis & Clark College, an MA in physics from the University of Texas-Austin, and a BS in physics (with additional majors in mathematics and anthropology) from Michigan State University.



### ANDREA MARCELA BRUSCO

*Environmental Governance Regional Coordinator, Latin America and Caribbean Office, United Nations Environment Programme (UNEP) Panama City*

Andrea Marcela Brusco has worked for the United Nations Environment Programme's (UNEP) Latin America and Caribbean Office since 2007. As Legal Officer, she implements projects in various countries in the region, focusing on the development of legislation, institutional strengthening, and training in environmental law. Since 2014, she has been the Regional Coordinator of Environmental Governance, directing and implementing UNEP's Global Environmental Law Programme in the region.

Before working at UNEP, Andrea was a Director in the Ministry of Environment of Argentina, where she specialized in international environmental governance.

Andrea is a lawyer who graduated from the Universidad del Salvador School of Law, in her home country, Argentina. She holds a Master's degree in International Relations from the Latin American Faculty of Social Sciences. and a Mohan Bhattarai currently serves in the Supreme Court of Nepal. Justice Bhattarai holds an M.A. (English and Pol. Sc.)

## Chairpersons

### JUSTICE NAMBITHA DAMBUZA-MAYOSI

*President, African Network of Judicial Academies and the Environment*

Justice Nambitha Dambuza-Mayosi is a judge at the Supreme Court of Appeal of South Africa. In 2005, she was appointed as judge in the Eastern Cape Division of the High Court. Prior to this, she served in various superior courts in South Africa, including the Eastern Cape Division, Competition Appeal Court, as well as the Constitutional Court.

She is the Chairperson of the Rules Board for the Courts of Law. Recently, she was appointed as the Chairperson of the African Judges Education Network on Environmental Law, a non-governmental organization established in Kenya that aims to promote judicial education on environmental law across the African continent.

Justice Dambuza is also a lecturer and holds leadership roles in various school councils including the Walter Sisulu University, Nelson Mandela University, and Rhodes University.

She holds a Baccalaureus Procuratoris and Bachelor of Laws from the University of KwaZulu-Natal. She obtained her Master of Laws from Tulane University.



### JUSTICE ALFREDO GUTIÉRREZ ORTIZ MENA

*Supreme Court of Mexico*

Justice Alfredo Gutiérrez Ortiz Mena holds a Bachelor of Laws from the Universidad Nacional Autónoma de México (UNAM) and a Master of Laws from Harvard University, where he also holds an International Taxation certification. He was awarded by the Fulbright-García Robles Foundation a graduate studies grant.

From 1995 to 2012, he worked in private practice in several local and international law firms. He also held Federal Civil Service positions in the Tax Department.

In November 2012, he was shortlisted by the head of the Federal Executive Branch, and was appointed a seat on the Mexican Supreme Court of Justice by the Senate.

In his decisions and opinions, Justice Gutiérrez Ortiz Mena has repeatedly explained why his approach to the law is steered by the



### Justice Alfredo Gutiérrez Ortiz Mena *(continued)*

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idea that the Constitution must be read and interpreted in accordance with international human rights law. He supports the idea that rules curtailing the scope of human rights must be construed as restrictively as possible. He has also consistently suggested that cases be analyzed from a gender standpoint. His way of thinking about equity and discrimination has prompted him to render decisions in favor of declaring the unconstitutionality of secondary rules that he believes would buttress gender stereotypes.

### VESSELINA HARALAMPIEVA

*Senior Counsel, European Bank for Reconstruction and Development (EBRD)*

Vesselina Haralampieva is a Senior Counsel at the European Bank for Reconstruction and Development (EBRD) in London, United Kingdom. She leads the energy and climate change policy and law reform work at the EBRD's legal department aimed at enabling green transition and sustainable finance across the EBRD's regions of operations. Vesselina advises on matters relating to energy and climate change law and policy, sustainability governance, and regulation. Vesselina is one of the originators of the EBRD's corporate climate governance approach, which supports private and public sector companies in enhancing their governance and management of climate-related risks and opportunities. Under her lead, the EBRD has launched its first climate change litigation review in its operating regions, and developed an environmental module for the EBRD's judicial training program. She also works with national authorities and sector regulators to provide support in advancing green transition.

She is a member of the Working Group on Climate Change to the Law Society of England and Wales. She is also part of the Expert Working Group on Governance of the European Financial Reporting Advisory Group (EFRAG), which is tasked to develop the new European Sustainability Reporting Standards.

Vesselina holds a Master of Arts and a Bachelor of Laws degree from Sofia University where she graduated summa cum laude, and a Master of Laws from Harvard Law School. She is admitted to practice as a solicitor in England and Wales, and as a lawyer in Bulgaria.



## Chairpersons



### JUSTICE AMBENG KANDAKASI

*Deputy Chief Justice, Supreme Court of Papua New Guinea*

Justice Ambeng Kandakasi was appointed as Deputy Chief Justice of the Supreme and National Courts of Justice of Papua New Guinea (PNG) on 13 December 2018. He was appointed a Justice of the same Courts in 2000.

Justice Kandakasi is accredited as a mediator in Australia, New Zealand, and PNG. Before Justice Kandakasi's appointment, he was a partner at the firm of Young & Williams Lawyers, and taught law at the University of PNG.

Presently, Justice Kandakasi chairs the PNG Judiciary's Alternative Dispute Resolution (ADR) Committee and oversees the development and successful implementation of court-annexed mediation and ADR in PNG. Justice Kandakasi leads a team of judges, magistrates, and lawyers in the design and implementation of ADR and mediation systems and structures. Through his leadership, PNG has become the 160th country to sign the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Further, under his leadership, PNG has successfully hosted an international conference on mediation and arbitration in March 2019.

He has a passion for continuing legal and judicial education on mediation and ADR, and is actively involved in training on these fields. Most of his trainees have been judges, magistrates, senior government and business leaders, lawyers, and other professionals in Solomon Islands, Australia, Fiji, Malaysia, and PNG. He has attended and facilitated at a number of local and international workshops and trainings on diverse areas of the law, particularly ADR and mediation. He has published several judgments on mediation and ADR. Further, he has presented and published several papers at international and local conferences and journals regarding mediation, ADR, and human rights. Justice Kandakasi continues to be the Vice President of the Perth-based Asia Pacific Mediation Forum.

Justice Kandakasi holds a Master of Laws from the University of San Diego (United States of America) and a Bachelor of Laws degree from the University of Papua New Guinea.

### DONALD W. KANIARU

*Managing Partner, Kaniaru & Kaniaru Advocates;  
Former Director, Division of Environmental Policy Implementation and  
Division on Environmental Conventions, United Nations Environment  
Programme (UNEP)*



Donald W. Kaniaru is the Managing Partner at Kaniaru & Kaniaru Advocates. He worked with the United Nations Environment Programme (UNEP) for over 28 years in diverse legal, diplomatic, and operational management roles, including as Director of the Division of Environmental Policy Implementation and of the Division on Environmental Conventions. He also served as Special Senior Legal Adviser to the Executive Director of UNEP.

Mr. Kaniaru is a member of several professional and environmental bodies, including the International Union for Conservation of Nature (IUCN), the Commission on Environmental Law, and the International Council of Environmental Law, for which he serves as representative to the UN in Kenya. He served as Chairman of the Kenya National Environmental Tribunal from 2005 to 2013 and made substantial contributions to the development of environmental law in Kenya during this period. He also served as a Trustee of the Centre for International Environmental Law (CIEL) since 2004, and is a Trustee of the Institute for Governance and Sustainable Development.

His achievements as a member of the International Centre of Insect Physiology and Ecology (*icipe*) Governing Council reflect his diverse and unique background and experience. Mr. Kaniaru played a vital role in supporting the Governing Council, and stewarded the Centre's growth and development between 2004 and 2018. He helped develop and improve operational management procedures, policies and institutional mechanisms in his role on the Governing Council and its Executive Board, and as Vice Chair of the Audit and Finance Committee. He also advised and supported *icipe* in strengthening its stakeholder partnerships and relations with the host and government authorities in several African countries. Mr. Kaniaru also dealt with issues affecting internal stakeholders, including the Staff Association and the African Regional Postgraduate Programme in Insect Science.

Mr. Kaniaru has received various awards and recognitions for his contributions to the development and advancement in the field of international environmental law, including the Elizabeth Haub Prize for International Law (2009) and the CIEL International Environmental Law Award (2010). He has authored several articles and book chapters, co-edited the two-volume seminal book



## Chairpersons

**Donald W. Kaniaru** (continued)

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*Making Law Work—Environmental Compliance and Sustainable Development* (2005), and edited *The Montreal Protocol—Celebrating 20 Years of Environmental Progress: Ozone Layer and Climate Protection* (2007).

Mr. Kaniaru is also a published author: *Environmental Law and Diplomacy, 1970-2022*, which was published by Strathmore University Press.



### JUSTICE C. ADÈLE KENT

*Chief Judicial Officer Emerita, National Judicial Institute, Canada*

Justice Kent was appointed to the Court of Queen's Bench of Alberta in February 1994 and retired in May 2021. During her time on the court, she was a member of several committees of the Court, including the Media Relations Committee, the Civil Procedure Committee, the List Management Committee, and the Strategic Planning Committee. She was also a member of the Public Information Committee of the Canadian Judicial Council and the National Advisory Committee on Judicial Ethics, later on becoming co-chair.

In August 2014, Justice Kent was appointed Executive Director (subsequently Chief Judicial Officer [CJO]) of the National Judicial Institute (NJI). She retired as CJO and became Chief Judicial Officer Emerita in June 2021.

Justice Kent has worked on several NJI courses on judicial ethics, science, and civil law. She also assisted the judiciary in other countries in the design of judicial education courses.

In 2005, she published a book entitled *Medical Ethics: The State of the Law*.

Justice Kent attended law school at the University of Alberta, graduating with an LLB in 1977. She was admitted to the Alberta bar in 1978.

### JUSTICE LUC LAVRYSEN

*President, Constitutional Court of Belgium;  
Chair, European Union Forum of Judges for the Environment*

Justice Luc Lavrysen is the President of the Constitutional Court of Belgium, where he was appointed as a Justice in 2001. He is also a professor emeritus of Ghent University where he also served as director of the Centre of Environmental and Energy Law.

Justice Lavrysen is President of the European Union Forum of Judges for the Environment, and a board member of the Global Judicial Institute on the Environment. He has been involved in the judicial program of the United Nations Environment Programme since 2002. He is likewise involved in the Task Force on Access to Justice of the United Nations Economic Commission for Europe (UNECE) Aarhus Convention, where he serves as chair in its current intersessional period. Justice Lavrysen has authored several publications.



### GEORGINA LLOYD RIVERA

*Regional Coordinator (Asia and the Pacific) of Environmental Law and Governance, United Nations Environment Program (UNEP) Bangkok*

Dr. Georgina Lloyd Rivera is the Regional Coordinator (Asia and the Pacific) of Environmental Law and Governance for the United Nations Environment Programme (UNEP). Georgina's work covers the areas of environmental rights, environmental crime, and technical assistance in environmental law and capacity building at the national and regional level. Georgina has been involved in capacity building for environmental law within Southeast Asia and has provided advice to government and non-government stakeholders on environmental law and policy issues.

Georgina holds a PhD in Law, Master in Environmental Law, and Bachelor in Environmental Science (Hons 1) from the University of Sydney.

### JUSTICE SAPANA PRADHAN MALLA

*Supreme Court of Nepal;  
Secretary-General, Global Judicial Institute on the Environment*

Justice Sapana Pradhan Malla is a judge of the Supreme Court of Nepal. She was also a member of the first Constituent Assembly of Nepal, which negotiated and drafted the new Constitution of Nepal. The constitution is remarkable for recognizing the right to a clean environment as a fundamental right.

She was part of the bench in several landmark decisions relating to environmental issues in Nepal, such as (i) the case involving conservation of the *Fewa lake* watershed located in the Pokhara Valley, where the court issued an order for reclamation of illegally encroached land, and (ii) the case where the court upheld a municipality's plastic ban. Justice Malla has also given directives to ensure the government's implementation of policies and programs which uphold the right to a clean and healthy environment, as enshrined in the Constitution of Nepal.

Justice Malla was a public interest lawyer prior to her appointment to the Supreme Court. She handled cases involving a wide range of issues, from the environment (e.g., water pollution, pesticides, and Godavari marble) to civil rights (e.g., right to inheritance, reproductive health rights, marital rape, and witness protection).

Justice Malla is a member of the International Union for Conservation of Nature (IUCN) World Commission on Environmental Law, and currently serves as the founding Secretary General of the Global Judicial Institution on the Environment.

She holds a Master in Comparative Law from Delhi University, and a Mid-Career Master in Public Administration from Harvard University.







### JOSÉ IGREJA MATOS

*President, International Association of Judges*

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### GOMOLEMO MOSHOEU

*Director, Judicial Academy of South Africa*

Dr. Gomolemo Moshoeu is the Chief Executive Officer of the South African Judicial Education Institute (SAJEI), which was established to promote the independence, dignity, accessibility, and effectiveness of the courts through continuing judicial education. Dr. G (as she is popularly known) was tasked with starting the operations of SAJEI in 2011. To date, SAJEI has both African and international footprint in judicial training. SAJEI is currently celebrating its 10th year anniversary through a number of activities, including an international webinar focused on judicial training principles. It is also anticipated to publish a book that will address pertinent issues on judicial education in 2022.

Prior to joining SAJEI, Dr. G held various roles. She was an academic, co-managing director of a private corrections facility in South Africa, and a project director of the Criminal Justice Strengthening Program funded by the U.S. Agency for International Development (USAID).



## Chairpersons



### JUSTICE RAGNHILD NOER

*Supreme Court of Norway*

Justice Noer has been serving as a Justice in the Supreme Court of Norway since October 2010. Prior to this, she served as a Court of Appeal Justice at the Borgarting Court of Appeal. She was, for many years, a lawyer at the Attorney General's Office for Civil Affairs. She was also a Senior Executive Officer in the Ministry of Justice and a Senior Legal Adviser in the Ministry of the Environment of Norway.

Since 2011, Justice Noer has been a member of the European Judges for the Environment network. From 2014 to 2021, she was a member of the Steering Committee of the World Commission on Environmental Law. She has been serving as a member of the Interim Governing Committee of the Global Judicial Institute on the Environment since 2017.

Justice Noer participated in a video series filmed for the 2021 United Nations Climate Change Conference, where judges from around the world presented perspectives on the role of the courts in addressing climate change, how this may evolve in the future, as well as some obstacles the courts will need to overcome. In the video, Justice Noer considered the courts' responsibility to work towards a sustainable future by striking a balance between the thorough assessment of complex individual cases, and awareness of the long-term consequences of judicial decisions on the global response to climate change.

### CHRISTINA PAK

*Principal Counsel and Team Leader, Law and Policy Reform Program, ADB*

Ms. Christina Pak specializes in international development finance and law and policy reform. She is currently a Principal Counsel of the Asian Development Bank and is responsible for managing the Office of General Counsel's Law and Policy Reform Program which designs, processes, and implements technical assistance projects directly to developing member countries relating to legal and judicial reforms. She oversees a diverse portfolio in the areas of environment protection and climate change, gender equality, private sector development, public-private partnerships and digital economy. In particular, Christina leads ADB's judicial capacity building program



### Christina Pak *(continued)*

on commercial and environmental and climate change disputes and Developing Environmental Law Champions Program which aims to improve environmental legal education in Asia and the Pacific. She also co-leads the Legal Readiness for Climate Finance and Climate Investments technical assistance which has been modernizing legal frameworks to attract greater international climate finance and climate investments into ADB's developing member countries and most recently, assisted with the enactment of the Fiji Climate Change Act 2021. In her previous role as a project counsel at ADB, she worked on complex multi-sector projects across the Central West, Southeast and East Asia regions. Prior to joining ADB, Christina was a legal counsel and vice president for markets and international banking at a major UK bank in Singapore and a finance associate at a New York City law firm. Christina is a Steering Committee Member of the IUCN World Commission on Environmental Law and a Member of the Chartered Institute of Arbitrators. She is a US-qualified lawyer, admitted in the States of New York and New Jersey.



### JUSTICE BEIBUT SHERMUKHAMETOV

*Supreme Court of Kazakhstan*

Justice Beibut Shermukhametov currently serves as judge in the Supreme Court of Kazakhstan. He has been in the judiciary for more than 23 years. Prior to the Supreme Court, he was a judge in the specialized financial court, and served as chairman of the panels on civil cases and criminal division in the Almaty Regional Court. He has more than 13 years of experience in Kazakhstan's prosecutor's office.

In the Supreme Court, Justice Shermukhametov oversees application-related issues of environmental law courts. He is a member of the Task Force on Access to Justice of the Aarhus Convention and the United Nations Committee on Environmental Affairs. He is likewise an associate member of the European Union Forum of Judges for the Environment.

Justice Shermukhametov lectures at the Academy of Justice under the Supreme Court of Kazakhstan. He is also an Organization for Security and Co-operation in Europe (OSCE) expert on trainings involving environmental disputes.

Justice Shermukhametov has authored articles focusing on financial, civil, and environment legislation. He graduated from the Kazakh State University.



## Chairpersons



### JUSTICE DAMARIS MARÍA VARGAS VÁSQUEZ

*Supreme Court of Costa Rica*

Justice Damaris María Vargas Vásquez sits on the Supreme Court of Justice in Costa Rica. As the Judiciary Environmental Management Commission Coordinator, she represents Costa Rica on the Ibero-American Judicial Summit Environmental Justice Commission. She is the Director of the Judiciary Environmental Policy Project, whose purpose is to buttress the competencies of the Judiciary in her homeland, in order to provide prompt, compliant, and accessible environmental justice aligned with high international standards, while also laying the foundations for the construction of a Specialized Environmental Jurisdiction. She is also a member of the Global Environmental Institute, which is establishing a set of strategies for strengthening the environmental judiciary.

With doctoral studies at the Free University Law School, she holds a Master's degree in Business Administration and a specialty qualification in project management from the Technological Institute in Costa Rica. She is also a specialist in human rights from the Castilla La Mancha University in Spain, and has a graduate degree in agrarian law from Costa Rica University, where she obtained her degree in law.

### CHRISTINA VOIGT

*Professor, University of Oslo School of Law;  
Chair, International Union for Conservation of Nature (IUCN)  
World Commission on Environmental Law*

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### JUSTICE MICHELLE WEEKES

*High Court of Barbados*

Justice Michelle Weekes was appointed judge of the High Court in Barbados on 16 June 2014. As a High Court judge, she presides over civil, family, and criminal matters.

Justice Weekes began her public service career as a Foreign Service Officer at the Ministry of Foreign Affairs. Prior to her appointment as judge, Justice Weekes acted as Master of the High Court and also as Registrar of the Supreme Court. She previously held appointments as Crown Counsel, Senior Crown Counsel, and Principal Counsel in the Solicitor General's Chambers in Barbados, as well as Deputy Registrar of the Supreme Court and Magistrate of the Judiciary Department.

Justice Weekes is currently a member of the Governing Committee of the Global Judicial Institute on the Environment. Her key areas of expertise are commonwealth law, rule of law and justice, climate change, coastal zone management, and small island developing states (SIDS).

Justice Weekes received her Bachelor of Laws (Hons) from the University of the West Indies and her Legal Education Certificate from the Hugh Wooding Law School. In 1990, she was called to the Bar in Barbados. In 1998, she was awarded the Master of Laws (Legislative Drafting) by the University of the West Indies.

### MARYNA YANUSH

*Environmental Affairs Officer,  
United Nations Economic Commission for Europe (UNECE), Geneva*

Maryna Yanush has been working as an Environmental Affairs Officer at the United Nations Economic Commission for Europe (UNECE) Aarhus Convention Secretariat. She supports the work under the convention on access to environmental information, access to justice, and capacity-building. Ms. Yanush has 20 years of professional experience dealing with various aspects of development, implementation and enforcement of environmental law at the national and international levels.





Given their extreme vulnerability to climate change, Pacific island countries have actively pushed to limit global warming to 1.5°C above preindustrial temperatures and have also questioned the climate obligations of states with higher emissions (photo by Eric Sales/ADB).





# 23

## **SPEAKERS**

In alphabetical order, by surname.

Affiliations and positions indicated are as of symposium dates (31 May–1 June 2022).

## Speakers



### DENISE ANTOLINI

*Professor, University of Hawai'i School of Law*

Denise Antolini is a Professor of Law at the University of Hawai'i at Mānoa School of Law. She also previously served as the Associate Dean for Academic Affairs of the Law School from August 2011 to December 2019. She joined the faculty in 1996 and directed the nationally recognized Environmental Law Program for several years. Her courses have included torts, environmental law, environmental litigation, domestic ocean and coastal law, International Union for Conservation of Nature (IUCN) motions seminars, and legal writing.

She served as a State Water Commissioner, the inaugural Chair of the Honolulu City Council's Clean Water and Natural Lands Commission, Chair of the State Environmental Council, and Chair of the Hawai'i State Bar Association's Natural Resources Section.

Professor Antolini received the 2006 University of Hawai'i Board of Regents' Excellence in Teaching Medal. She also served as Chair of the American Association of Law Schools' Environmental Law Section and, from 2005 until 2008, was on the American Bar Association's Standing Committee on Environmental Law. In 2002, she was selected by the Hawai'i Women Lawyers as the recipient of the Distinguished Community Service Award. In 2003–2004, she served as the Fulbright Distinguished Chair in Environmental Studies at the Politecnico di Torino in Italy.

In 2016, Professor Antolini was appointed as Deputy Chair of the World Commission on Environmental Law (WCEL) of the IUCN. She was elected to the inaugural Executive Committee of the IUCN United States National Committee in 2017 and coordinates the Hawai'i Hui of IUCN members. She was appointed as the Elections Officer for the IUCN World Conservation Congress in Marseille, France (June 2020).

Professor Antolini graduated from Princeton University in 1982, and concurrently obtained a Masters in Public Policy (1985) and a Juris Doctor (1986) from University of California, Berkeley, where she was editor-in-chief of *Ecology Law Quarterly*. After a two-year federal district court clerkship in Washington, D.C., she spent eight years practicing public interest law with the Sierra Club Legal Defense Fund (now Earthjustice) in Seattle and Honolulu, serving as Managing Attorney of the Honolulu office from 1994 until 1996. Professor Antolini litigated several major citizen suit environmental cases involving coastal pollution, water rights, endangered species, environmental impact statements, and native Hawaiian rights.

### JUSTICE ANTONIO HERMAN BENJAMIN

*National High Court of Brazil (STJ); President, Global Judicial Institute on the Environment; Chair Emeritus, International Union for Conservation of Nature (IUCN) World Commission on Environmental Law*

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### DAVID BOYD

*United Nations (UN) Rapporteur for Human Rights and the Environment; Professor, University of British Columbia*



David R. Boyd was appointed as the UN Special Rapporteur on human rights and the environment for a three-year term commencing August 1, 2018. He is an associate professor of law, policy, and sustainability at the University of British Columbia (UBC).

Mr. Boyd has a PhD in Resource Management and Environmental Studies from UBC, a law degree from the University of Toronto, and a business degree from the University of Alberta. His career has included serving as the executive director of Ecojustice, appearing before the Supreme Court of Canada, and working as a special advisor on sustainability for Canadian Prime Minister Paul Martin. He has advised many governments on environmental, constitutional, and human rights policy and co-chaired Vancouver's effort to become the world's greenest city by 2020. He is a member of the World Commission on Environmental Law, an expert advisor for the UN's Harmony with Nature Initiative, and a member of ELAW, the Environmental Law Alliance Worldwide.

Mr. Boyd is also the author of nine books and over 100 reports and articles on environmental law and policy, human rights, and constitutional law. His most recent books include *The Rights of Nature* (ECW Press, 2017), *The Optimistic Environmentalist* (ECW Press, 2015), *Cleaner, Greener, Healthier: A Prescription for Stronger Canadian Environmental Laws and Policies* (UBC Press, 2015) and *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press, 2012).



## Speakers

### NICHOLAS BRYNER

*Professor, Louisiana State University School of Law*

Nicholas Bryner, Associate Professor of Law & John P. Laborde Endowed Professor in Energy Law at Louisiana State University's (LSU) Paul M. Hebert Law Center, teaches courses in environmental, natural resources, and administrative law. He holds a J.D. and an LL.M. degree in Energy and Environmental Law from The George Washington University Law School. Prior to joining LSU, Bryner was an Emmett/Frankel Fellow in Environmental Law and Policy at the University of California, Los Angeles (UCLA) School of Law. His areas of research include environmental law in the United States and Brazil; public lands and natural resources law; climate change law; energy and electricity regulation; and theory and principles of environmental law. He currently serves as Chair of the IUCN World Commission on Environmental Law's Task Force on the Global Judicial Institute on the Environment.



### JUDGE MARC CLÉMENT

*Presiding Judge, Administrative Court of Lyon, France*

Marc Clément has served as presiding judge at the Administrative Court of Lyon, France since 2018. In addition, he has been a member of the French Environmental Authority—a national committee providing opinions on the quality of impact assessments in the context of public participation—since 2014. Judge Clément has been a member of the Deontological Committee of the Institut de Radioprotection et de Sécurité Nucléaire since 2015. He was appointed as a member of the Aarhus Convention Compliance Committee in September 2017, and has served as the Vice-President of the Committee since 2021.

From 2012 to 2018, he was an administrative judge at Administrative Court of Appeal of Lyon. Prior to this, he was a lawyer at the Directorate General Environment of the European Commission (2006–2012) and a legal adviser to the European Environment Agency (Copenhagen) (2004–2006). He was previously a judge at the Administrative Court of Lyon and started his career as a researcher for private companies.



### Judge Marc Clément *(continued)*

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He contributed to the following books: *Waste Management in European Law* (Eleven International Publishing, 2014), *The Habitats Directive in its EU Environmental Law Context* (Editions Routledge November 2014), and *Global Objectives and Scope of the Habitats Directive: What does the Obligation of Result Mean in Practice?*. He recently published the articles “Do Judges Need to Fear Artificial Intelligence?” for *Recueil Dalloz* (January 2017), and “Blockchain, Smart Contracts: What Else?” for the *Paris Innovation Review* (October 2017).

Judge Clément has been invited as a speaker in many international conferences in the domain of new technologies and environment. He participated in many international cooperation projects, including the “Codification of Chinese Environmental Law” in Beijing, and the “Support for Reform of the Justice Sector in Indonesia” in Indonesia.

Judge Clément was a founding member and is a current member of the Council of the European Law Institute.

### JUSTICE NAMBITHA DAMBUZA-MAYOSI

*President, African Network of Judicial Academies and the Environment*

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## Speakers



### **DIMITRI DE BOER**

*Chief Representative for Beijing Office, ClientEarth*

Dimitri de Boer is the co-founder and chief representative of ClientEarth's office in Beijing, People's Republic of China. He leads a team of legal experts to advance environmental governance and rule of law. Mr. de Boer is also special advisor and member of the chief advisor's group of the China Council for International Cooperation on Environment and Development (CCICED). He is likewise the team leader of the European Union (EU)-China Environment Project, and an international coordinator of the Green Light System study for greening the Belt and Road Initiative, also known as the "Traffic Light System."

He previously served as team leader of the EU-China Environmental Governance Programme (2014-2015), and Senior Advisor for the Environment and Climate with the United Nations Industrial Development Organization in China (2003-2014).

Mr. de Boer's key work focuses on provision of support to PRC's Ministry of Ecology and Environment for the development and implementation of environmental and climate-related laws and regulations. He also provides support to the Supreme People's Court and Supreme People's Procuratorate of China in the implementation of the world's largest capacity building programs for environmental judges and prosecutors. Likewise, he facilitates financial support for PRC environmental non-governmental organizations.

He holds a Master of Business Administration from the Edinburgh Business School. He also attended the EU-China Manager's Training Programme from the Beijing Foreign Studies University and Beijing Language and Culture University, as well as graduate courses in advanced macroeconomics from Peking University.

Mr. de Boer speaks fluent English, Dutch, Chinese, and Thai.



### EVA DUER

*Legal Officer and Team Leader, Collective Intelligence for Environmental Governance, United Nations Environment Programme (UNEP) INFORMEA, Geneva*

Eva Duer is a Legal Officer at the United Nations Environment Programme (UNEP). She leads the Law Division's collective intelligence work on enhancing the information base needed for the achievement of internationally agreed goals and multilateral environmental agreements (MEAs). She is responsible for the development of cost-effective capacity building tools for environmental lawyers around the world.

She manages the United Nations Information Portal on Multilateral Environmental Agreements (InforMEA) project to strengthen the capacity of national, regional, and global environmental networks to collect, curate and monitor environmental law, and to help identify and promote good practice and innovative trends in the field of MEA implementation.

Eva holds a Master of Law (LLM) degree from King's College London and a Master of Science degree in Law from the University of Vienna, which included studies of international law in Paris.

Her topics of interest are international environmental law, governance, and knowledge management and access to information. Her expertise is in environmental rights and governance.



### BRIONY EALES

*Team Leader (Consultant), Environment and Climate Change Judicial Program, ADB*

Briony Eales is an environmental, social, and governance lawyer. She is the team leader for the Asian Development Bank's (ADB's) Environment and Climate Change Law Judicial Capacity Building Program. The program supports judiciaries in Asia and the Pacific to strengthen their knowledge and procedures for environmental and climate change law adjudication. Briony was the lead editor and a lead author of *Climate Change, Coming Soon to a Court Near You*, ADB's four-part report series. The reports explore climate change law, policy,



## Speakers

### Briony Eales *(continued)*

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and litigation in Asia and the Pacific and present a fresh narrative about the nature of regional climate litigation. Briony also contributed to ADB's 2021 report, [Gender-Inclusive Legislative Framework and Laws to Strengthen Women's Resilience to Climate Change and Disasters](#).

Briony has advised public and private sector clients for over 20 years in Australia and across Asia. Her work has included updates to national climate law, climate change strategy, and laws on environmental crime. She has also advised corporate entities on resettlement, engaging with indigenous peoples, and risk.

### JONAS EBBESSON

*Professor and former Dean, University of Stockholm School of Law*

Jonas Ebbesson, LL.D., is Professor of Environmental Law, former Dean of Faculty of Law (2012–2017), and Director of Stockholm Environmental Law and Policy Centre, at Stockholm University. He was Chair of the Aarhus Convention Compliance Committee 2011–2021, and was a committee member from 2005 to 2021. He is a member of the Swedish Academy of Letters, History and Antiquities.

Much of his research focuses on transboundary dimensions of environmental law. He has written substantially about public participation, access to justice and human rights in environmental matters. This includes comparative work on access to justice in environmental matters in the European Union (EU), and studies on participatory rights in international law. Among other areas of research are corporate responsibility in transboundary cases, environmental justice, climate change law, and law in relation to social-ecological resilience, planetary boundaries and the United Nations Sustainable Development Goals. He has acted as consultant or expert for various governmental and intergovernmental bodies, and also for environmental and development assistance non-governmental organizations, law firms, and environmental consultants. He has also appeared as legal counsel before Swedish courts and the European Court of Human Rights on matters relating to the environment and health.





### SCOTT FULTON

*President Emeritus and International Envoy, Environmental Law Institute—Washington D.C.*

Scott Fulton is President Emeritus and International Envoy for the Environmental Law Institute (ELI), a leading nonprofit focused on building effective governance systems and rule of law in the environmental arena. From 2015 to 2022, he served as ELI's President. Fulton spent over thirty years in United States government service between the Department of Justice, where he handled and oversaw major prosecutions, and the Environmental Protection Agency (EPA), where he served in a broad array of senior leadership positions, including chief operating officer, top lawyer, senior-most diplomat, head of enforcement, and Environmental Appeals Board judge, leaving a lasting imprint on EPA's organizational design and policy architecture. During his nine years as an appeals judge, Fulton became deeply involved in the United Nations Environment Programme's (UNEP) Global Judges Programme, working with UNEP to build the capacity of judges around the world for environmental casework—work in which Fulton has remained involved through collaboration with UNEP, the Global Judicial Institute on the Environment, and others.

Fulton serves on the boards of several nonprofit organizations and is also affiliated with the consultancy Sustainability Frameworks, LLP, assisting governments, businesses, and other stakeholders in meeting their sustainability goals.

After leaving government and before taking the helm at ELI, Fulton was a partner at the world's premier environmental law firm, Beveridge & Diamond, P.C.



## Speakers

### ÉMILIE GAILLARD

*Lecturer in Environmental and Human Rights Law Sciences Po Rennes;  
General Coordinator, Normandy Chair for Peace (CNRS)*

Émilie Gaillard serves as the General Coordinator of the Normandy Chair for Peace (Normandy Region, the French National Centre for Scientific Research or CNRS, University of Caen Normandy – *Maison de la Recherche en Sciences Humaines* (MRSH) Caen) which is dedicated to the promotion of peace with the Earth, and the recognition of the rights of future generations. Ms. Gaillard's research is focused on the laws and rights for future generations.

She is a lecturer of International Human Rights and Environmental Law at *The Institut d'Etudes Politiques de Rennes*, otherwise known as SciencesPo Rennes. She also developed the first Master's degree focusing on future generations and legal transitions at the Caen Campus.

In 2015, she co-wrote the Universal Declaration of Rights and Duties of Humankind under the direction of Corinne Lepage for the President of the French Republic. In 2010, she was awarded by *The Académie des Sciences Morales et Politiques* the Dupin prize for her book, *Future Generations and Private Law: Towards a Law for Future Generations*. She also co-authored the book, *Legal Actions for Future Generation*, and has written on various legal topics, including legal theory, criminal law, and human rights.



### FEDERAL JUDGE MARCUS LIVIO GOMES

*National Council of Justice of Brazil (CNJ)*

Marcus Livio Gomes is a federal judge appointed to Rio de Janeiro's 2nd Federal Court Circuit. He is an Associate Research Fellow at the Institute of Advanced Legal Studies, a member institute of the University of London. He is also an Associate Professor for the Bachelor, Master, and PhD programs in taxation law at the Rio de Janeiro State University, Brazil.

### ARNOLD KREILHUBER

*Deputy Director, Law Division, United Nations Environment Programme (UNEP)*

Arnold Kreilhuber, a national of Austria, has many years of professional experience in the field of environmental law, diplomacy and policy. He believes in making sure that environmental law and governance deliver for people and the planet. Arnold joined the United Nations Environment Programme (UNEP) in 2005 and advanced work on important issues such as environmental crime, human rights and the environment, judges and the environment, freshwater law and governance, and, most recently, in response to attacks on environmental defenders. Under his leadership the international community and stakeholders began to advance the notion of environmental rule of law. In 2012 he led the planning and organization of the first World Congress on Justice, Governance and Law for Environmental Sustainability as part of the UN Conference on Sustainable Development (Rio+20). He is currently the Deputy Director of the Law Division.

Before joining UNEP, Arnold has worked in the governmental, non-governmental and in the private sector.

He holds a doctorate degree in international environmental law from the University of Vienna as well as a master's degree in advanced international studies from the Diplomatic Academy of Vienna.



### JUSTICE RICARDO LUIS LORENZETTI

*Supreme Court of Argentina; Professor, University of Buenos Aires*

Justice Ricardo Luis Lorenzetti currently serves in the Supreme Court of Argentina. He is a member of the experts group of the Governing Council of the International Institute for the Unification of Private Law (UNIDROIT) 2019–2023. He also holds several key leadership positions in various international bodies. He is the Co-President of the International Advisory Council for the Advancement of Justice, Governance and Law for Environmental Sustainability of the United Nations Environment Programme (UNEP). He is also a member of the Environmental Justice Commission of the Ibero-American Judicial Summit, and Steering Committee of the International Union



## Speakers

### Justice Ricardo Luis Lorenzetti *(continued)*

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for Conservation of Nature. In 2016, Justice Lorenzetti was the Organization of American States' Goodwill Ambassador for Environmental Justice in the Americas.

Justice Lorenzetti was a speaker in the Second Global Symposium collectively organized by the Global Judicial Institute on the Environment, the World Commission on Environmental Law (WCEL) of the International Union for Conservation of Nature, the General Secretariat of the Organization of American States, UNEP, and the Environmental Law Institute.

Justice Lorenzetti is also a prolific author and a post-graduate lecturer at University of Buenos Aires. Before being appointed to the Supreme Court of Argentina, he likewise taught post-graduate courses at the University of Palermo, Austral University, Social and Administration Sciences University, National University of Littoral, Catholic University of Rosario, National University of Tucumán, and University of Mendoza. He has also given lectures in Brazil, Chile, Italy, Mexico, Peru, Spain, the United States of America, and Uruguay.

### DANIEL MAGRAW

*Professorial Lecturer and Senior Fellow, Foreign Policy Institute,  
School of Advanced International Studies, Johns Hopkins University;  
President Emeritus, Center for International Environmental Law*

Daniel Magraw is an international lawyer with experience in international law, institutions, processes and policies, particularly relating to environmental protection, dispute settlement, investment and human rights, including climate change and environmental justice. He is Professorial Lecturer and Senior Fellow at the Foreign Policy Institute at Johns Hopkins University's School of Advanced International Studies (SAIS) and President Emeritus of the Center for International Environmental Law (CIEL). Professor Magraw teaches international environmental law and policy at SAIS, as well as human rights and environment at the University of Miami School of Law. He has worked in government, nongovernmental organizations, intergovernmental organizations, business, and academia, in the United States (U.S.) and abroad.

Professor Magraw serves as a consultant to the United Nations regarding environment, human rights, and investment. He served on the National Academies of Sciences committees on genetically engineered crops and on biologic confinement of genetically engineered organisms. He is on the boards of directors/trustees of Lightbridge Corporation (a publicly traded nuclear energy company)





## Daniel Magraw *(continued)*

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and the Universal Rights Group (a human rights thinktank in Geneva, of which he is a co-founder). He is co-chair of Human Rights Watch's Advisory Committee on Environment and Human Rights. He served on the Advisory Committee to the Law Library of Congress.

Professor Magraw was the Director of the Environmental Protection Agency's International Environmental Law Office (1992-2001) and Acting Principal Deputy Assistant Administrator of EPA's Office of International Activities (2001). He was a member of the U.S. government's Trade and Environment Policy Advisory Committee (TEPAC) during the Administrations of George W. Bush and Barack Obama (2002-2011), and co-chaired the White House assessment of the regulation of genetically engineered organisms (2000). He has served on many U.S. delegations to international negotiations and other meetings, often as a lead negotiator.

He worked as an economist and business consultant in South India as a Peace Corps Volunteer from 1968-1972. He developed the largest co-operative of its kind in India and, at the government of Tamil Nadu's request, extended his stay for a third year to conduct an economic survey of rural markets.

Professor Magraw was Chair of the American Bar Association (ABA) Section of International Law (2000-2001) and has served in other leadership capacities in the ABA and other professional organizations, including chairing that Section's Task Forces on Magna Carta and on Carta de Foresta (Charter of the Forest or Charter of the Commons). He was a member of the United Kingdom's Magna Carta 800th Commemoration Committee.

He has taught at the Universities of California (Berkeley) and Colorado and at Georgetown University Law Center. He has authored many books and articles, lectured widely, and won local, national and international awards, including the Elizabeth Haub Prize, the world's premier environmental law award, presented in Stockholm by the Speaker of the Swedish Parliament.

Professor Magraw practiced international and civil liberties law at Covington & Burling in Washington, DC, where he also worked for six months doing poverty law at the Neighborhood Legal Service Program (1978-1983). Among other counseling work, he was Counsel for India in the Kishenganga Arbitration over water in Kashmir brought by Pakistan under the Indus Waters Treaty (2011-13).

He has a J.D. degree from the University of California, Berkeley (1976), where he was Editor-in-Chief of the California Law Review and a co-founder of the Berkeley Law Foundation, which funds legal work for disadvantaged individuals and communities and has been replicated at other law schools. He has a B.A. Magna Cum Laude in Economics from Harvard University (1968), where he was student body president and a varsity swimmer and did volunteer work with low-income youth.

Professor Magraw has studied both Carnatic music (veena) and western music (guitar).

## Speakers



### **JUSTICE SUNTARIYA MUANPAWONG**

*Vice Chief Justice of Court of Justice Region 5, Thailand*

Justice Suntariya Muanpawong is the Vice Chief Justice of Thailand's Court of Justice Region 5. Before becoming a judge, she was a lawyer, a teacher in a Southeast Asian refugee camp, and a legal officer in the Harbor Department. Justice Suntariya was the first supervisor of the Judicial Research Institute, where she played a significant role in developing the accountability and responsiveness of the judiciary. She attended various human rights programs held by international institutions. She has been a proponent of people-oriented justice reform and has conducted many research projects on justice reform, child rights protection, gender justice, prisoner rights, and environmental jurisprudence.

Justice Suntariya serves as a commissioner in environmental legislation. She also formerly served as the Secretary of the Environmental Law Division, Vice Secretary of the Supreme Court, and Secretary of Appeal Court Region 1 of Thailand. She has joined many commissions and working groups to develop constitutional rights.

Justice Suntariya received her Bachelor's degree and Master of Law degree from Thammasat University, Barrister at Law from Thai Bar Institute, and Master and Doctorate degree in public environmental law from Muenster University, Germany.

### **JUSTICE BAMBANG HERY MULYONO**

*Supreme Court of Indonesia; Head of the Judicial Technical Education and Training Center*

Justice Bambang Hery Mulyono's career as a judge began in 1999. He served as a judge and chairman in eight first-instance courts sequentially in various provinces from 1999 until 2019. He was appointed as an appeals judge at the Jambi High Court and now holds the position as Head of Judicial Training Center of the Supreme Court of Indonesia.

He has taken an active role in various judicial reform activities and working groups at the Supreme Court of Indonesia, as well as the Judicial Education & Training Working Group (WG JET) at the Council of Association of Southeast Asian Nations (ASEAN) Chief Justices.



### Justice Bambang Hery Mulyono *(continued)*

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Justice Mulyono's concern for the environment and natural resources has led him to many judicial capacity building activities regarding environmental law and human rights. He has served as a course manager and teacher for judicial training in Indonesia since 2004. He also actively engages with the international community on the development of environmental law, including through the Judicial Portal of the United Nations Environment Programme (UNEP), the International Union for Conservation of Nature (IUCN)–World Commission on Environmental Law (WCEL), and the Asian Judges Network on Environment (AJNE).



### JUSTICE SAMSON ODHIAMBO OKONG'O

*Presiding Judge, Environment and Land Court of Kenya*

Justice Samson Odhiambo Okong'o MBS was elected by his peers in 2017 as the first Presiding Judge of the Environment and Land Court of Kenya, a position that he holds to date. At the time of his appointment as a judge of the Environment and Land Court in 2012, he was a litigation partner in one of Kenya's leading law firms, Anjarwalla & Khanna Advocates, where he specialized in civil litigation on land law.

Justice Okong'o has attended and participated in several symposia, congresses, and workshops in Kenya and abroad on environmental law and sustainable development. He is also a certified mediator.

He holds a Bachelor of Laws degree from the University of Nairobi, a Diploma in Law from the Kenya School of Law, and a Certificate on Environmental Law for Judges from the University of Capetown.



## Speakers

### JUSTICE BRIAN PRESTON

*Chief Justice, Land and Environment Court, New South Wales, Australia*

Justice Preston is the Chief Judge of the Land and Environment Court of New South Wales (NSW), Australia. Prior to being appointed in November 2005, he was a senior counsel practising primarily in NSW in environmental, planning, administrative, and property law.

Justice Preston has lectured in post-graduate environmental law for over 30 years. He is the author of Australia's first book on environmental litigation and 142 articles, book chapters, and reviews on environmental, administrative, and criminal law. He holds numerous editorial positions in environmental law publications, and has been involved in a number of international environmental consultancies and capacity-building programs, including for judiciaries throughout Asia, Africa, and the European Union.

Justice Preston is an Official Member of the Judicial Commission of NSW, Fellow of the Australian Academy of Law, Fellow of the Royal Society of NSW, and Honorary Fellow of the Environment Institute of Australia and New Zealand. He was awarded an honorary Doctor of Letters by Macquarie University in 2018. He is a member of various international environmental law committees and advisory boards. He also serves on the interim governing council and as Vice President for Oceania of the Global Judicial Institute on the Environment, and Chair of the Environmental Law Committee of the Law Association for Asia and the Pacific (LAWASIA).

Justice Preston is a Visiting Professor at Durham University, United Kingdom (UK); former Visiting Fellow at Oxford University, UK; and an Adjunct Professor at three Australian universities: the University of Sydney, Western Sydney University, and Southern Cross University.





## JUSTICE FABIEN RAYNAUD

*Conseil d'État, France*

Born in 1969, Fabien Raynaud is a graduate of Sciences-Po Paris and ENA (Saint-Exupéry promotion). He has been a member of the French Conseil d'Etat since 1994, where he has held the rank of Conseiller d'Etat since 2009. In 1999, he was seconded by the Conseil d'Etat to exercise the functions of legal adviser to the Secretariat General for European Affairs under the Prime Minister's Office for European Affairs. From 2002, he assumed the functions of a legal adviser to the French Permanent Representation to the European Union in Brussels. From May 2007 to May 2012, he was Advisor for European Affairs to the President of the French Republic, Mr. Nicolas Sarkozy. He returned to the Conseil d'Etat in June 2012, where he served from 2016 to 2022 as President of the 6th Chamber of the Litigation Section, which is in charge of environmental litigation and urban planning. In May 2022, he was appointed as General Rapporteur of the Council of State and Deputy President of the Report and Studies Section.

Justice Raynaud has been a judge of interim measures since 2013. He was appointed as Knight of the National Order of the Legion of Honor in 2016. He is also a member of the College of the French Competition Authority and the Tribunal of the European Space Agency.

## JUSTICE SYED MANSOOR ALI SHAH

*Supreme Court of Pakistan*

Justice Shah was elevated to the bench at the Lahore High Court in 2009 and, after serving as the Chief Justice of the Lahore High Court for almost two years, was elevated to the Supreme Court of Pakistan in early 2018. He did his schooling at Aitchison College, Lahore and obtained his law degree from the University of Cambridge, United Kingdom (UK), as well as the University of the Punjab, where he also obtained a degree in Masters in Economics. As a corporate litigator, he was a partner at AFRID, SHAH & MINALLAH<sup>1</sup> and



<sup>1</sup> All the three partners were successively elevated to the Bench and the law firm was dissolved.

## Speakers

### Justice Syed Mansoor Ali Shah *(continued)*

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took keen interest in public interest litigation with special focus on environmental issues and sustainable development. He had a passion for teaching and taught law for almost two decades at various institutions including Lahore University of Management Sciences (LUMS; Punjab Law College; Pakistan College of Law, Lahore; and

the Civil Services Academy, Lahore. He was also part of the steering committee that established the law school at LUMS, now called Syed Ahmed Hassan School of Law & Policy (SAHSOL).

His areas of special interest are constitutional law, human rights, climate<sup>2</sup> and water justice, environmental sustainability, disability rights, criminology, digital surveillance, privacy and proportionality.

He believes in continuous judicial reforms. As the Chief Justice of the Lahore High Court, he spearheaded the formation of Alternate Dispute Resolution Centers (ADRC) in Punjab. This was to provide an alternative to litigation in order to reduce the chronic backlog and staggering pendency of cases. He also set up the first ever Gender-Based Violence (GBV) Court and a Child Court in Lahore, besides Criminal and Civil Model Courts, to create working coordination between stakeholders to speed up dispensation of justice. He introduced Case Management and Court Automation Systems in Punjab, both at the Lahore High Court and the District Courts. He also installed the Enterprise IT System with the help of Punjab Information Technology Board (PITB) to sustain the IT vision of the court for the next decade, and to make the judicial system open, transparent, smart and fully connected at all levels. To provide access to justice to an ordinary litigant and the lawyers, an online Call Centre, Judicial Mobile App and online Sahulat (care) Center were established.

He underlines the need for Information Technology, Artificial Intelligence, Video Linking, Human Resource Development and Restructuring of the District Judiciary as the effective engines of change for the future and would like them to be mainstreamed to achieve state of the art judicial governance. He lays great emphasis on empowering the District Judiciary by enhancing their capacity through international and domestic training, based on performance indicators and by providing them a secure and conducive working environment, especially for the women judges. He feels that we need to increase judge per capita to improve the quality and speed of dispensation of justice in the country.

He helped restructure the curriculum at the Punjab Judicial Academy and brought it in line with the global best practices, building a sustainable platform for judicial capacity building of the members of the District Judiciary and the ministerial court staff. He laid special emphasis on research and played a foundational role in setting up the Lahore High Court Research Centre (LHCRC).

At the Supreme Court of Pakistan, he helped establish e-courts by video linking the Principal Seat of the Supreme Court with all the Provincial Registries of the Supreme Court, which has helped save travel cost to Islamabad from all over the country, bringing relief to the working schedule of lawyers who can attend to more cases and work more efficiently by avoiding adjournments.

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<sup>2</sup> He authored the *Asghar Leghari* and *D.G.Khan Cement* decisions.



### Justice Syed Mansoor Ali Shah *(continued)*

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This was done prior to COVID-19 and has attained exceptional utility during the pandemic. The new SC Judicial Mobile Application helps lawyers and litigants navigate their way through the cause lists and court rosters and have enhanced their access to justice. Research and scholarship are the hallmarks of any apex court in the country, hence the Research Centre (SCRC) at the Supreme Court was established, manned by bright and promising Civil Judges from all across Pakistan. SCRC carries the vision to eventually provide and support research to all the courts in the country, thereby enriching Pakistani jurisprudence and the scholarship of judges.

Justice Shah is an accredited mediator from Centre for Effective Dispute Resolution (CEDR), London; an Honorary Bencher of Lincoln's Inn, UK; a judicial member of the Global Judicial Institute on Environment (GJIE) (Brazil); a member of Global Constitutionalism (Yale University, 2020-present) and a Member of the Rhodes Scholarship Committee for Pakistan (2019-present). He is an avid golfer, loves sports and enjoys cycling, reading, travelling and music.



### JUSTICE BEIBUT SHERMUKHAMETOV

*Supreme Court of Kazakhstan*

Please see page 403.

## Speakers

### MARIA CECILIA T. SICANGCO

*Senior Legal Officer, ADB*

Maria Cecilia T. Sicangco is currently a senior legal officer at the Asian Development Bank (ADB). She is involved in the design, processing, and implementation of the Law and Policy Reform Program portfolio, which covers key areas such as environment and climate change law, international arbitration, gender-based violence and access to justice, commercial law and private sector development, digital economy, and Islamic finance.

Cecille works with development partners across Asia and the Pacific to promote the rule of law and establish an enabling environment for sustainable development. She has in-country experience in Afghanistan, Bhutan, Cambodia, Fiji, India, Myanmar, Pakistan, the Philippines, and Samoa. Her work has been published in the Yearbook of International Environmental Law (Oxford University Press) and the Human Rights Education in Asia-Pacific Journal. She authored the [International Climate Change Legal Frameworks](#) volume of the Climate Change, Coming Soon to a Court Near You report series. She also co-authored the [National Climate Change Legal Frameworks](#) volume, which synthesized the climate legal and policy frameworks of 32 countries in the region and analyzed key legislative trends and climate-relevant constitutional rights. Under ADB's Legal Literacy for Women technical assistance, Cecille put together knowledge resources for judges and prosecutors handling gender-based violence cases in Pakistan and Afghanistan. She contributed to and was the secondary editor of the [Court Companion on Gender-Based Violence Cases](#), which guides justice sector stakeholders in making justice more accessible to gender-based violence victims.

Cecille holds a Bachelor of Applied Economics and Accountancy double degree (*cum laude*) from De La Salle University and a Bachelor of Laws degree (*cum laude*, salutatorian) from the University of the Philippines. Thereafter, she pursued a Master of Laws in International Legal Studies degree at New York University, where she was the Starr Foundation Global Scholar, Hauser Scholar, and Thomas M. Franck Scholar in International Law. She holds a Certificate in Sustainable Finance from the University of Cambridge Institute for Sustainability Leadership, and is working towards an Associate Qualification in Islamic Finance at the Islamic Banking and Finance Institute Malaysia.

Cecille is a Philippine- and US-qualified lawyer (admitted to the bar in the State of New York), and a certified public accountant. She is a member of the World Commission on Environmental Law.





### **PETER SPEELMAN**

*Associate Legal Officer, Collective Intelligence for Environmental Governance, United Nations Environment Programme (UNEP) INFORMEA, Geneva*

Peter Speelman is a Canadian New York-barred lawyer working with the United Nations Environment Programme (UNEP) InforMEA team as an associate legal officer. He works on a number of projects at the intersection of international environmental law and the judiciary, helping to manage legal content on UNEP platforms, working on a dedicated global portal for the judiciary in partnership with the Global Judicial Institute on the Environment (GJIE), and developing e-learning content for judicial training.

### **ROBERT WABUNOHA**

*Regional Environment Governance Coordinator, United Nations Environment Programme (UNEP) Nairobi*

Robert Alex Wabunoha, a Ugandan, works in the environment and sustainable development field focusing on law and governance. He currently works with the United Nations Environment Programme (UNEP) as the Regional Coordinator for Environmental Governance for Africa.

He has vast experience and practice in development, implementation, and enforcement of national and international environmental law, environment policy, institutional development, environmental strategic planning, and capacity building. He has supported the development and implementation of several national and regional environment laws and policies, as well as multilateral environmental agreements, including those specific to Africa. Robert has authored numerous publications on various aspects of sustainable development, policy, and law.

Mr. Wabunoha holds a Master of Law degree from Makerere University, Kampala, with focus on environmental law and international economic law.





## Speakers



### KRISTEN WALKER PAINEMILLA

*Senior Vice President and Managing Director, Center for Communities and Conservation, Conservation International; Chair, Commission on Environment, Economic and Social Policy, International Union for Conservation of Nature*

Kristen Walker Painemilla is the Senior Vice President and Managing Director of the Center for Communities and Conservation at Conservation International, where she leads efforts to ensure that the organization and the broader conservation community implement a people-centered approach to conservation. The organization believes that effective conservation can only occur with and through the cooperation of Indigenous peoples and local communities living in and around protected areas—and elsewhere. The center's support for women as conservation stewards and decision-makers is central to its work.

To further Conservation International's mission, Kristen provides institutional leadership and comprehensive technical assistance on a range of social and international policies related to Indigenous peoples and local communities, gender, human rights-based approaches and social safeguards, as well as engagements with the peace and development community.

Throughout her career, Kristen has led efforts on behalf of Conservation International and the conservation community to engage Indigenous peoples and local communities more effectively in conservation through a human rights-based approach. In 2003, Kristen created the Indigenous and Traditional Peoples Program to consolidate Conservation International's work with community partners, as well as to strengthen the collective capacity of Indigenous peoples and Conservation International to achieve mutual goals.

In 2021, Kristen was elected to a second four-year term as Chair of the Commission on Environment, Economic and Social Policy (CEESP) of the International Union for Conservation of Nature (IUCN). The commission promotes research and policies to balance nature conservation with socioeconomic and cultural concerns.

Kristen has also led efforts on behalf of Conservation International to form the Conservation Initiative on Human Rights, a consortium of international conservation NGOs that seek to integrate human rights in conservation policy and practice. She is the author of the book "Indigenous Peoples and Conservation: From Rights to Resource Management," which draws from her years of experience working with Indigenous peoples.

## Kristen Walker Painemilla *(continued)*

Kristen holds a degree in Latin American Studies and Anthropology from George Washington University. She was a Cotlow Scholar in 1996, a Fulbright Scholar in 1997-1998 and is a Senior Fellow with the Environmental Leadership Program. She serves on several boards, including the Equator Initiative, the Bushmeat Crisis Task Force and the Chol-Chol Foundation.

## JUSTICE JOE WILLIAMS

*Supreme Court of New Zealand*

Justice Joe Williams is the first Māori judge to be appointed to the Supreme Court of New Zealand. Previous to this, he was appointed as a judge both in the Court of Appeal and the High Court of New Zealand. In 2004, Justice Williams was appointed as Chairperson of the Waitangi Tribunal. In 1999, he became Chief Judge of the Māori Land Court. Early in his legal career, he became a Partner at Kensington Swan, and eventually co-founded Walters Williams and Co.

Justice Williams holds a Bachelor of Laws from the Victoria University of Wellington and Master of Laws (Hons) from the University of British Columbia. His iwi are Ngati Pūkenga, Waitaha, and Tapuika.



## ASSOCIATE JUSTICE MICHAEL D. WILSON

*Supreme Court of Hawaii*

Associate Justice Michael Wilson was appointed to the Hawaii State Supreme Court on 17 April 2014, after serving as a judge of the Hawaii State Circuit Court of the First Circuit since 10 May 2000. As a Circuit Court judge, he presided over adult drug court, adult mental health court, and the felony criminal trial court.

Prior to his appointment as a Circuit Court judge, Justice Wilson was the director of the Department of Land and Natural Resources; Chair of the Board of Land and Natural Resources; Chair of the State Water Commission; and a Trustee of the Kahoolawe Island Reserve Commission. He was awarded a lifetime membership in the Western Association of Fish and Wildlife agencies in 1999. Previously, he was a



## Speakers

### Associate Justice Michael D. Wilson *(continued)*

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partner in the law firms of Pavey Wilson & Glickstein and Hart Wolff & Wilson, where he practiced civil and criminal trial and appellate law.

Justice Wilson is an adjunct faculty member of the Jindal Global University Law School in Sonapat, India. He is also a member of the Governing Committee of the Global Judicial Institute on the Environment; a member of the Climate Change Task Force for the International Union for Conservation of Nature (IUCN); a member of the World Commission on Environmental Law of the IUCN; and a member of the International Advisory Committee to the China Ecocivilization Forum.

Justice Wilson received his law degree from Antioch School of Law in Washington D.C., and bachelor's degree from the University of Wisconsin-Madison.

### JUSTICE KAREN ZARIKYAN

*Administrative Court of the Republic of Armenia*

Justice Karen Zarikyan is a judge in the Administrative Court of Armenia. Prior to his appointment as a judge in December 2013, he served in the same court where he provided judges with necessary assistance and performed the functions of a legal expert for six years.

He is a lecturer at the Russian-Armenian University, Academy of Justice and Chamber of Advocates. He is also an expert on projects involving administrative law at both national and international levels.

He received his Doctor of Philosophy in 2013. He is a published author, and has participated in numerous conferences.







### JUDGE LIU ZHUMEI

*Chief Judge, Environment and Resources Division, Supreme People's Court, People's Republic of China*


Judge Liu Zhumei is the Chief Judge of the Environment and Resources Division of the Supreme People's Court of China (SPC). She holds a Doctor of Law degree and is a national expert in trial practice. She has served as the Deputy Chief Judge of the Second Civil Division of the SPC, the Deputy Director General of the Research Office of the SPC, the First Deputy Chief Judge of the Fifth Circuit Court of the SPC, and the Director General of the State Compensation Division of the SPC. She has been engaged in civil and commercial trials for nearly forty years, and has tried many important, complex, and difficult civil and commercial cases. She has also presided over or participated in the formulation of many judicial interpretations.





A group of women cleaning wheat grains in India. Women are disproportionately affected by climate change, which also exacerbates existing gender inequalities (photo by Ariel Javellana/ADB).





# 24

## FORMAL CLOSING CEREMONY SPEAKERS

In alphabetical order, by surname.

Affiliations and positions indicated are as of symposium dates  
(31 May–1 June 2022).



## Formal Closing Ceremony Speakers



### **JUSTICE SAPANA PRADHAN MALLA**

*Supreme Court of Nepal;  
Secretary-General, Global Judicial Institute on the Environment*

Please see page 400.

### **CHRISTINA PAK**

*Principal Counsel and Team Leader, Law and Policy Reform Program, ADB*

Please see page 402.



### **ANDREW RAINE**

*Head, International Environmental Law Unit, United Nations  
Environment Programme (UNEP) Nairobi*

Andy Raine is the Head of International Environmental Law Unit in the Law Division at the United Nations Environment Programme (UNEP). He leads a global team in the progressive development and implementation of international environmental law. Andy has worked for over 20 years as an environmental lawyer in the public and private sectors, with positions in Melbourne, London, New York, Bangkok, and now Nairobi. Prior to his current role, Andy served as UNEP's Asia Pacific Regional Coordinator for Environmental Law

## Formal Closing Ceremony Speakers

### Andrew Raine *(continued)*

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and Governance, working across 41 countries in the region to advance the development and implementation of environmental rule of law. He has also held positions at the United Nations Development Programme, and in leading international law firms (Linklaters and Freehills). Andy has a Master of Laws (Environmental Law and Policy) with Distinction from University College London, and a Bachelor of Laws (Hons) and a Bachelor of Business (Management) from the University of Queensland. In 2022 he will complete a fellowship with the Faculty of Law at the University of Oxford as an Academic Visiting Fellow, researching different dimensions of inclusive and networked multilateralism in the context of the proposed treaty on plastic pollution.

### KATHLEEN ROGERS

*President, Earth Day*

Kathleen Rogers is the President of Earth Day Network. Under her leadership, EARTHDAY.ORG has grown into a global year-round policy and activist organization with an international professional staff.

Kathleen has been at the vanguard of developing campaigns and programs focused on diversifying the environmental movement. In 2002, she spearheaded the creation of Campaign for Communities (C4C). C4C is a coalition of African American and Latino partner organizations focused on voter registration and voter mobilization, which also works year-round on environmental issues in low-income communities. Kathleen also helped create innovative financial mechanisms to “green” low-income schools and communities. She created the National Civic Education campaign, which works with K-12 schools on projects that solve local environmental issues while teaching civic skills.

Kathleen also founded Earth Day Network’s groundbreaking “Billion Acts of Green” program, which has now recorded close to 3 billion individual actions to improve the environment. She is a frequent commentator on environmental issues in the media and has appeared on CNN, Fox News, and NPR, as well as in Time Magazine, The Washington Post, the New York Times, and The Los Angeles Times and many other international and national newspapers and journals.

Prior to her work at Earth Day Network, Kathleen held senior positions with the National Audubon Society, the Environmental Law Institute, and two U.S. Olympic Organizing Committees. As Chief Wildlife Counsel for the National Audubon Society, she oversaw international



## Formal Closing Ceremony Speakers

**Kathleen Rogers** *(continued)*

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trade, migratory species, and biodiversity programs, and was responsible for bringing the first citizen complaint before the Commission for Environmental Cooperation, the tri-national agency created to oversee North American environmental issues. She also worked for the BBC and other television networks.

Kathleen serves on various boards and as Regional Focal point for North America Region of the Non-Governmental Organization (NGO) Network of the Global Environment Facility (GEF), now known as the GEF-CSO Network, to serve a four-year term from 30 June 2018 to 29 June 2022. She is an advisor and judge for a number of global prizes, including the annual Hult Prize which awards \$1 million to college teams who create companies that solve pressing social issues.

She is a graduate of the University of California at Davis School of Law, where she served as editor-in-chief of the law review and clerked in the United States District Court for the District of Columbia.










Solar panels installed in Dali City, Yunnan, People's Republic of China  
(photo by Deng Jia/ADB).



The background of the page is a photograph of a road with solar panels on the left side. A large blue semi-transparent shape covers the right half of the image, containing the title and subtitle. The number '25' is in the top left corner.

# 25

## CONFERENCE SECRETARIAT

Affiliations and positions indicated are as of symposium dates  
(31 May–1 June 2022).



## Conference Secretariat



### **JUSTICE ANTONIO HERMAN BENJAMIN**

*National High Court of Brazil (STJ); President, Global Judicial Institute on the Environment; Chair Emeritus, International Union for Conservation of Nature (IUCN) World Commission on Environmental Law*

Please see page 390.

### **CHRISTINA PAK**

*Principal Counsel and Team Leader, Law and Policy Reform Program, ADB*

Please see page 402.



### **DENISE ANTOLINI**

*Professor, University of Hawai'i School of Law*

Please see page 408.



**NICHOLAS BRYNER**

*Professor, Louisiana State University School of Law*

Please see page 410.



**MARIA CECILIA T. SICANGCO**

*Senior Legal Officer, ADB*

Please see page 426.



**RYAH ZENDRA SANVICENTE**

*Legal Operations Administrator, ADB*

Ms. Ryah Sanvicente has been a staff member of the Asian Development Bank since 2005. She worked with the Office of the General Counsel (OGC) as a Legal Operations Assistant from 2005–2009, and moved to the South Asia Department from 2009–2015 as a Senior Operations Assistant. In 2015, she returned to OGC as the Executive Assistant to the General Counsel. In 2019, she joined the Law and Policy Reform Team of OGC as the Legal Operations Administrator.

She graduated from the University of Sto. Tomas with a Bachelor's Degree in Communications Arts in 2000.





### **GLADYS CABANILLA-SANGALANG**

*Senior Legal Operations Assistant, ADB*

Ms. Gladys Cabanilla-Sangalang has over 20 years of operations and administrative support experience. Before joining ADB, she worked as a paralegal in a full-service law firm that advises clients in the Banking & Finance, Corporate & Commercial, Dispute Resolution, Employment, Immigration, Intellectual Property, and Tax practice areas. Subsequently she became the Executive Administrator to the Global Chief Operating Officer of a multinational law firm and later a Global Talent Management Specialist, overseeing the performance management tool of the Firm and managing the election of local partnership to international partnership.

She also worked as an Office Administrator and Purchasing Associate in a subsidiary of the largest media conglomerate in the Philippines that brought the first indoor family educational entertainment center to the Bonifacio Global City, Taguig.

She is currently a senior legal operations assistant in the Office of the General Counsel in ADB, supporting the Law and Policy Reform Program, the operations of ADB's Pacific and South Asia regional departments and private sector legal group.

She graduated from the University of the Philippines with a Bachelor of Arts degree in Political Science (with minor in Economics and Psychology) and earned her Certificate as a Paralegal from the University of the Philippines Law Center. She also holds a diploma on Events Specialist that she earned from the School of Professional and Continuing Education of the De La Salle-College of Saint Benilde.



**BRIONY EALES**

*Team Leader (Consultant), Environment and Climate Change  
Judicial Program, ADB*

Please see page 413.



**ANGELO JACINTO**

*IT and Multimedia Specialist (Consultant), ADB*



Mr. Angelo Jacinto is a multimedia specialist and web developer who previously worked with the Asian Development Bank's (ADB) Office of the General Counsel (OGC) in producing the Developing Environmental Law Champions (<https://www.teachenvirolaw.asia>) and the Asian Judges Network on Environment (AJNE) (<https://www.ajne.org>) websites. He also documented events as a photo/videographer and produced video presentations for the Developing Environmental Law Champions Project.

He has been a multimedia and web development consultant with ADB since 2013, having worked mostly with the ADB's Department of Communications (DOC) on the redesign and maintenance of ADB.org (<https://www.adb.org>) and the creation of the ADB Data Library (<https://data.adb.org>). He also developed the Asia-Pacific Road Safety Observatory Website (<https://www.aprso.org>) with the ADB's Sustainable Development and Climate Change Department (SDCC), and the web version of the Office of Anticorruption and Integrity's (OAI) 2019 Annual Report (<https://www.adb.org/multimedia/oai-2019/index.html>). He also produced multimedia feature stories such as Green Cities (<https://www.adb.org/green-cities/index.html>) and Environmental Law Champions for Asia and the Pacific (<https://www.teachenvirolaw.asia/story/index.html>).

**Angelo Jacinto** *(continued)*

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Prior to consulting with the ADB, he worked with multilateral organizations such as UNAIDS, UNICEF, the ASEAN Centre for Biodiversity, the ASEAN Wildlife Enforcement Network, the Green Climate Fund (GCF) and the International Organization for Migration (IOM).

### **HYACINTH E. RAFAEL-ANTONIO**

*Knowledge Management Specialist (Consultant), ADB*

Hyacinth E. Rafael-Antonio is a Knowledge Management Specialist (Consultant) under the Law and Policy Reform (LPR) Program of ADB, particularly involved in the crafting of knowledge products and resources for the program. She collaborated in developing a reference booklet on international commercial arbitration, intended for use as a judicial education and technical capacity building tool in Uzbekistan. She is also working on content for the LPR knowledge database covering commercial law, environmental law, climate change law, sustainable development law and policy, private sector development, and related fields.

A member of the Philippine Bar, Hyacinth served as Assistant Vice President, heading the litigation group, in a top Philippine conglomerate. In this post, she managed the international arbitration and cross-border dispute resolution of the company and its subsidiaries. She also led the handling of environmental law concerns, competition law matters, labor litigation, trademark registration and intellectual property enforcement, land transactions, cybersecurity issues, as well as litigation risk management.

Prior to this, she was an Associate at the Law Office of Estelito P. Mendoza & Associates where she handled a number of high-profile cases up to the Supreme Court. She also served a stint as a Regulatory Lawyer in one of the largest power companies in the Philippines, and as a Junior Associate with Villaraza Cruz Marcelo & Angangco Law Offices.

Hyacinth holds a Bachelor of Arts in Economics degree from Ateneo de Manila University and a Bachelor of Laws degree from the University of the Philippines.





### IMELDA T. ALCALA

*Senior Project Coordinator (Consultant), ADB*

Ms. Imelda T. Alcala has a Bachelor of Science in Business Administration (major in Management) degree. She has been with the Asian Development Bank as a consultant for various projects since 1996. Her 26 years in the bank have seen her handle projects in environmental law, energy and water regulation, climate change, food fortification and health policy, regional cooperation in law, justice and development, finance and risk mitigation, and commercial law reform. At present, Ms. Alcala is the Senior Project Coordinator for three technical assistant projects under the Office of the General Counsel's Law and Policy Reform Program: (i) on promotion of gender-responsive judicial systems; (ii) on developing environmental law champions in the Asia-Pacific academe; and (iii) on judicial building in commercial law and climate change law. She is responsible for overseeing and managing the roll-over of project logistics, coordination and administration.

### PAULO ANTONIO C. BURRO

*Partnership Manager, Asian Research Institute for Environmental Law; Conference Specialist (Service Provider/Resource Person), Strengthening Judicial Capacity Towards Sustainable Economic Development in Asia and the Pacific Technical Assistance, Law and Policy Reform Program, ADB*

Paulo Antonio C. Burro is a law graduate of the San Beda College Alabang School of Law. He has over 9 years of experience in environmental law and its nexus with various other fields, such as transportation, education, agriculture, conservation, waste management, climate change, and gender and human rights. He is the Partnership Manager for the Asian Research Institute for Environmental Law and a consultant for international organizations and social enterprises. He was previously a consultant for the Philippine government.

In 2016, Paulo was a recipient of the *Bayanihan Sa Daan* Awards given by the Philippine national government in Malacanan Palace. He also received the People's Gratitude Award from the United Nations Environment Programme (UNEP) Bangkok office in 2018.

Paulo is a member of the Young Southeast Asian Leaders Initiative of the US Embassy and the Climate Reality Project.





## Conference Secretariat



### **COLEEN SALAMAT**

*Outreach Manager, Asian Research Institute for Environmental Law; Campaigner, EcoWaste Coalition; Conference Specialist (Service Provider/Resource Person), Strengthening Judicial Capacity Towards Sustainable Economic Development in Asia and the Pacific Technical Assistance, Law and Policy Reform Program, ADB*

Coleen Salamat is an environmental advocate with a background on oceans and waste management. She campaigns for reducing single-use plastics in the Philippines. She was previously the plastic campaigner of Oceana Philippines. At present, she is the outreach manager of Asian Research Institute for Environmental Law and campaigner of EcoWaste Coalition. Coleen is also a part-time lecturer at the De La Salle University and assists the Law and Policy Reform Program of the Asian Development Bank.







A farmer works at a sugar cane field in Nadi, Fiji (photo by Eric Sales/ADB).





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# CONFERENCE RAPPORTEURS



## Conference Rapporteurs



### MARIA CECILIA T. SICANGCO

*Senior Legal Officer, ADB*

Please see page 426.

### HYACINTH E. RAFAEL-ANTONIO

*Knowledge Management Specialist (Consultant), ADB*

Please see page 444.



### CARMEN GRACE S. RAMOS

*Resource Person, Strengthening Judicial Capacity Towards Sustainable Economic Development in Asia and the Pacific Technical Assistance, ADB*

Carmen Grace S. Ramos is a resource person for the *Strengthening Judicial Capacity Towards Sustainable Economic Development in Asia and the Pacific Technical Assistance*, under the Law and Policy Reform Program of the Asian Development Bank.

She has over a decade of experience as a regulatory lawyer in one of the largest utility companies in the Philippines. In such role, she has handled cases on tariff regulation, managed compliances, negotiated power-related contracts, and been heavily involved in policy research and advocacy on various regulatory matters, including renewable

### Carmen Grace S. Ramos *(continued)*

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energy law and sustainability initiatives. She has since become Assistant Vice President, heading the regulatory contract management group, in the same company.

Previous to that, she was involved in a legal resource non-government organization doing developmental work for marginalized sectors in the country, with thrusts on workers' rights, gender equality, and children's rights, among others.

Carmen Grace holds a Bachelor of Arts in Psychology degree and a Bachelor of Laws degree from the University of the Philippines.

### MA. ELISHA S. ELORIAGA-DOLATRE

*Resource Person, Strengthening Judicial Capacity Towards Sustainable Economic Development in Asia and the Pacific Technical Assistance, ADB*

Ma. Elisha S. Eloriaga-Dolatre is a resource person for *Strengthening Judicial Capacity Towards Sustainable Economic Development in Asia and the Pacific Technical Assistance*, under the Law and Policy Reform Program of the Asian Development Bank.

She is a regulatory and compliance lawyer for the largest private sector electric distribution company in the Philippines. In her capacity as a regulatory practitioner, she has participated in the formulation of contracts, rendered legal opinions, and engaged in policy advocacy on laws concerning energy, including renewable energy. She has also ensured compliance with, and has appeared as counsel with respect to, energy laws and regulations issued by the relevant government agencies and regulatory bodies.

During the height of the COVID-19 pandemic, she was a volunteer lawyer for Volunteers and Lawyers Organized for the Rule of Law (VALOR-19), which aims to respond to the Filipino people's most urgent legal questions during the time of the pandemic, including government issuances in light of COVID-19, human rights, labor and employment, as well as online free speech.

She holds a Bachelor of Arts degree from the De La Salle University-Manila and a Bachelor of Laws degree from San Beda University-Manila.







Climate change has caused “dzud” several times in the last decade. Dzud is a phenomenon where the country experiences drought in summer and an extremely cold winter (photo by Eric Sales/ADB).





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# LIST OF DELEGATES

# List of Delegates

## IN-PERSON (STOCKHOLM, SWEDEN) AND VIA ZOOM

COUNTRY	NAME	TITLE	ORGANIZATION
Argentina	Carolina Siritto	Legal Assessor	DGTALSECA
Argentina	Gustavo Rinaldi	Director Impacto Ambiental	Ministerio de Transporte
Argentina	Luis Mereles	Director	Estudio Jurídico Mereles
Argentina	Melisa Monzon	Subgerente Operativo Promoción Normativa	Secretaria de Ambiente - CABA
Argentina	Patricio Pastor	Lawyer	Universidad Nacional de La Plata
Armenia	Karen Zarikyan	Justice	Administrative Court of the Republic of Armenia
Australia	Bob Zhao	Senior Lecturer	University College of Southern Queensland
Australia	Brian Preston	Chief Justice	Land and Environment Court, New South Wales
Australia	Jennifer Jones	Environmental Protection Lawyer	Department for Environment and Water
Australia	Nicola Pain	Judge	Land and Environment Court of New South Wales
Barbados	Michelle Weekes	Judge	High Court of Barbados
Belgium	Karin De Roo	Judge	Council for Permit Disputed
Belgium	Luc Lavrysen	President Chair	Constitutional Court of Belgium European Union Forum of Judges for the Environment
Belgium	Maribel Rodriguez	Legal Director	Law and Wildlife
Benin	Boco Kana-Gaba	Juriste Environnementaliste	Ministère de l'Environnement
Brazil	Antonio Herman Benjamin	Justice President  Chair Emeritus	National High Court of Brazil – STJ Global Institute on the Environment International Union for Conservation of Nature World Commission on Environmental Law
Brazil	Marcus Livio Gomes	Federal Judge	National Council of Justice of Brazil (CNJ)
Brazil	Robinson Miranda	Docente	University of Sao Caetano do Sul
Canada	Adele Kent	Chief Judicial Officer Emerita	National Judicial Institute
Canada	Elizabeth Mrema	Executive Secretary	Convention on Biological Diversity
Costa Rica	Damaris María Vargas Vásquez	Justice	Supreme Court of Costa Rica
Croatia	Antun Žagar	President of the Court	Administrative Court in Rijeka
Fiji	Deepthi Amaratunga	Judge	Government
Fiji	Frances Disiga	Environmental Lawyer	International Union for Conservation of Nature

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## List of Delegates

In-Person (Stockholm, Sweden) and Via Zoom *continued*

COUNTRY	NAME	TITLE	ORGANIZATION
Fiji	Jeremaia Savou	Resident Magistrate	Judicial Department, Fiji Islands
Fiji	Kristel Whippy	Consultant	Ecostream Consulting Pte Ltd
Fiji	Maria-Goreti Muavesi	Senior Environmental Legal Officer	International Union for Conservation of Nature
Fiji	Uraia Makulau	Graduate Analyst	Reserve Bank of Fiji
Fiji	Vinisoni Filipe	Partner	Valenitabua & Associates
Finland	Niko Soininen	Professor of environmental law	University of Eastern Finland
France	Émilie Gaillard	Lecturer General Coordinator	Environmental and Human Rights Law Sciences Po Rennes Normandy Chair for Peace (CNRS)
France	Fabien Raynaud	Justice	Conseil of State/Conseil d'État, France
France	Léa Créton	Stagiaire	International Center for Comparative Environmental Law
France	Marc Clément	Presiding Judge	Administrative Court of Lyon
France	Megan Natali	PhD	Indépendany
France	P. Corinne Alida Kabre	Doctorante	Université de Bordeaux
France	Vincent Delbos	Chargé Enseignement	Tems
Georgia	Ani Nachkhatashvili	Fisheries Liaison Specialist	FAO-General Fisheries Commission for the Mediterranean
Germany	Agung Wardana	Assistant Professor	Universitas Gadjah Mada
Germany	Jochen Schumacher	Managing Director	Institute for Nature Conservation and Nature Conservation Law
Germany	Ryan Davis	Junior Consultant	SNPC GmbH
Ghana	George Sarpong	Managing Partner	G.A Sarpong & Co
Ghana	Kenneth Paa Kwesi Agyir	National Coordinator	Youth Alliance for Green Ghana
Ghana	Naa Koney	Associate	N. Dowuona and Company
Greece	Efpraxia Maria	Professor of Environmental Law	Technical University of Crete
Greece	Giorgos Balias	Associate Professor	Harokopio University of Athens
Greece	Stathis Arapostathis	Associate Professor	University of Athens
Honduras	Alicia Vargas	Lawyer and Master of Laws (Environmental Law) Student	Stockholm University
Hong Kong, China	Kevin Li	Researcher	CarbonCare InnoLab
India	Biplab Som	Contract Specialist	Freelancer
India	Ritu Dhingra	Environmental Law and Policy Analyst	Law Linkers and Company

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## List of Delegates

In-Person (Stockholm, Sweden) and Via Zoom *continued*

COUNTRY	NAME	TITLE	ORGANIZATION
India	Rupak Kumar	SRTDA	Central Drugs Standard Control Organisation, New Delhi
India	Shanmuga Sundara Bharathi	Commission Member	Species Survival Commission, International Union for Conservation of Nature I CEM I World Commission on Protected Areas; Commission for Environmental Cooperation
India	Smita Pandey	Assistant Professor	Chotanagpur Law College
Indonesia	Anna Christina Sinaga	Law Enforcement Technical Expert	United States Forests Service - International Program
Indonesia	Austin Faradian	Program Associate	International Development Law Organization
Indonesia	Azmiya Erma	Legal Counsel	Legal Counsel
Indonesia	Bambang Hero Saharjo	Professor	IPB University
Indonesia	Bambang Hery Mulyono	Justice Head	Supreme Court of Indonesia Judicial Technical Education and Training Center
Indonesia	Collin Adi Pratama	Student	Universitas Padjadjaran
Indonesia	Dedek Purnama Sari	Monev Associate	International Development Law Organization
Indonesia	Dodik Setyo Wijayanto	Assistant Chief Justice	Supreme Court of The Republic of Indonesia
Indonesia	Dwi Bakti Permana	Investigator	National Transportation Safety Committee
Indonesia	Frensita Kesuma Twinsani	Judge	JTC, Mahkamah Agung RI
Indonesia	Guse Prayudi	Judge	Supreme Court
Indonesia	Josua Hari	Lecturer/Student	Sekolah Tinggi Hukum Bandung
Indonesia	Maskur Hidayat	Judge	Supreme Court of Indonesia
Indonesia	Muhammad Anis Zhafran Al Anwary	Research Assistant	Faculty of Law, Universitas Brawijaya
Indonesia	Nadia Astriani	Assistant Professor	Universitas Padjadjaran
Indonesia	Siti Ulayya	Student	Faculty of Law Universitas Padjadjaran
Indonesia	Wini Noviarini	Judge	District Court
Indonesia	Wiwiek Awiati	Lecturer	Faculty of Law University of Indonesia
Indonesia	Yulinda Adharani	Lecturer	Universitas Padjadjaran
Italy	Ali Mekouar	Professor	International Center for Comparative Environmental Law

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## List of Delegates

In-Person (Stockholm, Sweden) and Via Zoom *continued*

COUNTRY	NAME	TITLE	ORGANIZATION
Italy	Mariella Kraus	PhD Student	Università Luigi Vanvitelli
Japan	Hitoshi Ushijima	Professor of Law	Chuo University
Jordan	Isra' Alturk	Owner and Manager	Environmental Law Office
Kazakhstan	Beibut Shermukhametov	Justice	Supreme Court of Kazakhstan
Kazakhstan	Roza Akshalova	Senior Lecturer	L.N. Gumilyov Eurasian National University
Kenya	Andrew Raine	Head of International Environmental Law	United Nations Environment Programme
Kenya	Angela Kariuki	Programme Officer	United Nations Environment Programme
Kenya	Arnold Kreilhuber	Deputy Director	UN Environment Programme Law Division
Kenya	Catherine Mwangi	Programme Management Assistant	United Nations Environment Programme
Kenya	David Kilonzi	Risk Officer	Bank of Baroda (Kenya) Ltd
Kenya	Donald Kaniaru	Managing Partner Former Director	Kaniaru & Kaniaru Advocates Division of Environmental Policy Implementation and Division on Environmental Conventions, United Nations Environment Programme
Kenya	Inger Andersen	Executive Director  Secretary General	United Nations Environment Programme  Stockholm+50 International Meeting
Kenya	Keriako Tobiko	Cabinet Secretary	Ministry of Environment
Kenya	Mark Odaga	Programme Manager	Natural Justice
Kenya	Marlene Nilsson	Senior Programme Management Officer/Special Assistant to the Executive Director	United Nations Environment Programme
Kenya	Nadine Andersen	Project Intern	United Nations Development Programme
Kenya	Nandita Surendran	Public Information Officer	United Nations Environment Programme
Kenya	Nicolas Bertrand	Senior Adviser to the Executive Director	United Nations Environment Programme
Kenya	Patricia Kameri-Mbote	Director Professor	United Nations Environment Programme Law Division University of Nairobi Law School
Kenya	Renee Gift	Legal Officer	United Nations Environment Programme

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## List of Delegates

In-Person (Stockholm, Sweden) and Via Zoom *continued*

COUNTRY	NAME	TITLE	ORGANIZATION
Kenya	Ruth Solitei	Policy Advisor	Ministry of Environment and Forestry
Kenya	Samson Okong'o	Presiding Judge	Environment and Land Court of Kenya
Kenya	Sylvia Bankobeza	Legal Officer	United Nations Environment Programme
Kenya	Wilson Tonkei	Executive Director	Afro-Oceanic Group of Companies
Lebanon	Vanessa Sfeir	Programs Coordinator	International Center for Human Sciences - UNESCO
Macedonia	Evgenija Krstevska	No information available	No information available
Malawi	Anneline Kanthambi	High Court Judge	Malawi Judiciary
Malawi	Jack Nriwa	Judge	Judiciary
Malaysia	Ganesan Vethiah	Retired Fisheries Officer (Law and Enforcement)	Department of Fisheries Malaysia
Mauritius	Vedalini Bhadain	Chairperson	Environment and Land Use Appeal Tribunal
Mexico	Alfredo Gutiérrez Ortiz Mena	Justice	Supreme Court of Mexico
Mexico	Angelina Isabel Valenzuela Rendón	Profesora Investigadora	Universidad de Monterrey
Mexico	Oscar Matias Tapia	Asistencia Técnica Ministro Alfredo Gutiérrez Ortiz Mena	Suprema Corte De Justicia De La Nación
Morocco	Imane Elmalki	Magistrate	Conseil supérieur du pouvoir judiciaire
Nepal	Ananda Mohan Bhattarai	Justice	Supreme Court of Nepal
Nepal	Prakash Dhakal	Advocate	Nepal Bar Association
Nepal	Sapana Pradhan Malla	Justice Secretary-General	Supreme Court of Nepal Global Judicial Institute on the Environment
Netherlands	Maja Bartczak	Student	Maastricht University
Netherlands	Shantha Dalugamage	Chairman	Stichting Mission Lanka
New Zealand	Joe Williams	Justice	Supreme Court of New Zealand
Nigeria	Folasade Olubanjo	Honourable Justice	Federal High Court of Nigeria
Nigeria	Idowu Adegbite	University lecturer	Olabisi Onabanjo University Ago-Iwoye
Nigeria	Tolu Ogboru	Lecturer	University of Jos
Norway	Christina Voigt	Professor Chair	University of Oslo School of Law IUCN World Commission on Environmental Law
Norway	Ragnhild Noer	Justice	Supreme Court of Norway

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## List of Delegates

In-Person (Stockholm, Sweden) and Via Zoom *continued*

COUNTRY	NAME	TITLE	ORGANIZATION
Norway	Ricardo Lorenzetti	Justice Professor	Supreme Court of Norway University of Buenos Aires
Norway	Roberto Coll	Executive Assistant	IUCN World Commission on Environmental Law
Pakistan	Alizeh Shah	No information available	No information available
Pakistan	Huma Omar	No information available	No information available
Pakistan	Shah Shazm	Judge	Judiciary
Pakistan	Syed Mansoor Ali Shah	Justice	Supreme Court of Pakistan
Panama	Andrea Marcela Brusco	Environmental Governance Regional Coordinator	United Nations Environment Programme
Panama	Antonio Chang Kruell	Abogado Socio	Alianza Para La Conservación y El Desarrollo, ACD Panamá
Papua New Guinea	Ambeng Kandakasi	Deputy Chief Justice	Supreme Court of Papua New Guinea
Papua New Guinea	Iova Geita	Judge of National & Supreme Courts	Papua New Guinea Judiciary
People's Republic of China	Danting Fan	Lawyer	ClientEarth (China Office)
People's Republic of China	Dimitri de Boer	Chief Representative	ClientEarth (China Office)
People's Republic of China	Echo	Program Officer	ClientEarth (China Office)
People's Republic of China	Jinghan Zhao	Legal Researcher	ClientEarth (China Office)
People's Republic of China	Liu Zhumei	Chief Judge	Environment and Resources Division, Supreme People's Court
People's Republic of China	Liumx	Programme Manager	ClientEarth (China Office)
People's Republic of China	Tang He	PhD Researcher	Wuhan University
Peru	Erick Pajares G.	Chief Executive Officer	Biosphere Group - Think Tank en Investigación de Futuros Sustentables
Philippines	Angelo O. Jacinto	IT and Multimedia Specialist (Consultant)	Asian Development Bank
Philippines	Arianne Fabregas	Deputy for Legal Affairs	GoodGovPH
Philippines	Arjay Valiente	Secretary-General	Philippine Model United Nations Community
Philippines	Asia Wy	Legal Fellow	Environmental Legal Assistance Center

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# List of Delegates

In-Person (Stockholm, Sweden) and Via Zoom *continued*

COUNTRY	NAME	TITLE	ORGANIZATION
Philippines	Briony Eales	Team Leader, Environment and Climate Change Judicial Program	Asian Development Bank
Philippines	Christina Pak	Principal Counsel	Asian Development Bank
Philippines	Cristina Madarieta	Research Assistant	Green Industrial Policy in the Age of Rare Metals
Philippines	Gladys Cabanilla-Sangalang	Senior Legal Operations Assistant	Asian Development Bank
Philippines	Glenn Openiano	Architect-Environmental Planner	Polytechnic University of the Philippines
Philippines	Hyacinth Antonio	Knowledge Management Specialist	Asian Development Bank
Philippines	Imelda Alcala	Senior Project Coordinator	Asian Development Bank
Philippines	Janella Nepomuceno	Pollution Control Officer	Toyota North EDSA
Philippines	Jansen Nacar	Lawyer	Integrated Bar of the Philippines
Philippines	Japhet Masculino	School of Law Professor	University of Negros Occidental Recoletos
Philippines	Leonora G. Bartolome	Government Employee	National Police Commission
Philippines	Ma Edelyn Zaragoza-Ventura	Lawyer	Independent
Philippines	Maria Cecilia T. Sicangco	Senior Legal Officer	Asian Development Bank
Philippines	Maria Celine Andal	Administrative Aide VI	Provincial Government of Cagayan
Philippines	Maria Dianne Rallon	Senior Project Planning and Development Officer	Metropolitan Cebu Water District
Philippines	Nancy Hadap-Villanueva	Attorney/Professor	Manila Law College
Philippines	Nestorio Felerino	Research and Extension Director	Kidapawan Doctors College, Inc.
Philippines	Olivia Paula Mauricio	Court Attorney	Sandiganbayan
Philippines	Renelyn Gamaya	Project Officer	Searice
Philippines	Rey Navarro	Assistant Professor IV	City Government of Island Garden City of Samal
Philippines	Thomas Clark	General Counsel	Asian Development Bank
Portugal	José Igreja Matos	Chief Justice President	Court of Appeal of Porto, Portugal International Association of Judges (IAJ-UIM)
Singapore	Laura Collins	Director	Sparkbox
Singapore	Lin Heng Lye	Professor	National University of Singapore
South Africa	Gomolemo Moshoeu	Director	Judicial Academy of South Africa - SAJEI
South Africa	Mampotse Mokgetle	Executive Support to the CEO	South African Judicial Education Institute

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## List of Delegates

In-Person (Stockholm, Sweden) and Via Zoom *continued*

COUNTRY	NAME	TITLE	ORGANIZATION
South Africa	Nambitha Dambuza-Mayosi	President	African Network of Judicial Academies and the Environment
South Africa	Odile Juliette Lim Tung	Extraordinary Research Fellow	North West University
South Africa	Poso Mogale	Director - Projects	South African Judicial Education Institute/AJENEL Secretariat
Spain	Ana Barreira	Director and Founder	International Institute for Law and the Environment
Spain	Jonatan Rigo	PhD Candidate	University of Balearic Islands
Spain	Montserrat Abad Castelos	Professor	Universidad Carlos III de Madrid
Sri Lanka	Lakmali Hewawasam	Judge	High Court
Sri Lanka	Priyasath Dep	Former Chief Justice	Supreme Court of Sri Lanka
Sweden	Anders Bengtsson	Former Senior Judge	Land and Environment Court (Växjö, Sweden)
Sweden	Anja Ipp	Co-founder	Climate Change Counsel
Sweden	Annette Magnusson	Lawyer	Climate Change Counsels
Sweden	Caroline Aberg	Representative	United Nations Development Programme
Sweden	Claudia Ituarte	Research Fellow	Stockholm University
Sweden	Elin Norlander	Consultant	SJR
Sweden	Hanna Werth	President Judge	Swedish Judges Association Administrative Court of Malmö, Sweden
Sweden	Jonas Ebbesson	Professor and Former Dean	University of Stockholm School of Law
Sweden	Katak Malla	Fellow, Stockholm Centre for International Law and Justice	Stockholm University
Sweden	Maria Rossana Conza	No information available	No information available
Sweden	Rebecka Eren	No information available	No information available
Sweden	Zahoor Ahmed	Ambassador	Embassy of Pakistan in Sweden
Switzerland	Bruno Oberle	Director-General	International Union for Conservation of Nature
Switzerland	Eva Duer	Legal Officer and Team Leader, Collective Intelligence for Environmental Governance	UN Environment Programme INFORMEA
Switzerland	Maryna Yanush	Environmental Affairs Officer	United Nations Economic Commission for Europe
Switzerland	Peter Speelman	Associate Legal Officer, Collective Intelligence for Environmental Governance	United Nations Environment Programme INFORMEA
Switzerland	Robert Wabunoha	Regional Environment Governance Coordinator	United Nations Environment Programme

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# List of Delegates

In-Person (Stockholm, Sweden) and Via Zoom *continued*

COUNTRY	NAME	TITLE	ORGANIZATION
Thailand	Georgina Lloyd Rivera	Regional Coordinator of Environmental Law and Governance (Asia and the Pacific)	United Nations Environment Programme
Thailand	Krittika Lertsawat	Senior Environmental Law Researcher	EnlawThai Foundation
Thailand	Ohm Ariyakhajorn	Student	KTH Royal Institute of Technology
Thailand	Patti Moore	Environmental Lawyer	Independent
Thailand	Sallie Yang	Programme Officer	United Nations Environment Programme
Thailand	Siraprapa Phanrin	Foreign Relation Officer, Senior Profession Level	Office of the President of the Supreme Court
Thailand	Suntariya Muanpawong	Vice Chief Justice	Court of Justice Region 5
Türkiye	Nazlı Töre	Associate Professor	Turkish Council of Women
Uganda	Thomas Omusolo	Intern	Foundation For Open Development (FOD), Tororo, Uganda
United Arab Emirates	Lyle Glowka	Principal	Biodiversity Strategies International
United Kingdom	Aaron Wu	Senior Professional Support Lawyer	Slaughter and May
United Kingdom	Aleksandra Bujaroska	Environmental Lawyer	Energy Community Secretariat
United Kingdom	Dan Ellis	Sustainability Manager	Adler and Allan
United Kingdom	Divya Chawla	Principal Counsel	European Bank for Reconstruction and Development
United Kingdom	Elizabeth Goh Huay Ling	Senior Associate	Azman Davidson & Co.
United Kingdom	Fabien Tondel	Policy Officer	European Centre for Development Policy Management
United Kingdom	Gobi Yogesh	Group Finance Controller	Montrose Global LLP
United Kingdom	Ingrid Gubbay	Head of Human Rights and Climate Law	HausfeldGlobal
United Kingdom	Jojo Mehta	Co-founder and Executive Director	Stop Ecocide International
United Kingdom	Julie Gibson	PhD Researcher	University of Strathclyde
United Kingdom	Karen Hulme	Professor	University of Essex
United Kingdom	María Barrera	Interpreter	No information available
United Kingdom	Michael Strauss	General Counsel	European Bank for Reconstruction and Development
United Kingdom	Myriam García Bernabé	Interpreter	Locus Linguarum
United Kingdom	Rina Cindrak	PhD Candidate and Researcher	Bournemouth University

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## List of Delegates

In-Person (Stockholm, Sweden) and Via Zoom *continued*

COUNTRY	NAME	TITLE	ORGANIZATION
United Kingdom	Stefan-Claudiu Axinia MRSB	Researcher	Academia
United Kingdom	Susan Shaw	Solicitor (Scottish Qualified)	Living Law
United Kingdom	Vesselina Haralampieva	Senior Counsel	European Bank for Reconstruction and Development
United States of America	Achim Steiner	Administrator	United Nations Development Programme
United States of America	Ahmad Rafay Alam	Senior Advisor	Air Quality Asia
United States of America	Ana Paula Flores García	Student	Universidad de Monterrey
United States of America	Carl Bruch	Director of International Programs	Environmental Law Institute
United States of America	Catherine Tinker	Adjunct Professor	School of Diplomacy and International Relations, Seton Hall University
United States of America	Cornelio Jr Guantero	Lecturer	University of San Carlos
United States of America	Daniel Magraw	Senior Fellow	Johns Hopkins School of Advanced International Studies
United States of America	David Boyd	Rapporteur for Human Rights and the Environment Professor	United Nations  University of British Columbia
United States of America	David Forman	Director	Environmental Law Program, William S. Richardson School of Law, University of Hawai'i at Manoa
United States of America	Denise Antolini	Professor	University of Hawai'i School of Law
United States of America	Dorothy Kamanga	Judge	Judiciary
United States of America	James May	Distinguished Professor	Widener University Delaware Law
United States of America	Jane Bryner	No information available	No information available
United States of America	Jeffrey Sachs	Professor Director  President	Columbia University Center for Sustainable Development at Columbia University  UN Sustainable Development Solutions Network
United States of America	Jessica Owley	Professor	University of Miami

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## List of Delegates

In-Person (Stockholm, Sweden) and Via Zoom *continued*

COUNTRY	NAME	TITLE	ORGANIZATION
United States of America	Jillian Kirn	Shareholder	Greenberg Traurig
United States of America	Kabita Silwal	Officer	National Judicial Academy
United States of America	Kathleen Rogers	President	Earth Day
United States of America	Kilaparti Ramakrishna	Chair	Strategic Advisory Group, The Nippon Foundation-GEBCO Seabed 2030 Project
United States of America	Kristen Walker Painemilla	Senior Vice President and Managing Director Chair	Center for Communities and Conservation Commission on Environment, Economic and Social Policy - International Union for Conservation of Nature
United States of America	Lalanath de Silva	Head - Independent Redress Mechanism	Green Climate Fund
United States of America	Mark Espineli	Project Evaluation Officer II	PPDO
United States of America	Merideth Wright	Vermont Environmental Judge (ret.)	Environmental Law Institute
United States of America	Michael Wilson	Justice	Supreme Court of Hawaii
United States of America	Nancy Boyer	Adjunct/Affiliated Assistant Professor	University of Delaware
United States of America	Nicholas Bryner	Professor	Louisiana State University School of Law
United States of America	Nicholas Robinson	Professor Chair Emeritus	Pace Law School IUCN World Commission on Environmental Law
United States of America	Prashant Bhatta	Lecturer in Environmental studies	Tribhuvan University
United States of America	Rec Eguia	Professor	University of Southeastern Philippines
United States of America	Scott Fulton	President Emeritus and International Envoy	Environmental Law Institute – DC
United States of America	Scott Hajost	Senior Policy Advisor	NWC/World Commission on Environmental Law
United States of America	Shehla Chowdhury	Former Research Associate	Environmental Law Institute
United States of America	Srikant Parthasarathy	Head of Chamber	Chambers of Dr. Srikant Parthasarathy
United States of America	Sroyon Mukherjee	Research Fellow	National University of Singapore

*continued on next page*

## List of Delegates

In-Person (Stockholm, Sweden) and Via Zoom *continued*

COUNTRY	NAME	TITLE	ORGANIZATION
United States of America	Viktoria Aberg	Human Rights Officer	Office of the United Nations High Commissioner for Human Rights
Vanuatu	Aurelie Tamseul	Deputy Master	Judiciary
Vanuatu	Setariki Waqanitoga	Magistrate	Judiciary
No information available	R. Garcia Jover	No information available	No information available
No information available	Monika Moshas	No information available	No information available
No information available	Hannah Frellington	No information available	No information available
No information available	Arlene Seymour	No information available	No information available
No information available	Cornaya Melb	No information available	No information available







## About the Asian Development Bank

ADB is committed to achieving a prosperous, inclusive, resilient, and sustainable Asia and the Pacific, while sustaining its efforts to eradicate extreme poverty. Established in 1966, it is owned by 69 members —49 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.



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