

Giving Force to Environmental Laws: Court Innovations Around the World

March 12, 2011

Environmental laws are being enforced today through new courts with special judicial remedies in many nations.

The recent emergence of “grass roots” innovations to strengthen the rule of law need nourishment, now. With stronger roots, the movement creating environmental courts and tribunals will not wither. This matters: despite the substantial number of environmental laws and international treaties in force, governments now recognize that environmental degradation is growing. In response, more than 380 jurisdictions in scores of nations have independently established special environmental courts or set up streamlined judicial practices to enforce these laws, giving environmental prosecutors and plaintiffs of non-governmental organization access to judicial enforcement. Building the effectiveness of these new courts depends on the support we give them today. Yet, most environmental decision-makers and donors are not aware of their existence. By 2012, at the UN “Rio+20” Conference in Brazil, States need to embrace the priority of strengthening their environmental judicial capacity.

Your Invitation:

You are cordially invited to meet judges from around the world at a special Symposium to be held on Friday, April 1, 2011, 9:00 a.m. to 4:30 p.m., at Judicial Institute of the State of New York and Pace University School of Law, in White Plains, New York, U.S.A., to learn about how governments have decided to empower courts to do more to enforce environmental laws and enhance the rule of law. This briefing paper describes how this Symposium will examine how to best sustain, strengthen and expand these bold initiatives across the Earth.

Space is limited. Please RSVP: Karen Ferro 914-422-4327 (kferro@law.pace.edu)

For further information on this Symposium and the proposal set forth below made on behalf of the **Commission on Environmental Law of the International Union for the Conservation of Nature & Natural Resources (IUCN)**, Dr. Sheila Abed de Zavala, Chair, and the **Environmental Law Institute** and **Pace University School of Law**, contact: **John Pendergrass, Esq.**, Director, Judicial Education Program, Environmental Law Institute, 2000 L Street, N.W., Washington, D.C. 20036 USA (202-939-3846) or **Prof. Nicholas A. Robinson**, University Professor, Pace University School of Law, 78 North Broadway, White Plains, New York 10591 USA (914-422-4327). Prof. Robinson is responsible for drafting this briefing paper.

Executive Summary:

The Symposium on April 1, 2011, will review an extraordinary phenomenon of the past several years: how many nations unilaterally decided to enhance their judicial enforcement of environmental laws. Participants will also explore what measures are needed to sustain and enhance the work of the judiciary, in order to strengthen the rule of law and access to environmental justice in environmental matters as more nations look to the courts to give rigor to their environmental laws.

The need *now* for effective law enforcement could hardly be more compelling. The agenda is formidable: curbing greenhouse gas emissions, coping with sea level rise, abating pollution, safeguarding biodiversity amidst burgeoning threats of species extinction, truly protecting “protected” areas, and attaining sustainable development for Earth’s growing population. These challenges tax the capacity of governments everywhere. Although most nations have enacted environmental laws that address these issues, few enforce their laws adequately. Although access to justice is internationally recognized as a principle of good governance --and of critical importance to the rule of law and sustainable development-- in a number of nations the rule of law itself is lacking, and justice is not yet accessible. Nations find they must empower their courts to secure compliance with their environmental laws.

One by one, national and sub-national governments have determined to strengthen their judicial capacity to enforce environmental laws, while at the same time enhancing the rule of law. Many have created specialized tribunals. Today, there are more than 380, national, state/provincial or local environmental courts, as well as environmental chambers in traditional courts. Within nations, there are modest resources that support the judiciary broadly, but there is virtually no international or U.N. support for environmental courts and tribunals. As a new initiative, environmental judicial capacity-building is last in line for any on-going support.

Judges and environmental advocates are calling for help to fill this gap. The courts agree that there is the need for an autonomous international judicial institute, to facilitate the exchange of experience, build the capacity for best judicial practices, and lend collective support for realizing the rule of law, in environmental case adjudication. A consortium of national judicial institutes and administrative offices of the courts can be established to do so. A meeting of judges at the NY Judicial Institute on April 1, 2011, will explore how to launch this effort. This meeting will outline a program of short courses and continuing judicial education for environmental courts and tribunals {see Part 4 below}. The Symposium will be webcast over the Internet globally for those who cannot attend in person (link at www.law.pace.edu, under “Events”, click on IJIEA Symposium simultaneous webcast).

This proposal is put forward under the auspices of the Commission on Environmental Law of the International Union for the Conservation of Nature & Natural Resources (IUCN), and building upon 17 years of experience that the Environmental Law Institute (ELI) has had in providing programs to strengthen judicial branch environmental law enforcement. It results from prior consultations conducted by the UN Environment Programme (UNEP), IUCN, the Asian Development Bank, the U.S. Environmental Protection Agency, the Judicial Institute of the State of New York and several other governmental institutions. It draws upon the wealth of academic experience in law faculties around the world, the extensive experience of environmental judges from courts and tribunals around the world, and contributions from Pace Law School and others. Their collective work is reflected in the Symposium to be held April 1, 2011, which will design a network of partnerships among national judicial authorities to provide the courses and administrative capacity-building, when requested. To conduct environmental judicial capacity-building worldwide will require \$1.5 million over the next three to five years. Nationally, funds for translation into appropriate languages will also be required.

The new courts urgently need capacity building if they are to enhance their effectiveness and attain recognition for their professionalism within each nation. Continuing judicial education courses and symposia will build their capacity. As the courses are provided in the coming 2-5 years, they will engender further support for an international cooperative program to build up the strength of, and respect for, environmental adjudication. The proposed International Judicial Institute for Environmental Adjudication will need only a small secretariat to schedule continuing judicial education programs serving the autonomous networks of national and local courts, in order to sustain their judicial integrity and independence. Overtime, it is expected that national or sub-national judicial institutes will incorporate environmental adjudication programs within their own on-going programs. For the moment, virtually no such courses and program exist around the world. Before the "Rio+20" United Nations Conference in Brazil, support for judicial environmental law enforcement should become a priority in all nations.

More Effective Environmental Law Enforcement through Courts

The following briefing paper describes new perceptions about how the courts can and do now secure implementation of environmental law and what will be needed to scale up contemporary innovations in judicial adjudication in order to be effective globally, in all regions. The contents of the Briefing Paper are as follows:

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1. New Environmental Courts Emerge

Environmental law, as a distinct field of law worldwide, emerged following the 1972 United Nations Stockholm Conference on the Human Environment. Fewer than five environmental ministries existed in 1972. Building on the extant laws for nature conservation, which had become important at the end of the 19th century, legislatures began to enact laws addressed also to escalating problems of industrial pollution and natural resource degradation. The UN Environment Programme's "Montevideo Programme" recommendations encouraged all nations to enact environmental statutes and build their environmental protection agencies. From 1963 onward, IUCN's Environmental Law Centre and Commission also had been assisting many nations in shaping their environmental laws and treaties. Nonetheless, by the 1992 Rio de Janeiro UN Conference on Environment and Development ("Rio Earth Summit"), there was urgent consensus that more environmental legislation and administrative implementation was required if the objectives of "sustainable development" were to be realized. Chapter 8 of Agenda 21 called for building the capacity to structure national environmental protection systems. In response, nations negotiated many treaties and enacted substantial legislation addressing environmental challenges. Responding to Agenda 21 recommendations in Chapter 8, IUCN's Commission on Environmental Law established the first world-wide programs whereby universities collaborated to provide environmental legal education via the IUCN Academy of Environmental Law (at the University of Ottawa, Canada).

Beginning in the late 1980s, several international programs emerged to identify how the role of courts could be enhanced to make environmental law effective. These included consultations, judicial symposia and educational courses provided by the UN Environment Programme (UNEP) and the Environmental Law Programme of the International Union for the Conservation of Nature and Natural Resources (IUCN), Asian Development Bank (ADB), Judicial Institutes in Brazil and elsewhere, overseas cooperative programs provided by the US Environmental Protection Agency (Environmental Appeals Board, and Offices of General Counsel and Enforcement & Compliance Assurance) and the British Commonwealth, and non-governmental programs provided by organizations such as the Environmental Law Institute or the *Instituto O Direito por Um Planeta Verde*. By the 2002 Johannesburg UN World Summit on Sustainable Development, much environmental protection had been accomplished within nations and globally,ⁱ but the goal of "sustainable development" appeared still distant. No matter how strong, the environmental laws remained unenforced, or remained too weakly drafted to be enforced, in too many countries.

Over a two-decade period, from late 1985 to 2008, UNEP and IUCN convened a series of regional gatherings of judges to deliberate about how courts acknowledged and enforced environmental legislation. These meetings provided continuing judicial education about environmental law – a subject which none of the judges had ever studied in their own legal education since the field did not exist – and exchanged views about best practices in enforcing environmental laws. The programs also inventoried what judges in each international region identified as the priorities for further capacity-building measures to further the implementation, observance and enforcement of environmental law. By this time, many of the national laws were also being used to implement the several new multilateral environmental agreements (MEAs) such as those for protection of the Stratospheric Ozone Layer, or Biodiversity, or Climate Change.

UNEP began conducting symposia for judges in East and Central Africa in the 1980s, with important environmental decisions being compiled by Prof. Charles O. Okidi, who served on secondment to UNEP. Thereafter, judicial meetings were first convened in South Asia, where the Supreme Courts of India, Bangladesh, Pakistan, Nepal and Sri Lanka each had established rulings recognizing a constitutional right to the environment and decisions enforcing such rights (convened by UNEP and the South Asian Cooperative Environmental Programme, SACEP). Thereafter, Chief Justice Hilario G. Davide Jr., on behalf of the Supreme Court of the Philippines, and UNEP convened a meeting for judges of the Supreme Courts of South-East Asia, in Manila. IUCN subsequently convened meetings in Kuwait for the supreme courts of the Arab States, and in London (U.K.) and in L'viv (Ukraine), for western and eastern European national supreme courts, in cooperation with UNEP. UNEP convened a further assessment of judicial environmental law needs in meetings in Kiev for the nations with economies in transition. France convened a subsequent meeting of European judges, which launched the European Conference of Environmental Judges. UNEP convened subsequent meetings in South America, and IUCN did so in North America (at Pace University School of Law, with the NY State Judicial Institute and UNEP). In South America, Brazil convened symposia of the Supreme Courts of MERCOSUR, led by Justice Antonio Herman Benjamin, who has gone on to convene an international association of judges on environmental law. The North American Commission on Environmental Cooperation (CEC) convened meetings at the Inter-American University in Mexico and at Pace University in New York. Amidst these meetings, UNEP hosted a Global Symposium of Supreme Court & High Court Judges in Johannesburg on the eve of the 2002 World Summit on Sustainable Development. South Africa's Chief Justice reported the recommendations to the Summit and to the UNEP Governing Council. Bakary Kante and Lal Kurukulasuriya led UNEP's work and Prof. Nicholas A. Robinson led IUCN's work, with support from the IUCN Environmental Law Commission and Centre (including Françoise Burhenne-

Guilmin, Maria Socorro Manguiat, and John Scanlon).¹ While serving as a judge on the US EPA's Environmental Appeals Board, Scott Fulton led the participation of the USA in these UNEP and IUCN meetings. During these years, Italian Justice Amedeo Postiglioni had independently established a foundation for an international environmental court, and convened several important international symposia in Rome for judges regarding national and transnational environmental adjudications, most recently in 2010. Among international tribunals, the Permanent Court of International Arbitration and the International Court of Justice, has each established special chambers for hearing environmental claims.

Since 1994, the Environmental Law Institute (ELI), an independent professional organization, has provided a Judicial Education Program, directed by John Pendergrass. When invited, and through receiving specified grants, ELI has provided continuing judicial education courses for more than 1,000 judges from 20 countries.ⁱⁱ In 2008, the ELI Judicial Education Program was awarded a one-year grant (\$273,805) to work with the Centro Mexicano de Derecho Ambiental (CEMDA, Mexico City) to provide courses for Mexican Judges on environmental laws and adjudication relating to conservation of the Gulf of California. Given the endangered status of biodiversity and biodiverse hot-spots around the world, this illustrates how environmental judicial education could build capacity directly with judges in such regions. The record of ELI's past programs for the judiciary is included in the Appendix, to this paper. Each of these programs has had different, separate funding, reflecting the fact that there is a recurring need for building judicial capacity for environmental adjudication, and the fact that there is no donor group, whether governmental or non-governmental, that perceives the needs for sustaining such continuing judicial education and expanding its reach to all nations which seek such programs. ELI has consistently found a consensus among governments that judicial capacity-building programs are needed, and has been troubled that sustained financial support is lacking to meet this need.

The necessity of providing access to the courts in environmental matters was made manifest through the work of the International Network for Environmental Compliance and Enforcement (INECE), with initiatives led by Prof. Durwood Zaelke and others. Based on the INECE's model, the Asian Environmental Compliance and Enforcement Network (AECEN) was launched with the support of the Supreme Courts of the Philippines and Thailand and the US Environmental Appeals Board and EPA; Asian Judges Forums were held in 2006, 2007, and 2010. In July 2010, the Asian Judges Symposium on Environmental Decision Making, the Rule of law, and Environmental Justice was organized by the Asian Development Bank. In 2008, the US EPA's Environmental Appeals Board partnered with the Philippines Judicial Academy to provide continuing judicial education for the newly-appointed judges of the environmental courts in

¹ See Thomas Greiber, Editor, Judges and the Rule of law – Creating the Links: Environment, Human Rights and Poverty (IUCN Environmental Policy and law Paper No. 60, 2006).

The Philippines. Comparable developments have emerged in other regions. Vermont law School with the China University of Political Science and Law in Beijing and Sun-Yat Sen Law School in Guangzhou have organized programs for judges and the new provincial environmental courts in China. And the US Environmental Appeals Board held a judicial workshop on the rule of law with the American Bar Association Rule of Law initiative and the Environmental and Resources Law Institute of the Zhongnan University of Finance and Political Science in Wuhan, China in 2009. The EAB is in discussions with the National Judicial Academy of China about providing further environmental law education for judges. Through 2010, the US Environmental Appeals Board and US EPA also have held workshops in conjunction with national judicial institutes for judges in the Caribbean and Central America, including programs with the Central American Commission on Environment and Development (CCAD). In Europe, under the leadership of several judges including Prof. Dr. Luc Lavrysen, Judge of the Constitutional Court (Court of Arbitration) of Belgium, the European forum of judges has been conferring regularly for more than a decade. Following UNEP's environmental judicial symposia in both the Gulf and in Egypt, an agreement was reached in 2004 to establish a "Union of Judges of Arab Supreme Courts for the Protection of the Environment," and now given the profound governmental evolution in this region, it will be important to re-introduce a strengthened role for the judiciary, the rule of law, and environmental adjudication. Currently, there remains considerable interest in building the role of the courts, and as Egypt prepares its new Constitution in the next six months, these topics are especially timely.

Despite the consensus, confirmed in all regions, that the courts are essential to realizing the remedial objectives of environmental legislation and environmental treaties, neither UNEP nor IUCN had adequate funds to continue, much less to expand, environmental judicial capacity-building programs. The growing urgency for remediating environmental problems, however, was well understood. At the national level, governments individually decided to devote their own, scarce domestic resources to building environmental judicial capacity. Stimulated by the UNEP and IUCN efforts, nations (and provinces and states within federal nations) established their own environmental courts and judicial chambers to hear and enforce environmental claims. In the 2002 UN Johannesburg Declaration, nations unanimously agreed that environmental protection is a pillar for their sustainable development. Consistent with that international consensus, national governments independently have determined, time and time again, that the effectiveness of environmental laws depend upon adjudication in the courts, often in specialized environmental courts and tribunals. This is because traditional courts lack the knowledge of complex environmental laws and science, or because traditional courts were compromised by short-comings in the rule of law. A newly established environmental court could bypass the problems evident in traditional courts.

Environmental courts, tribunals and dedicated judicial chambers of courts facilitate environmental adjudications, enable courts to make decisions more promptly, and foster consistent rulings across time and the wide range of environmental law cases. The judges become well versed in environmental science, which is the foundation of both environmental legislation and the MEAs and other treaties, which helps ensure that judicial rulings are scientifically “literate.” The judges and court administrators in environmental courts come to have a sound understanding of environmental law itself, a subject which still most sitting judges never have the opportunity to study in their own legal education. Environmental ministries and environmental non-governmental organizations alike find professionalism and independence in these environmental tribunals. They are valuable to ensuring access to justice, as Principle 10 of the Rio Declaration on Environment and Development (1992)ⁱⁱⁱ and as several international agreements require (1998 Århus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, among others).^{iv} Indeed, without a strong and independent judiciary, public interest litigation cannot proceed. At a time of growing court dockets across all fields of law, the establishment of courts and tribunals focused on environmental cases ensures that environmental law enforcement is given priority and not neglected. Equally impressive, by starting new courts and tribunals, governments set the stage for rigorous respect for the rule of law, unimpeded by entrenched problems of corruption, cronyism, favoritism or gross inefficiency in judicial procedures and court administration.^v Setting a high standard for judicial adjudication in one special field serves to enhance respect for the courts in all fields.

Substantively, in all regions the objectives of environmental legislation and international agreements are far from being attained. To arrest the environmental degradation patterns, environmental enforcement is urgently needed. Without strengthening the courts, and thereby widening observance of the rule of law, public health and environmental security will continue to erode. The Asian Development Bank (ADB) has taken leadership in convening courts and governments to strengthen the rule of law. In July 28-29, 2010, the ADB convened, with UNEP, the “Asian Judges Symposium on Environmental Adjudication, Green Courts and Tribunals, and Environmental Justice. “ Meeting in Manila, the symposium expressly examined the role of specialized environmental courts and tribunals. The ADB regional technical assistance seeks to strengthen the capacity of judges to apply environmental and natural resources law and regulation. In North America, the Commission on Environmental Cooperation (CEC) in Montreal has organized judicial symposia in Mexico and the USA.

Currently there are more than 380 environmental courts and tribunals functioning in every region of the Earth. Some are very well established, such as the Environment Court of New South Wales (Australia) with 30 years of experience. Others, such as the 14 new provincial courts in China, are very new and are being tested for the first time. India has enacted “The

National Green Tribunal Act” on June 2, 2010, to establish a national system of environmental courts, which are now being established. Brazil last year established four federal courts for enforcing laws in the Amazon region, and several States in Brazil have their own environmental courts; the State of Sao Paulo’s Supreme Court has an environmental chamber that issues more than 1,000 decisions annually. In some instances, tribunals have been established by Indigenous Peoples. Greece has long had an environmental chamber in its highest court. Sweden, Norway, Finland and Denmark have had established environmental courts for several years. Within the USA, Vermont has an Environmental Court with twenty years of experience, and New York has state administrative environmental tribunals within the Department of Environmental Conservation, and federally there are tribunals in the US Environmental Protection Agency and in the Department of the Interior. England and Wales established an Environment and Land Tribunal just at the end of 2010. Effective April 29, 2010, the Supreme Court of the Philippines established its Rules Procedure for Environmental Case, which also established the “Writ of Kalikasan,” an extraordinary new writ “of Nature” to vindicate the public’s environmental rights. Direct appeal to high courts to vindicate similar rights exists in New York’s Constitution (Article XIV, for the “forever wild” Forest Preserve), and in Montana, Pennsylvania, Hawaii, North Dakota, Minnesota and Wisconsin. Environmental adjudication to enforce environment law is a phenomenon that cuts across all common law, civil law, or socialist law legal systems, and is found in developing nations and developed nations alike.

The courts in most nations have been instrumental to the effectiveness of environmental law. These experiences are well analyzed by Louis J. Kotze and Alexander R. Paterson in The Role of the Judiciary in Environmental Governance – Comparative Perspectives (Wolters Kluwer, 2009), which examines the strengths and weaknesses of environmental adjudication in 19 nations.^{vi} More remarkable than the decisions in traditional courts, is the emergence of specialized environmental courts and tribunals. Professors George (Rock) Pring and Catherine (Kitty) Pring (University of Denver Sturm College of Law) conducted the world’s first empirical survey of 350 of these new courts, publishing their findings as Greening Justice: Creating and Improving Environmental Courts and Tribunals (2009, The Access Initiative, housed within the World Resources Institute, Washington, D.C.).^{vii} The Access Initiative encourages civil society to implement Principle 10 of the Rio Declaration on Environment and Development. Pace University School of Law and the Judicial Institute of the State of New York together have published the first scholarly commentaries about the substantive and procedural aspects of environmental judicial adjudications among these new environmental courts and tribunals, in the Journal of Court Innovation (2011). IUCN’s Commission on Environmental Law has established on the Internet a judicial portal for courts to post and access environmental decisions. Law schools around the world (more than 150 university law schools and faculties have combined to form the IUCN Academy of Environmental Law, www.iucnael.org), whose professors of environmental law are available in each region of the world to provide their

expertise to conduct capacity building programs for government officials and judges, as courts request such courses. Among the first will be a course taught by Pace and ELI, with Ilya University, in the nation of Georgia in May of 2011, on climate change law. Pace will also host a continuing judicial education program for Brazilian Judges in July on Indigenous Peoples and judicial environmental adjudication. These various research efforts and capacity-building programs have been financed through small, *ad hoc*, separate non-recurring grants, and are not part of any on-going or sustained programs by donors.

What eventually is needed is for jurisdictions to establish continuing environmental adjudication educational opportunities in judicial institutes, such as the Judicial Institute of the State of New York and the comparable Judicial Institutes in Brazil and elsewhere. Once launched, these national authorities can in turn provide on-going programs on best practices for judges handling environmental law cases in their courts. For example, the Judicial Institute of the State of New York will host a seminar for judges on scientific evidence in environmental criminal law cases on April 7-8, 2011.

2. The Impasse: How to Extend & Expand Environmental Judicial Capacity

Few of the recently established environmental courts know much about each other. The Asian Development Bank's meeting in July, 2010, was an attempt to exchange experiences about innovative environmental judicial practices and precepts. This is the aim of the symposium published in the current issue of the Journal of Court Innovation (2011). Notwithstanding these efforts, there is no ongoing way for judges and court administrators to exchange views and practices on environmental adjudication. In other fields of law, exchanges of experience on judicial practice do take place, for instance in areas such as intellectual property rights, or international trade or in criminal law. These fields have many publications and professional societies that promote best practices and permit comparative law learning. Environmental law is a relatively new field of law that covers a vast range of topics; its complexity and volume makes it difficult or impossible for judicial institutes or universities to provide programs for judge-to-judge exchanges of experience; no "best practices" guides exist.

Moreover, national court budgets are limited to the operation of the courts, and virtually never provide for travel to conferences outside the territory of the courts. There are insufficient print or electronic tools for judges about how best to enforce the environmental laws. Other than the western European forum of judges on environmental law, or the occasional regional ADB or MERCOSUR meetings for judges, there are no regular and routine means for the systematic exchange of information about best practices with respect to environmental adjudication. Uniformly, courts report an urgent need to learn about how to

frame more effective remedies and handle environmental cases.^{viii} National judicial institutes exist in India and in civil law nations, but they themselves have as yet little to no experience with environmental court systems.

At the inter-governmental level, none of UNEP, IUCN, INECE or their regional counterparts has any funding or staff to continue building the capacity of these environmental courts and tribunals. On the academic level, neither Denver University nor Pace University nor the other schools within the IUCN Academy of Environmental Law have more than nominal resources to continue the publications and research about environmental courts, although individual scholars undoubtedly will undertake research about the courts and their adjudication. The Environmental Law Institute has the longest experience in conducting capacity-building programs for courts and judges on environmental adjudication, remedies and enforcement, but each of its judicial education courses has been funded through *ad hoc* grants and from largely non-recurring sources. Among donors, intergovernmental or private and public, there is simply no recognition that this new phenomenon of environmental courts exists and is in need of support.

Since nations have already decided to create these courts, the political will and readiness exists to participate in building their capacity. Although these independent national decisions serve to advance the rule of law enormously, most professional and governmental programs designed to advance the rule of law at present do not perceive how this trend in environmental adjudication creates stronger new and transparent judicial procedures that overcome the shortcomings of existing systems.² The American Bar Association's Rule of Law programs, for instance, included environmental law and civil society in its conference in Vienna, Austria three years ago.

The UN General Assembly has adopted a decision to devote the highest priority to strengthening the rule of law at the national and international levels (UNGA Resolution, 61/39, on report of the Sixth Committee A/61/456) and the Secretary-General has established a Rule of Law Coordination and Resource Group and Secretariat Unit. The UN General Assembly action inspires the proposals made in this briefing paper. Nonetheless, the UN Secretary - General has yet to inventory the work of UN bodies and Member States in advancing the rule of law through establishing these new environmental courts and tribunals. The United Nations system can realize its rule of law policies and its Millennium Development Goals by supporting environmental adjudication. Diverse nations in all regions of the Earth have now taken steps to strengthen judicial independence and integrity at the national level, and thereby promote

² See, for example, [The Rule of law Index 2010 \(version 3.0\)](#), a project of The World Justice Project, by Mark David Agrast, Juan Carlos Botero, Alejandro Ponce, with the collaboration of Chantal V. Bright, Joel Martinez, and Christine S. Pratt (2010).

reliable steps toward sustainable development internationally. The UN can, and should, do much more to extend these national experiences in some nations to all nations.

Pace Law School, with the participation of ELI, the US Environmental Protection Agency, the World Resources Institute (WRI) and others held a consultation about the phenomenon of environmental courts and tribunals at WRI in Washington, D.C., on July 15, 2010. Participants at this meeting agreed that international cooperation among environmental courts and tribunals should be encouraged and facilitated (see minutes attached). The work of Pace Law School to build this cooperation was endorsed. Pace has also consulted with Prof. Durwood Zaelke and the International Network for Environmental Compliance and Enforcement (INECE), which while supporting measure to strengthen the courts, primarily has worked with public prosecutors and civil society to build their capacity to bring environmental enforcement actions. Such actions, of course, depend upon a strong and independent judiciary. None of the organizations that Pace and ELI have consulted are in a position to undertake this capacity building efforts with environmental courts.

If nations are to abate pollution, conserve nature and natural resources, protect public health, and curb transnational hazardous waste dispersion, their courts need to be effective. As the UN repeatedly observes, as in the Millennium Development Goals or in the Rio Declaration on Environment and Development, sustainable development fails without effective environmental protection. Protected areas, whether in public parks or privately established preserves, cannot persist without the rule of law to protect their designations. More urgently, if nations are to establish and enforce effective rules to address climate change, by reducing and eliminating green house gas emissions and by adapting to sea level rise and hydrologic changes in patterns of flooding and droughts, they will need effective judicial enforcement. As nations themselves now recognize, it is not enough to adopt environmental legislation. Until non-governmental organizations or public prosecutors can seek judicial enforcement of these laws, and vindicate public environmental rights, the legislation and treaties languish merely as good intentions. An honest and effective judicial is essential to the realization of environmental protection.

3. Advancing Environmental Judicial Effectiveness

Courts require well educated judges and a professional support team of administrative court officers. The need a well defined set of proven procedural rules and a well understood set of remedies to apply. The experience in structural injunction by the Supreme Court of the Philippines under writs of mandamus (such as for nation-wide forest protection or abating pollution in Manila Bay), and its coming experience with the new Writ of *Kalikasan* (Nature), should to be known by courts in other nations. Similarly courts in Canada have created innovative rules to place corporations on probation in criminal cases, to ensure that they

reform their operations and obey environmental law in the future; such innovations were then enacted into legislation in Canada, and yet this well regarded judicial practice is little known outside of Canada. Innovative and effective court practices deserve wider analysis and use. Brazilian rulings are far reaching, but little known outside of Brazil because they need to be translated from Portuguese into English and other languages. Environmental courts in New Zealand and Australia have a wealth of experience in facilitating cases by civil society, but this experience needs to be translated from English into Spanish, French, Portuguese and other languages.

While all nations share the same legal obligations under the Multilateral Environmental Agreements (MEAs) and other environmental treaty obligations, and most have enacted similar environmental legislation, very few of their courts have any way to learn from other nations about how different national courts are enforcing these comparable environmental laws. Until the experiences of Brazilian civil law courts are translated into Chinese, the many environmental courts in China cannot learn from Brazil's leading examples. China is promoting the recourse to environmental courts to assist in enforcing environmental law, and the experience gained by affording access to justice can do much to enhance other judicial practices over time. Until examples across the courts of the *Francophonie* are gathered and translated, the courts of the British Commonwealth will not know of their examples, and *vice versa*. There is much shared administrative environmental law between common law and civil law nations, yet very little sharing of how the courts handle comparable issues, even under the same treaties and legislation. Until this world-wide practice is made accessible to judges in the USA, in English, or to judges in the Arab world in Arabic, it will be ignored.

Within nations, there are administrative offices of the courts and Judicial Institutes to provide continuing judicial education to judges, and to work with judges to streamline and enhance court rules and remedies. No such institute or offices exist internationally to facilitate the sharing of environment adjudication experiences across nations. International tribunals, of course, have their own programs, such as those of the World Trade Organization or the International Court of Justice, but they do not extend to national court systems.

It should be possible to enlist national Judicial Institutes and court offices in an international consortium to support the on-going work of environmental courts and tribunals. Indeed, if there is to be a consistent enforcement of MEA treaty obligations across all nations, it is essential to encourage such judicial cooperation. If civil society is to have access to justice across all regions, the courts need to be open, available, honest and effective. Without the rule of law, there will be inconsistent and thus ineffective observance of environmental laws, climate change mitigation rules, and nature conservation norms. As the Brundtland Commission

noted in Our Common Future in 1987: “The Earth is one, but the world is not.”³ The world has agreed to a sound system of environmental treaties and each nation has enacted a solid regime of environmental legislation, but the world lacks worldwide judicial model within each nation for enforcing these agreed norms. The Earth waits for our human systems of the justice to evolve.

How to proceed?

The Brundtland Commission inspired the preparation of Agenda 21 adopted at the 1992 Earth Summit in Rio de Janeiro. The next UN world summit in June of 2012, “Rio+20,” should build on the momentum that already exists behind environmental adjudication, and scale up globally the national efforts to strengthen the capacity of courts. Every legal system and nations in every region would welcome doing so, as a concerted step toward advancing the rule of law and sustainability in their counties.

Consultations among judges around the world confirm this consensus. One way to take action is to constitute a new *International Judicial Institute for Environmental Adjudication*. Initially, this body would need only to be a “virtual” institute, with a small secretariat to organize continuing judicial education courses and workshops around the world, in each region. These courses would be cosponsored by the existing national judicial institutes or court administrative offices in each nation. The small secretariat would arrange with the national judicial institutes to translate materials into national languages used in the various courts. Information about best practices and innovative procedures or remedies would be exchanged, so that national courts could adapt and use those aspects that are appropriate to their situations. The aim is to use and enhance national judicial offices, not compete with them or duplicate their work.

A small steering committee of judges could be assembled to guide this process, initially under the auspices of the IUCN Commission on Environmental Law. A small secretariat would coordinate the initial courses and sharing of knowledge in symposia, organized initially through the good offices of ELI. Over time, the new *International Judicial Institute for Environmental Adjudication* could enter into independent regional partnerships with judicial institutes and become an autonomous international body. As national judicial institutes and administrative offices of courts become familiar with the capacity-building work of the *International Judicial Institute for Environmental Adjudication*, they could begin to add budgetary provisions to cover the costs of their courts participating in this international cooperative work. Eventually, one or more judicial institute in each region might provide a regional secretariat for the regional

³ The UN World Commission on Environment and Development, Our Common Future, p. 27 (Oxford University Press, 1987).

activities. This would be logical in terms of regional environmental similarities, judicial traditions, languages and the non-judicial environmental cooperation programs already established in each region.

The IUCN Commission on Environmental Law is sponsoring ELI's endeavors to seek support internationally and nationally in these formative stages of creating an *International Judicial Institute for Environmental Adjudication*. IUCN is an international, inter-governmental organization with Observer Status in the United Nations, and since 1963 its Commission on Environmental Law has led the world in fashioning innovations in environmental legal systems. The Commission is now led by Dr. Sheila Abed de Zavala, and IUCN's Director General is currently Julia Marton-Lefevre. As additional grant funding becomes available, the Environmental Law Institute, which is a Member Organization of IUCN, has agreed to provide the initial secretariat functions for the *International Institute for Environmental Adjudication*, and to contribute ELI's long expertise on judicial environmental laws capacity building to work with national environmental courts and tribunal to structure the new and on-going continuing judicial education programs.

Pace University School of Law, also an IUCN Member, has agreed with IUCN CEL and ELI to host on April 1, 2011, an invitational judicial symposium to examine the world-wide phenomena of new environmental courts and tribunals, explore how best to organize the *International Judicial Institute for Environmental Adjudication*, and launch the first continuing judicial education programs. Pace is providing, from its own law school budget, funds to conduct this Symposium in conjunction with the Judicial Institute of the State of New York, and has consulted with a number of judges and academic leaders in shaping that symposium, including Judge Donald Kaniaru (Kenya Environment Court), Justice Antonio Herman Benjamin (Brazil High Court), Judge Merideth Wright (Vermont Environmental Court, USA), Prof. Richard Macrory (for the Environment Court of England & Wales), Judge Luc Lavryson (European Forum of Judges for the Environment), and Chief Justice (ret.) Hilario G. Davide, Jr. (Supreme Court of the Philippines), and Justice Brian Preston (The Land and Environment Court of New South Wales, Australia), and Hon. Scott Fulton and colleagues from the US Environmental Protection Agency's Environmental Appeals Board and EPA's Office of General Counsel and Office of Enforcement and Compliance Assurance.

On April 1, 2011, the Symposium will examine for the first time primary source materials, and commentaries, compiled from these new courts and tribunals about their environmental judicial practices. These materials are being provided to all participants, and will be posted on-line. At a small working group meeting of judges on April 2, 2011, judicial participants will critique drafts of organic documents to constitute a new International Judicial Institute for Environmental Adjudication; these drafts have been prepared with and edited by

Chief Justice Hilario G. Davide, Jr., and other judges. It is expected that the April 2nd meeting will (a) review and revise as needed a draft charter for the *International Judicial Institute for Environmental Adjudication*, (b) constitute the initial steering committee of judges to advise on the establishment of such an *Institute*, (c) outline the scope for initial continuing judicial education topics and courses, and (d) authorize ELI to proceed, in concert with IUCN CEL, to prepare judicial capacity-building courses and materials on behalf of an *International Judicial Institute for Environmental Adjudication*.

An international advisory committee of judges from around the world is also being constituted, to ensure that all the views of all regions are considered and to guide the initial work of the International Judicial Institute for Environmental Adjudication. As funding becomes available, further regional meetings and international meetings of judges will be convened to guide the new Institute. Judges have expressed a consensus that the work of the Institute needs to begin and cannot wait for donors to fund the level of international participation that would be desirable. National court budgets lack travel funds for attending meetings outside the jurisdictions of the courts, and it will take time to align national continuing judicial education with the availability of the new *International Judicial Institute's* programs. Accordingly, the April 1st meeting is only a beginning, as will be the preparation of the initial environmental continuing judicial education programs themselves.

4. Creating the World's First Continuing Judicial Environmental Law Education Systems

Based upon past experience in the judicial symposia and workshops (see, e.g., examples of ELI's past courses for judges, attached), and following discussion with judges of environmental courts, a generic set of more than twenty themes have been identified as appropriate for judicial continuing education modules. The generic materials would be adapted and supplemented by national or regional materials, appropriate to each nation or region where the continuing judicial education would be held. It is important to provide a core foundation in best judicial environmental adjudication practices, but also to have symposia and courses reflect the cultural values of nature and the environment and roles of courts that are familiar in each place where capacity-building takes place. "One size does not fit all." At the same time, all may usefully learn from innovative and leading practices of others in order to adapt and tailor such practices to enable them to become more effective in their own environmental adjudications. A number of teaching materials exist, for example those prepared for courses of the Environmental Law Institute, UN Environment Programme, the US EPA, or Universities.

Initially the basic continuing judicial education course modules could cover the following generic themes:

Comparative procedure for public interest litigation (e.g., *Amparo*, citizen suit, *locus standi*, access to justice provisions, permit or EIA judicial review, Aarhus Convention, etc.)

The distinct characteristics of and complementary roles served by administrative, civil judicial and criminal judicial proceedings

Private environmental claims (e.g., civil procedure, notice, *delicts*, torts, contractual claims, remedies, etc.)

Remedies appropriate for different types of environmental civil cases (e.g., civil procedure, damages, remedial measures, restoration, structural injunctions, preliminary relief, nullification, monitoring of remedial measures, continuing jurisdiction, etc.)

Criminal law (e.g., sanctions, criminal procedure, scientific evidence for proving environmental crimes, (probation, fines, prison terms)

Basics of Environmental Science for Judges (e.g. including understanding risk assessment, dealing with uncertainty, how to measure environmental injury or the efficacy of remediation, etc.)

Evidence (e.g., types of scientific proof, burdens of proof, use of investigating magistrates or assessors or special masters, etc.)

Essential elements of Administrative Law and judicial review thereof

Appeals from courts of first instance (e.g., records, standards of review, remands, etc.)

Judicial enforcement of arbitral awards (e.g., public policy constraints, environmental factors, etc.)

Judicial Decisions (e.g., access or decisions and records, reporting decisions officially and unofficially, notice, electronic filings, etc.)

Use of Alternative Dispute Resolution techniques in environmental conflicts

Special Environmental Measures for special courts (e.g., Fiscal Tribunals, administrative law tribunals, e.g. for water resources, regional air pollution tribunals, wetlands, etc.)

Basics of Environmental Economics for Judges (e.g., including how to measure and value externalities and ecosystem services, working with technical experts, and evaluating technical evidence

Environmental law and labor law disputes (e.g., role of ILO Conventions, arbitration of environment health and safety claims, etc.)

Judicial oversight of Biodiversity habitats, migration corridors and legally protected areas (e.g., warden and ranger led-enforcement actions, remediation orders, monitoring of special habitat protection zones, transboundary “peace park” dispute settlement, etc.)

Indigenous Peoples and application of environmental law and international norms (e.g. UN Declaration on the Rights of Indigenous Peoples in environmental contexts, indigenous wildlife stewardship law enforcement in tribal courts, etc.)

Overview of MEAs and International Environmental Law obligations (e.g. fact-finding and dispute settlement and compliance matters, “proving” environmental treaty obligations in national and sub-national courts, etc.)

Surveys of National Environmental Law, and updates (especially within a given nation for the judges of its own courts)

Analysis of adaptation legal issues in property law regimes, the Public Trust Doctrine and other legal frameworks in the wake of sea level rise, and other physical changes resulting from climate change (comparative law on adaptation measures and remedies arising in judicial contexts in order to cope with phenomena of climate change)

Rule of Law safeguards (judicial ethics, qualifications of judges, ALJs and court officers, transparency, notice, fees etc.)

Scope of continuing judicial education in environmental adjudication and how to institutionalize it in national programs (comparative reports on judicial environmental law capacity building programs at national and sub-national levels)

An example of a recent capacity building program for judges in Chile is attached in the appendix to this paper (see the *Taller de Capacitacion Judicial*, March 18-19, 2009, Ministry of Foreign Relations, Chile).

The preparation of these materials depends on contributions from the new environmental courts worldwide, and assembling comparative experience will take time and effort. Modules will need examples of proven judicial practices, case studies, and primary source materials that may be shared with judges. Pace is compiling an initial collection of illustrative primary source materials and commentaries for the April 1, 2011 meetings.

It should be noted that while measures are needed to strengthen environmental adjudication, the courts do not function in a vacuum. Their autonomous and independent role must be secured, but their caseload will depend on a given nation’s environmental governance system and upon environmental legislation, institutions, and administrative implementation mechanisms. Many of these other environmental law system elements have received

international support and doubtless need further development. While appreciating the importance of these other dimensions, *the focus here is on the judiciary.*

To begin to design and provide continuing judicial education courses on these themes generically, ELI estimates that a grant of \$(US) 500,000 to \$(US) 750,000, initially is needed. To sustain the roll-out of courses in different countries and regions would require an additional \$(US) 1.5 million for a 3-5 year period. The goal would be not just to educate the current generation of judges handling environmental adjudications. The objective is also to build the networks of collaboration among national judicial institutes, which could carry on and continue this capacity building on their own. Law professors in each country would be enlisted to assist ELI, and work with their judicial institutes. The aim is to “seed” national and regional on-going efforts. Pace Law School and IUCN CEL have examined these financing estimates and concur in ELI’s assessment of the scope of the minimal additional funding needed for implementing these proposals. ELI is prepared to receive and administer grants to begin implementing these measures.

Work to prepare such an extensive set of continuing judicial education modules necessarily must proceed incrementally. All modules cannot be prepared at once. Priority themes, such as enhancing civil remedies or refining criminal environmental law sanction, would be selected to begin preparing modules. Specific nations would define the priority topics that their judges may request. The urgency of environmental crises in some countries would suggest the need for strengthening judicial capacity with regard to those issues, and thus appropriate priority could be assigned to those course components, e.g. for biodiversity legal issues on habitat protection, or illegal trade in endangered species, or safeguarding resources that migratory species depend upon. Judicial enforcement of sustainability issues, such as adequate safe drinking water, could be a focus, drawing for example on the judicial experience of the Constitutional Court of South Africa.

In addition to preparing the modules, as a nation requests a capacity building course for their courts, funds to pay for the costs of bringing experts to that nation to conduct courses would need to be raised. Moreover, often the cost of convening the judges within the nation will need to be covered since national judicial budgets rarely provide for travel beyond the location of the courthouse. For courses convened regionally for several nations, regional travel funds would also be needed. Over time, there will be a need to update and revise the course modules to reflect maturing court practice. In response to requests for specific topics or programs, and reflecting new practices as they merge more comprehensive sets of course components would be prepared and shared in cooperation with national judicial institutes. In many regions, these materials can be assembled and disseminated efficiently via the Internet, on line.

ELI would work to prepare the materials with teams of professors and students, working closely with judges experienced in the different topics of each module. Judges cannot do this work alone. Judges are tied to court calendars and their judicial obligations, and need support to ensure that the materials they recommend are compiled in a timely way and are complete. Under the guidance of the judges participating in the *International Judicial Institute's* Steering Committee, ELI would work with Pace and other law schools world-wide to assemble the teams and coordinate the preparation of the materials. A modest "head start" on assembling some of the new primary source materials underway at Pace Law School confirms that there is a vast new body of judicial experience to be assembled, digested and shared.

Ultimately, it will be up to the national judicial authorities in each jurisdiction to request continuing environmental judicial educational programs. The autonomy of each court must be respected. Experience to date confirms a back-log in expressions of requests by courts for such programs. Specific courses designed for different regions or nations would draw on the general modules, and then adapt them in cooperation with national judicial institutes or court administrative offices and national judges. Translation, often needed, would render the materials initially into English, to then facilitate translating into other languages. When other languages are needed, special arrangements for translation would be provided within each nation or regional language area. The modules would be made available electronically on-line for courts to use them directly. Asynchronous distant learning units would be prepared to provide self-directed study, either on the Internet or through national judicial networks as appropriate. Most continuing judicial education, however, is expected to be requested within a given country, with resources specialists providing the courses.

Once the initial modules are prepared, and used in programs in selected countries in partnership with national judicial authorities, the *International Judicial Institute* could envision working with countries on a sustained basis. For larger nations, this approach would need to have a sub-national and regional focus, as is appropriate in federal states or states such as China that have established separate provincial court systems for the environment, or India which will have a separate court in every state. It is unlikely that large numbers of court systems will seek continuing judicial education at the same time, so that gradually national capacity building programs for the judiciary in specific countries could be put in place through a small coordinating secretariat at ELI. ELI has done so for seventeen years, and has the requisite experience to structure such a program.

As the *International Judicial Institute for Environmental Adjudication* builds its teamwork with national judicial institutes, regional updates for each module would be developed within each region. On-going courses could then be provided by a given national judicial institute or administrative court office as part of its routine work with judges.

Financing is needed to build this network of national continuing judicial education programs for environmental adjudication.

5. Conclusion: Ensuring the Rule of Law Through Effective Environmental Adjudication

In June of 2008, the United Nations estimated that four billion people live beyond the protection of the rule of law. Environmental protection norms do not reach these people and the places where they live. Even where the rule of law exists, it can be inefficient. “Some experts, for example, have estimated that at the current rate, it would take 350 years for the courts in Mumbai, India, to hear all the cases on their books. According to the UN Development Program, India has 11 judges for every one million people. There are currently more than 30 million cases pending in Indian courts, and cases remain unresolved for an average of 15 years.”^{ix} Implementing the leading environmental decisions of the Supreme Court of India depends on its new “green tribunals.” These courts will be as important to democracy in India as to its environmental conservation laws to ensure the public’s right to potable drinking water and other environmental rights. This is not a mere hope: it is the promise of India’s new environmental courts.

Much the same assessment can be said for every nation. As Arctic nations or small island states well know, climate change is altering the face of the Earth and “business as usual” is ending. The changing environment of the Earth will result in many disputes among human beings and their enterprises. These disputes will increase the need for recourse to the courts, which traditionally maintain order by administering justice and resolving disputes. This will be an additional demand, which will be beyond the sort of environmental adjudication being undertaken by the new courts and tribunals worldwide. As the displacements of climate change hit home, nations will increasingly depend upon a well-functioning judiciary to help sustain an ordered society, respect human rights and the rule of law. Governance without strong courts becomes problematic at best. For many people of Earth today, both their human and their environmental rights are denied. Worldwide, the consensus is that the courts, as a core branch of government, and their peaceful dispute settlement functions are essential.

There is widespread awareness, across socio-economic classes and regions, that environmental quality must be restored and maintained if sustainable development is to become a norm rather than an aspiration. INECE, IUCN and UNEP have each demonstrated that poverty alleviation and securing fundamental rights depends on effective environmental law enforcement in the courts. Environmental legislation and treaties need to be enforced nationally, and without objective courts, this cannot happen. It is this consensus that has

inspired governments to establish new courts to handle the growing agenda of environmental claims.

Public and private donors alike must recognize that now is a unique moment in time. Political support for judicial adjudication is not an aspiration; it exists and deserves support. Either this new commitment to environmental adjudication becomes effective, or we lose both environmental quality and the opportunity to rebuild the rule of law. It is time to rally support for the judiciary, and leverage these local and isolated judicial innovations into becoming an international standard for governance.

When the United Nations and other intergovernmental organizations and civil society organizations meet in Rio de Janeiro for the UN “Rio+20” conference, it should be clear that the courts have a significant role to play to ensure the observance and effective implementation of environmental laws at the national level, and of a nation’s obligations under multilateral environmental agreements and other international environmental treaties assumed at the international level. Rio+20 should endorse the importance of environmental adjudication, and welcome the new environmental courts and tribunals, as essential elements of the rule of law and sustainable development.

Will the now isolated yet widespread instances of environmental courts and tribunals be nourished as they begin their work, or left as a novel but little noticed new legal development? As yet uncorrupted, they can build the rule of law by example. As knowledgeable about environmental norms, they can see to the realization of legal safeguards set for sustaining human health, species and habitat, and the environment. Will their promise be supported?

We all have a role to play here, to ensure that the judiciary can sustain the environmental laws that support all of us. Do we not neglect the opportunity provided by this unique moment in time at our collective peril?

ELI and Pace Law School and the IUCN Commission on Environmental Law invite your consideration of this proposal and would be pleased to confer further with you about the proposals in this paper. We shall move between now and 2012 to make the support for strengthening the capacity of courts in their environmental adjudication as an international priority, recognized at the UN “Rio+20” Conference. Please join us April 1, 2011, to begin this discussion.

Appendices:

UN General Assembly Resolution 61/39, “The rule of law at the national and international levels”

“Summary Report – Meeting of U.S.-Based Organizations and Entities Working on Environmental Courts, Rule of Law and Access to Justice” (Pace and WRI, July 2010)

“ELI Research in Action – Educating the Judiciary around the Globe”

“Taller de Capacitacion Judicial” 2009, Ministry of Foreign Affairs, Chile

End Notes:

ⁱ See the restatement of environmental law in Lal Kurukulasuriya and Nicholas A. Robinson (eds.), Training Manual on International Environmental Law (UN Environment Programme, 2006) at www.enep.org/dpdl/law, and available in print from www.earthprint.org with examples of representative national law enactments that implement the international agreements, and in Chapter 7 (pages 80-81) the report on the UNEP Global Judicial Symposium held in 2002 on the eve of the UN World Summit on Sustainable Development in Johannesburg, South Africa .

ⁱⁱ Bolivia, Brazil, Cameroon, Chile, Colombia, Costa Rica, Ecuador, Haiti, Honduras, Hungary, India, Jamaica, Liberia, Paraguay, Peru, Russia, Tanzania, Uganda, Ukraine, and the USA. See generally, “Environmental Law Institute Judicial Education Experience” (ELI, January 2011).

ⁱⁱⁱ 1992 Rio Declaration Principle 10 provides as follows: “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. State 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**” [emphasis added].

^{iv} On the Aarhus Convention, see www.unece.org/env/pp/

^v There are many critiques of rule of law deficits and the courts. One recent study that focuses on the role of lawyers and the challenges of building the rule of law in post-colonial Asia (but does not discuss environmental law at all) is Yves Dezalay and Bryant G. Garth, Asian Legal Revivals (University of Chicago Press, 2010). If traditional judicial practice, in commercial law or family law or criminal law, has problems, the difficulties are even more acute for the new field of environmental law. As the environment degrades, arguably the stakes are even higher when environmental law is neglected.

^{vi} The Netherlands, Belgium, Germany, U.K., U.S.A., Canada, Brazil, Argentina, Paraguay, Australia, New Zealand, Pakistan, China, Kenya, Uganda, Tanzania, Nigeria, South Africa, and Eritrea.

^{vii} This empirical study focuses on environmental courts and tribunals in Australia, Austria, Bangladesh, Belgium, Bolivia, Brazil, Canada, Chile, China, Costa Rica, Denmark, Fiji, Finland, Greece, Guyana, Hungary, India, Indonesia, Ireland, Jamaica, Japan, Kenya, Liberia, Malawi, Malaysia, Mauritius, Netherlands, Nigeria, Pakistan, Philippines, South Africa, South Korea, Spain, Sudan, Sweden, Tanzania, and the USA. It included many of the states and provinces within federal nations, and their subdivisions, such as the courts and tribunals within Alabama, Arkansas, Colorado, Georgia, Indian, Mississippi, Missouri, New York, North Carolina, Ohio, Oklahoma, Tennessee, and Virginia.. It also included quasi-judicial bodies, such as the Environmental Ombudsman Offices in the 9 Länder of Austria. See www.law.du.edu/index.php/ect-study .

^{viii} The United Nations Environment Programme undertook a series of regional needs assessments in the late 1990s and early years of the next decade corroborated these request. IUCN CEL did a parallel review. The ELI and Pace have interviewed a number of judges to the same effect. A set of commentaries and primary source materials will be presented to judges at the Symposium that IUCN CEL, the NYS Judicial Institute, and Pace Law School will hold on April 1, 2011, in New York.

^{ix} Gary Haugen and Victor Boutros, “And Justice for All – Enforcing Human Rights for the World’s Poor,” Foreign Affairs, (May June 2010), p. 51.