



CONSTITUTIONS, ENVIRONMENT, AND HUMAN RIGHTS: PRACTICE AND IMPLEMENTATION

Regional Judicial Colloquium for Latin
America and the Caribbean

**Under the Auspices of the Federal Senate of Brazil
– through the Environment Committee and the
Joint Senate and House Permanent Committee on
Climate Change – and the Global Judicial Institute
for the Environment**

Brasília, Brazil, 22-23 May 2017


Organized under the auspices of the Federal Senate of Brazil and the Global Judicial Institute for the Environment. Co-sponsored by UN Environment, UN Special Rapporteur on Human Rights and the Environment, the Brazilian Association of Judges (AMB), the Brazilian Association of Federal Judges (AJUFE), the Brazilian Bar Association (OAB - Conselho Federal), the Organization of American States (OAS), the IUCN World Commission on Environmental Law (WCEL), Widener University Delaware Law School (USA), and North-West University (South Africa).

Overview

Environmental constitutionalism has become a critical aspect of global environmental governance and environmental rule of law. This important Judicial Colloquium on “Constitutions, Environment, and Human Rights: Practice and Implementation” will bring together prominent judges and scholars from Latin America and the Caribbean, to be joined by other distinguished international jurists, scholars, and high-level governmental representatives to enrich and enhance comparative perspectives on environmental constitutionalism. They will engage on vital questions, such as jurisdiction and access to courts, enforcement of judicial orders, and related substantive issues focused on constitutional environmental protection.

Emphasis will be placed on procedural matters (standing, justiciability, statutes of limitations, access to courts, *res judicata*), causes of action, remedies (“medidas judiciais”), and how courts are giving effect to substantive constitutional provisions related to environmental protection. The Colloquium will enable the exchange of experiences in advancing environmental constitutionalism through judicial decision-making.

Building on established expertise and diversified experience, this event is part of a larger programme under the leadership of the *UN Special Rapporteur on Human Rights and the Environment* and supported by the United Nations Environment Programme (UN Environment) to enhance judicial capacity in environmental constitutionalism, identify gaps and opportunities, and support judges worldwide. It also takes place



within the framework of the Inter-American Program on Sustainable Development's priority action of building capacity of key stakeholders including public officials and governmental agents who participate in matters relating to the environmental rule of law and who support effective enforcement of domestic environmental laws, multilateral agreements, and regional agreements. Additionally, the Colloquium is an innovative collaboration initiated by the IUCN *World Commission on Environmental Law* and the newly created *Global Judicial Institute for the Environment* (GJIE).

Each of the sessions will be chaired by a member of the Federal Senate of Brazil, which is hosting this event as an official Senate Hearing. The sessions are designed to be iterative and interactive. The UN Environment's *Judicial Handbook on Environmental Constitutionalism*, by Professors James R. May and Erin Daly, including cases from jurisdictions in the region and around the world, and other primary and secondary sources, will be provided electronically in advance. The final session – a case study – will integrate all of the previous sessions and participants' contributions by focusing on practice and implementation of human rights, environmental constitutionalism, and the environmental rule of law in the Amazon Biome.

Topics

- The role of judges in protecting the environment, considering such issues as separation of powers, environmental rule of law, and environmental constitutionalism;
- Interpretation and application of environmental provisions in international, regional, and domestic law, with particular attention to constitutional provisions, and how the various layers interrelate with and complement one another;
- Approaches to achieving better access to justice on environmental matters in the region, including costs, standing, interim relief, burden of proof, statute of limitations, remedies, *res judicata*, and enforcement, including the judicial role in coordinating the execution of judgments with other branches of government;
- Progress and challenges in guaranteeing and implementing environmental constitutional provisions in countries of the region;
- Development of new and additional judicial training and educational materials on issues of judicial concern relating to all facets of the implementation of environmental constitutional provisions; and
- The Amazon Biome as a case study of the different concepts and instruments analyzed in the previous panels.

PROGRAMME

Monday, 22 May 2017

9:00
9:30

Opening Remarks

CHAIR: SENATOR CASSIO CUNHA LIMA (VICE-PRESIDENT, FEDERAL SENATE OF BRAZIL)

SPEAKERS:

PRESIDENT ZHANG XINSHENG (INTERNATIONAL UNION FOR THE CONSERVATION OF NATURE – IUCN, CHINA)

PROFESSOR DENISE ANTOLINI (DEPUTY CHAIR, IUCN WORLD COMMISSION ON ENVIRONMENTAL LAW)

DENISE HAMU (HEAD, UN ENVIRONMENT BRAZIL OFFICE)

CLAUDIA DE WINDT (ORGANIZATION OF AMERICAN STATES)

JUDGE CRISTINA CRESPO (FORMER PRESIDENT, INTERNATIONAL ASSOCIATION OF JUDGES, URUGUAY)

JUDGE JAYME DE OLIVEIRA (PRESIDENT, BRAZILIAN ASSOCIATION OF JUDGES – AMB)

JUDGE ROBERTO VELOSO (PRESIDENT, BRAZILIAN ASSOCIATION OF FEDERAL JUDGES – AJUFE)

PROFESSOR ERIN DALY (WIDENER UNIVERSITY DELAWARE SCHOOL OF LAW, ORGANIZING COMMITTEE)

9:30
9:45

Break

SESSION I

Keynote Addresses: Constitutions and the Environmental Rule of Law

CHAIR: SENATOR JORGE VIANA (PRESIDENT, JOINT SENATE & HOUSE OF REPRESENTATIVES PERMANENT COMMITTEE ON CLIMATE CHANGE, BRAZIL)

PROFESSOR JOHN KNOX (UN SPECIAL RAPPORTEUR ON HUMAN RIGHTS AND THE ENVIRONMENT), *THE INTERNATIONAL FRAMEWORK: THE RELATIONSHIP OF HUMAN RIGHTS TO THE ENVIRONMENT*

HONORABLE JUSTICE ANTONIO HERMAN BENJAMIN (NATIONAL HIGH COURT OF BRAZIL – STJ), *MODELS OF ENVIRONMENTAL CONSTITUTIONAL PROVISIONS*

HONORABLE JOSÉ SARNEY FILHO (MINISTER OF THE ENVIRONMENT OF BRAZIL), *THE 1988 CONSTITUTION AND THE ROLE OF THE STATE IN AND PROTECTING THE ENVIRONMENT*

The keynote session will address the complex interrelationships of the environmental rule of law, human rights, constitutional provisions, the state, and environmentalism. Professor Knox will begin with an overview of the broad international context of human rights and the environment. The following speakers will focus in depth on these issues from the perspective of Brazil, the host country for this Colloquium. Justice Benjamin will provide perspective on the Brazilian constitution by examining other models of environmental constitutional provisions. Minister Sarney will discuss the evolution of the role of the state in protecting the environment, from the 1988 Constitution through the present, providing an important historical perspective for the Colloquium.

SESSION II

Perspectives and Priorities from the Scientific & Conservation Community

CHAIR: SENATOR JOSÉ ANTONIO REGUFFE (FEDERAL SENATE, BRAZIL)

KEYNOTE ADDRESS: PRESIDENT ZHANG XINSHENG (IUCN), *ECO-CIVILIZATION AND ENVIRONMENTAL GOVERNANCE*

SPEAKERS:

KRISTEN WALKER PAINEMILLA (CHAIR, COMMISSION ON ENVIRONMENT, ECONOMIC AND SOCIAL POLICY, IUCN), *PEOPLE AND NATURE*

JOHN ROBINSON (IUCN COUNCILOR AND VICE PRESIDENT, WILDLIFE CONSERVATION SOCIETY), *THE BIODIVERSITY CRISIS*

This session features distinguished leaders of the International Union for the Conservation of Nature – the world's oldest and most prominent entity comprised of states and non-governmental organizations devoted to global environmental protection. They will address how the IUCN leads the setting of priorities

11:00
12:15

for global science and conservation. President Zhang Xinsheng will discuss the major role played by the organization in providing critical scientific information and leadership for policy and lawmaking around the world on issues ranging from endangered species to water conservation and climate change. An IUCN Commission Chair and an IUCN Councilor will then explore the world's conservation crises in their respective areas of expertise.

12:15
14:15

Lunch

SESSION III

14:30
16:00

1ST Roundtable: Comparative Dialogue on Interpretation and Application of Environmental Constitutional Provisions

- Interpretation and application of environmental constitutional provisions in international, regional, national, and subnational law, with particular attention to how the various layers interrelate with and complement one another
- Direct implementation of constitutional provisions, and other problems of constitutional interpretation
- Latin American and Caribbean judges, joined by other participating judges, to lead panel discussion and share experiences and comparative perspectives

CHAIR: SENATOR JOÃO CAPIBERIBE (FEDERAL SENATE, BRAZIL)

DISCUSSION FACILITATORS: PROFESSOR ERIN DALY (WIDENER UNIVERSITY DELAWARE SCHOOL OF LAW) AND **JUDGE RAFAEL DE MENEZES** (VICE-PRESIDENT, INTERNATIONAL ASSOCIATION OF JUDGES, BRAZIL)

GRETHEL AGUILAR (DIRECTOR, IUCN REGIONAL OFFICE FOR MÉXICO, CENTRAL AMERICA AND THE CARIBBEAN – ORMACC)

SPEAKERS (ALPHABETICAL ORDER BY LAST NAME):

JUDGE FRUZZINA BÖGÖS (SECRETARY GENERAL OF THE EUROPEAN UNION FORUM OF JUDGES FOR THE ENVIRONMENT, HUNGARY)

JUSTICE CHIFUNDO KACHALE (HIGH COURT OF MALAWI AND CHAIRPERSON, MALAWI JUDICIARY TRAINING COMMITTEE)

JUSTICE PAUL KIHWELO (HIGH COURT AND INSTITUTE OF JUDICIAL ADMINISTRATION, TANZANIA)

JUDGE DOYO KIM (SOUTH KOREA)

JUSTICE JOSÉ IGNACIO VÁSQUEZ MÁRQUEZ (CONSTITUTIONAL COURT, CHILE)

JUSTICE RAGNHILD NOER (SUPREME COURT, NORWAY)

JUSTICE MICHAEL WILSON (SUPREME COURT, HAWAII, US)

SESSION IV

16:00
17:15

New Principles of Environmental Law: From and Beyond Constitutions

This session will focus on new principles of environmental law, with particular focus on the World Declaration on Environmental Law, in addition to the Draft International Covenant on Environment and Development, and the Earth Charter.

CHAIR: SENATOR CRISTOVAM BUARQUE (FEDERAL SENATE, BRAZIL)

KEYNOTE ADDRESS: PROFESSOR NICHOLAS ROBINSON (ELISABETH HAUB SCHOOL OF LAW, PACE UNIVERSITY, US)

SPEAKERS (ALPHABETICAL ORDER BY LAST NAME):

PROFESSOR NICHOLAS BRYNER (EMMETT INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT, UNIVERSITY OF CALIFORNIA LOS ANGELES, US)

PROFESSOR NÉSTOR CAFFERATTA (NATIONAL UNIVERSITY OF BUENOS AIRES, ARGENTINA)

ARNOLD KREILHUBER (SENIOR LEGAL OFFICER, INTERNATIONAL ENVIRONMENTAL LAW UNIT, UN ENVIRONMENT, NAIROBI, KENYA)

SESSION V

17:15
18:30

2nd Roundtable Discussion: Judges, the Environment and Access to Justice in Latin America and the Caribbean

- *The role of judges in protecting the environment, considering separation of powers, environmental rule of law, and the relationship with environmental constitutionalism*
- *Access to justice issues: costs, standing, statutes of limitations, burdens of proof, and interim relief*

CHAIR: SENATOR

DISCUSSION FACILITATOR: JUDGE CANDICE GALVÃO JOBIM (FEDERAL JUDGE, BRASÍLIA, BRAZIL)

PROFESSOR LOUIS KOTZÉ (NORTH-WEST UNIVERSITY FACULTY OF LAW, POTCHEFSTROOM CAMPUS, SOUTH AFRICA)

SPEAKERS (ALPHABETICAL ORDER BY LAST NAME):

JUSTICE RAFAEL ASENJO (PRESIDENT, ENVIRONMENTAL TRIBUNAL OF SANTIAGO, CHILE)

JUSTICE RICARDO TORRES DE CARVALHO (PRESIDENT, ENVIRONMENT CHAMBER, STATE SUPREME COURT OF SÃO PAULO, BRAZIL)

JUSTICE BRIAN COTTLE (EASTERN CARIBBEAN SUPREME COURT, ST. VINCENT AND THE GRENADINES)

JUDGE WENDY MARTÍNEZ MEJÍA (DOMINICAN REPUBLIC)

JUSTICE EDWARD SIDNEY BLANCO REYES (CONSTITUTIONAL CHAMBER, SUPREME COURT OF JUSTICE, EL SALVADOR)

PROFESSOR GUSTAVO ALANIS (PRESIDENT, MEXICAN ENVIRONMENTAL LAW CENTER – CEMDA, MEXICO)

19:00

Closing

19:15
20:15

Visit to the National High Court of Brazil (STJ)

20:30
22:00

Reception and Dinner, hosted by Claudio Lamachia (PRESIDENT OF THE BRAZILIAN BAR ASSOCIATION, OAB - CONSELHO FEDERAL)

Tuesday, 23 May 2017

SESSION VI

9:00
9:30

Keynote Address:

HONORABLE JUSTICE LUIS ROBERTO BARROSO (CONSTITUTIONAL COURT OF BRAZIL – STF), *EFFECTIVENESS OF CONSTITUTIONAL PROVISIONS PROTECTING THE ENVIRONMENT*

CHAIR: SENATOR ROSE DE FREITAS (FEDERAL SENATE, BRAZIL)

SESSION VII

9:30
11:00

3rd Roundtable: Judicial Remedies ("Medidas Judiciais") and Enforcement

- Remedial orders: judicial responses to a finding of a violation of rights including orders to restore the environment, pay damages, clean up environmental harms, or prevent environmental damage
- Remedies and enforcement, including the judicial role in coordinating the execution of judgments with other branches of government
- Trends, progress, and challenges in guaranteeing and implementing of environmental constitutionalism in countries of the region

CHAIR: SENATOR FLEXA RIBEIRO (FEDERAL SENATE, BRAZIL)

DISCUSSION FACILITATORS: PROFESSOR DENISE ANTOLINI (UNIVERSITY OF HAWAII WILLIAM S. RICHARDSON SCHOOL OF LAW) AND PROFESSOR JAMES R. MAY (WIDENER UNIVERSITY DELAWARE LAW SCHOOL)

SPEAKERS (ALPHABETICAL ORDER BY LAST NAME):

JUSTICE SYED REFAAT AHMED (SUPREME COURT, BANGLADESH)

PROFESSOR MARCELO JOSÉ COUSILLAS (UNIVERSITY OF MONTEVIDEO, URUGUAY)

JUDGE CARLOS HUMBERTO CUESTAS (SECRETARY-GENERAL, SUPREME COURT, PANAMA)

JUSTICE CÂNDIDO LEAL JUNIOR (FEDERAL COURT OF APPEALS, 4TH CIRCUIT, BRAZIL)

JUSTICE HIMA KOHLI (DELHI HIGH COURT, INDIA)

JUSTICE ENRIQUE PERETTI (SUPREME COURT, STATE OF SANTA CRUZ, ARGENTINA)

JUSTICE ANTONIO SOUZA PRUDENTE (FEDERAL COURT OF APPEALS, 1ST CIRCUIT, BRAZIL)

JUSTICE CARLOS DIVINO VIEIRA RODRIGUES (SUPREME COURT, FEDERAL DISTRICT OF BRASÍLIA, BRAZIL)

JUSTICE DAMARIS VARGAS VÁSQUEZ (SUPREME COURT, COSTA RICA)

JUSTICE MICHELLE WEEKES (HIGH COURT, BARBADOS)

11:00
11:15

Coffee/Tea Break

11:15
11:45

Discussion

SESSION VIII

11:45
12:45

4th Roundtable: Next Steps, Conclusions, and Recommendations

This session will focus specifically on the development of the environmental rule of law, new judicial training and educational materials on issues of judicial concern relating to all facets of the implementation of environmental constitutionalism, and the OAS-UN Environment-IUCN judicial capacity building programme.

CHAIR: SENATOR FERNANDO BEZERRA COELHO (FEDERAL SENATE, BRAZIL)

DISCUSSION FACILITATORS: PROFESSOR DENISE ANTOLINI, PROFESSOR ERIN DALY, PROFESSOR LOUIS KOTZÉ, ARNOLD KREILHUBER, AND PROFESSOR JAMES R. MAY

Lunch

13:00
14:30

SESSION IX

THE AMAZON BIOME: A CASE STUDY OF THE ENVIRONMENTAL RULE OF LAW, HUMAN RIGHTS, AND ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Opening:

SENATOR DAVI ALCOLUMBRE (PRESIDENT, ENVIRONMENT COMMITTEE, FEDERAL SENATE, BRAZIL)

AMBASSADOR JACQUELINE MENDOZA (SECRETARY-GENERAL, AMAZON COOPERATION TREATY ORGANIZATION – ACTO, VENEZUELA)

The Broader Picture

CHAIR: SENATOR DAVI ALCOLUMBRE (FEDERAL SENATE, BRAZIL)

DISCUSSION FACILITATOR: JUDGE FLÁVIA VIANA (PRESIDENT, ASSOCIATION OF LUSOPHONE COUNTRIES, BRAZIL)

KEYNOTE ADDRESSES:

JUSTICE DUBERLÍ RODRÍGUEZ (CHIEF JUSTICE, SUPREME COURT OF PERU)

JOSÉ PEDRO DE OLIVEIRA COSTA (NATIONAL SECRETARY FOR BIODIVERSITY, MINISTRY OF THE ENVIRONMENT, BRAZIL)

MINISTER-COUNSELOR ÉVERTON LUCERO (NATIONAL SECRETARY FOR CLIMATE CHANGE AND FORESTS, MINISTRY OF THE ENVIRONMENT, BRAZIL)

Discussion

5th Roundtable: Ecologically Sustainable Development: Protected Areas, Indigenous Territories, and Other Legal Instruments – A Comparative Analysis

CHAIR: SENATOR JORGE VIANA (FEDERAL SENATE, BRAZIL)

DISCUSSION FACILITATOR: SAMY BARBOSA LOPES (FORMER ATTORNEY GENERAL OF THE STATE OF ACRE, BRAZIL)

KEYNOTE ADDRESSES:

JUSTICE PABLO TINAJERO DELGADO (SUPREME COURT OF ECUADOR)

MINISTER-COUNSELOR CESAR DE LAS CASAS (EXECUTIVE DIRECTOR, AMAZON COOPERATION TREATY ORGANIZATION – ACTO, PERU)

RICARDO SOAVINSKI (PRESIDENT, ICMBIO – BRAZILIAN PROTECTED AREA AGENCY, BRAZIL)

SPEAKERS:

JUDGE PAULO ANAÏSSE (FEDERAL JUDGE, ITAITUBA, STATE OF PARÁ, BRAZIL)

JUDGE MARA ELISA ANDRADE (FEDERAL JUDGE, MANAUS, STATE OF AMAZONAS, BRAZIL)

JOSÉ LUIS CAPELLA (PERUVIAN SOCIETY FOR ENVIRONMENTAL LAW – SPDA, PERU)

14:30
14:45

14:45
15:45

15:45
16:15

16:15
18:00

CARLOS DURIGAN (DIRECTOR, WILDLIFE CONSERVATION SOCIETY – WCS BRAZIL)

JUSTICE DAWN GREGORY-BARNES (COURT OF APPEALS, GUYANA)

LUIS FERNANDO MACIAS (PRESIDENT, COLOMBIAN ENVIRONMENTAL LAW INSTITUTE, COLOMBIA)

CLÁUDIO MARETTI (DIRECTOR, ICMBio – BRAZILIAN PROTECTED AREA AGENCY, BRAZIL)

JUSTICE IRIS ESTELA PACHECO HUANCAS (SUPREME COURT OF JUSTICE, PERU)

PATRICIA AMORIM RÉGO (FORMER ATTORNEY GENERAL OF THE STATE OF ACRE, BRAZIL)

RICARDO SAUCEDO (PRESIDENT, BOLIVIAN SOCIETY FOR ENVIRONMENTAL LAW, BOLIVIA)

JUSTICE ROBERTO SERRATO (COUNCIL OF STATE/CONSEJO DE ESTADO, COLOMBIA)

RAUL TELLES DO VALLE (ISA – INSTITUTO SOCIOAMBIENTAL, BRASÍLIA, AND CHAIR, WCEL FOREST SPECIALIST GROUP, BRAZIL)

18:00

18:45

Discussion

19:00

Closing

COLLOQUIUM ORGANIZING COMMITTEE: DENISE ANTOLINI, ERIN DALY, ANGELA KARIUKI, JOHN KNOX, ARNOLD KREILHUBER, AARON LAUR, JAMES R. MAY, AND CLAUDIA DE WINDT

