

## ISSUE EDITOR'S NOTE: THE ROLE OF THE ENVIRONMENTAL JUDICIARY

Pace University School of Law (Pace) and the New York State Judicial Institute proudly present this volume of the *Journal of Court Innovation*, devoted entirely to the issue of environmental courts and tribunals (ECTs). The publication of this volume is in anticipation of the launch of the International Judicial Institute for Environmental Adjudication (IJIEA), a collaborative initiative sponsored by Pace and the International Union for Conservation and Nature's (IUCN) Commission on Environmental Law, a volunteer global environmental law network.

Indisputably, the quality of our natural environment has deteriorated dramatically over the past several decades. The significant difficulties posed by climate change, biodiversity loss, transboundary pollution, explosive growth in both population and consumption, and natural resource depletion all require innovative solutions, tailored to the individual needs of those most affected. Moreover, concerns of intergenerational equity — regarding the distribution and usage of natural resources — must be held paramount. Developing and strengthening the specialized judicial institutions that serve to protect our natural capital and the health of our populace is critical to the rule of law and sustainable development.

Visionary world leaders at the 1992 Rio Earth Summit agreed that sustainable development is the only way forward given the constraints and limitations inherent in the Earth's natural systems, and

formally recognized the fundamental relationship between such development and public participation in no uncertain terms. Environmental adjudicative bodies are a necessary component of this vision as institutions that check the undue influence of political and economic interests while enforcing effective accountability measures. Institutional innovation is crucial, as traditional judicial models in some systems fail to safeguard participation or tackle the many scientific, technical, and logistical complexities of environmental litigation. In an effort to share effective and innovative practices, many experts, judges, judicial administrators, and legal scholars have offered invaluable perspective and insight in this issue about the most successful processes, models, and case studies throughout the world.

We believe that law schools in general and Pace in particular will continue to be at the forefront of crafting initiatives to advance environmental law to the next stages of its development. For the better part of four decades, Pace has been a leader in this area, having sponsored a multitude of judicial training workshops, symposia and conferences in collaboration with dozens of esteemed public and private institutions. And now, the knowledge that Pace has gained over the years through its staff, conferences and workshops have culminated in the creation of the IJIEA. This journal's introductory piece, *An Institute for Enhancing Effective Environmental Adjudication*, recites the history and confluence of efforts that have led to the establishment of the IJIEA. The article describes not only the proliferation of ECTs throughout the world, but also the series of conferences dedicated to the training modules, theoretical underpinnings, and motivating factors of such institutions. Regional workshops have focused on the many ways in which specific courts — each designed to match the problems endemic to that region — have been driven by an active judiciary and able administrators, and supplemented by the tireless capacity-building of academic, governmental, United Nations, IUCN and other environmental law advocacy institutions.

Following this introductory piece, the first set of articles provides an extensive survey of a number of ECTs and national environmental regulatory regimes, and the ways in which both facilitate the broader development of environmental law. Authors representing over a dozen countries describe diverse legal systems, socioeconomic

conditions, and cultures. The next set of pieces is more experiential in nature, focusing on specific topics of implementation, outreach work, pioneering proposals, and novel techniques related to the development of environmental adjudication. These pieces highlight the work of some of the agencies, advocacy groups, and legal institutions that have been setting the standard for new models of adjudication, including UNEP, the Environmental Law Institute, and the Asian Development Bank. Complementing these are two scholarly articles examining emerging theories in environmental law.

We have also conducted a set of short interviews with several influential practitioners in the field, examining in greater detail the triumphs, hardships, and significant barriers that have defined their experiences. Finally, we conclude with a book review of Charles O. Okidi's *Environmental Governance in Kenya*. Kenya recently established an environmental court.

This issue of *Journal of Court Innovation* presents a valuable collection of multidisciplinary resources and analyses for the benefit of a community that is aggressively engaged in improving and expanding these institutions. Underlying themes of environmental governance surface repeatedly throughout: observing international norms for public participation; the importance of cataloguing decisions for the benefit of precedence; the institutionalization of transparency and accountability provisions; and strong enforcement mechanisms. All are vital to further success. Highlighting these themes and normalizing best practices are two of the main purposes of this volume. By examining changing practices and novel forums for environmental adjudication, we hope to identify those models that are best suited to accomplishing true environmental justice and equity in a flexible, inclusive manner.

Readers are presented with a practical resource through which to review the logistics of establishing and administering new and existing ECTs.

"The Role of the Environmental Judiciary" is an innovative theme for a law journal. The broad selection of pieces included herein emphasizes experience and critical analysis by authors hailing from a wide range of nations and backgrounds. In this way, we have tried to form a representative (though certainly not exclusive) cross-section of perspectives from a panoply of diverse legal traditions. Most of these

pieces are short, yet insightful. Due to resource and time limitations, we were unable to cover every nation, legal system, or development. We invite our readers to bring to our attention any innovative developments that we were unable to include. Updates, inquiries and comments can be sent to [ijiea@law.pace.edu](mailto:ijiea@law.pace.edu).

This volume complements the stated mission of IJIEA: to foster professionalism; to share insights and ideas; to build an integrated scholarly network founded upon strong working relationships and mutual respect; and to increase exposure to the extensive body of constantly expanding scientific, policy, and legal debates within the field of environmental governance. Through these pages, we look to facilitate a dialogue that offers practical solutions, templates and recommendations for further progress. The future of effective environmental law — in all of its various manifestations and at all levels — rests on the judiciary developing in a way that is deeply attendant to the needs and pressures of the twenty-first century. Building networks and fostering solidarity is a means to this end, and the New York State Judicial Institute and Pace contribute to this common effort. We hope that this volume advances the further development of ECTs throughout the world, engendering new scholarship, continuing dialogue, and forging new paths through which the judiciary may constructively confront the exigencies of a changing global environment, to protect Earth's shared resources and the beauty of our common heritage.

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