



Inaugural IUCN Oceania Environmental Law Conference

in conjunction with the

***2nd World Environmental Law Congress
(Oceania Environmental Law Congress)***

CONFERENCE OUTCOMES STATEMENT

***'Advancing Environmental Law in the Pacific:
Towards 2030 and Beyond'***

Introduction

The IUCN Oceania Regional Office hosted the Inaugural IUCN Oceania Environmental Law Conference from the 14th - 16th of July 2021 in conjunction with the 2nd World Environmental Law Congress (Oceania Environmental Law Congress).

The Inaugural IUCN Oceania Environmental Law Conference (the Conference) was held in partnership with the IUCN World Commission on Environmental Law (WCEL), the UN Environment Programme (UNEP), the US Embassy in Fiji, the Secretariat of the Pacific Islands Forum and the European Union, with the support of the Pacific Network for Environmental Law (PaNEL), the Asian Development Bank (ADB) and the Environmental Defenders Office (EDO). The organisers are grateful for financial support from the United States Embassy in Fiji, UNEP, WCEL, the Secretariat of the Pacific Islands Forum (PIFS) and the European Union.

Over three days, the Conference created a platform for environmental law experts, judges, lawyers, practitioners, academics, conservationists, government and civil society representatives to share experiences on the continued challenges that Pacific Island Countries face in protecting natural resources and biodiversity through law and policy. Participants explored opportunities to leverage legal tools and approaches to drive and scale-up positive conservation and development outcomes, and identify options for improving or strengthening the environmental rule of law.

This Outcomes Statement reflects the participants' most pressing issues of concern discussed during the Conference. It intends to inform and guide IUCN Oceania and partners' initiatives in the years ahead towards the achievement of environment protection and conservation objectives through law and in the context of the IUCN Programme 2021 - 2024 and of the IUCN Oceania Programme 2021-2024

Preamble

Deeply concerned about the extreme adverse impacts of the environmental crises of climate change, biodiversity loss, pollution and deteriorating oceanic ecosystems' health.

Acknowledging the crucial role of the ocean in the Pacific cultures, national economies and community livelihoods. Honouring that the Pacific Ocean is the largest and deepest of Earth's oceans, and home to the greatest number of coral reef species globally.

Understanding also the global ecological function of the Pacific Ocean as a global carbon sink. Highlighting the central role of coral reefs and mangrove forests to climate adaptation. Stressing that an estimated 70% of the global fish catch comes from the Pacific Ocean.

Recognising the importance of Indigenous, traditional and local knowledge systems and practices, the value and centrality of customary law, governance and rights over natural resources and territories, and of the benefits of synergies between customary and formal legal and governance systems for conservation outcomes.

Noting the fundamental role of the Environmental Rule of Law, including the procedural and substantive environmental rights it upholds, to support the conservation of nature and sustainable development.

Aware of the role of lawyers and of the judiciary in advancing environmental law and in giving effect to the principles of environmental law including but not limited to intergenerational equity, polluter pays, prevention of transboundary environmental harm, the precautionary principle, Free, Prior and Informed Consent, *in dubio pro natura*, *in dubio pro aqua* and the rights of nature.

Taking into account the obligations of the countries of Oceania under global and regional Multilateral Environmental Agreements including, among others, the UN Framework Convention on Climate Change, the Paris Agreement on climate change, the Convention on Biological Diversity (CBD), the Nagoya Protocol on Access and Benefits Sharing, the Aichi Targets; the UN Convention on the Law of the Sea (UNCLOS), the Ramsar Convention on wetlands, the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, and the Kigali Amendment to the Montreal Protocol, the Basel, Rotterdam and Stockholm Conventions on hazardous chemicals and wastes, as well as global strategies, plans and programs, notably the UN Sustainable Development Goals 2030 (SDGs), the CBD post-2020 Global Biodiversity Framework and the IUCN Programme 2021-2024.

Further taking into account the Pacific regional environmental agreements, including the Convention for the Protection of Natural Resources and Environment of the South Pacific Region (Nouméa Convention), the Convention to Ban the importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement of Hazardous wastes within the South Pacific Region (Waigani Convention); as well as the Pacific regional strategies and plans for the conservation of biodiversity and natural resources, including the Pacific Islands Framework for Nature Conservation and Protected Areas 2021-2025 and the IUCN Oceania Programme 2021-2024

Affirming the principles of the 1972 Stockholm Declaration, 1992 Rio Declaration on Environment and Development, and 2015 Sendai Framework on Disaster Risk Reduction.

Recalling the principles upheld and commitments made in the following declarations and statements: the Kunming Declaration of the World Judicial Conference on Environment, 2021; the Vemöore Declaration: Commitments to nature conservation action in the Pacific Islands region, 2021-2025; the Statement of the Asia Pacific Judicial Conference on Environmental and Climate Change Adjudication, 2020; the Brasília Judges Declaration on Water Justice 2018; and the IUCN World Declaration on the Environmental Rule of Law, 2016.

The participants at the Conference recognise that:

Oceania's small islands developing states (also referred to as large ocean small islands developing states) are facing urgent and existential environmental challenges as a result of extreme exposure to the impacts of the global environmental crises affecting the oceans and the climate.

Advancing environmental law in Oceania, towards 2030 and beyond, is critical to addressing, adapting to and mitigating the impacts of these challenges. Through collaboration, partnerships and resource and knowledge sharing, some positive developments are taking place.

The Conference highlighted key areas for advancing environmental law that align with and complement the objectives of Multilateral and Regional Environmental Agreements, global and regional strategies as well as with the declarations and statements referred to in the preamble of this Outcome Statement. Further, they contribute to the commitments made in previous IUCN World Commission on Environmental Law conferences, and to the implementation of the IUCN Programme 2021-2024, the IUCN Oceania Programme 2021-2024 and of the resolutions adopted at the 2021 IUCN World Conservation Congress.

And identify the following priority areas for advancing environmental law in Oceania:

Strengthening the environmental rule of law is an overarching goal for good environmental governance. The role of lawyers and the judiciary is critical to developing and upholding the environmental rule of law. It is essential not only for combating environmental crimes and promoting ecologically sustainable development, but also for protecting everyone's fundamental right to live in a safe, clean, healthy and sustainable environment and climate. It further underpins and enables the implementation of fundamental environmental law principles and the advancement of environmental law. **Strengthening the environmental rule of law** in Pacific Island Countries promotes SDG 16 - 'peaceful and inclusive societies for sustainable development, provides access to justice for all and builds effective, accountable and inclusive institutions at all levels' - and contributes to the achievement of other SDGs. Pacific Island Countries are more exposed than larger and more developed countries to the impacts of the global environmental crises, and therefore are among the most vulnerable to environmental harm. Good environmental governance entails

social, gender and intergenerational equity and respects Indigenous and human rights. It also contributes to positive conservation outcomes. The environmental rule of law also contributes to securing the protection of environmental human rights defenders.

Recognise formally the role of customary law and practices and of traditional knowledge in environmental and natural resources management including through strengthening co-management models and the role of Indigenous and local communities as environmental monitoring and enforcement partners.

Support the development of adequate and effective environmental legislation, as recommended by the objectives of the UNEP Fifth Montevideo Environmental Law Programme for the Development and Periodic Review of Environmental Law and in line with the findings of assessment and gap analyses of the environmental legal frameworks in Pacific Island Countries. Outdated laws governing natural resource management are inadequate for the implementation of national policies and the commitments made under regional and international environmental agreements, including climate and biodiversity conservation commitments. Adequate legislation in Oceania should address the environmental and climate change issues, be science-based and cognizant of traditional knowledge and enable bridging of formal and customary governance systems. It should also align with national policies and give effect to the commitments made under international and regional agreements while upholding the environmental rule of law, including procedural and substantive rights.

Strengthen equitable access to justice (SDG16) and improve environmental and climate change adjudication processes and institutions, including through facilitating equitable access to remedies, especially for Indigenous and local communities and vulnerable populations, such as alternative dispute resolution mechanisms. The establishment of environmental tribunals in the Pacific Island Countries should be supported, and the option of a regional tribunal or a regional alternative dispute resolution mechanism further explored. Specialised environmental tribunals enhance the development of environmental and climate change jurisprudence and improve compliance and consistent enforcement of environmental and climate law. A regional tribunal or mechanism could enhance access to justice by focusing on science-based dispute resolution with an emphasis on the collaboration of experts and recognizing - customary dispute resolution mechanisms.

Improve compliance and enforcement of environmental law. Limited human and financial resources of the government authorities vested with implementing and enforcing environmental laws, the lack of coordination between government agencies, and the need for greater awareness and capacity, compounded by the geographic challenges of the Pacific small island developing and archipelagic States, were some of the impediments to compliance, monitoring and enforcement that were highlighted during the Conference. These challenges affect particularly the effectiveness of environmental planning legislation, compliance with the environmental impact assessment's requirements, and with the conditions of development approvals and fisheries legislation leading to overfishing and illegal unreported and unregulated (IUU) fishing.

Enhance environmental legal awareness of communities and the capacity of enforcement officers for improved environmental decision making and environmental law implementation, compliance and enforcement. This entails enhanced community awareness

of environmental laws and of their rights, including access to information and public participation. The role of non-government organisations – such as environmental law associations – in raising legal awareness and of community-based organisations in environmental monitoring, was identified during the Conference as an efficient and effective means to address the human and financial resource limitations of public enforcement agencies. Improved environmental legal capacity of environmental officers and other stakeholders may also be enhanced through legal education and knowledge platforms such as InforMEA, the UNEP Law and Environment Assistance Program (LEAP), ADB e-learn, Asian Judges Network on Environment, and through the implementation of other objectives of the Montevideo Environmental Law Programme.

Support the health, resilience and sustainable management of ocean and marine ecosystems through law - Further development of marine protected area networks are needed in line with SDG 14, Life Below Water. Planning and protection must cover marine spatial planning and actively promote action for the protection of marine life, especially ecosystem architects such as coral reefs and mangrove forests, and for the reduction of marine pollution, notably plastics and microplastics pollution. A precautionary approach should be promoted and supported by IUCN and partners in the Pacific in their engagement with all activities relating to the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (BBNJ), as part of the current UN negotiations for a new international legally-binding instrument for a BBNJ Agreement under UNCLOS. This applies to the mining of seabed minerals, of which the impacts on the environment and marine biodiversity are largely unknown. At national level, a robust and science-based legal framework, including environmental, social and cultural impact assessment, should be developed prior to the issuance of deep seabed mining licences.

Improve the legal framework for pollution control and waste management and strengthen the regional and global legal frameworks to prevent plastic pollution. Waste management is one of the most critical challenges in Pacific Island countries and territories, which are faced with an increasing volume of waste to manage, insufficient waste management facilities and no or little options for recycling. Plastics and microplastics pollution and its impacts have become an escalating part of the waste and pollution problem. Plastics are an additional global transboundary threat to the region, contributing to and exacerbating climate change impacts on the ocean, biodiversity, food security, human health and rights. Plastics' impacts affect the region's progress towards the objectives of the Multilateral and Regional Environmental Agreements and strategies, including the sustainable development goals. The need for a coordinated and effective national, regional and global legal response that addresses plastics pollution and its impacts at every stage of the plastics' life cycle was identified by the findings of the marine litter and microplastics working group reporting to the UN Environment Assembly that is expected to decide on the establishment of an intergovernmental negotiating committee - for a new global agreement to prevent plastic pollution in 2022.

Strengthen partnerships at global, regional, national and local levels for improved environmental rule of law and conservation outcomes (SDG17). As this Conference illustrated, dialogue and partnerships established across stakeholders groups – governments, and non-state actors including civil society organisations and the private sector – as well as between local, national, regional and international actors including donors and UN agencies,

are an essential and effective tool for advancing environmental law and for coordinated, inclusive, and adequately resourced legal responses and nature-based solutions to the crises facing Oceania. National, regional, and global frameworks need to empower and protect the right of participation, especially by those who are vulnerable to climate change, including women, children, older adults, Indigenous peoples, persons with disabilities, and the poor. All partnerships must be founded on the principle of intergenerational equity.

IUCN, UNEP, ADB and other partners will exercise their convening powers to work in identified areas of collaboration with partners and other stakeholders in the region, and leverage IUCN's members and Commissions' expertise to address the priority issues raised during the Conference and highlighted in this statement as part of the implementation of IUCN Programme 2021-2024 and the IUCN Oceania Programme 2021-2024.