

Environmental Courts and Tribunals

10769

Original language of motion as submitted:
English

Status:
Submitted

Background information

1. Does the proposed motion:

Fall within the scope of the vision and mission of IUCN:

Yes

Propose an amendment to either the draft IUCN Programme 2017-20 or a proposed mandate of a Commission :

No

Address issues pertaining to the governance of IUCN:

No

2. Specify which IUCN constituents referred to in the operative paragraph(s) of this motion have

Been consulted during the development of this motion:

Center for Environmental Legal Studies (United States of America)
World Commission on Environmental Law 2013-2016

Collaborated in the development of the motion:

Center for Environmental Legal Studies (United States of America)
World Commission on Environmental Law 2013-2016

If possible, add here the position or advice from the above mentioned constituents (unless they are co-sponsors of the motion):

Justice Antonio Benjamin, Chair WCEL, has approved the motion as a complement to the Global Judicial Institute for the Environment initiative, and has indicated that the environmental courts and tribunals theme has been discussed with the Steering Committee and the Membership in general.

3. Before submitting this motion, have you searched the IUCN Resolutions and Recommendations Platform:

Yes

Please specify, what is new, over and above current Resolutions and Recommendations and state which Resolutions / Recommendations you have consulted:

WCC-2012-Res-129-EN called upon member states to establish an autonomous international judicial institute on the environment, to coordinate the efforts and principles of national judiciaries and other related administrative authorities on the environment.

This motion complements Res-129 by encouraging member states to adopt a framework to more easily establish and support environmental courts and tribunals (ECTs) and furthers collaboration among ECTs.

4. Please indicate whether the proposed motion has been discussed in one of the Regional Conservation Forums held in 2015:

No

5. Does the motion focus on local, national or regional issues :

Yes

Please provide evidence that the matter covered by the motion has been engaged at local, national and/or regional instances:

Although there has been a dramatic increase in the creation of environmental courts and tribunals around the world in recent years, member states have not moved quickly enough to confront environmental challenges through specialized judicial venues. For example, in the United States, only two states have environmental courts (Vermont and Hawai'i), and only the recently established Hawai'i court addresses natural resources issues.

6. Does the proposed motion concern issues arising in a State or States outside the proponents State / Region:

No

Preamble

NOTING environmental courts and tribunals ensure the fair, consistent, and effective resolution of cases involving the environment;

FURTHER NOTING environmental courts and tribunals better position regional, national, and local governments to safeguard the most treasured environments in the world by organizing the technical and legal issues through informed, efficient, and consistent application of environmental laws;

FURTHER NOTING that additional training for jurists presiding over environmental courts and tribunals increases effective decision-making by providing specialization in this technical and complex field of law;

CELEBRATING the dramatic increase in the creation of environmental courts and tribunals around the world in recent years, now numbering over 1,000 and flourishing in 44 countries;

RECOGNIZING the commencement of the Hawai'i State Environmental Court in 2015, which established the second statewide environmental court in the United States;

FURTHER RECOGNIZING that, during the 1992 Earth Summit, 178 governments signed the Rio Declaration affirming the principle that environmental decisions are best made with the participation of all relevant stakeholders with access to judicial remedies;

NOTING that WCC-2012-Res-129-EN called upon member states to establish an autonomous international judicial institute on the environment, to coordinate the efforts and principles of national judiciaries and other related administrative authorities on the environment;

ACKNOWLEDGING the environmental crisis we are facing on a global, regional, national, and local scale and the increased need for strong environmental governance worldwide;

governance worldwide;

The World Conservation Congress, at its session in Hawai'i, United States of America, 1-10 September 2016:

Operative paragraphs

CALLS UPON the Director General of IUCN to work in coordination with the IUCN World Commission on Environmental Law (WCEL) to implement a framework for creating environmental courts and tribunals that can be useful in different legal cultures and political situations, and transmit that framework with specific recommendations to Member States;

URGES Member States to establish their own environmental courts or tribunals and provide them with sufficient authority to promote transparency, inclusiveness, and accountability; and

FURTHER URGES Member States to invest their environmental courts and tribunals with the tools necessary for citizens to access those institutions and achieve environmental justice.

Proponent and co-sponsors

You are submitting this motion on behalf of:

Environmental Law Program at the William S. Richardson School of Law (United States of America)

Co-sponsors:

Center for Environmental Legal Studies (United States of America)

Conservation Council for Hawai'i (United States of America)

Harold L. Lyon Arboretum, of the University of Hawaii (United States of America)

Hawai'i Conservation Alliance (United States of America)

International Council of Environmental Law (Germany)

Kua`aina Ulu `Auamo (United States of America)

Sierra Club (United States of America)

Tropical Resources Institute (Yale School of Forestry and Environmental Studies) (United States of America)

Explanatory Memorandum

Environmental Courts and Tribunals (ECTs) ensure the fair, consistent, and effective resolution of cases involving the environment and play a direct and important role in promoting government accountability by providing access to justice. Access to justice through ECTs expands freedom of information by allowing civil society to press governments for information. These specialized courts and tribunals allow citizens the means to participate meaningfully and are more significantly included in decision-making on environmental matters. ECTs help to level the playing field by empowering groups that may not have

These help to level the playing field by empowering groups that may not have influence in the legislative or executive agency process to seek redress in the courts and other fora. ECTs increase the public's ability to seek redress and remedy for environmental harm.

Many countries around the world have come to realize the value of establishing specialized tribunals. These include efficiency and speed in the disposal of cases, harnessing expertise relevant to the specialized field, reducing the costs of dispute resolution, uniformity of decision-making, visibility for the subject area, integrating related issues and remedies, and increasing public participation and confidence.

Unfortunately, environmental courts and tribunals do not exist in many of the countries that need them the most. In recognition of this need, 178 governments signed the Rio Declaration (Earth Summit, 1992), affirming the principle that environmental decisions are best made with the participation of all relevant stakeholders with access to judicial remedies. WCC-2012-Res-129-EN called upon member states to establish an autonomous international judicial institute on the environment, to coordinate the efforts and principles of national judiciaries and other related administrative authorities on the environment.

Access to justice in environmental matters has gained ascendancy as an effective mechanism for holding governments accountable and ensuring that environmental laws and regulations are enforced. There has been dramatic increase in the creation of environmental courts and tribunals around the world in recent years, now numbering over 1,000 and flourishing in 44 countries.

Several studies in various legal systems have set out guidelines for effective implementation of ECTs. There are numerous examples of decision-making frameworks for creating ECTs that can be useful in different legal cultures and political situations. They provide the tools and support necessary to enhance access to environmental justice in countries around the world that, in turn, will advance the principles of environmental protection, sustainable development, and intergenerational equity through the institutions responsible for delivering environmental justice.

In recognition of the above, this motion calls on the IUCN to implement an expansive framework for creating ECTs that can be useful in different legal cultures and political situations in order to assist member states in establishing their own ECTs.

An integral part of this framework includes recommendations for a broad range of enforcement tools and remedies that allow ECTs to individually tailor enforcement to maximize real environmental justice. In order to promote transparency, inclusiveness, and accountability, member states should be urged to provide their ECTs with sufficient authority to improve access to environmental justice.

Information required for the implementation of the motion

1. Provide

a) A preliminary description of the actions (strategies and/or processes) with, as far as possible, a timeline and an estimate of the financial and human resources needed to implement the motion:

Type of actions:

Capacity-building
 Education/Communication/Raising awareness
 Policy influencing/advocacy

Preliminary description of implementation strategy:

The motion requests that the Director General of IUCN work in coordination with the IUCN World Commission on Environmental Law (WCEL) to implement a framework for creating environmental courts and tribunals that can be useful in different legal cultures and political situations, and transmit that framework with specific recommendations to Member States.

The motion also asks Member States to establish their own environmental courts or tribunals and provide them with sufficient authority to promote transparency, inclusiveness, and accountability.

The motion urges Member States to invest their environmental courts and tribunals with the tools necessary for citizens to access those institutions and achieve environmental justice.

Estimated budget necessary to implement the motion (in US \$):

100000-499999

Estimated human resources necessary to implement the motion, for example new staff positions, type of expertise required, and:

Existing staff and resources could be utilized if this motion is adopted by members. The expertise and resources of WCEL and the proposed Global Judicial Institute for the Environment will support the implementation of this motion.

b) Description of the contributions which proponent and co-sponsors intend to make towards the implementation of the motion**Proponent****Environmental Law Program at the William S. Richardson School of Law (United States of America)**

Proposed Actions: Convene stakeholders/Networking, Education/Communication/Raising awareness, Policy influencing/advocacy
 The Environmental Law Program has collaborated with the Hawaii State Judiciary on the establishment of the new Hawaii Environmental Court, is involved in WCEL, and the new Global Judicial Institute for the Environment.

Co-sponsors**International Council of Environmental Law (Germany)**

Proposed Actions: Convene stakeholders/Networking
 ICEL can assist with convening/networking regarding ECTs in Europe.

Kua`aina Ulu`Auamo (United States of America)*Proposed Actions:* Education/Communication/Raising awareness

KUA can collaborate with other IUCN members on education/communication/raising awareness related to the effectiveness of the Hawaii Environmental Court.

Conservation Council for Hawai'i (United States of America)*Proposed Actions:* Education/Communication/Raising awareness

CCH can collaborate with other IUCN members on education and networking related to the effectiveness of the Hawaii Environmental Court.

Hawai'i Conservation Alliance (United States of America)*Proposed Actions:* Convene stakeholders/Networking

HCA can collaborate with other IUCN members on convening/networking related to the effectiveness of the Hawaii Environmental Court.

Center for Environmental Legal Studies (United States of America)*Proposed Actions:* Education/Communication/Raising awareness

CELS is extensively involved in the WCEL and the new Global Judicial Institute for the Environment.

Tropical Resources Institute (Yale School of Forestry and Environmental Studies) (United States of America)*Proposed Actions:* Education/Communication/Raising awareness

TRI can collaborate with other IUCN members on education, communication, and raising awareness related to the need for more ECTs in the US.

Harold L. Lyon Arboretum, of the University of Hawaii (United States of America)*Proposed Actions:* Scientific/technical activities

Lyon Arboretum can collaborate with other IUCN members on scientific and technical expertise related to ECTs.

Sierra Club (United States of America)*Proposed Actions:* Education/Communication/Raising awareness

Sierra Club can collaborate with other IUCN members on education, communication, and raising awareness related to the need for more ECTs in the US.

2. Provide here the name of a focal point who would be in charge of reporting annually on the followup and implementation of the motion if adopted.**Focal point****Name:** Denise**Surname:** Antolini**Institution:** Environmental Law Program William S. Richardson School of Law**3. If the operative paragraph(s) of this motion is/are directly related to the mandate and work of one or more IUCN Commission(s), has the Steering Committee of the relevant Commission(s) committed to oversee implementation and assist in the gathering of data on the implementation of the Resolutions involved:**

Yes

Specify which Commission(s):

World Commission on Environmental Law 2013-2016

Please specify to which area of the draft IUCN Programme 2017-2020 this motions is related:

Valuing and conserving nature

Effective and equitable governance of nature's use

Indicate to which issues this motion is linked by selecting the relevant keywords:

Civil Society

Institutional building & reform

Law & policy (including Multilateral Environmental Agreements)

Indicate the geographic scope of the implementation of this motion:

Global