



JUSTRAC

JUSTICE SECTOR TRAINING, RESEARCH
& COORDINATION PROGRAM

**RULE OF LAW AND THE ENVIRONMENT:
RIGHTS, RESOURCES, AND GOVERNANCE**

Symposium Summary

Tuesday, January 19, 2016

A Justice Sector Training, Research and Coordination (JusTRAC) Symposium
The Rule of Law Collaborative at the University of South Carolina
In coordination with the Woodrow Wilson International Center for Scholars



JusTRAC is a cooperative agreement between The Rule of Law Collaborative at USC & the Bureau of International Narcotics and Law Enforcement, Department of State

Background

On January 19, 2016, INL and USC-ROLC delivered “Rule of Law and the Environment: Rights, Resources and Governance,” the fourth JusTRAC Symposium and the second JusTRAC Symposium in Washington DC, at the Woodrow Wilson International Center for Scholars. The Symposium convened policymakers, academics, rule of law implementers, members of the press, and representatives of the private sector and civil society, to discuss the challenges of rule of law and the environment. The event was also broadcast via LiveStream on the JusTRAC and Wilson Center websites. The Symposium had a specific focus on rights, resources, and governance in key areas, such as water and land rights. ROLC Director Joel Samuels and INL Director Bob Gifford delivered opening remarks and John Cruden, Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, delivered the keynote address. New York Times investigative reporter Ian Urbina offered remarks at lunch. John Pendergrass, Vice President, Research and Programs, Environmental Law Institute and Joel Samuels, provided closing remarks.

Symposium Topics and Findings

The one-day symposium was organized into panels on the following topics:

- The Intersection of Rule of Law and the Environment
- Rule of Law Challenges in the Context of Land and Water
- Rule of Law and Resource Depletion
- Lunchtime remarks on Lawlessness on the High Seas
- Environmental Governance and the Rule of Law

INL Director Bob Gifford indicated that this groundbreaking symposium could help drive recommendations for government policy and programming. In his keynote speech, Assistant Attorney General John Cruden addressed the application of rule of law principles to the effective enforcement of environmental standards, with emphasis on domestic polluting, wildlife trafficking and illegal logging, among other areas. Cruden emphasized the importance of enforcement and the connected and inter-dependent roles of law making, enforcement, resources and the development of an independent judiciary. He also discussed the role of environment rule of law in situations of breakdown and conflict.

Panelists in Session Two discussed land and water issues, focusing attention on those issues in the context of gender imbalances and indigenous peoples’ rights. There was also discussion of how rule of law interventions by the World Bank and others might improve environmental conditions and on how the World Bank works with host governments to strengthen rule of law, including independent governance mechanisms. Additional discussion centered on reforming inheritance rights and the effects of project-related remedies that reside outside domestic law. Building on the previous discussion, Session Three presentations focused on resource access, corruption, and illegal fishing and logging. The speakers agreed that stakeholder participation in the resource policy making process was crucial to building sustainable solutions. It was noted that in the enforcement arena, one of the key challenges is for prosecutors, courts, police, investigators and government officials to effectively collaborate across the various US agencies and international offices. Another key challenge is finding sustainable solutions that do not rely on outside funding.

At the lunch session, Ian Urbina discussed the findings in his acclaimed series, *The Outlaw Ocean*, which focused on the shocking consequences of lawlessness on the high seas. The final session in the symposium explored U.S., bilateral, and multilateral perspectives, including divergent global north-south approaches. An interesting analogy was made between international efforts to engage indigenous communities and the Environmental Protection Agency’s



cooperation with Native Americans. Some panelists focused on the growing importance of public access to environmental information and the ways that technology can leverage the impact. The experts acknowledged that two recent accomplishments, the 2030 Agenda for Sustainable Development and the recent Paris Agreement on Climate Change were important rule of law developments for the environment, but they are only a starting point. For instance, many of the Sustainable Development Goals (SDGs) impact environmental issues, but appropriate scientific indicators need to be developed and promoted. On the other hand, efforts are sometimes hampered by different understandings of what the *rule of law* means, and the law can potentially be a tool for injustice and conflict—the Niger Delta is an example. The panelists agreed that for the rule of law to aid environmental protection, a more comprehensive, democratic and participatory approach is required. Additional discussion focused on a new trend of alternative environmental management strategies designed to sidestep constraints on conventional regulation regimes. These strategies rely on local communities, private enterprise and informal channels, but require a strong background threat of formal mandatory regulation and, thus far, have mixed results.

In the Closing Session, ELI Vice President John Pendergrass discussed various aspects of environmental decision making, such as public participation with “notice and comment” processes. He also addressed environmental implementation and accountability mechanisms. Pendergrass was joined by Joel Samuels, who emphasized the importance of focusing on corruption, particularly as additional regulatory mechanisms are put in place to safeguard resources and the environment. He also emphasized the inter-connected nature of actors and solutions – at the international, regional, national, local, and community level – and the impacts that efforts in one arena may have – intended or unintended – on others.

Recommendations

Various speakers made the following recommendations:

- Effective enforcement of environmental standards often requires more than just formal rights, but includes the creative and fair *implementation* of international and domestic laws.
- Rule of law efforts in the area of transparency will foster self-correcting behavior.
- Corruption must be addressed at all levels when designing environmental programs.
- Programs must take into account the needs of vulnerable and marginalized populations, including women, youth, and indigenous groups.
- Evidence-based rules should be used to better shape effective environmental incentives.
- Rule of law interventions should promote the socially just and sustainable distribution of resources.
- Capacity building training is important, but organizers should focus on the right individuals, not just high-level officials who might not be directly involved in enforcement.
- Environmental solutions should be incorporated into wider programs involving family planning, gender, justice sector reform and economic development.
- Rule of law efforts must balance economic development with environmental concerns, from local communities to national and even transnational actors.
- Stakeholders should stop treating environmental concerns as peripheral but rather consider them as fundamental needs to be addressed.
- If the right conditions are present, environmental policy should consider alternative environmental management strategies such as voluntary industry compliance, public disclosure agreements, and eco-ratings programs.

