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LAND USE FOR SUSTAINABLE DEVELOPMENT

SECOND COLLOQUIUM OF
THE IUCN ACADEMY OF
ENVIRONMENTAL LAW

UNIVERSITY OF NAIROBI
4-7 OCTOBER 2004
GRAND REGENCY HOTEL
NAIROBI • KENYA

Meeting of the IUCN Academy's Collegium

8 October 2004



IUCN
The World Conservation Union

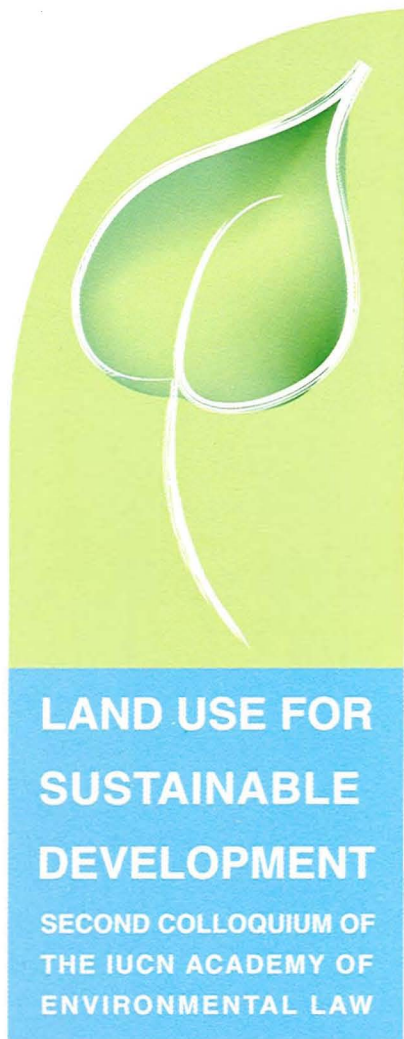
SUMMARY OF COLLOQUIUM

In October 2004, law professors from all regions of the world convene at the University of Nairobi for a comparative analysis of land use and environmental law. Leading academic scholars will examine how land use laws and practices either advance or complicate sustainable development. Panels will evaluate environmental land use laws in the context of both urban re-development and natural resource management.

Opening on the United Nations' World Habitat Day, this 2nd Colloquium of the IUCN Academy of Environmental Law assembles, for the first time, comparative studies of how land use laws work, in practice as well as theory, in both developing and developed regions, with varied legal traditions. Case studies will evaluate how environmental laws have made re-development possible in various cities, and how techniques such as integrated coastal zone management have facilitate compatible economic development of natural resources, human settlements, commerce, a nature conservation.

The Colloquium also features a set of distinguished lectures, synthesizing the field of environmental law. In 2004, the honored lecturer will be **Prof. Dr. Akio Morishima** of Japan, founder of the environmental law programs of Sophia University, laureate of the Elizabeth Haub Prize in Environmental Law. Dr. Morishima chairs the Environment Council for the government of Japan, and is one of the "fathers" of environmental law internationally. The Cambridge University Press will publish his lectures and the edited research papers from the colloquium in 2005.

Land use laws are invariably national and local, and rarely are examined in an international format. The IUCN Academy's 2nd Colloquium is the first research seminar to examine how these laws work when measured against transnational and global policies of environmental law and sustainable development.



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A STATEMENT OF WELCOME

Welcome to the Second Colloquium of the IUCN Academy of Environmental Law to be hosted by University of Nairobi from 4th to 7th October, to be followed by one day Collegium of the Academy on 8th October 2004. We are immensely honoured that the Inaugural Collegium of the Academy designated this University to host the Second in its annual global events. It is, at the same time, a challenge that our University should pioneer in setting out the pace and tradition for the newly established prestigious learned society.

The choice of the theme for Nairobi as “Environmental Law and Land Use” is utterly apt for a conference in Africa, and I invite participants to come and make personal and conceptual assessments. First, in Africa, as in most parts of the world, we view land use and stewardship as the foundation of sustainable development. The raw materials, on which our livelihood and industrialization may be based, are largely dependent on land stewardship, which depends on respect for threshold of sustainability prescribed in environmental law.

Secondly, and key to all that is the diversity which you will see in Kenya and which represents the situation in most parts of Africa. A two hour excursion from Nairobi, eastwards or westwards, can take one through at least three agro-ecological zones and we encourage our guests from abroad to make broader excursions once they are in Kenya. For our part in preparing for the Colloquium, we shall provide an opportunity for a field trip not only to see the wildlife in their habitat but also areas of conflict in human-wildlife interfaces and some creative legal responses being developed.

Thirdly, we are intent that this global scholarly event should also provide an opportunity to encourage teaching and research in environmental law in Africa. For that reason we have sought collaboration of other organizations, especially United Nations Environment Programme (UNEP), to ensure broad participation of scholars from diverse universities in Africa. We appreciate the positive and collaborative spirit of UNEP which has supported a pre-colloquium symposium to bring together over 30 lecturers from African universities to discuss, among themselves, teaching and research in environmental law in Africa. The purpose is to ensure that this Colloquium is a rich social and scholarly experience with lasting effect on all who attend. University of Nairobi is delighted to play this role and we request UNEP to support such an activity as an annual event.

Finally, I congratulate the IUCN-The World Conservation Union, especially, its commission on Environmental Law, for their initiative in establishing the Academy of Environmental Law to promote conceptual work, research and teaching in environmental law. You will note that this university has a special interest expressed in the large number of courses in environmental law and policy and the recent establishment of the Centre for Advanced



UNIVERSITY OF NAIROBI
OCTOBER 4 - 7, 2004
Nairobi, Kenya



Prof. Crispus M. Kiamba
Vice Chancellor
University of Nairobi

Studies in Environmental Law and Policy (CASELAP), as a unique centre of excellence. We are proud of the new programme which will, partly, offer an opportunity for specialization in environmental law and policy while at the same time offering an opportunity to mainstream the subjects in other specializations in different departments of the University. We assure the visiting scholars that CASELAP offers a home in Nairobi for all scholars who are interested in pursuit of excellence in environmental governance. I encourage the Academy and its affiliates to consider CASELAP as an eternal partner.

Welcome to the University of Nairobi, to Kenya and to Africa.

Thank you.



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ENVIRONMENTAL LAW

UNIVERSITY OF NAIROBI
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Nairobi, Kenya

LEGAL FOUNDATIONS FOR A GLOBAL PARTNERSHIP: FROM “LAND USE” TO ECOLOGICAL STEWARDSHIP

Ever since humans gathered in urban settlements, there has been a tension between rural and urban life. Variants of the parable of the “city mouse and country mouse,” well known by the time Horace wrote in ancient Rome, independently emerged in many traditional societies. In this 21st century, the fates of the rural and urban communities have become one, bound together with the destiny of environmental systems throughout the Earth. Agenda 21, the action plan adopted by the UN “Earth Summit” in 1992 in Rio de Janeiro, starkly stated: “Humanity stands at a defining point in history.”

Despite the evident consensus at Rio, plus the subsequent agreement on the UN’s Millennium Development Goals and the 2002 Johannesburg Plan of Action, nations have taken inadequate steps to forge the new global partnership for sustainable development. Multilateral policy statements, and indeed many multilateral environmental agreements, exist largely in a realm apart from national legal, budgetary, and other governmental systems. If past be prologue to future, we cannot rely on these tepid international measures to produce sustainable development.

Across the planet, immigration and new births swell many urban populations. Unplanned slums account for 43% of cities in developing nations. In Africa, slum dwellers are 72% of urban residents. Two-thirds of slum dwellers live in Asia. UN-HABITAT estimated last year that the one billion urban poor would double over the next generation. Beyond the acute problems of providing the minimal levels, expected by Human Rights standards, for sanitation, employment, transport, energy, health and education, this urban growth will also challenge the countryside.

A city’s air and water pollution, its solid waste, its inhabitants’ insatiable demand for cheap energy sources, its sprawl into undeveloped adjacent lands, rural or suburban, adversely impacts the environmental quality of the countryside. These “spill over” effects exist in developed nations, where real estate development is pursued without regards of its cumulative adverse effects. Neglected inner city sites become blighted, while “green fields” development is authorized and even subsidized. National laws often permit development in flood plains, wetlands, on prime agricultural soils, on fragile steep slopes, and in watersheds.

Environmental laws, enacted since the 1972 UN Conference on the Human Environment in Stockholm, do exist to address these phenomena. However, these laws still are poorly understood and even more poorly enforced. It is time to develop new concepts to finance the sustainable use of ecosystem services, and to prevent their misguided conversion to other



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UNIVERSITY OF NAIROBI
OCTOBER 4 - 7, 2004
Nairobi, Kenya



Nicholas A. Robinson

Chair, IUCN Commission on Environmental Law (1996-2004), and Gilbert & Sarah Kerlin Distinguished Professor of Environmental Law, Pace University School of Law, (New York)

land uses. New legal concepts must identify the interdependencies between rural and urban communities, and then link their combined political and financial interest. Regional land use agencies do this; historic boundaries and political borders are notoriously hard to dismantle, but new, cross-sectoral regimes can be engrafted onto these antiquated political subdivisions.

The IUCN Academy of Environmental Law's research and capacity-building educational programs aim to propose new conceptual legal developments that can build the missing elements to produce an effective new partnership. While international law has its supporting roles, the challenge is essentially one for national law. Through comparative legal techniques, the university law departments, faculties and schools, which join the IUCN Academy, will propose new legal elements appropriate to forging a common approach to sustainable land use.

All legal systems provide their own jurisprudential foundations for this approach. The Holy Qu'ran in Islamic law, the principles of Civil Law, the norms in the cases of the Common Law, the precepts of Socialist Law, and the Customary Law values of traditional societies, all provide very similar provisions for stewardship of nature. From these diverse legal traditions, we can frame new national or local legislation to build the strength into the still nascent partnership for sustainable development.

In this quest, the Academy's legal scholars will need to draw on the kindred experts in environmental economics, ecology and other environmental sciences, and the social and political sciences. Until urban and rural leaders alike understand how the Earth's environmental systems bind their fates into one,¹ there will not be "sustainable development." It is the promise of environmental law to build that partnership.

The IUCN Academy for Environmental Law welcomes the insights and analysis of all the professors who attend its 2nd Colloquium, and also those who will read the published proceedings of these deliberations. The studies here will frame an agenda for future work, furthering the Academy's mission, to "examine how law advances a just society that values and conserves nature." The Academy is proud to be the partner of the University of Nairobi in launching these studies and thanks each participant for the commitment of time and resources to travel to Kenya. We expect productive and stimulating sessions. Best wishes to all!

Nicholas A. Robinson

4 October 2004



UNIVERSITY OF NAIROBI
OCTOBER 4 - 7, 2004
Nairobi, Kenya

¹ For an articulate example of one ecologist's call for urban dwellers to understand that their urban setting must be improved in tandem with the enhanced stewardship of the nature word, see Daniel B. Botkin, *Discordant Harmonies: A New Ecology for the 21st Century*.

PROGRAMME

Sunday, 3 October 2004

Arrivals and Registration
(Registration Desk will open at 2 pm)

Day One Monday, 4 October 2004

Observing United Nations' World HABITAT Day

08.00 – 09.00 Registration and Coffee

09.00 – 11.00 **Opening Ceremony**

Co-chairs of the 2nd Colloquium of the IUCN Academy of Environmental Law

For the University of Nairobi, on behalf of Universities around the world: Prof. Dr. Crispus M. Kiamba, Vice-Chancellor, University of Nairobi

For Kenya, Host Country: His Worship the Mayor Councilor Dick Wathika, Mayor, City of Nairobi
Hon. S. Amos Wako, MP, The Attorney General, Republic of Kenya

For the United Nations and IUCN:

Message from the Executive Director, United Nations Environment Programme (UNEP), Dr Klaus Töpfer
Message from Director General, IUCN, Achim Steiner
Message from United Nations' Secretary-General, H.E. Kofi Annan, presented by Ambassador Bhagwat Singh

Opening Address: Prof Ratemo Michieka, Director General, National Environment Management Authority, Kenya

11.00[†] – 11.30 Tea/coffee break

11.30[†] – 12.30 **Keynote address: The New African Convention and Its Potential for Advancing Sustainable Land Use Practices**

Dr. Ali Mohammad Mekouar, UN Food & Agricultural Organization (Rome)

12.30 – 13.30 Lunch – Colloquium Book Exhibit Opens



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ENVIRONMENTAL LAW

UNIVERSITY OF NAIROBI
OCTOBER 4 - 7, 2004
Nairobi, Kenya



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DEVELOPMENT**

**SECOND COLLOQUIUM OF
THE IUCN ACADEMY OF
ENVIRONMENTAL LAW**

**UNIVERSITY OF NAIROBI
OCTOBER 4 - 7, 2004
Nairobi, Kenya**

13.30 – 15.30 **Panel One: Legal Measures for Integrating Environmental and Social Factors in Spatial Development Planning**

Prof. John Nolon –Historic Legal Roots for “Smart Growth” in Zoning and Town and Country Development Planning (New York)

Prof. H.W.O. Okoth Ogendo– Climate Change Adaptation and Mitigation: Exploring the Role of Land Reforms in Africa (Kenya)

George Okoth-Obbo – The Environmental Impact of Refugees in Kenya: Legal, Policy and Accountability Considerations (Kenya)

Prof. Sunee Mallikamarl and Prof. Sutini Ratanavaraha – The Spatial Planning for Environmental Management in Thailand. (Thailand)

15.30 – 15.45 Tea/coffee break

15.45 – 16.30 Dr. Anna Kajumulo Tabajuka, Executive Director, UN-HABITAT

16.30 – 18.15 **Panel Two: Enhancing Effectiveness of EIA in Land Stewardship**

Prof. Michael Jeffery–EIA: Addressing the Major Weaknesses–Critique of Australian and Canadian Development Regimes (Australia)

Prof. Michael Kidd–Impact of EIA on Water Development (South Africa)

Prof. Lana Roux and Prof. Willemien du Plessis–EIA Legislation and the Importance of Transboundary Application (South Africa)

Prof. Cao Mingde–The Environmental Impact Assessment of Planning (China)

Dr. Alejandro Iza–EIA in Latin America (Argentina)

18.15 - 19.00 **IUCN Academy’s 1st Distinguished Lecture on Environmental Law**

Prof. Akio Morishima, Japan

19.15 – 21.00 Reception /Cocktail in Honor of UN World HABITAT Day, held in the gardens of the IUCN Eastern African Regional Office, Langata, Nairobi (bus transport), hosted by the IUCN Academy of Environmental Law

Day Two Tuesday, 5 October 2004

08.30 – 09.15 **The Role of Jurisprudence and the Judiciary in Promotion of Sustainable Development**
Lal Kurukulasuriya (UNEP)

09.15 – 09.30 Tea/Coffee break

PARALLEL SESSIONS

- **Comparative Land Use Practices & Sustainable Development**
- **Natural Resources Conservation**
- **Human Settlements**

NATURAL RESOURCES CONSERVATION

09.30 – 10.30 **Panel One: Environmental Law in Natural Resources Conservation**

Prof. Koh Kheng Lian – Land Stewardship & the Law: The ASEAN Heritage Parks and Transboundary Biodiversity Conservation (Singapore)

Prof. Nathalie Chalifour – Economic Incentives to Promote Land Stewardship: Are Legal and Policy Constraints Paralyzing Progress? (Canada)

Prof. José Heder Benatti – The Common Property and the Community Forest Management in the Brazilian Amazon Forest (Brazil)

Dr. Justice Nchunu – Managing Land Use and Environmental Conflicts in Cameroon (Brazil)

Prof. Jeremy Firestone – Ballast Water Management (USA)

10.30 – 11.30 **Panel Two: Legal Issues On Averting Land Degradation**

Dr. Philip Dobie – Drylands Management (UNDP Drylands Development Center)

Prof. Du Qun – Legislative Reform to Control Land Degradation in the People's Republic of China (Australia and China)

Prof. E. le Roux – Comparative Assessment of the Adequacy of Laws in South Africa, Namibia and Botswana under the UN Convention on Desertification (South Africa)

11.30 – 12.45 **Panel Three: Natural Resource Management**

Prof. Karen Bubna-Litic – Environmental Law and Irrigated Land in Australia (Australia)



UNIVERSITY OF NAIROBI
OCTOBER 4 - 7, 2004
Nairobi, Kenya



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ENVIRONMENTAL LAW

UNIVERSITY OF NAIROBI
OCTOBER 4 - 7, 2004
Nairobi, Kenya

Prof. Louis Kotze – Co-operative Environmental Governance in Developing Countries: Integration of Environmental Authorizations in South Africa (South Africa)

Prof. Biborbra Bello-Orubebe – EIA and Land Use: A Comparative Analysis of Recent Trends in the Nigerian and US Oil and Gas Industry (Nigeria)

12.45 – 14.00 Lunch

14.00 – 15.30 **Panel Four: Biodiversity Issues in Land Use and Environmental Law**

Prof. José Juan Gonzalez – Biodiversity Protection through Land Use Regulations (Mexico)

Mr. Emmanuel Kasimbazi – The Development of Environmental Law and Its Impact on Sustainable Use of Wetlands in Uganda (Uganda)

Prof. David Hodas – Climate Change & Land Use (USA)

Prof. Ed Couzens – Is Conservation a Viable Land Usage? Issues Surrounding the Sale of Ivory by Southern African Countries in 2004 (South Africa)

Dr. Mekete Bekele – Community Rights to Genetic Resources and their Knowledge: African and Ethiopian Perspectives (Ethiopia)

15.30 – 15.45 Tea/coffee break

HUMAN SETTLEMENTS

09.30 – 10.30 **Panel One: Legal Avenues Toward Building Sustainable Human Settlements**

Dr Parvez Hassan – An Urban Planning, Heritage and Environment in Pakistan (Pakistan)

Prof. Lye Lin Heng – The Garden City as an Urban Development Approach (Singapore)

Prof. Amber Pant – Nepal's Legal Initiatives on Land Use for Sustainable Development (Nepal)

Dr. Carla Hanna– Restoring Beirut & Lebanon's Environment (Lebanon)

Prof. Kombe - Sustainable Cities Programme, the Tanzania Experience (UN-HABITAT)

Prof. Peter Ngau – Land Use and Environmental Policy in Nairobi (Kenya)

10.30 -10.35 Tea/coffee break

10.45 - 11.45 **Panel Two: Water Resources for Human Settlements**

John Scanlon – Water as a Human Right (IUCN, Germany)

Dr. Graham Alabaster – The Interface Between Regulatory Frameworks and Informal Community Systems on Water and Sanitation (UN HABITAT)

Prof. Robyn Stein – Integrating Water and Land Reform: South Africa- A Case Study (South Africa)

Dr. Gerrit J. Pienaar and Dr. Elmarie van der Schyff – Nationalization of Water Rights in South Africa – Expropriation or Deprivation? (South Africa)

11.45 – 12.45 **Panel Three: Local Authorities and the Management of Land Resources**

Prof. Abdul Haseeb Ansari – Toward Sustainable Land Use Planning (Malaysia)

Prof. Linda Malone – Local Land Use Controls (USA)

Mr. Godber Tumushabe – Municipal and Urban Land Use Law (Uganda)

Prof. Li Guangbing – Urbanization and Environmental Protection in China (China)

Dr. Mohammed Ismail (Fahmy) – Sustainable Cities Programme, the Sri Lanka Experience (UN-HABITAT)

Prof. Jerry Magutu – The Role and Impact of Town Planning and Urban Design in Environmental Sustainability (Kenya)

12:45 – 14.00 Lunch

Plenary Resumes

14.00 - 15.15 **Plenary Panel: Biodiversity Protection and Land Use**

Dr. Patricia Kamari-Mbote – Land Tenure, Land Use and Sustainable Environmental Management in Kenya: Towards Innovative Property Rights in Wildlife Management (Kenya)

Ms. Nyokabi Gitahi – Conserving Wildlife Areas Outside Protected Areas Using Environmental Easements in Kenya (Kenya)

15.15 –15.30 Tea/coffee break

15.30 – 17.00 **IUCN Academy's 2nd Distinguished Lecture on Environmental Law**

Prof. Akio Morishima, Japan, and discussion



UNIVERSITY OF NAIROBI
OCTOBER 4 - 7, 2004
Nairobi, Kenya

- 17.00 – 17.30 Depart for University of Nairobi (bus transport)
- 17.30 – 18.30 Official photograph of the Colloquium at University of Nairobi
- 18.30 – 22.00 Reception and dinner at the Norfolk Hotel

Day Three Wednesday, 6 October 2004

- 06.30 – 15.00 **Study Excursion to Kitengela** - A Field Study of the settlement of land use disputes through the use of a wildlife conservation “leasing” initiative to accommodate both migration of wildlife, pastoral herds, while respecting traditional community rights and buffering land development sprawl stimulated by economic development incentives, covering 8,600 acres adjacent to Nairobi National Park. Transparent and public agreements now involve 117 family units, which maintain open lands for both migrations and their own pastoral uses. Land tenure and planning and environmental laws will be examined. Customary legal rights and systems will be a focus of the study

NB. The early start is to enable the convoy to go through the Nairobi National Park first, before proceeding to Kitengela. View wildlife in their habitat first

Lectures and Discussion during the Trip on with Benson Ole Mutunkei, David Nkebenye, Ogeli ole Makui, and others (Wildlife Foundation, Kenya)

Bus transport to/from Hotel and picnic box (**Participants encouraged to wear comfortable clothing**)

- 15.00 – 16.30 Bus transport from Kitengela to **Bomas of Kenya** for a cultural programme
 - 16.30 – 17.00 Return to the Grand Regency Hotel
- Free evening for flexible plans

Day Four Thursday, 7 October 2004

- 09.00 – 9.45 **IUCN Academy’s 3rd Distinguished Lecture on Environmental Law**
Prof. Akio Morishima, Japan
- 09.45 – 10.15 Discussion on Prof. Morishima’s lectures
- 10.15 – 10.30 Tea/coffee break



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Nairobi, Kenya

10.30 – 12.30 **Panel One: Sustainable Development and Land Use Management**

Dr. Hillary Masundire – Ecosystem approach (IUCN)

Prof. John Nolon – Framework Laws for Land Use Governance (USA)

Prof. Werner Scholtz – Promotion of Co-operative Governance Relating to Land Use: The Relevance of Co-operative Agreements for Developing Countries (South Africa)

Prof. Debra Horstein – Promotion of Sustainable Development Through Implementation of Corporate Social Responsibility (South Africa)

12.30 – 13.30 Lunch

13.30 – 15.30 **Panel Two: Environmental and Land Use Issues in Access to Justice**

Dr. Albert Mumma – Environmental Tribunals as a Tool for Promoting Sustainable Land Use: A Case Study of Kenya National Environmental Tribunal (Kenya)

Prof. Wasile W. Mandlana – Hindered Access to Justice: An Indictment of Sustainable Development (South Africa)

Prof. Jeremy Ridl – The Disclosure of Environmental Information in the Course of Legal Proceedings: Hidden Under the Lawyer's Gown (South Africa)

Prof. Antonio Benjamin – Brazilian Environmental Court Practice. (Brazil)

Prof. Hannelie Crous – Dispute Resolution in the Environmental Field (South Africa)

15.30 – 15.45 Tea/coffee break

15.45 – 16.45 **Panel Three: Land Use Prospects**

Prof. Nicholas A. Robinson – Human Settlement Priorities: Missing Legal Elements in Sustainable Development (USA)

Prof. Eckard Rehbinder – Promotion of Nature Conservation on Rural Land by Economic Incentives in the Framework of the Common Agricultural Policy of the European Union (Germany)

Dr. Heline S. Ferreira and Dr. Patryck de Araujo Ayala – The Fundamental Right to the Environment in the Brazilian and African Constitutional Experiences: A Contribution for a Comparative Analysis (Brazil)



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17.00

Closing Ceremony for Colloquium

Invitation to Attend the Academy's 3rd Colloquium, 10-15 July 2005, Macquarie University, Sydney, Australia – **Biodiversity Conservation, Law and Livelihoods: Bridging the North-South Divide**

Message from Vice Chancellor, Macquarie University (Australia)

Parting Remarks – Vice-Chancellor, University of Nairobi

Vote of Thanks to University of Nairobi Chair, IUCN Academy of Environmental Law by Prof Nicholas Robinson, and IUCN Commission on Environmental Law

Post Colloquium Events

Friday, 8 October 2004

09.30 – 16.30 **Meeting of the Collegium** (governing body) of the IUCN Academy of Environmental Law, comprised of the appointed representatives of the Member University Law Faculties, Law Schools and Law Departments (Open to university representatives and academic observers)

Venue: The Grand Regency Hotel (Agenda forthcoming)

19.00 – 21.00 **Working Dinner** for the Board of Governors of the IUCN Academy (By Invitation Only)

Saturday, 9 October 2004

10.00 – 14.00 **Academic Workshop on the Academy's Collaborative Scholarly Research in Environmental Law**

- Review Research Criteria and Classifications
- Critique Research Proposals from Woods Hole Academic Workshop
- Propose and Discuss Specific Collaborative Research Projects
- Identify Possible Collaborative University Faculty Research Teams

Venue: The University Council Chamber, University of Nairobi

Other Options for Friday through Sunday. Field Trips to Parks and Protected Areas (Individuals make their own arrangements)



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