Chief Justice: Hawaii Environmental Court ‘Very Successful’ In First Year

Before establishing it here, officials looked at the environmental courts in India. That country’s laws were discussed at a conference in Honolulu.

Almost a year after Hawaii’s Environmental Court made its debut, it received high marks last week at a conference in Honolulu on environmental law.

The court established specific judges and schedules – but no new facilities – to routinely address environmental cases. Proponents said they hoped judges’ familiarity with the cases would result in a more consistent application of environmental laws.

Twenty-two Hawaii judges, who also hear other types of cases, are assigned to the Environmental Court.

Speakers from India, California, Colorado and Delaware discussed climate change and environmental law at a University of Hawaii Manoa Law School event last week.

At the District Court level, it deals with day-to-day, misdemeanor offenses. At the Circuit Court level, more complex criminal cases are processed. Five to 10 percent of criminal cases go to trial, while misdemeanor cases rarely do.

Hawaii Chief Justice Mark Recktenwald, who helped choose the Environmental Court’s judges, said he looked at factors like ability to work well with
diverse community sectors and be flexible, since the court was new. He deemed its first year “very successful.”

Environmental Court was one of several topics discussed at the India-Hawaii Law Symposium hosted Thursday at the University of Hawaii Manoa’s William S. Richardson Law School. Experts talked about climate change, local environmental erosion and important decisions made by environmental courts worldwide.

‘They Will Understand The Nuances’

Hawaii District Judge Barbara Richardson said that from July 2015 to May 2016, more than 1,600 cases have been filed in the state’s Environmental Court, including 804 alleged violations of camping rules in state parks. Another 457 were for boating and ocean recreation violations, 206 involved aquatic resources and 152 were related to forestry and wildlife.

Common violations include overfishing ulua and papio, catching undersized octopuses and squid and entering prohibited state park areas, Richardson said.

Ten criminal cases have been filed so far at the Circuit Court level, according to Hawaii First Circuit Judge Jeannette Castagnetti. Maui has seen the most criminal cases, many of which involved hunting violations.

Supreme Court Associate Justice Michael Wilson said Hawaii looked at examples all over the world before establishing its Environmental Court.

The first case filed in Environmental Court (actually on its first day of existence) was Stop Cane Burning v. Hawaii Department of Health and Alexander & Baldwin, which addressed the longstanding, contested Maui sugar cane burning practice.

The case was settled and until Alexander & Baldwin ceases burning in December, the company agreed to place limitations on the times and locations for burning.

Denise Antolini, the associate dean of UH’s Richardson Law School, said there’s no way to quantify the Environmental Court’s impact yet, but she’s been analyzing data of its cases in partnership with the state Judiciary. Within a couple months, Antolini hopes to have a better idea of just how things have changed over the past year.

Consistent law enforcement strategies in specific areas could also impact the number of cases seen in court, Antolini said. It’s tricky to tell if the court has had an impact based on numbers alone, so she is speaking with judges, prosecutors
and **Department of Land and Natural Resources** officers to get a more detailed understanding of what those numbers might mean.

Having judges consistently see the same types of cases should improve their perspective, Antolini said.

“That’s what we’ve seen in traveling to neighbor islands — if a single judge sees all the cases, they will understand the nuances, they will be fairer overall,” Antolini said.

**Global Perspective On Courts**

Hawaii Supreme Court Associate Justice Michael Wilson said in his presentation that India, Brazil, Australia and China were Hawaii’s partners in working to develop the environmental court system. He said climate change was the greatest issue facing environmental judges worldwide and rising coastlines could particularly impact Waikiki, Oahu’s main tourist hub.

“The environment can’t fix itself,” Wilson said.

Hawaii’s Environmental Court was partially inspired by India’s National Green Tribunal. Indian guests at the symposium talked about their country’s version of the environmental court system.

Raj Kumar, vice chancellor of the Indian law school at **O.P. Jindal Global University**, said his school hosted Antolini and Wilson in 2013 to discuss how India’s environmental courts function. India’s version of the court, **National Green Tribunal**, hosted UH officials in 2015 to talk about environmental law and discuss specifics like how to train judges for environmental court.

*During a lunch break, guests enjoyed a hula performance in the courtyard of the Law School.*

Both Hawaii and India are constitutional democracies that face environmental challenges, he said. India’s courts function differently — half its judges have a judicial background and half have technical environmental expertise.

“In both countries, because of the democratic engagement, there has been a greater degree of consensus achieved in more recent times about the need for protecting the environment, about the need for fashioning public policy as well as legislation,” Kumar said.

Swatanter Kumar, former Supreme Court justice of India and current National Green Tribunal chairperson, said in his presentation that environmental law was
defined as being related to land, water, earth, or a person in relation to any of those elements.

“Nature doesn’t need us, we need the nature, he said. “And if we need the nature, we need to care for it.”

Hawaii’s Environmental Court doesn’t interpret the phrase “environmental law” quite as broadly as India does.

In establishing the court, Hawaii lawmakers limited its scope to include cases involving water, forests, streams, beaches, air, mountains and land or marine animals. There’s some room for flexibility and judges can determine on an individual basis whether a case should be decided in the court.