

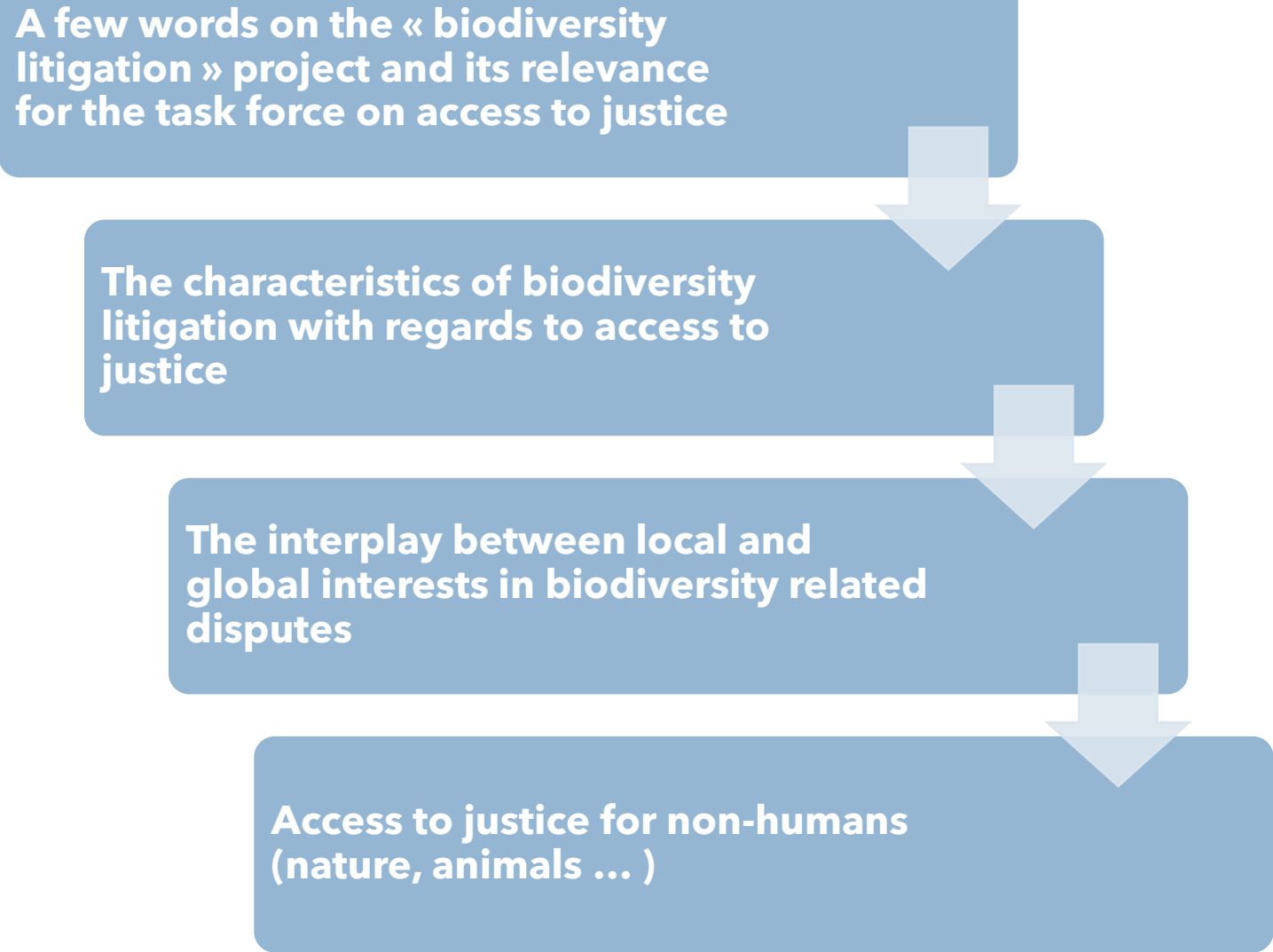


BIODIVERSITY AND ACCESS TO JUSTICE

Some current trends and future
challenges

Presentation by Guillaume Futhazar, Ph. D.
Co-editor of the book « Biodiversity Litigation »
(Oxford University Press)

A few words on the « biodiversity litigation » project and its relevance for the task force on access to justice



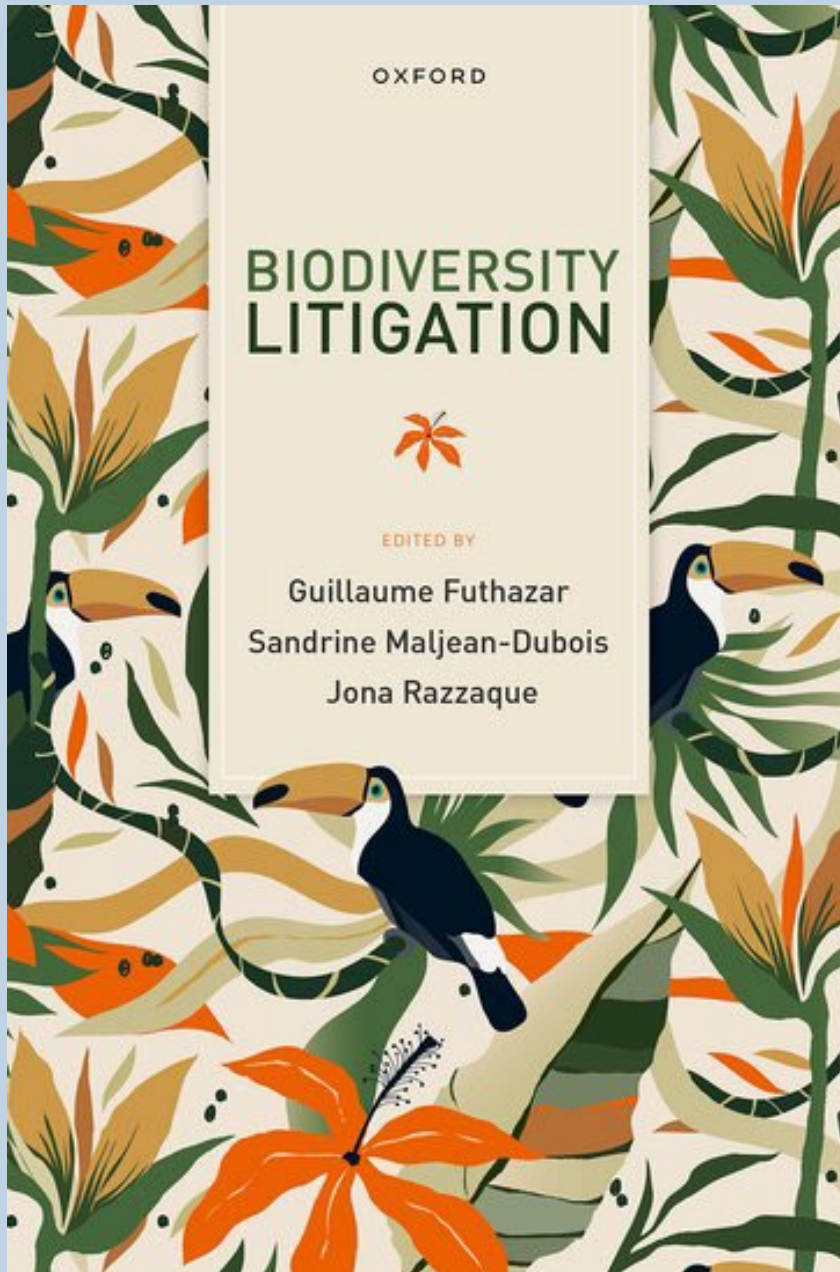
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graph TD; A["A few words on the « biodiversity litigation » project and its relevance for the task force on access to justice"] --> B["The characteristics of biodiversity litigation with regards to access to justice"]; B --> C["The interplay between local and global interests in biodiversity related disputes"]; C --> D["Access to justice for non-humans (nature, animals ... )"];
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The characteristics of biodiversity litigation with regards to access to justice

The interplay between local and global interests in biodiversity related disputes

Access to justice for non-humans (nature, animals ...)


OUTLINE OF THE PRESENTATION



PURPOSE OF THE BOOK

To examine the recent trends of biodiversity related cases

To determine whether these trends have been influenced by the development of international biodiversity law

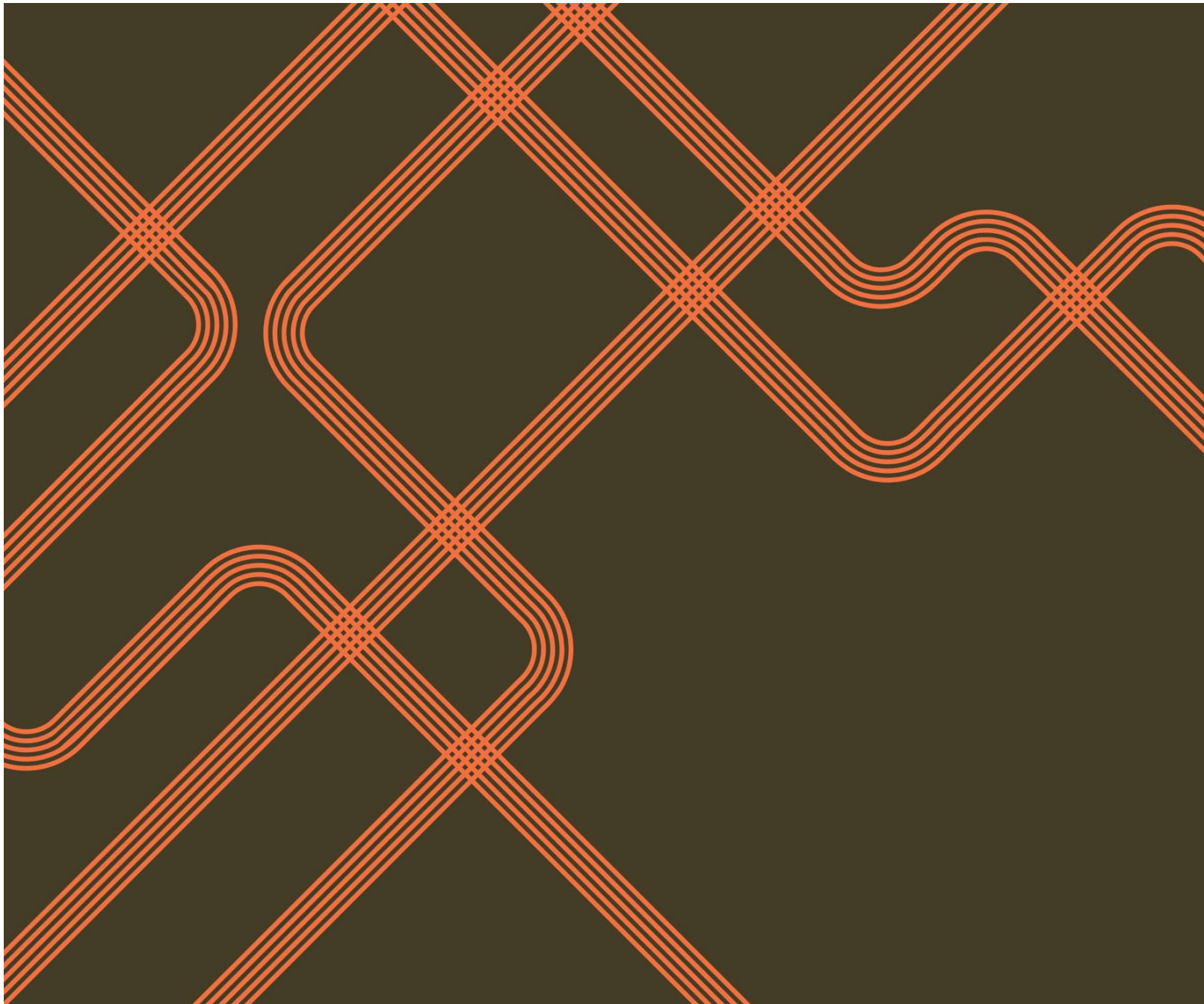


*ANY LEGAL DISPUTE AT THE NATIONAL, REGIONAL OR INTERNATIONAL LEVEL
THAT CONCERNS CONSERVATION OF, SUSTAINABLE USE OF AND ACCESS AND
BENEFIT- SHARING TO GENETIC RESOURCES, SPECIES, ECOSYSTEMS AND
THEIR RELATIONS*



ACCESS TO JUSTICE AND BIODIVERSITY LITIGATION

Which particularities in the broader framework of environmental litigation ?



THE INTERPLAY
BETWEEN LOCAL
AND GLOBAL
INTERESTS

Standing in biodiversity related disputes (1/3)

- **A common element of standing : a sufficient interest in the environmental matter at hand (cf. commentary of article 9)**
- **A potential difficulty : characterizing the interest of « global » actors for « local » matters**
- **An example : Appellate Administrative Court of Bordeaux, 31/01/2023, n° 21BX04291 (shark captures in La Réunion)**

Standing in biodiversity related disputes (2/3)

- **Can a national association (Sea Shepherd France), with a general purpose for the protection of marine biodiversity, have standing in a case involving « local » biodiversity?**

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- **In previous rulings, administrative courts considered that this constituted an over-extension of the standing of the association**
- **In this case, the court considered the migratory nature of the captured sharks, their listing on the IUCN Red List, the fact that their capture led to by-catch of endangered species. These elements were deemed sufficient to justify the interest of a national association**

Standing in biodiversity related disputes (3/3)

- **What was once seen as a local « damage to the environment » is now understood as a global concern, that warrants the standing of an association with a more general mandate.**
- **This opens up the question of the value of lost biodiversity at a local level and how this may shape the standing of different types of actors**



CAN THE LOSS OF LOCAL BIODIVERSITY
BE ENOUGH TO CHARACTERIZE THE
SUFFICIENT INTEREST OF ANY PERSON
INVESTED IN BIODIVERSITY
CONSERVATION?



SPEAKING FOR NON-HUMANS

THE RISE OF NON-HUMAN RIGHTS

- **From a legal point of view, non-human rights are still anecdotal within the broader field of environmental law. However, they are growing in numbers and will reshape how traditional legal concepts are understood (cf. ecojurisprudence.org, KAUFFMAN 2022, DARPÖ 2021)**
- **325 referenced RON initiatives in 2022 (mostly soft law and other para-legal initiatives)**
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- **Who can have standing for non-humans?**

THE VEILED POWERS OF REPRESENTATION

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- **The implications of representation of non-humans require **that procedures are carefully thought out for standing related questions****
 - **For instance see the Te Awa Tupua Act (subpart 3) in New Zealand, that creates a specific institution for the representation of the Whanganui river. The Pou Tupua serves as the human face of Te Awa Tupua and act in the name of the river.**

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- **However, rights and legal personality are often conferred without specifying the procedural implications of such a legal phenomenon. This may raise controversies when considering who gets access to justice**



THANK YOU FOR YOUR ATTENTION

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