Greening Justice: the Emergence of Environmental Courts & Tribunals

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Overview

• Background: Setting the Stage for Environmental Courts & Tribunals (“ECTs”)
  – International legal agreements
  – Environmental rights as a constitutional guarantee

• Development of Environmental Courts & Tribunals in the Latin American Region
  – Issued focused ECTs
  – Jurisdictional ECTs (administrative and judicial models)

• Future Trends
• Expanding the scope of the justice system to include initiatives centered on, or built around, environmental rights

• Worth a read: George Pring & Catherine Pring, Greening Justice: Creating and Improving Environmental Courts and Tribunals (The Access Initiative, World Resources Institute 2009)
Global View

350 Environmental Courts & Tribunals in 41 Countries

Nearly 20 of those can be found in 6 different Latin American Countries

How did we get here?
International Legal Instruments

- **1972 Stockholm Declaration**
  - First major international instrument to assert a connection between human rights and environmental protection

- **1982 World Charter on Nature**
  - Only international document with eco-centric perspective on environmental rights

- **1992 Rio Conference**
  - Call to action (Agenda 21, Chapter 8)
Since 1992 > 80 governments have passed laws providing citizens with greater access to environmental information.

More than 80 countries around the world have constitutional provisions addressing the environment.

Nearly 20% of countries with constitutions granting environmental rights are in Latin America (14)!
Constitutional Protection for the Environment

• Latin American countries with constitutional provisions protective of the environment, environmental rights:
  – Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guyana, Mexico, Nicaragua, Paraguay, Peru, and Venezuela
Constitutional Protection for the Environment

• Examples
  – Argentina (Art. 41): the right to a healthy and balanced environment fit for human development
  – Brazil: the right to an ecologically balanced environment
  – Chile (Art. 69): the right to live in a pollution-free environment
  – Colombia (Arts. 49 & 79): the right to enjoy a healthy environment
  – Costa Rica (Art. 50): the right to a healthy and ecologically balanced environment
Moving from Recognition to Action

• 1980s-1990s: UN Environment Programme ("UNEP") Global Judges Programme
  – Ad hoc advisory group of justices

• 2000: Conference held in Argentina on the role of the judiciary in environmental law
Building Blocks for Effective ECTs

• **12 Essential Elements**
  - Type of forum (judicial or administrative)
  - Legal jurisdiction (scope of legal authority)
  - ECT decisional levels (appealable or final decisions? Civil, criminal, administrative, or a combination?)
  - Geographic area (territory covered by ECT)
  - Case volume
  - Standing
Building Blocks for Effective ECTs

• 12 Essential Elements (cont.)
  – Costs
  – Access to scientific and technical expertise
  – Alternative dispute resolution (ADR)
  – Competence of ECT judges and decision-makers
  – Case management
  – Enforcement tools and remedies
ECTs in Latin America

• Multi-jurisdictional, issue-focused tribunal
  – Latin American Water Tribunal

• Jurisdiction-specific
  – ECTs based in one Latin American country

• Type of adjudicatory body
  – Administrative
  – Judicial
Multi-jurisdictional ECTs

- **Latin American Water Tribunal (LAWT)**
  - Founded in 1998 as Central American Water Tribunal (CAWT); 2005 - expanded jurisdictional reach to all of Latin America
  - Autonomous, independent, multi-jurisdictional organization focused on resolving water conflicts throughout Latin America
  - To date, the Tribunal has handled > 250 consultations, 58 cases, and 5 full trials (held in Costa Rica, Mexico, and Guatemala)

For more information: [http://www.tragua.com/index.html](http://www.tragua.com/index.html) (Spanish) or [http://www.tragua.com/index_english.html](http://www.tragua.com/index_english.html) (English)
CAWTCases

– 2000 Regional 1st Hearings (San Jose): 10 cases involving 6 Central American countries
  • Issues addressed: threats to ecosystems; pollution from mining; water resource usurpation
– 2004 Regional 2nd Hearings (San Jose): 9 cases involving all Central American Countries
  • Issues: invasive species; pesticides; deforestation; chemical discharges; public-private development projects (dams, highways) affecting waterways; resource allocation
LAWTCases

– 2006 Regional 1st Hearings (Mexico City): 13 cases involving 9 Latin American countries
  • Issues addressed: open pit mining; transport of nuclear material through the Panama Canal; resource allocation; soil contamination and runoff pollution; pollution of protected areas; human rights and environmental violations related to development projects; oil spills

– 2007 Regional 2nd Hearings (Guadalajara): 7 cases involving 4 Latin American countries
  • Issues addressed: open pit mining; development and construction projects; resource allocation
LAWT Cases

- **2008 Regional 3rd Hearings (Guatemala City):** 7 cases involving 4 Latin American countries
  - Issues addressed: water concession law; natural resource protection; open pit mining; agricultural and development projects; landfill; resource allocation

- **2009 Water Tribunal (Istanbul, Turkey):** 5 cases involving 8 countries from Europe and Latin America
  - Issues addressed: hydroelectric and dam projects; natural resource preservation; petition to government for action on past decisions of the LAWT
Jurisdiction-specific ECTs

- Judicial Bodies
  - Brazil
  - Bolivia
  - Chile
  - El Salvador

- Administrative Bodies
  - Costa Rica
  - Guyana
Jurisdiction-specific ECTs

• Brazil
  – 4 Federal Environmental Courts (Amazonian Region)
  – 3 State Environmental Courts

• Bolivia
  – Agricultural & Environmental Court

• Chile
  – 3 Regional Environmental Courts
Jurisdiction-specific ECTs

- **Costa Rica**
  - Environmental Administrative Court (EAC)
  - Ombudsman
  - Office of Environment Comptroller

- **Guyana**
  - Environmental Appeal Tribunal
  - Environmental Assessment Board

- **El Salvador**
  *(authorized by law, but not yet developed)*
Jurisdiction-specific ECTs: a closer look at Costa Rica

• Between 2007-2009:
  – EAC heard >2700 cases alleging violations or environmental damage by individuals and institutions throughout the country
  – Categories of environmental issues: forestry (1090 cases), water (994), “other” (including mineral extraction, wastes, etc.- 647)
  – EAC conducted >1800 inspections and held more than 800 full hearings
Jurisdiction-specific ECTs: a closer look at Costa Rica

• Resolutions:
  – On the 2700+ cases before the EAC, the court issued 600 substantive decisions, 479 injunctions, and 746 dismissals.
  – The remaining 9,111 complaints were referred to specialized institutions (such as the Ministry of Health, SETENA, DIGECA, etc.) with a technical expertise on the relevant subject.

For more information: [http://www.tribunalambiental.org/](http://www.tribunalambiental.org/)
What are the possible implications of emerging environmental courts in Latin America?
Future Trends

• Emergence of more ECTs throughout Latin America and/or changes to existing laws to allow for enforcement of environmental laws
  – El Salvador

• Increasing number of class action suits
  – Using ECTs as forum for environmental class action lawsuits
Thank you!

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