



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

GREENING JUSTICE?

- 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
 - Environmental law training materials (available at http://www.unep.org/law/Programme_work/Judges_programme/index.asp)
- 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> (Spanish) or http://www.tragua.com/index_english.html (English)

CAWT Cases

- 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

LAWT Cases

- 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/>



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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