SPECIALIZED ENVIRONMENTAL COURTS AND TRIBUNALS: A NECESSITY?

Luc Lavrysen, Amsterdam, September 28th, 2017

GLOBAL TENDENCIES
Based on:


**GLOBAL TENDENCIES**

- Explosion of number of ECTs since 2000
- For the moment 1200 ECTS, in 44 countries; discussions in 20 other countries
- Propelled by the fast development of environmental law principles and rules on the different levels of government
GLOBAL TENDENCIES

- Link between environmental law and human rights law
- Environmental and climate change crisis
- Critics on the ability of the general judicial system to respond in an effective way

DIVERSITY

Hugh differences in the various systems (5 Models)

**Model 1: Extensive competencies**
- Administrative, civil and criminal jurisdiction
- Environmental law in the broad sense, land use planning, renewable energy
- Large territory (sometimes various regional sections or local hearings)
DIVERSITY

- Combining legal, scientific and technical experience (technical judges or experts of the Court)

E.g. *Land and Environment Court of New South Wales (Australia)*

*National Green Tribunal (India)*
http://www.greentribunal.gov.in/

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DIVERSITY

Model 2 + 3: Intermediate competencies

Model 2: combination of administrative and civil jurisdiction – environmental and planning law, not energy law – legal and technical expertise – large territory

E.g. *Vermont Superior Court, Environmental Division* (US) – *Land- and Environmental Courts* (Sweden) – *Tribunal Ambiental* (Chile) – *Environment and Land Court* (Kenya)
DIVERSITY

Model 3: combination of civil and criminal jurisdiction + 450 Environmental Tribunals in PR China

Model 4: more limited competencies: specialized administrative Courts and Tribunals
- E.g. Vasaa Court (Finland), Environmental Court of New Zealand, Raad voor Vergunningsbetwistingen and Milieuhandhavingscollege (Flemish Region of Belgium)

DIVERSITY

- Model 5 – Specialised sections of General Courts
  - E.g. Environmental Courts (Philippines), Lahore High Court Green Bench (Pakistan), Hawai’i Environmental Courts

Preference for model 1, but national legal traditions and political circumstances can advocate for another model

Important to include civil law in the competencies of such courts and tribunals
### ADVANTAGES

- **Expertise:** Expert decision makers make better decisions
- **Efficiency:** Greater efficiency, including quicker decisions
- **Visibility:** Shows visible government support for the environment and sustainability and provides an easily identifiable forum for the public
- **Cost:** Can lower expenses for litigants and the courts
- **Uniformity:** Greater uniformity in decisions, so litigants know what to expect
- **Standing:** Can adopt rules that expand standing, for individuals, ENGO’s and PIL
- **Commitment:** Effectuates government’s commitment to the environment and sustainability

### ADVANTAGES

- **Accountability:** Greater government accountability to the public
- **Prioritization:** Ability to prioritize and move on cases that are urgent
- **ADR:** Broadens ability to use ADR and other non-adversarial dispute resolving processes, including restorative justice
- **Issue Integration:** Can deal in a more integrated way with multiple laws, particularly if the ECT has civil, criminal and administrative jurisdiction
- **Remedy Integration:** Can combine civil, criminal and administrative remedies and enforcement under one roof
- **Public Participation:** Involvement of the public can be increased
ADVANTAGES

- **Public Confidence**: The public’s confidence in the government and the judicial system can be increased, so that members of society are more likely to bring concerns to the system
- **Problem Solving**: Judges can look beyond narrow application of the rule of law and craft creative new solutions
- **Judicial Activism**: Can apply new international principles of environmental law and natural justice as well as national/local law

- **Potential Drawbacks can de avoided by smart design of the ECT system**

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