



Environmental Courts & Tribunals

A Guide for Policy Makers

by George (Rock) Pring & Catherine (Kitty) Pring
Global Environmental Outcomes LLC (GEO) and University of Denver
Environmental Courts & Tribunals Study
For the United Nations Environment Programme





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Foreword

Sound governance and enforcement of the environmental rule of law are crucial to delivering the 2030 Agenda for Sustainable Development and the Paris Agreement on Climate Change. However, as some countries face judicial backlogs of up to ten years, government reforms increasingly combine the expansion of infrastructure and personnel, with the use of specialised Environment Courts and Tribunals, which vary in both structure and performance. That is why UN Environment Programme commissioned this *ECT Guide* to inform policy makers on the existing situation, the lessons learned and the available options.

The importance of such options for national and international progress is underscored by the creation of a specific 2030 goal to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. This reinforces Principle 10 of the Rio Declaration, which acknowledges that sustainable development can only be achieved through access to effective, transparent, accountable and democratic institutions.

With over 1,200 environmental courts and tribunals now operating worldwide at the national and state/provincial level, this guide shares concise, practical advice and best practices to make them more effective, updating the 2009 “Greening Justice” report by the University of Denver Environmental Courts and Tribunals Study and published by World Resources Institute.

I hope it will be useful to policy makers and judiciary experts in all countries in their quest to deliver the 2030 Agenda, and I thank all of those who contributed their time and case studies.



Ibrahim Thiaw,
United Nations Assistant Secretary General
and Deputy Executive Director,
UN Environment Programme

Executive Summary

Improving the environmental rule of law, access to justice and environmental dispute resolution is essential for achieving the UN's 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs), particularly SDG Goal 16 – “to provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” Specialized **Environmental Courts and Tribunals (ECTs)** are now widely viewed as a successful way to accomplish this important goal.

The objective of this UN Environment guide is to provide the most current, comprehensive, comparative analysis of ECTs available – a synthesis of the experiences, opinions and recommendations of leaders at the forefront of the ECT field. It is designed to be a helpful **“roadmap”** for policy makers, decision makers, and other stakeholders who are exploring how to improve adjudication of environmental and land use disputes, to make them – in the memorable words of Australian court law – “just, quick and cheap.” It presents an easy **reference for those considering creating a new ECT or improving an existing one** – to make it fair, fast, and affordable.

This UN Environment guide is a 2016 update of the University of Denver ECT Study that produced the book *Greening Justice – Creating and Improving Specialized Environmental Courts and Tribunals*, published by the World Resources Institute (WRI) in 2009. This update clearly identifies the necessary goals, steps and standards for an effective ECT.

The **“explosion”** in the number of ECTs since 2000 is astounding. Today, there are over 1,200 ECTs in 44 countries at the national or state/provincial level, with some 20 additional countries discussing or planning ECTs. This continuing explosion is being driven by the development of new international and national environmental laws and principles, by recognition of the linkage between human rights and environmental protection, by the threat of climate change, and by public dissatisfaction with the existing general judicial forums.

A systems analysis of both traditional general courts and existing ECTs has been done to identify the hurdles to effective environmental dispute resolution and environmental justice. An ECT is **different from general courts** because it specializes in environmental cases and has adjudicators trained in environmental law. The decision-making process often

incorporates both lawyers and scientific/technical experts, and relies on alternative dispute resolution, open standing, streamlined case review and sophisticated use of information technology.

There are many different **models of ECTs** around the world, and this UN Environment guide describes the major choices. ECTs can be either courts (judicial branch) or tribunals (executive or ministerial branch), both reflecting the social, economic and environmental characteristics of the host nation. Some are free standing and independent, while others are “captives” inside the agency whose decisions they review. The specific ECTs described – such as the New South Wales, Australia, Land and Environment Court, India’s National Green Tribunal and the Environmental Courts of Kenya – are outstanding examples of each of the models, and employ many of the best practices identified by experts surveyed for this updated publication.

“**Best practices**” are recommended by expert judges, officials, academics, and other stakeholders and they are listed and explained because they enhance access to justice and support international principles of sustainability. Best practice examples include judicial independence, flexibility, use of ADR, comprehensive jurisdiction, open standing, effective remedies and enforcement powers, and unique case management and expert evidence tools. The guide also identifies **recent trends** in ECT development, including amalgamation, incrementalism and judicial reform, trends designed to make courts more open, transparent, accessible, affordable and accountable.

The guide outlines “**the steps**” on the road to ECT creation or improvement, including assessment of the existing judicial system, engaging stakeholders, assessing the need for change, selecting a model and planning the best practices which optimally serve each country’s unique judicial, legal, social, economic and political environment.

To prepare this 2016 update for UN Environment, the authors surveyed and consulted over 50 current ECT judges and other experts in 2015-16, reviewed a wealth of new ECT literature, and extensively updated the University of Denver ECT Study database. The guide includes in Appendices A, B, C and D current lists of known operating ECTs, ones in discussion, those created but never implemented, and the few that were created and disbanded. Perhaps most important is the Appendix E contact list of ECT and Access to Justice Experts, who can help policy makers and others understand more fully the challenges and opportunities in creating an ECT. The authors’ credentials are summarized in Appendix F, and recommended readings are provided in Appendix G.

Background

Reason for this Guide

This UN Environment guide to Specialized Environmental Courts and Tribunals (ECTs) is designed to provide an overview for policy makers, decision makers and other leaders who are interested in improving adjudication of environmental disputes. It identifies ECT features that can enhance the resolution of environmental cases, resulting in better informed decisions that directly support achievement of many of the UN's Post-2015 Sustainable Development Goals (SDG), particularly SDG Goal 16:

Promote Peaceful and Inclusive Societies For Sustainable Development, Provide Access to Justice for All and Build Effective, Accountable and Inclusive Institutions at All Levels.



- SDG 16,
<http://www.un.org/sustainabledevelopment/>

The guide describes different institutional models, gives examples of best practices in ECTs around the world, and provides a roadmap for those interested in exploring, creating or improving environmental dispute resolution institutions in their country.

The initial research for this book was done in 2007-2009 by the University of Denver Environmental Courts and Tribunals Study (ECT Study), co-directed by George (Rock) Pring and Catherine (Kitty) Pring, the authors of the 2009 book entitled **Greening Justice: Creating and Improving Environmental Courts and Tribunals**. That book was based on extensive on-site, telephone and email interviews with almost 200 ECT-knowledgeable justices and judges, staff,



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