



# Environmental Courts & Tribunals

## A Guide for Policy Makers

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## 2.0 What is an ECT?

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### 2.1 Characteristics of ECTs

“The judiciary has a role to play in the interpretation, explanation and enforcement of laws and regulations. ... Increasingly, it is being recognized that a court with special expertise in environmental matters is best placed to play this role in the achievement of ecologically sustainable development.”<sup>32</sup>

ECTs are now found on every inhabited continent, in large countries and small, under democratic and non-democratic regimes and in rich developed nations and the poorest least developed nations alike. They are found in common law, civil law, Asian law and mixed law legal systems; in Christian, Muslim, Hindu, Buddhist and other religious societies. They are also found in countries with highly developed environmental laws and those with weak or inadequately enforced ones, and at all government levels, including national, state/province and local/municipal. Geographically and politically, ECTs now cover an astonishing percent of the people and land surface of the world.

As mentioned, local/municipal ECTs – of which there are a great many – have not been included in this guide’s list of existing ECTs, only those serving at the national or state/province level or serving as part of such a system (with the exception of New York City’s “stand alone” ET, as explained later). Internationally, there are no true, comprehensive-jurisdiction ECTs at the multinational level, although a few international bodies handle environmental disputes, such as the International Court of Justice, the Tribunal for the Law of the Sea and the European Court of Justice. These international bodies have not been included in this study because their jurisdictions and enforcement powers are limited and not a model for ECTs.

#### A SAMPLE OF THE DIVERSE NATIONS WITH ECTS:

- Australia
- Bangladesh
- Brazil
- Canada
- Chile
- China
- Costa Rica
- El Salvador
- England
- India
- Japan
- Kenya
- Malawi
- New Zealand
- Pakistan
- Philippines
- Samoa
- Sweden
- Thailand
- Trinidad & Tobago
- USA

The ECT models analyzed are as different as the countries creating them, and different from the general courts in their countries. **Environmental courts (ECs)** range from fully developed, independent judicial branch bodies with highly trained staffs and large budgets all the way to simple, underfunded village ECs that handle environmental cases one day a month with rotating judges. **Environmental tribunals (ETs)** range from complex administrative-branch bodies chaired by ex-Supreme Court justices, with law judges and science-economics-engineering PhDs, to local community land use planning boards with no law judges. Some handle hundreds or thousands of cases a year (New York City's ET processed over 600,000 cases in FY 2015, and China's 456 ECs decided 233,201 cases in the last 2 years!), yet others decide as few as 3 or 4 cases a year. Some have very comprehensive powers – including civil, criminal and administrative law powers combined – while others have only 1 or 2 of those. Some have jurisdiction over the country's full range of both environmental and land use planning/development laws, while others are limited to one without the other, while still others have jurisdiction only over only one limited type of case, such as the adequacy of environmental impact assessments (EIAs). However, the trend is to expand ECT jurisdictions to be more comprehensive and inclusive, so that issues can be addressed in an integrated fashion.

In fairness, creation of an ECT may not be the ideal solution to improve environmental justice and the rule of law when they are found lacking. There are advocates both for and against specialization. Specialized courts and tribunals have existed for many years (e.g. family, traffic, tax, drugs, bankruptcy, etc.). However, specialized environmental ones have gained widespread international attention only in the last decade or two. Here is a summary of the major arguments for and against.

## 2.2 Positive Features

Proponents of ECTs cite the following “pro” arguments in favor of specialized environmental adjudication bodies:<sup>33</sup>

1. Expertise: Expert decision makers make better decisions.
2. Efficiency: Greater efficiency, including quicker decisions.
3. Visibility: Shows visible government support for the environment and sustainability and provides an easily identifiable forum for the public.
4. Cost: Can lower expenses for litigants and the courts.