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ECTs Can Improve All Rio Prin. 10 **Green Access Rights for the Public:**

- 1. Access to Information
- 2. Access to Public Participation in
- 3. Access to Environmental Justice

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Access to Information

- · ECT rules can make information public about cases, process, outcomes
- ECT website
- ECT does independent research, site visits, etc.
- · Public access to hearings
- · Posting of court's, parties', experts' documents on line
- · Requiring disclosure of information from government and parties.

Access to Public Participation

- · Allow public interest complaints against government, private parties
- Expand "standing" to:
 - Public - Environmental NGOs
 - Class actions
 - Future generations
- Permit "friend of the court" briefs
- Allow greater public involvement in discovery, evidence gathering, etc.

Access to Justice

- Reduced costs
- Speed process
- Expert judges, decision-makers
- Consistent decisions
- More government and private sector transparency and accountability
- Control "SLAPPs"
- Provide a "problem-solving" approach

Increased public confidence

The Study Findings:

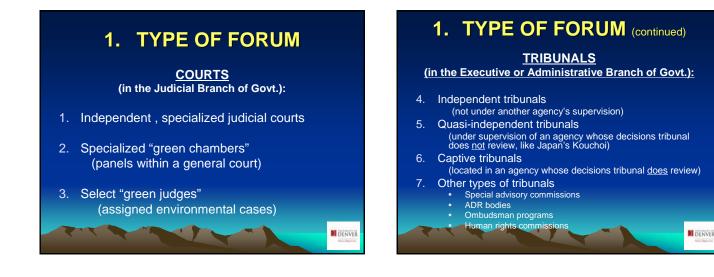
Successful ECTs are built on 12 key "Building Blocks" (Design Decisions) – and <u>all</u> affect Green Access:

- 1. Type of forum
- 2. Legal jurisdiction
- 3. Level of review
- 4. Geographic coverage
- 5. Case volume
- 6. Standing
- 7. Costs
- 8. Access to scientific and technical expertise
- 9. Effective remedies
- 10. Alternative dispute resolution (ADR)
- 1. Competence of judges and decision-makers

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12. Creative rules of procedure



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2. LEGAL JURISDICTION

What laws are assigned to the ECT?

- Constitutional rights?
- Environmental quality laws?
- Natural resource development laws?
- Natural resource protection laws?
- Land use (town & country) planning laws?
- Public health laws?
- Exemptions (issues of national significance, nuclear, minister's discretion, etc.)?

2. LEGAL JURISDICTION (cont.)

What kinds of enforcement jurisdiction?

- Civil?
- Criminal?
- Administrative (dealing with Govt. action)?
- Combination?



5. CASE VOLUME

Will the ECT be used enough? Depends on:

- Public awareness and activism
- Respect for ECT
- Environmental laws adequacy, complexity
- Scope of laws under ECT's jurisdiction
- Accessibility vs. barriers that keep people away
- Government support
- Geographic coverage
- Economic conditions, development policy
 ECT's enforcement effectiveness

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5. CASE VOLUME (continued)

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An ECT needs enough cases to justify itself

 ECT case loads range from 100,000s of cases per year (New York City) to as few as 5 (Trinidad-Tobago) !

• No minimum number needed for a green chamber or a green judge (better to start small?)

6. STANDING

How "open" is the ECT's door?

ECTs vary from to broadly accessible to extremely closed . . . depending on their "standing" rules

Standing rules govern <u>who</u> can bring cases or participate in them

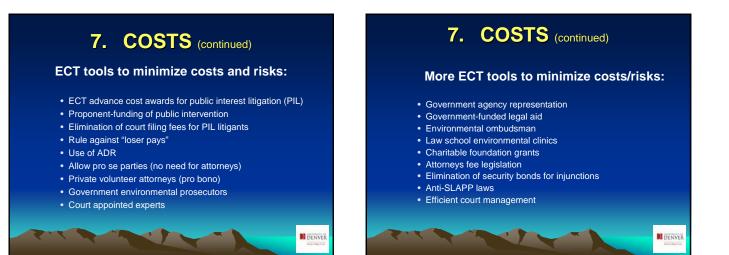
They can be a huge barrier to A2J and the ECT's success.

7. COSTS

Another huge barrier to access to justice, costs can include:

1. Court fees

- 2. Professional fees (attorneys, experts, etc.)
- 3. Costs of lost work, travel, other resources
- 4. Cost-shifting ("loser pays" winning party's costs)
- 5. Security for costs for an injunction
- 6. Risk of countersuit a "SLAPP"



8. ACCESS TO SCIENTIFIC & TECHNICAL EXPERTISE

1: ECTs can provide expertise

- · Expert judges or commissioners
- Standing expert panels
- Special commissions
- Court staff consultants-inspectors
- Agency's experts
- Prosecutor's experts
- Independent scientific institutes
- · Community volunteer experts list

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8. ACCESS TO SCIENTIFIC & <u>TECHNICAL EXPERTISE</u> (cont.)

2: ECTs can <u>manage</u> parties' experts

- Meetings of experts to focus issues
- Parties' experts made responsible to the court, not to parties

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- Concurrent testimony
- Issue sequencing by court
- Pre-filed expert testimony
- ECT calls own experts.

9. EFFECTIVE REMEDIES

- 1. **INJUNCTIONS**—Order to act or to not act • Preliminary, interlocutory, permanent
- 2. **DAMAGES**—Award of money to compensate for loss
 - Compensatory, punitive, natural resource damages
- RESTITUTION—Award of money measured by the cost of restoring status quo or of depriving wrongdoer of gain

Cleanup and restoration, unjust enrichment

9. EFFECTIVE REMEDIES (cont.)

- 4. **DECLATORY JUDGMENTS**—Order determining rights, duties, relationships, constitutionality, or interpretation of laws
- 5. ADMINISTRATIVE REMEDIES—Order concerning acts or inaction of government agencies or officials
 Affirm, reverse, modify, remand government decision; injunction against government; continuing mandamus
- 6. CRIMINAL PENALTIES

Incarceration, monetary fines, required work, government supervision, restorative justice



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11. COMPETENCE OF JUDGES & DECISION-MAKERS

Competence based on 6 factors:

- 1. Initial qualifications
- 2. Selection process
- 3. On-going training in environmental law
- 4. Tenure
- 5. Salary
- 6. Career Path

12. CREATIVE RULES OF PROCEDURE

To be successful, ECTs should have the power to adopt new rules and procedures, beyond those of the general courts.

The following are some examples of ECT rules which increase Green Access . . .

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12. CREATIVE RULES OF PROCEDURE (continued)

- · Increase ease of filing cases
- · Open standing to PILs and NGOs
- Preliminary injunctions
- Relaxed rules of discovery, evidence, and procedure
- · Increase public access to court documents
- Incorporate information technology

12. CREATIVE RULES OF PROCEDURE (continued)

- Wide range of ADR tools
- Alternate court hours (weekends, evenings)
- Special rules for SLAPPs
- Traveling courts
- Creative sentencing
- Sentencing database
- Continuing mandamus

12. CREATIVE RULES OF PROCEDURE (continued)

- Helpful case management tools:
 - Case managers
 - ADR screening in advance
 - Court assistance for litigants
 - Case tracking process
 - Directions hearings timelines on cases
 - Computer data management
 - Video- and tele-conferencing of hearings

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- ECT website

THE FUTURE: 10 PREDICTIONS

- COMPLEXITY: Environmental laws will become increasingly complex – driven by climate change, demands for sustainability, and other new issues – requiring a "problem-solving approach," not just routine law application
- GROWTH: Increase in ECTs and countries with ECTs
- INNOVATION: More innovation in ECT processes
- ADR: Increased use of ADR
- INTEGRATION: More ECTs with have integrated jurisdiction over both environmental laws and land use planning laws – increasing ECTs' coverage and caseload

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THE FUTURE (continued)

- COLLABORATION: Expanded collaboration between ECT judges and decision-makers from different nations
- CAPACITY BUILDING: Increasing aid and training for ECTs from governments and NGOs (UNEP, USAID, World Bank and other IFIs, ABA-ROLI, etc.)
- EVALUATION: More rigorous performance evaluation of ECTs
- INTERNATIONAL: Creation of multi-country ECTs to deal with transboundary and global problems

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HUMAN RIGHTS: Increased recognition of human rights to a clean, healthful, quality environment.



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