Developments and Challenges in Green Litigation

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Developments and Challenges in Green Litigation

- Green Litigation
  - Meaning and practice

- Developments
  - A jurisprudencedence of principles

- Challenges
Green Litigation

- Litigation as a mosaic of actors and (horizontal and vertical) spaces
  - Courts of justice x public opinion tribunals

- Judges of the elements of Nature: a long history
  - Land, water, wildlife, forests, soil, air

- Nuances of “green”
  - Holistic approach
  - Pure blood cases x mixed cases
Evolution

- Legislative, administrative and judicial
- “The Union shall protect and conserve the natural environment” (section 45)

Judicial evolution

- Where are the cases? The difference of environmental judges and judges with environmental jurisdiction and cases
- Who are the judges?
- What type of judicial method?
Judicial Method

- Incorporation of the environmental/ecological vocabulary into the Courts’ vernacular
- Blend of common law and civil law perspectives and techniques
- Extensive reliance on legal principles
- Environmental Rule of Law (2012)
Traditional Principles

- Principle of Prevention
- Polluter-Pays Principle
- User-Pays Principle
- Precautionary Principle
- Principle of amelioration
Emerging Principles

■ Ecological function of property rights
  - “The Union is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere” (section 37, a)

■ “In dubio pro Natura” Principle
  - Technique of interpretation and reversal of the burden of proof
Emerging Principles

- Principle of non-regression
- Resilience Principle
- Principle of the “propter rem” nature of environmental obligations
Challenges

- Judges with awareness and knowledge, but without cases

- The “petit” judge syndrome
  - Limits of jurisdictional boundaries

- Specialized courts and non-specialized appeals

- Judicial Loneliness
  - The Global Judicial Institute on the Environment
Launched in 2006, with a strong input from the ADB and the Asian/Pacific Region

Registration in Geneva with Secretariat in Nairobi (UN Environment)

Still in the implementation phase

Website and training programs