

## ARTICLE

# *Transnational Environmental Law and Grass-Root Initiatives: The Case of the Latin American Water Tribunal*

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### Abstract

This article analyzes the role played by the Latin American Water Tribunal (*Tribunal Latinoamericano del Agua – TRAGUA*) (LAWT) in the resolution of environmental disputes over water resources. Since its inception in 1998, the LAWT has emerged as a non-governmental body with a multidisciplinary composition and a mandate based on both formal and informal sources of law, which holds public hearings in order to address water-related complaints. This article explores whether (and the ways in which) the LAWT is contributing to the resolution of environmental disputes concerning water resources. The main underlying thesis is that, whereas the traditional model for interstate dispute settlement offers only limited possibilities of redress to non-state actors (mainly individuals and groups), the LAWT provides them with the opportunity to present their demands before an environmental justice forum.

**Keywords:** Right to water, Environmental justice, Environmental dispute settlement, Transnational environmental law, Latin American Water Tribunal, Water tribunals

## 1. INTRODUCTION:

### A TRANSNATIONAL APPROACH TO WATER ISSUES

Access to water has become a topical issue in the scholarly literature. However, the enforcement of water rights has proved to be a difficult task. Transnational initiatives (at the international and regional levels) have arisen to enforce specific legislation

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relating to water resources. Since its inception in 1998, the Latin American Water Tribunal (*Tribunal Latinoamericano del Agua – TRAGUA*) (LAWT or Tribunal) has emerged as a non-governmental body with a multidisciplinary composition and a mandate based on both formal and informal sources of law.<sup>1</sup>

The LAWT's activities are based upon international environmental law and relevant environmental principles, namely, the sustainable development principle and the precautionary principle. Within its mandate, the Tribunal is committed to protecting water resources in the region, including such issues as privatization of water utilities, mining activities, access to water in indigenous territories and water pollution.<sup>2</sup> It holds public hearings to address water-related complaints.<sup>3</sup> The legal framework includes relevant international environmental law norms that protect natural resources; international human rights law – in particular, the 1989 International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries<sup>4</sup> and the 2007 United Nations (UN) Declaration on the Rights of Indigenous Peoples<sup>5</sup> – and the principles set out in the Latin American Water Declaration.<sup>6</sup>

In this article, I analyze the role played by the LAWT in resolving environmental disputes over water resources. This article explores whether and the ways in which the LAWT contributes to resolving environmental disputes relating to access to water. The main argument is that, whereas the traditional model for interstate dispute settlement offers only limited possibilities for redress to non-state actors (mainly individuals and groups), the LAWT provides them with the opportunity to present their demands in a quasi-judicial forum. The research also looks at how international environmental law accommodates global civil society approaches as the driving force behind transnational lawmaking processes.<sup>7</sup>

The article is structured as follows. The next section explores the current state of environmental dispute resolution and access to water, in particular, in Latin America. The third section presents a critical analysis of the LAWT's main features and functions under international environmental law. The fourth section examines three case studies focusing on the verdicts issued by the LAWT and their impact on the resolution of the disputes 'on the ground'. Finally, the fifth section states my conclusions.

<sup>1</sup> See R.A. Wessel, 'Informal International Law-Making as a New Form of World Legislation?' (2011) 8 *International Organizations Law Review*, pp. 253–65. See further A. Boyle & C. Chinkin, *The Making of International Law* (Oxford University Press, 2007).

<sup>2</sup> A brief description of complaints submitted is available in Spanish on the LAWT website, available at: <http://tragua.com/audiencias>.

<sup>3</sup> The LAWT (also known as TRAGUA, its acronym in Spanish) was established in 1998 and initially the main geographical area covered by its activities was Central America. For this reason the Tribunal was originally known as the Central American Water Tribunal and was subsequently renamed the Latin American Water Tribunal.

<sup>4</sup> Geneva (Switzerland), 27 June 1989, in force 5 Sept. 1991, available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169).

<sup>5</sup> New York, NY (US), 13 Sept. 2007, available at: <http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx>.

<sup>6</sup> LAWT, 'Declaración Latinoamericana del Agua' ('Latin American Water Declaration') (1998), available at: <http://tragua.com/quienes-somos/declaracion-del-agua>.

<sup>7</sup> See generally M.J. Warning, *Transnational Public Governance: Networks, Law and Legitimacy* (Palgrave Macmillan, 2009).

## 2. THE RIGHT TO WATER AND ENVIRONMENTAL DISPUTE RESOLUTION

### 2.1. *Access to Water as a Human Right*

Access to water as a human right lies at the intersection of human rights and environmental law. In analyzing this right, human rights litigation and the protection of the environment come together. The enforcement of the human right to water embraces issues such as water pollution from a human rights perspective as opposed to a more traditional ‘water management’ approach.<sup>8</sup>

Both the Declaration of the United Nations Conference on the Human Environment of 1972 (Stockholm Declaration)<sup>9</sup> and the 1992 Rio Declaration on Environment and Development (Rio Declaration)<sup>10</sup> place people at the centre of concerns for sustainable development, and highlight that they are entitled to a healthy environment (Rio Declaration, Principle 1) and access to justice in environmental matters (Rio Declaration, Principle 10).<sup>11</sup> A considerable number of cases involving environmental protection have arisen before international bodies,<sup>12</sup> such as the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS)<sup>13</sup> and the dispute settlement bodies of the World Trade Organization (WTO).<sup>14</sup> At the same time, regional human rights courts have become increasingly involved in environmental protection. This seems to be the case for the main judicial bodies instituted by regional human rights treaties – namely the European Court of Human Rights (ECtHR);<sup>15</sup> the Inter-American Court of Human Rights (IACtHR);<sup>16</sup> and the African Commission on Human and Peoples’ Rights (ACHPR).<sup>17</sup>

<sup>8</sup> See D. Anton & D. Shelton, *Environmental Protection and Human Rights* (Cambridge University Press, 2011).

<sup>9</sup> Stockholm (Sweden), 16 June 1972, available at: <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503>. The first two principles of the Stockholm Declaration link human rights and the environment.

<sup>10</sup> Rio de Janeiro (Brazil), 3–14 June 1992, available at: <http://www.un.org/documents/ga/conf/151/aconf15126-1annex1.htm>.

<sup>11</sup> *ibid.*

<sup>12</sup> See generally A. Boyle & J. Harrison, ‘Judicial Settlement of International Environmental Disputes: Current Problems’ (2013) 4(2) *Journal of International Dispute Settlement*, pp. 245–76; T. Stephens, *International Courts and Environmental Protection* (Cambridge University Press, 2009), pp. 345–65.

<sup>13</sup> *Southern Bluefin Tuna Cases* (Provisional Measures), ITLOS Nos. 3 and 4 (1999); *MOX Plant Case* (Provisional Measures), ITLOS No. 10 (2001).

<sup>14</sup> WTO, *United States Import Prohibition of Certain Shrimp and Shrimp Products (Shrimp Turtle Case)*, 12 Oct. 1998, WT/DS58/AB/R.

<sup>15</sup> See ECtHR, 9 Dec. 1994, *López Ostra v. Spain*, appl. no. 16798/90, [1994] Series A, No. 303-C, and ECtHR, 19 Feb. 1998, *Guerra & Others v. Italy*, appl. no. 14967/89, *Reports* 1998-I.

<sup>16</sup> E.g. *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of 31 Aug. 2001, IACtHR, (Ser. C) No. 79 (2001); *Metropolitan Nature Reserve v. Panama*, Case 11.533, 22 Oct. 2003, Report No. 88/03, IACtHR, OEA/SerL/V/II.118 Doc. 70 Rev. 2 at 524 (2003).

<sup>17</sup> *African Commission on Human and Peoples’ Rights v. Kenya*, Application No. 006/2012, 12 July 2012; African Charter on Human and Peoples’ Rights (AChPR), Banjul (Gambia), 27 June 1981, in force 21 Oct. 1986, available at: [http://www.achpr.org/english/\\_info/charter\\_en.html](http://www.achpr.org/english/_info/charter_en.html), Art. 24, Right to a General Satisfactory Environment.

Environmental disputes fall into the category of public interest litigation, the scope of which, according to Schall, has been defined in the following terms:

(1) there is a public interest in the outcome of the litigation; (2) the plaintiff has no personal, proprietary or pecuniary interest in the outcome, or if such interest exists, it does not justify the litigation economically; and (3) the litigation raises issues of importance beyond the immediate interests of the parties.<sup>18</sup>

Complaints processes before these human rights bodies are a means to further environmental protection by facilitating access to environmental information, participation in environmental decision making, and access to justice in environmental matters.<sup>19</sup> Nevertheless, there are limitations to these endeavours in proceedings before such bodies. Firstly, behaviour must qualify as a human rights violation, and there must be a victim. Secondly, not everyone has the legal standing to bring a case before human rights bodies.

The enforceability of the right to water and, in general, of economic, cultural and social rights has been addressed over the past years.<sup>20</sup> In 2002, General Comment No. 15 of the UN Committee on Economic, Social and Cultural Rights (CESCR) defined the right to water as the right of everyone ‘to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses’.<sup>21</sup> According to the General Comment, nation states ‘have to adopt effective measures to realize, without discrimination, the right to water’.<sup>22</sup> In this iteration of the right to water, the 2010 Resolution of the UN General Assembly (UNGA) on the Human Right to Water and Sanitation underlined the scope and nature of the right.<sup>23</sup> This Resolution is a step towards the recognition of a fully fledged human right to water.<sup>24</sup> Further to these instruments, in 2011 the Human Rights Council adopted Resolution 18/1 on the Human Right to Safe Drinking Water and Sanitation.<sup>25</sup>

Despite these legislative efforts, people around the globe face significant difficulties in accessing water.<sup>26</sup> These difficulties are underlined in the 2006 UN Human

<sup>18</sup> Ch. Schall, ‘Public Interest Litigation Concerning Environmental Matters before Human Rights Courts: A Promising Future Concept?’ (2008) 20(3) *Journal of Environmental Law*, pp. 417–53, at 419.

<sup>19</sup> UN Economic Commission for Europe (UNECE), Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), Aarhus (Denmark), 25 Jun. 1998, in force 30 Oct. 2001, available at: <http://www.unece.org/env/pp/welcome.html>.

<sup>20</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR) (New York, NY (US), 16 Dec. 1966, in force 3 Jan. 1976, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>), Art. 20, underlines the obligation of each party ‘to take steps ... to *guarantee* the maximum of its available resources with a view to achieving progressively the full realisation of the rights recognised in the Present Covenant’.

<sup>21</sup> CESCR, General Comment No. 15 (2002), Economic and Social Council, E/C.12/2002/11, 20 Jan. 2003, available at: <http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94>.

<sup>22</sup> *Ibid.*, at p. 2.

<sup>23</sup> UNGA, A/64/L.63/Rev.1, 26 July 2010, available at: [http://www.internationalwaterlaw.org/documents/intldocs/UNGA\\_Resolution\\_HR\\_to\\_Water.pdf](http://www.internationalwaterlaw.org/documents/intldocs/UNGA_Resolution_HR_to_Water.pdf).

<sup>24</sup> This resolution was backed by the majority of UN Member States; it was adopted by 122 votes in favour, none against and 41 abstentions.

<sup>25</sup> Human Rights Council, 12 Oct. 2011, available at: <http://www.un.org/es/comun/docs/?symbol=A/HRC/RES/18/1&clang=E>.

<sup>26</sup> E. Brown Weiss, ‘The Coming Water Crisis: A Common Concern of Humankind’ (2012) 1(1) *Transnational Environmental Law*, pp. 153–68.

Development Report,<sup>27</sup> which highlights ‘the deep inequalities in life chances that divide countries and people within countries on the basis of wealth, gender and other markers for deprivation’.<sup>28</sup> To make matters even more complex, the transnational effects of climate change on water availability will worsen the current situation.

Considering all circumstances, the enforceability of the right to water, as secured through the implementation and adoption of measures to ensure effective access by citizens to safe water and sanitation, is crucial.<sup>29</sup> This leads to the question of the ‘justiciability’ of the right to water, which involves the activity of judicial bodies and various enforcement mechanisms designed to protect human rights.<sup>30</sup> Where the right to water is explicitly recognized in national constitutions, national courts (especially constitutional courts and supreme courts) may uphold that right in a case of violation.<sup>31</sup> Where the right to water is not explicitly enshrined, national courts may at least provide an authoritative interpretation that protects the right to water through the recognition of other rights, such as the right to life or to a healthy environment.<sup>32</sup>

In this regard, identifying effective international and national legal mechanisms for enforceability and redress is critical, since the availability of water resources does not necessarily translate into access to water. Although Latin America possesses approximately one-third of the world’s freshwater resources, a significant percentage of the population has no access to safe water and sanitation. It is estimated that nearly 14% of the Latin American population (71.5 million people) does not have access to potable water; 63% of this population (45 million people) lives in rural areas,<sup>33</sup> and only 20% of the population has access to adequate sanitation.<sup>34</sup> Unequal access to water is also related to the broader issue of equity in

<sup>27</sup> UN Human Development Report 2006, ‘Beyond Scarcity: Power, Poverty and the Global Water Crisis’ (UNHDR 2006), United Nations Development Programme, 2006, available at: <http://hdr.undp.org/en/media/HDR06-complete.pdf>.

<sup>28</sup> *Ibid.*, at p. 27.

<sup>29</sup> E. Chapple & F. Leitch, ‘The Right to Water: Does it Exist and is it Justiciable Content?’, Paper presented at the Australian National University (ANU) College of Law, Environmental Law Student Society Symposium, 28 May 2011, available at: <http://law.anu.edu.au/coast/events/environment/papers/chapple&leitch.pdf>. See also Harvard Law Review Association, ‘What Price for the Priceless?: Implementing the Justiciability of the Right to Water’ (2007) 120(4) *Harvard Law Review*, pp. 1067–88. See also R. Pejan, ‘The Right to Water: The Road to Justiciability’ (2004) 36 *George Washington International Law Review*, pp. 1181–97.

<sup>30</sup> These mechanisms provide a rapid defence of the human right at stake. In American doctrine and in common law in general, they are equivalent to injunctions. In Latin America these injunctions have names such as *acción de tutela* and *recurso o acción de amparo*.

<sup>31</sup> Th. Marauhn, ‘Changing Role of the State’, in D. Bodansky, J. Brunnée & E. Hey (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press, 2007), pp. 727–48, at 735.

<sup>32</sup> See Harvard Law Review Association, n. 29 above, at p. 1080.

<sup>33</sup> See Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2014: Synthesis Report*, Contribution of Working Groups I, II and III to the Fifth Assessment Report of the IPCC (IPCC, 2014), available at: <http://www.ipcc.ch/report/ar5/syr>.

<sup>34</sup> LAWT, ‘Situación Hídrica en América Latina’, 2011, available at: <http://tragua.com/situacion-hidrica-en-america-latina>; UN Environment Programme (UNEP), ‘Inequality in Access to Water and Sanitation’, in *Vital Water Graphics – An Overview of the State of the World’s Fresh and Marine Waters* (UNEP, 2008), available at: <http://www.unep.org/dewa/vitalwater/article63.html>.

the region.<sup>35</sup> According to the 2006 UN Human Development Report, the main inequalities observed with regard to access to water in Latin America relate to price inequality,<sup>36</sup> group identity as a marker of disadvantage (disparities between indigenous and non-indigenous people),<sup>37</sup> and regional divides.<sup>38</sup>

Water access in Latin America faces two specific concerns: pollution and privatization. The over-exploitation and pollution of groundwater and the pollution of lakes and rivers have proved to be highly problematic. Latin American rivers are among the most polluted in the world.<sup>39</sup> The current vulnerabilities observed in many regions of Latin America will increase as a result of a growing demand for water for irrigation and domestic use as a result of population growth and drought conditions in several hydrological basins.<sup>40</sup> In the future scenario of climate change in Latin America, as portrayed by the Intergovernmental Panel on Climate Change (IPCC), between 12 and 81 million people will experience water stress<sup>41</sup> in the 2020s, and from 79 to 178 million in the 2050s.<sup>42</sup> Against this background, the main challenges faced by Latin American countries are to ensure access to water for most of the population and to maintain such access in the future.

Privatization of the water supply in many Latin American countries has led to various arbitration proceedings.<sup>43</sup> A clear example is the 2005 *Aguas del Tunari* case, which was initiated before the International Centre for the Settlement of Investment

<sup>35</sup> UNHDR 2006, n. 27 above, at p. 51.

<sup>36</sup> For millions of households the high price of water tariffs reduces the already scarce economic resources. There is evidence that ‘the poorest 20% of households in Argentina, El Salvador, Jamaica and Nicaragua allocate more than 10% of their spending to water’ and ‘about half of these households live below the \$1 a day threshold for extreme poverty’: *Ibid.*, at p. 51.

<sup>37</sup> For instance, the Report highlights that in Bolivia ‘the average rate of access to piped water is 49% for indigenous language speakers and 80% for non-indigenous language speakers’: *Ibid.*, at p. 54.

<sup>38</sup> There are disadvantaged areas in different countries in which the measures taken to reduce the disparities have had limited positive impact. The Report mentions the case of Mexico, in which ‘more than 90% of the population is connected to a safe water source and two-thirds of households are connected to a sewer. But coverage drops sharply from more developed urban areas and more prosperous northern states through smaller towns, to more remote rural areas and the poverty-belt states of the south’: *Ibid.*

<sup>39</sup> H. Flint, ‘Latin American Rivers among Most Polluted in the World, Says New Study’, *The Telegraph*, 8 Jan. 2014, available at: <http://tinyurl.com/na65tvm>.

<sup>40</sup> World Water Council (*Comisión Nacional del Agua*), 4<sup>th</sup> World Water Forum, ‘Water Problems in Latin America’, 2004, available at: [http://www.worldwatercouncil.org/fileadmin/wwc/News/WWC\\_News/water\\_problems\\_22.03.04.pdf](http://www.worldwatercouncil.org/fileadmin/wwc/News/WWC_News/water_problems_22.03.04.pdf).

<sup>41</sup> According to the European Environment Agency, water stress ‘occurs when the demand for water exceeds the available amount during a certain period or when poor quality restricts its use. Water stress causes deterioration of fresh water resources in terms of quantity (aquifer over-exploitation, dry rivers, etc.) and quality (eutrophication, organic matter pollution, saline intrusion, etc.)’: Glossary of Terms, European Environment Agency, 2014, available at: <http://epaedia.eea.europa.eu/alphabetical.php?letter=W&gid=108#viewterm>.

<sup>42</sup> IPCC, *Climate Change 2007: Synthesis Report*, Contribution of Working Groups I, II and III to the Fourth Assessment Report of the IPCC (IPCC, 2007), available at: [https://www.ipcc.ch/publications\\_and\\_data/ar4/syr/en/contents.html](https://www.ipcc.ch/publications_and_data/ar4/syr/en/contents.html).

<sup>43</sup> K. Bakker, ‘The “Commons” Versus the “Commodity”’: Alter-globalization, Anti-privatization and the Human Right to Water in the Global South’ (2007) 39 *Antipode*, pp. 430–55. On water markets see especially E. Brown Weiss, L. Boisson de Chazournes & N. Bernasconi-Osterwalder (eds), *Fresh Water and International Economic Law* (Oxford University Press, 2005).

Disputes (ICSID) in the context of the attempt to privatize the water service in Cochabamba, the third largest city in Bolivia.<sup>44</sup> Troubles arose with the local community shortly after the concession was awarded because of a substantial increase in the water rates. This gave rise to social unrest and violent demonstrations against the privatization. Ultimately, Bolivia rescinded the concession agreement.<sup>45</sup>

Cases relating to access to water have arisen over the past 15 years before judicial and arbitral bodies in Latin America, which have resulted in landmark rulings.<sup>46</sup> Some of these cases were highly controversial as to the interests in conflict, such as the construction of a hydroelectric dam in Chilean Patagonia;<sup>47</sup> the privatization of water and increased water prices in Cochabamba (Bolivia);<sup>48</sup> the impact of the economic crisis on rising water rates in Argentina;<sup>49</sup> and the construction of the Baba Dam project in Ecuador.<sup>50</sup> All these controversial cases demonstrate how the legal principle of sustainable development interacts with other principles, such as the precautionary principle, at the national and international level to protect the right to water, as will be examined in the following sections.<sup>51</sup>

## 2.2. *Introducing the LAWT: Procedure and Theoretical Conceptualization*

The context of emerging litigation concerning the right to water requires consideration of the nature and different functions performed by the LAWT in the settlement of disputes over water resources.<sup>52</sup> From the outset, the LAWT was conceived as an autonomous and independent international forum for environmental justice.<sup>53</sup> According to its mandate, the main feature of the LAWT is to serve as an alternative justice mechanism that operates in a complementary way with other formal administrative and judicial bodies to find solutions to water resources-related

<sup>44</sup> *Aguas del Tunari SA v. Republic of Bolivia*, ICSID Case No. ARB/02/3 (Decision on Respondent's Objections to Jurisdiction), 21 Oct 2005, available at: <http://tinyurl.com/AguasdelTunari>.

<sup>45</sup> After the arbitration tribunal issued a decision on jurisdiction, the dispute was settled, and the case was 'discontinued'.

<sup>46</sup> See M.B. Olmos Giupponi, 'Inequality and Access to Water in Latin America: Implementing the Right to Water in Argentina' (2014) 3 *Rethinking Development and Inequality*, pp. 87–109, at 95. See also, in general, C. Romano, 'International Dispute Settlement', in Bodansky, Brunnée & Hey, n. 31 above, pp. 1036–56.

<sup>47</sup> The hydroelectric project by Enel/Endesa in the region of Panguipulli (Chile) affects not only water rights but also Mapuche territories and sacred sites.

<sup>48</sup> The increase in the water tariffs in Cochabamba in 2000 after the privatization of the water supply resulted in social turmoil: see 'Water War in Bolivia', *The Economist*, 10 Feb. 2000, available at: <http://www.economist.com/node/280871>.

<sup>49</sup> During the economic crisis, many users in Argentina could not afford to pay the water tariffs; this led to various controversial cases, as seen in Section 4 below.

<sup>50</sup> The dam project in the Baba river (Ecuador), which threatened access to water by communities living in the area, was finally stopped after years of struggle: see FIAN International, 'Discontinuation of Dam Project in Ecuador', 2007, available at: <http://www.fian.org/news/press-releases/discontinuation-of-dam-project-in-ecuador-1>.

<sup>51</sup> Olmos Giupponi, n. 46 above, at p. 95.

<sup>52</sup> M. Backhouse, J. Baquero Melo & S. Costa, 'Between Rights and Power Asymmetries: Contemporary Struggles for Land in Brazil and Colombia' (2013), *desigualdades.net*, Working Paper Series No. 41, pp. 1–2, available at: [http://www.desigualdades.net/Resources/Working\\_Paper/41\\_WP\\_Backhouse\\_Baquero\\_Costa\\_Online.pdf](http://www.desigualdades.net/Resources/Working_Paper/41_WP_Backhouse_Baquero_Costa_Online.pdf).

<sup>53</sup> Since its inception, the LAWT has covered the protection of water resources in Central America.

problems of concern to Latin American citizens, and to address the ‘democratic deficit in water management’ and the ‘environmental impunity situation’.<sup>54</sup>

### *LAWT procedure*

The LAWT may receive cases of alleged damage or threats to water resources in different parts of Latin America.<sup>55</sup> Social organizations, community groups and individuals who are aware of practices that threaten the sustainability of water resources in Latin America may forward a motivated complaint grounded on robust scientific evidence.<sup>56</sup> Allegations included in the complaints must be supported by ‘thick’ evidence – compelling scientific evidence that a threat of environmental damage or actual damage to water resources exists.<sup>57</sup> The cases that have been brought concern different types of water-related dispute: some deal with national disputes (individuals or groups and governments, inter-regional conflicts) while others involve transboundary cases. There are also cases against private corporations involved in the privatization of water supplies in various countries.<sup>58</sup>

Following submission, the LAWT Scientific and Technical Commission evaluates the application thoroughly and considers the supporting evidence provided in the light of the precautionary principle as embodied in Principle 15 of the Rio Declaration: ‘Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation’.<sup>59</sup>

As a general rule, the Scientific and Technical Commission, based on the evidence presented, ‘selects cases for public hearing that are the most representative and best supported causes in terms of content and coherence’, and, in particular, those that ‘pose the greatest hazard to the largest population’.<sup>60</sup> The Tribunal can then decide whether to hold a public hearing when both parties present their case and the defendant has the opportunity to respond to the allegations. Once the complaint has been accepted, the LAWT will formally notify the defendant of its entitlement to

<sup>54</sup> C. Maganda, ‘The Latin American Water Tribunal and the Need for Public Spaces for Social Participation in Water Governance’, in J. Feyen, K. Shannon & M. Neville (eds), *Water and Urban Development Paradigms: Towards an Integration of Engineering, Design and Management Approaches* (CRC Press, 2009), pp. 687–92, at 688.

<sup>55</sup> There is also the possibility to submit a complaint online at: <http://tragua.com/denuncias>.

<sup>56</sup> LAWT Statute, a summary of which can be found at: <http://tinyurl.com/Tragua-PI>.

<sup>57</sup> J. Bogantes & J. Muiser, *Estrategias erróneas y la vulneración de los sistemas hídricos en América Latina* (LAWT, 2011), p. 86. The LAWT will examine the case and determine whether the complaint is well grounded.

<sup>58</sup> According to the LAWT only two cases have been characterized as ‘multinational’: one involves water privatization in Colombia and the other concerns a transboundary river between Chile and Argentina: J. Bogantes, ‘Tribunal Latinoamericano del Agua Una alternativa de justicia’, Paper presented at the Workshop on People’s Tribunals, Rome (Italy), Sept. 2013, pp. 28–9 (original in Spanish, author’s translation).

<sup>59</sup> Rio Declaration, n. 10 above. According to the precautionary principle, every complaint must be supported by adequate scientific evidence that there is potential environmental damage or risk for water resources.

<sup>60</sup> M.A. Weaver, ‘El Agua No Se Vende: Water is Not for Sale! The Latin American Water Tribunal as a Model for Advancing Access to Water’ (2011) 11(3) *Pepperdine Dispute Resolution Law Journal*, pp. 519–45, at 526.



appear at a public hearing to exercise its right of defence. Even if the case has not been selected for the public hearing, ‘technical guidance is still provided to the plaintiffs to help them resolve their conflict because the committee has already performed extensive technical analysis’.<sup>61</sup>

During the public hearings arranged by the LAWT, a select number of individual cases are presented before the jury.<sup>62</sup> The proceedings follow an established order. Plaintiffs and defendants are each allocated thirty minutes in which to present their claim and defence respectively.<sup>63</sup> Witness evidence and cross-examination take place for twenty minutes before the jury. The plaintiffs and defendants then have ten minutes in which to submit a summary of their case and their conclusions. The jurors examine the evidence and may question the witnesses before they deliberate. Finally, the jurors deliberate in private to reach a verdict; the deliberation ends when the verdict is made public. Precisely because the hearings are public and the media devote attention to the cases examined in each hearing, the verdicts contribute to the transparency of the disputes. The ‘core principles’ that govern the proceedings are systemic analysis, ecocentric ethical principles, indirect evidence and inversion of the burden of the proof.<sup>64</sup> If necessary, the LAWT may arrange a site visit to assess the severity of the situation described in the complaint.

The ‘jurors’ of the LAWT vary from case to case, as they are selected by an impartial Scientific and Technical Commission from a list of experts.<sup>65</sup> The LAWT is distinctive because of its interdisciplinary composition; it comprises not only legal experts but a diverse range of professionals from fields such as history, literature, anthropology, geology and hydrology.<sup>66</sup> They are mainly from Latin American countries, although some jurors are from other continents. The Tribunal has dealt with more than 60 different cases.<sup>67</sup>

On completion of the proceedings, the jury issues a verdict with recommendations for the settlement of the dispute. Although the LAWT’s ‘verdicts’ are not judgments *stricto sensu*, they contribute to generating and raising public pressure on states and increasing the ‘visibility’ of environmental conflicts.<sup>68</sup> The public hearings receive media attention and generate debate in society, which helps to organize local

<sup>61</sup> Ibid.

<sup>62</sup> The public hearings that have occurred so far are as follows: Costa Rica, 2000; Costa Rica, 2004; Mexico, 2006; Guadalajara (Mexico) 2007; Guatemala, 2008; Istanbul (Turkey), 2009; and Argentina, 2012. Hearings may also take place in one country to hear only cases arising in that specific jurisdiction, e.g., the public hearing in San Carlos, in the northern part of Costa Rica (Feb. 2004), and the public hearing that took place in Managua (Nicaragua) (June 2004).

<sup>63</sup> LAWT Statute, n. 56 above.

<sup>64</sup> LAWT, ‘Procedural Rules’: see LAWT, ‘Presentación Institucional’, 2014, available at: <http://tinyurl.com/Tragua-PI>.

<sup>65</sup> The current list of different scholars and practitioners is available via the LAWT, *ibid*.

<sup>66</sup> This list is merely illustrative; other professions are also represented in the Scientific and Technical Commission: *ibid*.

<sup>67</sup> As of Feb. 2015, the Tribunal had held 7 public hearings: see <http://tragua.com/audiencias>.

<sup>68</sup> In parallel with the tasks performed by the LAWT in the admission of complaints, it organizes workshops and other activities to further disseminate information about water-related environmental problems in the region.

communities to protect natural resources. Furthermore, the LAWT organizes other dissemination and training activities on sustainable water management in local communities and fosters dialogue between the public authorities in charge of water governance and policy making and the users.<sup>69</sup>

### *Theoretical conceptualization*

Several different theoretical analyses could be applied to theorize the LAWT's functions and role. In this section, I will explore the 'environmental conflicts' approach, the 'human rights' approach and the 'dispute settlement' approach.

The environmental conflicts approach emphasizes the role of the LAWT as a public forum for the resolution of socio-environmental conflicts. Relevant elements of this approach are the unequal distribution of natural resources and the struggle by communities to gain access to water resources.<sup>70</sup> This analysis is in line with theoretical contributions from authors such as Escobar on political ecology, with a focus on local communities' social struggle to access and control water resources.<sup>71</sup> From a sociological perspective, theories about 'environmental racism' may also play a role in understanding the discrimination suffered by minorities, especially indigenous and afro-descendant communities, in the enjoyment of environmental goods.<sup>72</sup> These tensions are apparent in the various complaints brought before the LAWT. Local and indigenous communities that take part in the proceedings are often those most exposed to the potential harmful effects of activities that interfere with the enjoyment of the right to water. Yet, these communities are unable to assert their rights before national courts because of obstacles created by lack of access to justice or legal standing.<sup>73</sup>

Another theoretical lens through which to view the LAWT's function is the human rights approach.<sup>74</sup> The LAWT is committed under its mandate to protect the right to water as recognized and protected in international instruments and

<sup>69</sup> LAWT, 'Presentación Institucional', n. 64 above.

<sup>70</sup> L.A. Suarez Rojas, 'La Comunidad de Carhuancho y Sus Avatares por el Agua: Una Mirada al Bien Común y Las Desigualdades Persistentes en la Sierra Central, Peru' (2009) 9(2) *Global Jurist*, pp. 1–22, at 19.

<sup>71</sup> A. Escobar, 'Difference and Conflict in the Struggle over Natural Resources: A Political Ecology Framework' (2006) 49(3) *Development*, pp. 6–13. Also R. Muradian, M. Folchi & J. Martinez-Alier, "'Remoteness" and Environmental Conflicts: Some Insights from the Political Ecology and Economic Geography of Copper' (2004) 7(3) *International Journal of Sustainable Development*, pp. 1–20.

<sup>72</sup> M. Dorsey, 'Environmental (In) justice: Race, Poverty and Environment' (1998) 22 *The Legal Studies Forum*, pp. 501–18, at 501. 'Environmental racism' is defined as the discrimination (based on racial or ethnic considerations) in environmental policy making.

<sup>73</sup> A. Davidson-Harden, 'Latin American Water Tribunal: Using National and International Law to Form a Basis of Water Ethics', in *Local Control and Management of our Water Commons: Stories of Rising to the Challenge* (The Council of Canadians, 2008), p. 53, available at: [http://www.ourwatercommons.org/sites/default/files/local-control-management-water-commons\\_0.pdf](http://www.ourwatercommons.org/sites/default/files/local-control-management-water-commons_0.pdf).

<sup>74</sup> On the interface between the human rights and the environmental regimes see, e.g., P.B. Anand, 'Right to Water and Access to Water: An Assessment' (2007) 19 *Journal of International Development*, pp. 511–26; and Pejan, n. 29 above, at p. 1182. More generally, see P.H. Sands, *Principles of International Environmental Law*, 2<sup>nd</sup> edn (Cambridge University Press, 2003), pp. 294–307, at 297; P. Birnie, A. Boyle & C. Redgwell, *International Law and the Environment* (Oxford University Press, 2009), pp. 284–5.

Latin American constitutions. The starting point for this approach is the CESCR General Comment No. 15 (2002) on the human right to water; similarly, the UNGA Resolution of 28 July 2010 recognizes the human right to water and sanitation.<sup>75</sup> More recently, in 2014, the Community of Latin American and Caribbean States (CELAC) issued a Declaration on the Human Right to Water and Sanitation.<sup>76</sup> The developments in human rights law at the international level inform and impact upon law reform at the national level. During the last ten years, there has been a trend towards the recognition of access to water as a human right in Latin America.<sup>77</sup>

These developments have led to various ‘models’ for enforcing the right to water in Latin America. In countries where the right is constitutionally guaranteed, the right is directly enforceable in the courts.<sup>78</sup> As a result, constitutions have been reformed to explicitly include the right to water in countries such as Bolivia (2009), Ecuador (2008) and Uruguay (2004).<sup>79</sup> At the same time, case law that indirectly recognizes the right to water has emerged in other Latin American countries which do not have constitutional protection for water access. This second group includes such countries as Argentina, Colombia, Mexico and Peru, where the right to water has successfully been made explicit by the courts.<sup>80</sup>

The LAWT seeks to protect the right to water and bases its activities on international human rights instruments.<sup>81</sup> The human right to water is often cited in

<sup>75</sup> CESCR, General Comment No. 15, n. 21 above; UNGA Resolution A/RES/64/292, of 28 July 2010, on the Human Right to Water and Sanitation, available at: <http://www.un.org/es/comun/docs/?symbol=A/RES/64/292&lang=E>; see also UNGA A/64/L.63/Rev.1, n. 23 above.

<sup>76</sup> The Declaration was adopted by the Heads of State and Government of the Latin American and the Caribbean States, during the Second Summit of the CELAC, Havana (Cuba), 28–29 Jan. 2014, available at: [http://celac.cubaminrex.cu/sites/default/files/ficheros/doc\\_3.21\\_declaracion\\_agua\\_y\\_saneamiento\\_ingles.pdf](http://celac.cubaminrex.cu/sites/default/files/ficheros/doc_3.21_declaracion_agua_y_saneamiento_ingles.pdf).

<sup>77</sup> The EU-wide legislative initiative ‘Right2Water’ submitted under the Lisbon Treaty (Treaty on European Union, Lisbon (Portugal), 13 Dec. 2007, in force 1 Dec. 2009, available at: [http://europa.eu/libson\\_treaty/full\\_text](http://europa.eu/libson_treaty/full_text)) was successful in obtaining more than 1.8 million signatures. Consequently, the European Commission issued its Communication on the European Citizens’ Initiative, ‘Water and Sanitation are a Human Right! Water is a Public Good, not a Commodity!’, COM(2014)177 final, 19 Mar. 2014, reflecting EU past and current actions concerning the human right to water, available at: <http://ec.europa.eu/citizens-initiative/public/welcome>.

<sup>78</sup> Ibid. See also E. Brown Weiss, *The Evolution of International Water Law*, Recueil des Cours 2007, VI, vol. 331 (Académie de Droit International de la Haye/Martinus Nijhoff, 2007), p. 326.

<sup>79</sup> Constitution of Bolivia (2009), ‘Article 16.I. Everyone has the right to water...’, Center for Latin American Studies, Political Database of the Americas, University of Georgetown, 5 July 2011, available at: <http://pdba.georgetown.edu/Constitutions/Bolivia/bolivia09.html>; Constitution of Ecuador (2008), ‘Article 12. The human right to water is essential and cannot be waived. Water constitutes a national strategic asset for use by the public and it is unalienable, not subject to a statute of limitations, immune from seizure and essential for life’, Center for Latin American Studies, Political Database of the Americas, University of Georgetown, 31 Jan. 2011, available at: <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>; Constitution of Uruguay (2004), ‘Article 47. ... water is an essential resource for life ... access to water and sanitation are human rights’ (original in Spanish, author’s translation), Center for Latin American Studies, Political Database of the Americas, University of Georgetown, 17 Aug. 2005, available at: <http://pdba.georgetown.edu/Constitutions/Uruguay/uruguay04.html>.

<sup>80</sup> M.B. Olmos Giupponi & M.C. Paz, ‘El Derecho al Agua, El Derecho al Agua en la Jurisprudencia Argentina y de la Corte Constitucional Colombiana’ (2012) *Diario Juridico El Derecho*, pp. 1–5, Buenos Aires (Argentina).

<sup>81</sup> LAWT, ‘Tratados y Declaraciones’ (‘Treaties and Declarations’), 2014, available at: <http://tragua.com/tratados-y-declaraciones> (in Spanish).

complaints submitted to the LAWT, in particular, in cases dealing with access by local and indigenous communities to water.<sup>82</sup> In this respect, the Tribunal attempts precisely to guarantee non-discriminatory and affordable access by human beings to safe drinking water by making states comply with their international obligations to respect, protect, and implement the right to water.

Finally, the dispute resolution approach seeks to examine the features of the LAWT as an alternative forum for the resolution of disputes over water resources.<sup>83</sup> For some scholars, the LAWT could represent a new alternative in the field of international arbitration.<sup>84</sup> From an international law perspective, the Tribunal also brings an opportunity to reflect upon the nature of environmental dispute resolution.<sup>85</sup> For example, Sands has emphasized the fragmentation in international adjudication with regard to environmental issues.<sup>86</sup> Boyle and Harrison have pointed out the main problems of environmental dispute resolution, noting the limited possibilities for non-government organizations (NGOs) to participate in the proceedings as a result of restrictive rules relating to legal standing.<sup>87</sup> In addition, Romano underlines the current features of dispute resolution and highlights the atomization of litigation at both the domestic and international levels, competing and parallel legal regimes, multiplication of actors and levels, and the limits of domestic jurisdictions.<sup>88</sup>

In this context, it is necessary to bear in mind the limitations of ‘traditional’ dispute settlement mechanisms under international environmental law. They all follow the classical ‘interstate’ treaty-based scheme. As a general rule, they do not afford access to private actors (individuals or corporations). Therefore, traditional dispute settlement mechanisms do not provide clear-cut solutions for holding corporations liable for environmental damage (as in the cases of Union Carbide in India and Chevron/Texaco in Ecuador).<sup>89</sup> Interest in the development of environmentally tailored dispute resolution mechanisms has increased over the last two decades. Among other initiatives, the Permanent Court of Arbitration (PCA) adopted optional rules for the arbitration and conciliation of disputes relating to natural resources and the environment in 2001–02,<sup>90</sup> and in 1993 the ICJ instituted a Chamber for

<sup>82</sup> M. Parriciatu & F. Sindico, ‘Contours of an Indigenous Peoples’ Right to Water in Latin America under International Law’ (2012) 1 *International Human Rights Law Review*, pp. 211–36.

<sup>83</sup> Weaver, n. 60 above, at p. 528.

<sup>84</sup> *Ibid.*, at p. 529.

<sup>85</sup> Romano, n. 46 above, at p. 1054.

<sup>86</sup> P. Sands, ‘Sustainable Development: Treaty, Custom and the Cross-Fertilization of International Law’, in A. Boyle & D. Freestone (eds), *International Law and Sustainable Development* (Oxford University Press, 1999), pp. 39–60, at 42.

<sup>87</sup> Boyle & Harrison, n. 12 above, at p. 258.

<sup>88</sup> In more detail, Romano refers to the fragmentation at both the domestic and the international levels and different competing and parallel legal regimes: trade and investment disputes; environmental disputes and protection of human rights: Romano, n. 46 above, at p. 1055.

<sup>89</sup> Romano, n. 46 above, at p. 1053.

<sup>90</sup> The PCA’s Optional Rules for Arbitration of Disputes Relating to the Environment and/or Natural Resources were adopted in 2001; the rules seek to address the principal lacunae in environmental dispute resolution identified by the working group; the Optional Rules for Conciliation of Disputes Relating to the Environment and/or Natural Resources were adopted in 2002: PCA, ‘Environmental Dispute Resolution’, 2009, available at: [http://www.pca-cpa.org/showpage.asp?pag\\_id=1058](http://www.pca-cpa.org/showpage.asp?pag_id=1058).

environmental matters (which was operative until 2006); both mechanisms were restricted to interstate claims.<sup>91</sup> In the international trade realm, panels created at the World Bank (1994), the Inter-American Development Bank (1995), and the Asian Development Bank (1995) allow individuals or groups to submit requests for inspection of projects financed by international organizations that may adversely impact upon the environment.<sup>92</sup> While greater attention has been devoted to the study of these different ‘formal’ dispute settlement arrangements in environmental law, literature dealing with grass-root initiatives such as the LAWT is scarce.<sup>93</sup>

The following sections examine the features of the LAWT from a ‘dispute settlement’ approach, emphasizing the key elements featured by the LAWT in light of international environmental law. The analysis focuses on the LAWT as a forum for dispute settlement; it also discusses the LAWT’s role in the protection of the human right to water.<sup>94</sup>

### 3. THE MAIN FEATURES OF THE LAWT UNDER INTERNATIONAL ENVIRONMENTAL LAW

Despite its denomination, the LAWT is not an international court or tribunal *stricto sensu* from an international law perspective. The International Water Tribunals held in Rotterdam (the Netherlands) in 1983<sup>95</sup> and in Amsterdam (the Netherlands) in 1992 are often mentioned as the antecedents to the LAWT.<sup>96</sup> The main feature of these International Water Tribunals was that they ‘took as the culprit in that situation not the states involved, but big private companies which were cited as defendants’.<sup>97</sup>

#### *Antecedents and the establishment of the LAWT*

In 1983, the Rotterdam International Water Tribunal presided over cases regarding environmental damage to the Rhine river basin and helped to reinforce environmental policies and strengthen measures against water pollution. Specifically, the tribunal

<sup>91</sup> In 1993, the ICJ, pursuant to Art. 26(1) of the Statute of the ICJ (annexed to the Charter of the UN, San Francisco, CA (US), 26 June 1945, in force 24 Oct. 1945), available at: <http://www.icj-cij.org/documents/?p1=4&p2=2>), created a Chamber for Environmental Matters, which was periodically reconstituted until 2006. In the Chamber’s 13 years of existence, however, no state ever requested a case to be dealt with by it. Consequently, the Court decided in 2006 not to hold elections for a Bench for the said Chamber: ICJ, ‘Chambers and Committees’, 2014, available at: <http://www.icj-cij.org/court/index.php?p1=1&p2=4>.

<sup>92</sup> Romano, n. 46 above, at p. 1054.

<sup>93</sup> Birnie, Boyle & Redgwell, n. 74 above, at pp. 250–67.

<sup>94</sup> D. Bodansky, ‘Is There an International Environmental Constitution?’ (2009) 16 *Indiana Journal of Global Legal Studies*, pp. 565–84, at 576.

<sup>95</sup> The International Water Tribunal met in Rotterdam (the Netherlands), 3–8 Oct. 1983, to examine the cases of pollution in the Rhine, the North Sea and the Wadden Sea.

<sup>96</sup> See Weaver, n. 60 above, at p. 524. Second International Water Tribunal organized in 1992 in Amsterdam (the Netherlands): Declaration of Amsterdam, adopted by the Second Water Tribunal (the Netherlands) on 27 June 1991. M. Dejeant-Pons & M. Pallemarts, *Human Rights and the Environment* (Council of Europe Publishing, 2002), pp. 104–7, at 105.

<sup>97</sup> See J. Sette-Camara, ‘Pollution of International Rivers’, *Recueil des Cours* 1984, (Académie de Droit International de la Haye/Martinus Nijhoff, 1985), p. 146.

adopted a Declaration regarding Individual Responsibility for the Protection of the Aquatic Environment, which emphasized that:

every user of the environment has the duty towards the world community, cases of *force majeure* excepted, to prevent any pollution of the aquatic environment caused by that use ... Consequently, the world community has the right to call every individual user of water to account when that rule is breached.<sup>98</sup>

In 1992, the International Water Tribunal held a public hearing in Amsterdam at which cases from Asia, Africa, America, and Oceania regarding water pollution disputes were presented. Both tribunals laid the groundwork for the creation of the LAWT.

More generally the history of ‘water tribunals’ dates back to the Water Court of the Plain of Valencia (*Tribunal de las Aguas de Valencia*).<sup>99</sup> In Latin America, the Brazilian National Water Tribunal which took place in Florianopolis 1983<sup>100</sup> constitutes the immediate model of alternative justice that inspired the creation of the LAWT. In several public hearings, the Brazilian tribunal examined the harmful impacts on water systems in Brazil caused by mining, radioactive and agrochemical pollution, and the consequences of dam construction.<sup>101</sup>

Following these institutional precedents, the LAWT was created initially by NGOs in 1998 as the Central American Water Tribunal (CAWT), extending its activities to cover South America from 2005, in which year the CAWT became the LAWT.<sup>102</sup> The essential idea behind its creation was to provide a specialized quasi-judicial forum for citizens and communities in Central America to protect sustainable access to water resources. The LAWT therefore embodies features of a peoples’ or citizens’ tribunal as a commission of inquiry that seeks another form of accountability outside state-organized structures.<sup>103</sup> In particular, the LAWT offers expert knowledge to deal with alleged violations of environmental norms relating to water resources and to provide recommendations for the resolution of conflicts over water resources.<sup>104</sup>

### *The mandate of the LAWT: enhancing the enforcement of water law*

Under its mandate, the LAWT is committed to preserving water resources and ensuring access to water as a human right for present and future generations.<sup>105</sup> In carrying out its functions, the Tribunal relies on four pillars: (i) alternative justice

<sup>98</sup> *Ibid.*, at p. 147.

<sup>99</sup> The Valencia Water Court (*Tribunal de las Aguas de Valencia*) represents one of the oldest models of justice that has survived until now. It was recognized as Intangible Cultural Heritage by the UN Educational, Scientific and Cultural Organization (UNESCO) in 2009; further information is available at: <http://www.tribunalde lasaguas.org/en>.

<sup>100</sup> LAWT, ‘Precedents’, available at: <http://tragua.com/quienes-somos/fundamentos-vision-mision-objetivos>. See C.G. Caubet, ‘O Tribunal Da Água’ (1994) 18 *GEOSUL*, pp. 71–86.

<sup>101</sup> Caubet, *ibid.*, at p. 85.

<sup>102</sup> See LAWT, ‘Quiénes-Somos’ (‘Who We Are’), available at: <http://tragua.com/quienes-somos>.

<sup>103</sup> These tribunals have been established since the 1960s, although international law scholars have devoted little attention to their contribution so far; but see A. Brynes & G. Simm, ‘People’s Tribunal, International Law and the Use of Force’ (2013) 36(2) *University of New South Wales Law Journal*, pp. 711–44, at 725, available at: <http://www.austlii.edu.au/au/journals/UNSWLJ/2013/28.pdf>.

<sup>104</sup> Weaver, n. 60 above, at p. 527.

<sup>105</sup> LAWT, ‘Quiénes-Somos’, above n. 102.

to traditional legal mechanisms; (ii) environmental security; (iii) environmental education and awareness of the protection of water systems; and (iv) water security and water governance.<sup>106</sup>

The LAWT represents a landmark in the evolution of ‘global environmental law’. As Kotzé indicates in his study on global environmental constitutionalism, a consensus exists among commentators on the various causes of the failure of global environmental law, such as:

the lack of compliance with and enforcement of environmental laws, norms and standards; the lack of, or the inadequate participation of civil society in, governance and law-making processes; a general lack of good governance practices; the continued prevalence of environmental injustice and the lack of access to justice; the lack of legitimacy of the actors and the democratic deficits in decision-making structures; the obstacles presented by state sovereignty, unilateral decision-making, abuse of authority and the serving of self-interests by states; the difficulties of holding private entities such as transnational corporations to account for their environmental wrongs; the lack of core ecological and ethical values.<sup>107</sup>

These challenges to the enforcement of environmental law generally are reproduced and sometimes exacerbated when it comes to access to water. The LAWT aims to tackle some of these flaws in the global environmental legal system by: (i) increasing transnational action and the coordination of environmental NGOs; (ii) helping the organization of local communities to defend their rights; and (iii) promoting dialogue between governments, corporations, individuals and communities on the sustainable management of water resources. In sum, as Maganda underlines, ‘the LAWT’s most important contribution comes from its proceedings that encourage forms of institutional social participation that extend beyond simple protest ... The tribunal’s activities create public space within the context of water management’.<sup>108</sup>

### 3.1. *Proceedings before the LAWT*

#### *Public interest litigation and environmental ethics*

Despite certain similarities with international arbitration, proceedings before the LAWT are different. Firstly, the LAWT’s structure and proceedings have a quasi-judicial nature. Secondly, the LAWT is rooted in the tradition of ‘consciousness tribunals’ whereby hearings are held in public. Thirdly, the LAWT’s composition, mandate and legal framework differ from those of an arbitration tribunal *stricto sensu*.

A basic institutional framework allows the LAWT to perform its functions. The LAWT’s activities are based on the interaction of three basic bodies: the ‘Secretariat’, the Scientific and Technical Commission and the jury.<sup>109</sup> The Secretariat facilitates

<sup>106</sup> Ibid.; Spanish version reads: ‘Seguridad ecológica. Educación y sensibilización para la protección de los sistemas hídricos. Seguridad hídrica y justo gobierno por el agua’.

<sup>107</sup> L.J. Kotzé, ‘Arguing Global Environmental Constitutionalism’ (2012) 1(1) *Transnational Environmental Law*, pp. 199–233, at 202–3.

<sup>108</sup> Maganda, n. 54 above, at p. 689.

<sup>109</sup> LAWT Statute, n. 56 above; ‘Organisation’ in ‘Presentación Institucional’, n. 64 above (in Spanish, Secretariat (*Equipo de Gestión*); Scientific and Technical Commission (*Comisión Científico-Técnica*); and jury (*jurado*, also known as ‘tribunal’).

proceedings, organizes hearings, and is responsible for all related logistical and financial work.<sup>110</sup> Moreover, the LAWT benefits from institutional advice from multiple experts to support its specific tasks, ranging from scientific and technical analysis to communication.<sup>111</sup> In addition to ensuring that the complaints and case evidence are scientifically justified, the Scientific and Technical Commission decides whether to hold a public hearing and chooses the members of the jury, with an eye to ensuring heterogeneity, impartiality and expertise.<sup>112</sup>

During the hearings, organizations such as public institutions, academic professionals and social organizations, which have been invited to participate by the parties, have the opportunity to express their position on the issues. Most of the cases brought before the LAWT have already been decided by domestic tribunals. In such cases the aggrieved parties consider that the national courts have failed to provide appropriate redress, or the government or private corporations have not complied with the rulings.<sup>113</sup> Although the LAWT resolutions (*veredictos* in Spanish) are not binding on the parties to the dispute,<sup>114</sup> they provide a scientific and technical basis for the settlement of water-related disputes in the region.

### *Parties to LAWT proceedings*

The applicants are often organizations such as the Latin American Observatory for Environmental Conflicts (OLCA).<sup>115</sup> The main geographical focus is Latin America, although during the 2009 World Water Forum in Istanbul (Turkey)<sup>116</sup> a public hearing was held in parallel with the support of the Heinrich Boll Foundation, and cases from other regions were also analyzed.<sup>117</sup>

<sup>110</sup> Bogantes, n. 58 above, at p. 31 (original in Spanish, author's translation). Note that the LAWT Secretariat has its headquarters in San José (Costa Rica).

<sup>111</sup> LAWT, 'Presentación Institucional', n. 64 above. The Tribunal's activities are funded by various international cooperation agencies.

<sup>112</sup> LAWT Statute, n. 56 above; 'Organisation' in 'Presentación Institucional', n. 64 above.

<sup>113</sup> For instance, the case regarding the Atuel basin in Argentina involving two provinces (regions): Mendoza and La Pampa: see Water Lex, 'Tribunal Latinoamericano del Agua, Fundación Chadilievú c/ Estado Nacional Argentino y Provincia de Mendoza', in *The Human Rights to Water and Sanitation in Courts Worldwide: A Selection of National, Regional and International Case Law* (Swiss Agency for Development and Cooperation, 2014), pp. 281–3.

<sup>114</sup> These parties are civil society, basin authorities and institutions in charge of water governance.

<sup>115</sup> The OLCA has contributed towards bringing cases to the LAWT and monitoring compliance with the verdicts.

<sup>116</sup> The 5<sup>th</sup> World Water Forum (WWF) took place in Mar. 2009 in Istanbul (Turkey): see WWF Final Report, available at: [http://www.worldwatercouncil.org/fileadmin/world\\_water\\_council/documents/world\\_water\\_forum\\_5/WWF5\\_Final\\_Report\\_ENG.pdf](http://www.worldwatercouncil.org/fileadmin/world_water_council/documents/world_water_forum_5/WWF5_Final_Report_ENG.pdf).

<sup>117</sup> LAWT, 'Public Hearing Held in Istanbul, Turkey', available at: <http://tragua.com/audiencias/audiencia-publica-estambul-2009>. The following cases were presented: Konaktepe Dam and Konaktepe I and II Hydropower Plants in the Munzur Valley, case report, 2009, available at: [http://tragua.com/wp-content/uploads/2012/04/case\\_munzur-en.pdf](http://tragua.com/wp-content/uploads/2012/04/case_munzur-en.pdf); Yusufeli Dam and Hydroelectric Power Plant Project in the Çoruh Valley, case report, 2009, available at: [http://tragua.com/wp-content/uploads/2012/04/case\\_yusufeli-en.pdf](http://tragua.com/wp-content/uploads/2012/04/case_yusufeli-en.pdf); and Ilisu Dam, activities report, 2009, available at: <http://tragua.com/wp-content/uploads/2012/05/boletin-2009-final.pdf>. In addition, two cases from Latin America were tried: Petition – Mexico's Social and Environmental Deterioration, case report, 2009, available at: [http://tragua.com/wp-content/uploads/2012/04/case\\_mexico-en.pdf](http://tragua.com/wp-content/uploads/2012/04/case_mexico-en.pdf); and Madeira River Hydroelectric Dams, Amazon Forest, State of Rondonia, Brazil, case report, 2009, available at: [http://tragua.com/wp-content/uploads/2012/04/case\\_brazil-en.pdf](http://tragua.com/wp-content/uploads/2012/04/case_brazil-en.pdf).



Defendants may be individuals, states/governments or private actors (corporations) that pollute, mismanage or threaten the sustainability of water resources.<sup>118</sup> The various forms of liability that are claimed in the complaints include:

- state responsibility for permitting activities that lead to environmental harm;
- lack of compliance with planning and pollution prevention and control legislation on the part of corporations which involves environmental harm; and
- failure by the state to control and respond to potential or actual harmful activities carried out by corporations.

The LAWT facilitates meetings among the applicants, government authorities and corporate representatives, although it has been difficult to make the latter two appear before the Tribunal. Even so, recent practice shows that government and corporations are becoming more open to dialogue, and representatives from both have appeared and tried to reach agreement before the LAWT during hearings in Costa Rica, Mexico, Guatemala and Argentina.<sup>119</sup>

#### *LAWT verdicts and memoranda of understanding*

Each decision adopted by the LAWT jury contains a short description of the facts, arguments and parties involved in the dispute, followed by the articulation of relevant legal/ethical standards and their application to the facts. On the basis of the findings, the jurors issue a decision (verdict), which includes recommendations to improve the situation or resolve the legal controversy. These verdicts, despite the name, are not directly enforceable.

In addition to seeking a LAWT verdict, parties to a dispute may sign an *Acuerdo de Intención* (Memorandum of Understanding). The Memorandum is a document that embodies a mutual agreement regarding the protection of water resources as a basic condition for future dialogue and for compliance with the recommendations contained in the relevant verdict. In LAWT hearings in Costa Rica, Mexico, Guatemala and Argentina, local authorities and companies that were parties to some of the disputes reached agreement and signed such memoranda.<sup>120</sup> The importance of this becomes clear when one realizes that in Guatemala in 2008 only about 40% of cases brought before the jury resulted in the signing of memoranda.<sup>121</sup>

<sup>118</sup> On the role of corporations in compliance with environmental law see generally P. Muchlinski, *Multinational Enterprises and the Law* (Oxford University Press, 2007), pp. 537–74, at 546; see also S. Özen & F. Küskü, ‘Corporate Environmental Citizenship – Variation in Developing Countries: An Institutional Framework’ (2009) 89(2) *Journal of Business Ethics*, pp. 297–313, at 302.

<sup>119</sup> LAWT Statute, n. 56 above; Bogantes & Muiser, n. 57 above, at pp. 88–93.

<sup>120</sup> Bogantes, n. 58 above, at p. 23 (original in Spanish, author’s translation).

<sup>121</sup> *Ibid.*, at p. 25.

### 3.2. *The Moral Authority of the LAWT in the Settlement of Environmental Disputes over Water Resources*

The principal and laudable goal of the LAWT is to contribute to the settlement of disputes concerning water resources in Latin America.<sup>122</sup> Its activities are based upon international environmental law and the principles of harmonious relationship with nature, respect for human dignity, and solidarity among people and organizations to protect water resources.<sup>123</sup> According to its mandate, the legitimacy of the Tribunal derives from the moral authority of its verdicts.<sup>124</sup>

The concept of ‘legitimacy’ in international environmental law has both a sociological and a normative dimension. As Bodansky notes, ‘legitimacy concerns the justification of authority; it provides grounds for deferring to another’s decision, even in the absence of coercion or rational persuasion’.<sup>125</sup> Borrowing from Bernstein, legitimacy can be defined ‘as the acceptance and justification of shared rule by a community’.<sup>126</sup> The LAWT’s functions are grounded in the need to overcome the lack of compliance with environmental law or *crisis de legalidad* as it is referred to in Tribunal documentation.<sup>127</sup> Hence, the very deficit of adequate reaction or legislative and judicial action to enforce environmental laws and to protect water resources provides the impetus to grant standing to citizens to seek alternative redress or ‘justice’.<sup>128</sup>

The LAWT’s biggest challenge is to reinforce its legitimacy and credibility. To this end, the Secretariat has developed procedural rules according to which the LAWT performs a rigorous scrutiny of complaints in order to ensure impartiality. This is achieved largely through an exhaustive analysis of the scientific quality of the evidence presented in light of the precautionary principle, the sustainable development principle, and other principles of environmental ethics.<sup>129</sup>

The LAWT was created by civil society organizations as an ethical tribunal to overcome ‘democratic deficits in water management’ and the ‘environmental

<sup>122</sup> However, note that in Istanbul, the LAWT examined cases of water pollution and degradation affecting other regions.

<sup>123</sup> LAWT, ‘Presentación Institucional’, n. 64 above.

<sup>124</sup> LAWT, ‘Fundamentos Ético Jurídicos’, available at: <http://tragua.com/wp-content/uploads/2012/04/FundamentosTLA.pdf>, and ‘Presentación Institucional’, n. 64 above; Weaver, n. 60 above, at p. 525; Maganda, n. 54 above, at p. 688.

<sup>125</sup> D. Bodansky, ‘The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?’ (1999) 93(3) *American Journal of International Law*, pp. 596–624, at 603. See J. Nickel & D. Magraw, ‘Philosophical Issues in International Environmental Law’, in S. Besson & J. Tasioulas (eds), *The Philosophy of International Law* (Oxford University Press, 2010), pp. 453–71, at 454; R. Crisp, ‘Ethics and International Environmental Law’, in Besson & Tasioulas, *ibid.*, pp. 473–90, at 474.

<sup>126</sup> S. Bernstein, ‘Legitimacy in Global Environmental Governance’ (2004–05) 1 *Journal of International Law & International Relations*, pp. 139–66, at 142.

<sup>127</sup> LAWT, ‘Proceedings’, in ‘Presentación Institucional’, n. 64 above. Weaver, n. 60 above, at p. 532.

<sup>128</sup> Romano, n. 46 above, at p. 1053.

<sup>129</sup> LAWT, ‘Manual de Procedimientos’ (‘Procedural Rules’), in ‘Presentación Institucional’, n. 64 above; J.M. Borero Navia & J. Bogantes Diaz, *Tribunal Latinoamericano del Agua: Fundamentos éticos y jurídicos* (LAWT, 2012), available at: <http://tragua.com/wp-content/uploads/2012/04/FundamentosTLA.pdf>.

impunity situation'.<sup>130</sup> Access to water as a human right was included as a main pillar. It follows that human rights are also embedded in its activities. At the same time, proceedings before the LAWT show specific 'uses' of human rights and certain power relations on social, institutional, and discursive dimensions.<sup>131</sup> The demands of local communities denote the advent of a transnational system of law redefining the contours of public international law<sup>132</sup> whereby, especially in the field of human rights, civil society is the driving force behind the creation of transnational legal norms.<sup>133</sup>

The LAWT's contribution to the resolution of increasing conflicts over access largely to water could be crucial. By the end of 2014, the Tribunal had received more than 250 complaints and dealt with more than 60 cases.<sup>134</sup> Various infringements were alleged in the complaints, ranging from water pollution to the construction of dams resulting in reduced access to water.<sup>135</sup> In this regard, the LAWT plays a significant role in increasing the visibility of environmental disputes. In general terms, 'environmental visibility' has been addressed recently in environmental studies literature to refer, from an environmental justice perspective, to public attentiveness towards relevant environmental problems in specific regions around the world,<sup>136</sup> and transparency in environmental management.<sup>137</sup> Increased visibility of environmental disputes concerning water resources is linked to the LAWT's role as an 'environmental justice forum'. At the heart of LAWT proceedings lies the concept that 'the more visible pollution is, the more likely people will organise to do something about it'.<sup>138</sup>

The lack of a sophisticated mechanism to enhance compliance with the decisions is one of the weaknesses of the LAWT. Unlike national and international tribunals, the LAWT has not established its own structured follow-up procedure. Instead, the prevailing party is left to use the publicity of the Tribunal's hearings in their own future advocacy. Despite this limitation, the LAWT plays a remarkable role in raising

<sup>130</sup> LAWT, 'Quiénes-Somos', n. 102 above (Spanish version reads: 'Justicia alternativa ante la crisis de legalidad imperante').

<sup>131</sup> Cf. Backhouse, Baquero Melo & Costa, n. 52 above, at pp. 4–5.

<sup>132</sup> A. Fischer-Lescano, 'Ex Facto Ius Oritur: Procesos de Escándalo y el Derecho Mundial Emergente' (2007) 30 *Doxa, Cuadernos de Filosofía del Derecho*, pp. 435–50; Fischer-Lescano has put forward this argument with regard to the transitional process in Argentina. See also, generally, N. Krisch, *Beyond Constitutionalism: The Pluralistic Structure of Post-National Law* (Oxford University Press, 2010).

<sup>133</sup> Fischer-Lescano, *ibid.*, at p. 435.

<sup>134</sup> LAWT, 'Audiencias y Casos' ('Hearings and Cases'), available at: <http://tragua.com/audiencias>.

<sup>135</sup> *Ibid.*

<sup>136</sup> Various initiatives have been put forward by NGOs in order to map relevant environmental conflicts concerning land, air and water resources, and their livelihoods which are at risk of being affected by damaging environmental impacts: see, e.g., Global Atlas of Environmental Conflicts, available at: [http://cordis.europa.eu/news/rcn/143637\\_en.html](http://cordis.europa.eu/news/rcn/143637_en.html); Environmental Justice Atlas, available at: <http://ejatlas.org/about>.

<sup>137</sup> See generally F. Bowen, 'Environmental Visibility: A Trigger of Green Organizational Response?' (2000) 9(2) *Business Strategy and the Environment*, pp. 92–107; F. Bowen, *After Greenwashing: Symbolic Corporate Environmentalism and Society* (Cambridge University Press, 2014).

<sup>138</sup> K. Gould, 'Pollution and Perception: Social Visibility and Local Environmental Mobilization' (1993) 16(2) *Qualitative Sociology*, pp. 157–78, at 158.

awareness and contributing to the exertion of pressure on states and corporations to comply with the environmental legislation applicable in each case. It should be noted that ‘environmental awareness’ may be taken for granted in legal systems with a longer environmental tradition, but it is a relatively new phenomenon in Latin America where non-compliance with environmental legislation historically has been high.

The principal manner in which awareness is raised is through the verdicts which may be deployed by NGOs and local organizations to promote the institutional enforcement of legislation.<sup>139</sup> As Bodansky stresses, ‘environmental groups typically have a more single-minded focus than governments and hence are more willing to invest in implementation and enforcement measures ... They monitor behavior, publicize violations, mobilize public opinion against delinquent states, and provide technical and financial assistance’.<sup>140</sup>

### 3.3. *The LAWT as a Legitimate Forum for Alternative Dispute Resolution (ADR)*

Compared with domestic or international courts, the LAWT is perceived by the applicants as an environmental justice forum in which both parties receive fair treatment<sup>141</sup> in overcoming environmental injustice – defined as a situation that ‘occurs when the redistributed risks generated by pollution control end up disproportionately in low income communities and communities of color’.<sup>142</sup> Fairness is reflected in the special features of the proceedings. Firstly, access for the petitioners to formulate their claims is relatively easy: no strict rules of procedure have to be followed and petitioners are not required to have an attorney. Secondly, evidence is carefully scrutinized by an impartial Scientific and Technical Commission, which can reject evidence that it finds to be contrary to established science.<sup>143</sup> Thirdly, once the complaint is admitted, the respondents are permitted to answer the complaint. Fourthly, during the public hearing, both parties have the opportunity to present their cases publicly.<sup>144</sup> Finally, the LAWT provides a forum for communities to expose environmental problems in a semi-judicial and less formalistic context and to analyze the relationship between sustainable development and social exclusion.<sup>145</sup>

<sup>139</sup> On the role of NGOs in environmental compliance see A.D. Tarlock, ‘Role of Non-Governmental Organizations in the Development of International Environmental Law’ (1992), 68 *Chicago-Kent Law Review*, pp. 61–76, at 63.

<sup>140</sup> D. Bodansky, *The Art and Craft of International Environmental Law* (Harvard University Press, 2010), p. 234.

<sup>141</sup> Brynes & Simm, n. 103 above, at p. 713. Conclusions of the Seminar on Peoples’ Tribunals and International Law, Lelio Basso Foundation, Rome (Italy), Sept. 2013, available at: <http://www.ahrcentre.org/topics/peoples%E2%80%99-tribunals-and-international-law>.

<sup>142</sup> R. Lazarus, ‘Fairness in Environmental Law’ (1997) 27 *Environmental Law*, pp. 705–40, at 714.

<sup>143</sup> The members of the Commission are appointed from a list of experts by the Secretariat on the basis of their respective experience; they receive no payment for the tasks performed.

<sup>144</sup> Weaver, n. 60 above, at p. 523.

<sup>145</sup> Various international instruments deal with sustainable development. These include the Brundtland Report adopted in the 1980s (UN, Report of the World Commission on Environment and Development, 20 Mar. 1987, available at: <http://www.un-documents.net/our-common-future.pdf>); the Rio Declaration in the 1990s (n. 10 above); and the 2002 Declaration of the UN World Summit

The nature of the LAWT proceedings demonstrates that, with regard to domestic jurisdiction, 'there is an increasing demand for redress and access to justice by non-state entities that (largely) stems from the shortcomings of national legal systems'.<sup>146</sup> However, the remedies available at the international level often preclude individuals and groups from bringing environmental claims. For instance, a number of investor-state arbitration cases before the ICSID<sup>147</sup> or under the North American Free Trade Agreement (NAFTA)<sup>148</sup> concern access to water (affected by water privatization).<sup>149</sup> Access to justice by individuals or groups with a public interest (other than the parties to the controversy) before NAFTA and ICSID is quite limited for three main reasons: difficulties in the admissibility of *amicus curiae* briefs, economic costs, and confidentiality of the NAFTA and ICSID proceedings.<sup>150</sup> Even if the new ICSID procedural rules now allow for *amici curiae*, the protection granted to individuals and local communities remains limited. Since the focus is on the protection of the foreign investor, the forum does not seem amenable to the settlement of environmental disputes.<sup>151</sup>

In comparison with other alternative adjudicatory bodies and human rights bodies, such as the World Bank panels and the Inter-American Commission and Court of Human Rights, the LAWT offers several advantages. The World Bank panels represent a top-down approach that focuses on projects funded by international institutions to the detriment of individual or group demands.<sup>152</sup> The ACHR entities have only recently developed a body of case law on environmental issues, given that they are not specialized in environmental issues.<sup>153</sup> In addition, legal standing is more restricted than it is for the LAWT.

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on Sustainable Development, Johannesburg (South Africa), 26 Aug. to 4 Sept. 2002, available at: [http://www.un.org/jsummit/html/documents/summit\\_docs/0409\\_l6rev2\\_pol\\_decl.pdf](http://www.un.org/jsummit/html/documents/summit_docs/0409_l6rev2_pol_decl.pdf)) on how the unsustainable practices of wealthy nations may impact upon poorer countries. Scholars have addressed environmental inequalities, their implications and the linkages between poverty on the one hand, and environmental degradation and economic policies on the other: see Backhouse, Baquero Melo & Costa, n. 52 above, at p. 4. There is also a vast literature on the inequality of access to environmental 'goods' (i.e. healthy living conditions) and the inequitable impacts of environmental 'bads' (i.e. pollution): see M. Adebowale, 'Towards a Socially Inclusive Sustainable Development Research Agenda', in M. Eames & M. Adebowale (eds), *Sustainable Development and Social Inclusion: Towards an Integrated Approach to Research* (Policy Studies Institute, 2002).

<sup>146</sup> Romano, n. 46 above, at p. 1056.

<sup>147</sup> A. Kulick, *Global Public Interest in International Investment Law* (Cambridge University Press, 2014), pp. 225–67.

<sup>148</sup> San Antonio, TX (US), 17 Dec. 1992, in force 1 Jan. 1994, available at: <http://www.sice.oas.org/trade/nafta/naftatce.asp>.

<sup>149</sup> J. Vinales, 'Access to Water in Foreign Investment Disputes' (2009) 21(4) *Georgetown International Environmental Law Review*, pp. 733–59.

<sup>150</sup> 'The Secret Trade Courts', *The New York Times*, 7 Sept. 2004, available at: [http://www.nytimes.com/2004/09/27/opinion/27mon3.html?\\_r=0](http://www.nytimes.com/2004/09/27/opinion/27mon3.html?_r=0).

<sup>151</sup> A. de Lotbinière McDougall & A. Santens, 'ICSID Tribunals Apply New Rules on Amicus Curiae' (2007) 22(2) *Mealey's International Arbitration Report*, pp. 1–11.

<sup>152</sup> The World Bank Inspection Panels were created in 1993: see S. Herz & A. Perrault, 'Bringing Human Rights Claims to the World Bank Inspection Panel', Center for International Environmental Law, 2009, available at: [http://www.bicusa.org/wp-content/uploads/2013/01/InspectionPanel\\_HumanRights.pdf](http://www.bicusa.org/wp-content/uploads/2013/01/InspectionPanel_HumanRights.pdf).

<sup>153</sup> See, in general, E. Ulate, 'La tutela medioambiental en el Sistema Interamericano de Protección de los Derechos Humanos', in B. Olmos Giupponi (ed.), *Medio ambiente, Cambio Climático y Derechos Humanos* (Dike, 2011), pp. 75–89.

### 3.4. *An Evaluation of the LAWT as a Transnational Environmental Dispute Settlement Forum*

The LAWT is perceived as an alternative space for environmental justice in the resolution of water conflicts and for the recognition of water as a human right in indigenous territories, incorporating indigenous traditions and customs.<sup>154</sup> In short, the LAWT is more ‘user friendly’. As is the case with human rights forums, local remedies must have been exhausted before a party may obtain access to the LAWT. The Tribunal’s Scientific and Technical Commission accepts cases only if there is sufficient scientific evidence to establish causation between the accused and the environmental degradation. The compilation of scientific evidence is expensive, but fortunately NGOs and other civil society organizations typically sponsor some of the research, given the public nature of the Tribunal and of the disputes.<sup>155</sup>

Some contend that certain features of the LAWT reflect features of arbitration within the ADR framework. For instance, Weaver indicates that the LAWT has ‘developed out of a rich tradition of arbitral bodies’<sup>156</sup> and combines ‘various dispute resolution approaches in such a way that the disadvantages and drawbacks of traditional mediation and arbitration are eliminated’.<sup>157</sup> However, this viewpoint overlooks some of the essential features of the proceedings before the LAWT. Firstly, such proceedings constitute public interest litigation; therefore, confidentiality, which is the main feature of arbitration, does not play a role. Secondly, in arbitration the consent of the parties to the dispute to submit it to the tribunal or mediator constitutes the basis of jurisdiction; this is not so in cases before the LAWT. Thirdly, in arbitration proceedings there is a duty to comply with the award, which is enforceable in national courts. For these reasons, it is more accurate to view the LAWT as a mediator forum that proposes an alternative solution for parties to the conflict, while engaging civil society organizations and consultations. As Maganda asserts, ‘the body’s main innovation lies in the fact that it convenes all the actors in specific cases and attempts to mediate their conflict impartially’.<sup>158</sup>

Indeed, in recent years the LAWT has clearly emerged as a mediator in water conflicts, providing channels to foster dialogue between civil society and public authorities. In this manner, the LAWT has intervened in various mediation processes: it has managed to open channels of mutual understanding in water issues in Huancavelica (Peru) among indigenous communities and local authorities; in

<sup>154</sup> This is, e.g., the case before the LAWT regarding the transfer of water from the region of the Cutzamala System to the Valley of Mexico basin (United Mexican States): P. Avila-García, ‘Water Conflicts and Human Rights in Indigenous Territories of Latin America’, in A. Garrido & M. Schechter (eds), *Water for the Americas: Challenges and Opportunities* (Routledge, 2014), pp. 177–205.

<sup>155</sup> Latin America Solidarity Centre (LASC), ‘The Latin American Water Tribunal Puts “Water Polluters on Trial”’, *Latin America Week*, 15 Apr. 2007, p. 16, available at: <http://www.lasc.ie/sites/default/files/L.A.W.%2007Magazine.pdf>.

<sup>156</sup> Weaver, n. 60 above, at p. 523.

<sup>157</sup> *Ibid.*, at p. 528.

<sup>158</sup> Maganda, n. 54 above, at p. 689.

El Salvador, including communities opposed to hydroelectric projects and the authorities of environment and energy; and in Mexico, Guatemala and South America.<sup>159</sup>

#### 4. THE LAWT'S IMPACT ON ENVIRONMENTAL LAW ENFORCEMENT

The LAWT's functions in assuring compliance with environmental law can be better understood through the analysis of case studies. In this section, three cases brought before the LAWT are discussed to ascertain the impact of its judgments on the resolution of disputes. All three cases examine the nature of the conflict, the verdict issued by the LAWT and the relation with other 'formal' dispute resolution mechanisms.

##### 4.1. *The Construction of the La Parota Dam (Mexico)*

The vast majority of the complaints submitted to the LAWT originated in Mexico,<sup>160</sup> mainly on the grounds of the absence of specialized environmental tribunals in Mexico and the weakness of the rule of law.<sup>161</sup> This high-profile case dealt with the construction of a hydroelectrical dam in Mexico with potentially harmful effects for water resources and the environment.<sup>162</sup> The application to the LAWT is one of several initiatives that have been undertaken in Mexico to protect natural resources.<sup>163</sup>

The hydroelectric dam project, La Parota, to be built on the river Papagayo, was an infrastructure project carried out by the Federal Electricity Commission (*Comisión Federal de Electricidad* (CFE)) in the state of Guerrero.<sup>164</sup> According to different reports issued by NGOs, this dam would severely impact upon strategic environmental resources (such as water) and the ecosystem, directly displace around 25,000 people, and indirectly affect another 75,000 people through the potential environmental harm and the destruction of their livelihoods.<sup>165</sup>

In 2003, the CFE began the construction of the dam in the territory of the indigenous community of Cacahuatpec.<sup>166</sup> These activities were carried out without

<sup>159</sup> Bogantes, n. 58 above, at p. 24.

<sup>160</sup> See LAWT, 'Statistics', in Bogantes & Muiser, n. 57 above, at pp. 86–7.

<sup>161</sup> O. Rosas Landa, 'La lucha legal por la justicia hídrica: México en el Tribunal Latinoamericano del Agua' (2012) 173 *El Cotidiano*, pp. 67–79, at 68.

<sup>162</sup> Amnistía Internacional, 'México Derechos Humanos en Peligro: Proyecto Presa La Parota', Amnesty International, 2007, p. 12, available at: <http://tinyurl.com/puet5nx>.

<sup>163</sup> L. Romero Navarrete, 'Experiencias de Acción Colectiva Frente a la Problemática Ambiental en México' (2003) 50 *Revista Mexicana de Ciencias Políticas y Sociales*, pp. 157–74, at 167.

<sup>164</sup> Asociación Interamericana para la Defensa del Ambiente (AIDA), 'Informe Grandes Represas en América, ¿Peor el Remedio que la Enfermedad?', pp. 94–5, available at: [http://www.aida-americas.org/sites/default/files/INFORMEREP5Eparota\\_0.pdf](http://www.aida-americas.org/sites/default/files/INFORMEREP5Eparota_0.pdf).

<sup>165</sup> LAWT, 'Verdict on the Case concerning the Hydroelectric Dam Project on the Papagayo River in the State of Guerrero, Mexico', Mar. 2006, available at: <http://tragua.com/wp-content/uploads/2012/04/Caso-La-Parota.pdf>.

<sup>166</sup> H. Briseño, 'Opositores a presa La Parota crearán autodefensa en Cacahuatpec, Guerrero', *La Jornada*, 15 Jan. 2014, available at: <http://tinyurl.com/o74hv92>.

consultation with the indigenous communities or representatives of local communities. These actions resulted in a conflict that involved different actors and gave rise to demonstrations against the construction of the dam. Local communities opposed to the project established the Consejo de Ejidos y Comunidades Opositores a la presa La Parota (CECOP). In 2004, the Ministerial General Directorate of Environmental Impact and Risk conditionally approved the environmental impact assessment for the project. Claimants sought redress before national courts and international human rights bodies,<sup>167</sup> including administrative review of the ministerial decision by the national agricultural tribunal<sup>168</sup> and the UN Human Rights Council.<sup>169</sup> In addition, the UN Rapporteur on the Right to Housing issued a report, and the UN Rapporteur on Indigenous Peoples visited the affected area.<sup>170</sup>

Local organizations raised before the LAWT several environmental issues associated with the construction. The main allegation was that neither the environmental impact assessment nor the authorization took into account the damage to water resources or to the local population's public health and quality of life triggered by the construction of the dam.<sup>171</sup> The claimants emphasized that the intervention of the authorities had not guaranteed respect for the right to water and other rights at stake. In addition, the violation of the fundamental rights of the affected communities resulted in heavy social costs arising from the destruction of natural resources. Moreover, they argued that the expropriation of communal lands contravened constitutional principles because the dam would not provide benefits for the inhabitants or contribute to their development.<sup>172</sup> The claimants therefore aimed to guarantee the integrity of indigenous peoples' lands, protect forests and shared water resources, regulate land use and promote actions to improve the quality of life.

The LAWT gave a verdict on the case in 2006 at the conclusion of the first hearing. The Tribunal determined that construction of the dam violated Articles 2 and 27 of the Constitution of the United Mexican States, as well as domestic law provisions on ecological balance and environmental protection, the National Water Act and the

<sup>167</sup> Secretariat of Environment and Natural Resources of Mexico (SEMARNAT), see <http://www.semarnat.gob.mx>; Consejo de Ejidos y Comunidades Opositores a la Presa La Parota (CECOP), see: <http://www.afectadosambientales.org/consejo-de-ejidos-y-comunidades-opositoras-a-la-presa-la-parota-cecop>.

<sup>168</sup> The agricultural tribunal has jurisdiction to consider allegedly unconstitutional action: see M.V. Martínez, Guerrero *Tribunales Agrarios a veinte años de su creación* (2012) 50 *Revista de los Tribunales Agrarios*, pp. 169–93, at 183–4, available at: <http://www.tribunalesagrarios.gob.mx/assets/docs/revistas/rev28.pdf>.

<sup>169</sup> Centro Mexicano de Derecho Ambiental (CEMDA) and Asociación Interamericana para la Defensa del Ambiente (AIDA), 'Resumen de las ilegalidades cometidas en el Proyecto Hidroeléctrico La Parota, Memorando enviado a los Relatores Especiales de la ONU', Aug. 2007, p. 12, available at: <http://inicio.ifai.org.mx/ProyectoComunidades/CEMDA-BOLETIN.pdf>; UNCESCR, Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of Mexico, E/C.12/MEX/CO/49, 9 June 2006, available at: <http://www.refworld.org/docid/45377fa20.html>.

<sup>170</sup> UN Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, to the World Urban Forum III, Vancouver, BC (Canada), 19–23 June 2006, available at: <http://tinyurl.com/osej8xy>.

<sup>171</sup> LAWT, Verdict – Mexico, n. 165 above.

<sup>172</sup> Rosas Landa, n. 160 above, at p. 73.



Health Act.<sup>173</sup> The LAWT issued recommendations that emphasized the need for a complete and comprehensive assessment of the project, including environmental, social, economic and cultural aspects.<sup>174</sup> Moreover, it recommended implementing a process of consultation and public participation in the decision-making process of public interest projects and a mechanism for the resolution of disputes arising from the construction of the dam.<sup>175</sup> In particular, the LAWT proposed the creation of a commission to represent the victims and civil organizations to promote dialogue and a peaceful resolution of the conflict.

After the hearing, the UN Economic and Social Council (ECOSOC) adopted the LAWT verdict,<sup>176</sup> emphasizing that the project ‘would also, according to the Latin American Water Tribunal, violate the communal land rights of the affected communities, as well as their economic, social and cultural rights’.<sup>177</sup> Initially, the Mexican federal government ignored the LAWT’s verdict and recommendations issued by the ECOSOC.<sup>178</sup> However, in three decisions adopted between 2006 and 2007, Mexican courts overturned the dam construction permits.<sup>179</sup> Finally, in 2007, the construction of the dam was suspended *sine die*.<sup>180</sup> Subsequent judicial decisions after 2009<sup>181</sup> supported the demands of local communities in their opposition to the project.<sup>182</sup>

The deeper implications of this case relate not only to how local communities could voice their demands but also increase their participation in water management. Specifically, the LAWT provided an institutionalized forum for dialogue to facilitate the parties’ mutual understanding.<sup>183</sup> In addition, as a result of the combined pressure from the LAWT, local organizations and international NGOs over time, the Mexican government decided to halt the project.

<sup>173</sup> The summary of the application submitted is contained in the verdict: LAWT Verdict – Mexico, n. 165 above, at pp. 1–3.

<sup>174</sup> *Ibid.*, at p. 7.

<sup>175</sup> *Ibid.*, at p. 8.

<sup>176</sup> UNCESCR, Consideration of Reports, n. 169 above.

<sup>177</sup> *Ibid.*, para. 10.

<sup>178</sup> LAWT, Verdict – Mexico, n. 165 above, at p. 9.

<sup>179</sup> The Agricultural Court District 14, Acapulco, Guerrero, issued various decisions calling to a halt the process of approval of land expropriation in order to build the Parota dam: (i) 27 Mar. 2007, regarding Communal Properties of Cacahuatpec, Case No. 0447/2005; (ii) 18 Apr. 2007, with respect to Dos Arroyos, File No. 0074/2006; (iii) 25 Aug. 2008, regarding Los Huajes, Case No. 0072/2006; (iv) 14 May 2007, regarding La Palma, Case No. 0074/2006. See AIDA, n. 164 above, at p. 96.

<sup>180</sup> M. Cifuentes Carbonetto, ‘El conflicto del proyecto hidroeléctrico represa La Parota’, Observatorio Latinoamericano de Conflictos Ambientales, 2007, available at: <http://www.olca.cl/oca/mexico/represas005.htm>.

<sup>181</sup> The Agrarian Tribunal (TUA) 41 ruled in favour of the members of the Board of Ejidos and Communities Opposed to La Parota Dam: see F. Meza Carranza, ‘Falla el Tua a Favor del Cecop; Declara nula la asamblea de La Concepción’, *La Jornada Guerrero*, 28 Apr 2011, p. 1, available at: <http://www.lajornadaguerrero.com.mx/2011/04/28/index.php?section=sociedad&article=007n1soc>.

<sup>182</sup> H. Briseño, ‘Diez Años de Resistencia Contra la Presa La Parota’, *La Jornada*, 27 Dec. 2013, available at: <http://www.jornada.unam.mx/2013/12/27/estados/028n1est>.

<sup>183</sup> Maganda, n. 54 above, at p. 689.

#### 4.2. *Water Pollution in González Catán (Argentina)*

This case was brought before the LAWT in 2012. It concerned a dispute over water pollution in the district of González Catán in Buenos Aires (Argentina), and involved, on the one hand, the citizens of this district and, on the other hand, a state-owned company.<sup>184</sup> In 2008, the Argentine Supreme Court made a ruling regarding water pollution in the same watershed (Matanza-Riachuelo)<sup>185</sup> in which it adopted measures for protecting the environment and stressed the need to defend the collective ‘common and indivisible use’ of the environment.<sup>186</sup> The Supreme Court established the watershed authority’s obligation to meet a strict comprehensive sanitation programme for the water basin, which included ‘the expansion of the drinking water supply ..., sewage and sanitation systems’.<sup>187</sup>

In the 2012 case before the LAWT, a group of neighbours from the district of González Catán<sup>188</sup> sued the Metropolitan Ecological Society of the State (CEAMSE)<sup>189</sup> for using landfill in the area, which, according to the claimants, caused ‘pollution of water, air and soil seriously damaging inhabitants’ health’.<sup>190</sup>

The dispute concerned the sanitary landfill operated by CEAMSE since 1978. CEAMSE allegedly poured ‘2,000 tons of garbage a day without separation of origin’ causing the pollution of a lagoon, the water from which may be intermingled and thus affect water availability for human consumption.<sup>191</sup> The claimants emphasized the poverty and vulnerability of the population living in the district. Serious environmental damage and health risks were alleged whereby ‘according to independent studies, the water is unfit for human consumption from a bacteriological point of view’.<sup>192</sup> The applicants sought the following orders before the LAWT: that CEAMSE close, sanitize and remediate the landfill; the repeal of Decree Law 9,111 of 1978 (the regulatory framework for the management of solid waste in the province of Buenos Aires);<sup>193</sup> the construction of a drinking water network; measures to improve health services for the population and monitoring of water quality with the involvement of the national water commission. The respondent,

<sup>184</sup> LAWT, ‘Activity Report 2011–2012’, 2012, available at: <http://tragua.com/wp-content/uploads/2012/07/English-Bull.-TLA-2011-12....pdf>.

<sup>185</sup> Argentine Supreme Court (in Spanish ‘Corte Suprema de la Nación’ (CSJN)), ‘Mendoza, Beatriz Silvia y otros c/ Estado Nacional y otros s/ daños y perjuicios (daños derivados de la contaminación ambiental del Río Matanza – Riachuelo)’, 8 July 2008, Fallos 331:1622.

<sup>186</sup> J.M. Belisle, ‘La Protección Constitucional del Medio Ambiente en Argentina: Reflexiones a la luz del caso “Cuenca Riachuelo”’, in B. Olmos Giupponi (ed.), *Medio Ambiente, Cambio Climático y Derechos Humanos* (Dike, 2011), pp. 57–74, at 72–3.

<sup>187</sup> Argentine Supreme Court, n. 185 above, paras 75, 76; Olmos Giupponi, n. 46 above, at p. 100.

<sup>188</sup> In Spanish ‘Vecinos Autoconvocados de González Catán’.

<sup>189</sup> In Spanish ‘Coordinadora Ecológica Área Metropolitana Sociedad del Estado’.

<sup>190</sup> Complaint submitted before the LAWT, summary included in the final verdict, at pp. 1–4: LAWT, ‘Verdict on Water Pollution in González Catán’, 7 Nov. 2012, available at: <http://tragua.com/wp-content/uploads/2012/11/gonzalescatan.pdf>.

<sup>191</sup> LAWT, ‘CEAMSE demandada por Vecinos de González Catán ante el TLA’, 2012, available at: <http://tragua.com/2012/11/ceamse-demandada-por-vecinos-de-gonzalez-catan-ante-el-tla>.

<sup>192</sup> According to the complaint, water presented ‘metal, crystal and algae particles and elements such as hexavalent’: see LAWT, n. 184 above.

<sup>193</sup> *Ibid.*

CEAMSE, appeared before the LAWT. CEAMSE questioned the causal link between its activities and diseases in the district and submitted technical studies arguing that, as a utility company, public policy, urban planning, environmental monitoring and waste treatment were not included within its functions.

In reaching its verdict, the LAWT relied on (i) the universal recognition of the human right to water; (ii) Argentina's Constitution, which protects the right to a healthy and balanced environment; and (iii) the General Environmental Law.<sup>194</sup> The verdict urged the implementation of the human right to water, relying on jurisprudence regarding the universal recognition of the human right to water, the enjoyment of which must be protected as a fundamental human right to guarantee access to adequate quantity and quality.<sup>195</sup> The Tribunal called on national and provincial authorities to enhance compliance with these norms and, moreover, urged CEAMSE to disseminate regularly the results from monitoring groundwater quality in the filling perimeter and any other information relating to its operations at the site. The disclosure of this information would ensure citizen participation in monitoring.<sup>196</sup> Following the verdict, the parties reached agreement and signed a Memorandum of Understanding.

In sum, the LAWT's verdict harnessed the formal justice system to protect the water resources in the area. With the help of the Tribunal, local communities could partake in the management of water resources as demonstrated by the participation of local committees in monitoring legal compliance following its recommendations.

#### 4.3. *The Conga Mining Project (Peru)*

This complaint was submitted by affected populations against the Conga Project, which is a gold and copper mining operation in the provinces of Celendín and Cajamarca (Peru).<sup>197</sup> In previous cases before the LAWT, similar complaints had been submitted about mining activities in Peru and their effect on the right to water.<sup>198</sup> This project would allegedly cause detrimental impacts on the surrounding environment.<sup>199</sup> The claimants were the Group for Training and Intervention in Sustainable Development (Grufides) and the Inter-Institutional Platform Celendina

<sup>194</sup> LAWT Verdict – González Catán, n. 190 above, at p. 4, 'Considerandos 1, 2 and 3'.

<sup>195</sup> *Ibid.*, at p. 5.

<sup>196</sup> *Ibid.* The LAWT's recommendations have been only partially followed.

<sup>197</sup> Water Lex, 'Tribunal Latinoamericano del Agua, Grupo de Formación e Intervención para el Desarrollo (Grufides) y Plataforma Interinstitucional Celendina (PIC) c/ Estado Peruano y Minera Yanacocha SRL', 7 Nov. 2012, in Swiss Agency for Development and Cooperation, n. 113 above. For a detailed follow-up on the conflict see: <http://www.justiciaviva.org.pe/notihome/notihome01.php?noti=709>.

<sup>198</sup> The claim was submitted in 2006 and examined during the hearing held in Mexico in Feb. 2006: see A. Pigrau, S. Borràs, J. Jaria i Manzano & A. Cardesa-Salzmann, 'Legal Avenues for EJOs to Claim Environmental Liability', Environmental Justice Organisations, Liabilities and Trade (EJOLT) Report No. 4, June 2012, p. 82, available at: [http://www.ejolt.org/wordpress/wp-content/uploads/2012/08/120731\\_EJOLT-4-High.pdf](http://www.ejolt.org/wordpress/wp-content/uploads/2012/08/120731_EJOLT-4-High.pdf); Suarez Rojas, n. 70 above, at pp. 18–9.

<sup>199</sup> C. Jamasmie, 'Peru "Washing its Hands" of Newmont's Conga Mine Issues: Local Authorities', *mining.com*, 7 Oct. 2013, available at: <http://www.mining.com/peru-washing-its-hands-of-newmonts-conga-mine-issues-local-authorities-83177>.

(PIC), acting on behalf of the local communities.<sup>200</sup> The respondents were the Peruvian state, the Ministry of Energy and Mines, and the mining company Yanacocha SRL, acting on behalf of the Conga Mining Project.<sup>201</sup>

The complaint stated that the mining project would adversely impact upon more than 600 water springs and cause the imminent loss of natural resources, with drastic environmental effects and negative consequences for the population living in the area. According to studies and reports issued by NGOs, the project's foreseeable consequences included the disappearance of several ecosystems and the replacement of lagoons by mine dumps and water pollution.<sup>202</sup>

In their application to the LAWT, the claimants invoked the human right to water and the right to a healthy environment, and requested the definitive cancellation of the Conga Mining Project.<sup>203</sup> The case was examined during the seventh public hearing in 2012.<sup>204</sup> The company sent a submission, in which it stated that it would not participate in the proceedings on the basis that the LAWT 'has no legal power because its actions do not emanate from an authority conferred by any state, lacking the capacity to impose criminal, administrative or civil sanctions'.<sup>205</sup> The Peruvian government similarly failed to appear before the LAWT.<sup>206</sup>

In its verdict, the LAWT reported a number of irregularities in the mining concession and the privatization of water resources. It called on public bodies, such as the Ministry of the Environment, to effectively ensure the right of all people to a balanced environment suitable for the development of life as set out in the Peruvian Constitution in accordance with international standards recognizing the human right to water based on UNGA Resolution 64/292 (2010).<sup>207</sup> Furthermore, the LAWT disapproved of the persecution and repression of the social movement and the lack of participation of civil society in the discussion and approval of this project. It emphasized both the seriousness of the allegations made by the claimants and the Peruvian state's obligations under international treaties to ensure compliance with fundamental human rights, especially the right to water.<sup>208</sup>

Although the LAWT's recommendations have not been fully taken into consideration by the company or the government, the verdict played a significant

<sup>200</sup> In Spanish 'Grupo de Formación e Intervención para el Desarrollo (Gufides) y Plataforma Interinstitucional Celendina (PIC)': see Grufides, Observatorio de Conflictos, available at: <http://www.grufides.org>.

<sup>201</sup> H. Quesada Lluçà, 'Water Yes, Gold No! Empowerment and Social Change through the Social Mobilizations against the Conga Mining Project in the Andean Region of Peru', Master's thesis, Roskilde University, International Development Studies, June 2014, pp. 18–9, available at: <http://rudar.ruc.dk/bitstream/1800/16094/1/Water%20Yes,%20Gold%20No.pdf>.

<sup>202</sup> See Robert E. Moran, 'The Conga Mine, Peru: Comments on the Environmental Impact Assessment (EIA) and Related Issues', Environmental Defender Law Center, 2012, available at: <http://tinyurl.com/pesow7s>.

<sup>203</sup> LAWT, 'Verdict – Conga Mining Case', 7 Nov. 2012, available at: <http://tragua.com/wp-content/uploads/2012/11/congaperu.pdf>.

<sup>204</sup> *Ibid.*

<sup>205</sup> *Ibid.*, para. 36.

<sup>206</sup> *Ibid.*, para. 37.

<sup>207</sup> *Ibid.*, 'Recommendations', 1; UNGA Resolution A/RES/64/292, n. 75 above.

<sup>208</sup> *Ibid.*, 'Recommendations', 5.

role in enhancing the visibility of the conflict.<sup>209</sup> In a brief appraisal of the effectiveness of the verdict, the LAWT stated that the local population's demands should be taken into account by the company and the government during the implementation of the infrastructure project. Were it not for the verdict, the potentially harmful effects would not have been made so public or evident. Had the LAWT not pronounced on the case, local communities would have had fewer opportunities to be heard at the domestic and international levels. Finally, the LAWT supported the claims of local communities for more participatory procedures to decide upon their future development.<sup>210</sup>

#### 4.4. *Discussion*

In this article, I have argued that the LAWT represents an alternative forum to formal state-based institutions for the settlement of environmental conflicts concerning access to water in Latin America. Although environmental concerns and conflicts related to water resources are not a novelty in Latin America, they have not been addressed in the past with the current level of conscientiousness. The three selected cases show different ways in which the LAWT can play a central role in resolving such concerns and conflicts and in facilitating the enforcement of environmental regulation.

The cases demonstrate how the LAWT provided the opportunity to affected communities to present their claims. The three verdicts emphasize the respondents' responsibilities to comply with environmental legislation, and stress the linkage between international human rights and the protection of the environment. Since the LAWT's verdicts are not legally binding, they could not be enforced. However, the respective verdicts have heightened the visibility of the conflicts, which has helped to facilitate compliance with environmental norms.

The impact of LAWT verdicts does seem to depend on the 'use' made of them by the parties in subsequent negotiations and advocacy. In the La Parota case, for example, the petitioners were at last able to stop the construction of the dam on the basis of the LAWT's recommendations. In González Catán, demands of local organizations were backed up by the LAWT, which provided additional support in monitoring compliance with the relevant environmental legislation. Finally, in the Conga Mining case, the affected communities could voice their demands through the LAWT's participation in the process.

### 5. CONCLUSION

A key criticism of the LAWT is that it lacks enforcement powers and, as a result, some disputes are still continuing. This article has demonstrated that the LAWT's activities are nonetheless critical as an alternative and effective forum for access to environmental justice in Latin America for three main reasons.

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<sup>209</sup> The social movement to defend water resources and the environment also organized a People's Summit in Cajamarca (Peru), 23–25 Oct. 2014.

<sup>210</sup> Quesada Lluçà, n. 201 above, at p. 86.

Firstly, the LAWT provides the opportunity for claimants to present their cases and with recommendations for compliance with environmental legislation. The LAWT also facilitates voluntary compliance with water resources legislation, and indigenous norms and customs. In this way, the LAWT acts as a mediator recommending compliance with applicable environmental norms and identifying possible ways of resolving the disputes.

Secondly, the LAWT has proved to be an alternative forum to place water issues on the agenda, which contributes to mobilizing public opinion. Its proceedings and verdicts raise awareness about water conflicts in Latin America and thus facilitate public pressure on states and corporate private actors. It increases transparency and environmental visibility in legal procedures, as evidenced in the cases involving approval of the construction of a new hydroelectric dam or permission for the exploitation of mining concessions. Only through the intervention of the LAWT were the affected local communities able to raise their concerns.

Thirdly, traditional water management systems designed by governments adopt a top-down approach without considering the human rights dimension. In contrast, the LAWT offers a bottom-up approach which includes the demands of the various groups in society, such as the local population and indigenous people. This approach represents an alternative to extant fora in which affected groups cannot access justice mechanisms and/or lack legal standing to do so.

In sum, the remarkable activity of the LAWT opens the door to future opportunities to address controversial situations that may arise with regard to access to water where traditional justice mechanisms prove to be ineffective or inadequate.