

Access to Justice in International (Quasi-) Judicial Procedures

The Case for Strengthening Procedural Rights of Environmental NGOs

EELF Conference, Wroclaw, Poland
14-16 September 2016

At a glance...

Research Design

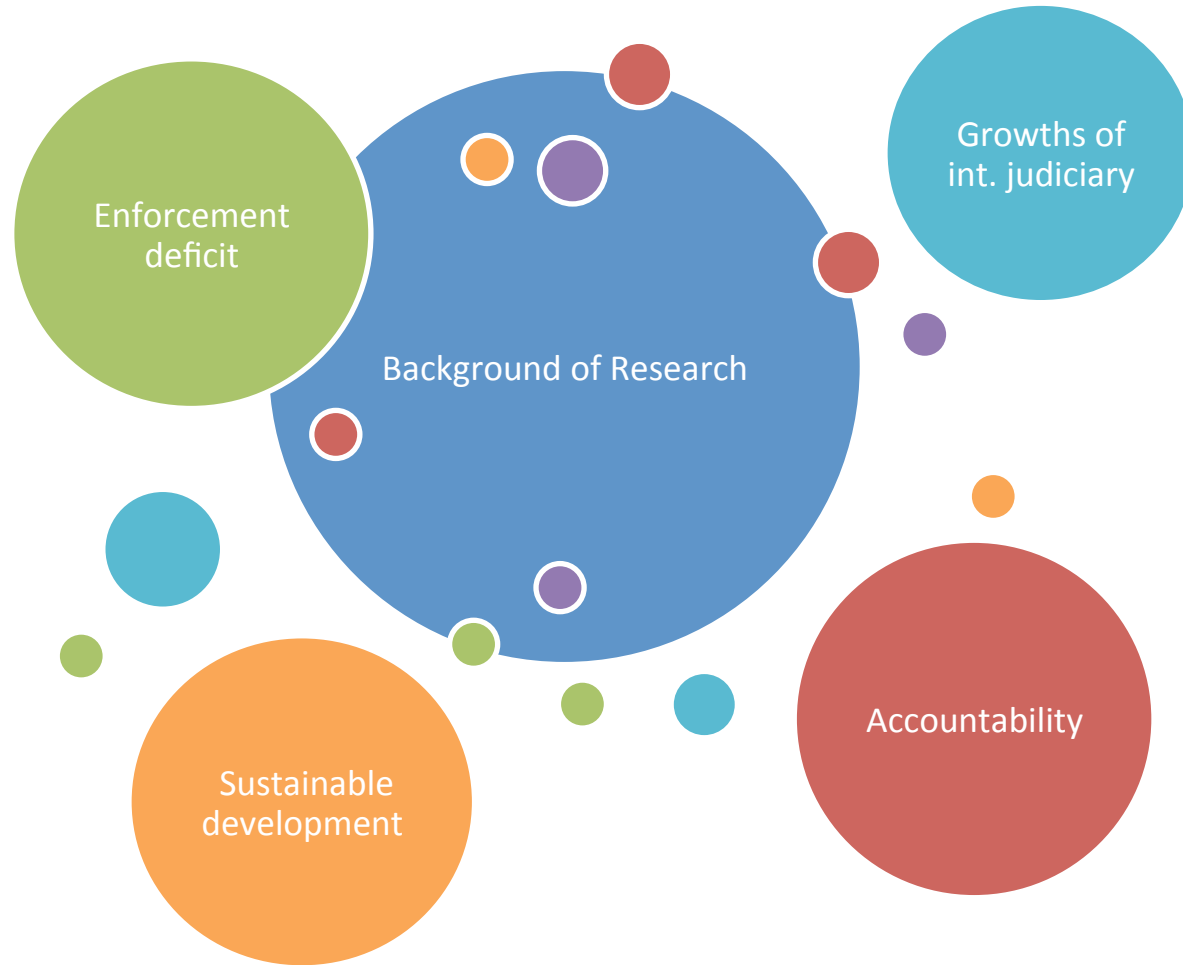
Key Findings and Recommendations



Region	Ref.	# Cases	Inst. Act.	Access		Transparency			
Under				Info	Legal	Info	Legal	Info	Legal
Courts									
ICJ	2006	224 cases 26 act.	Art. 92	S	UN OJ NGO?	X	X	X	X
WTO	2006	423	Art. 17	S	-/NGO	X	X	-	-
ITLOS	2006	18 cases 1 act	Art. 17 Dispute Settlement	S, SA	ICJ, IACJ 2 NGOs	X	X	X	X
Arbitral Tribunals									
PCA	2006	57	Art. 17	S, SA	ICJ, IACJ	X	X	-	-
UNCITRAL	2006	151	-	S, SA	UNCITRAL	X	X	-	-
Compliance Committees									
WTO	2006	7	-	S, SA	WTO	X	X	X	X



Background of Research



Research Question

Does the court, tribunal, or compliance committee appropriately contribute to accountable governance towards sustainable development?

Procedure
Decision
Applicable Law

Accessibility
Quality
Transparency

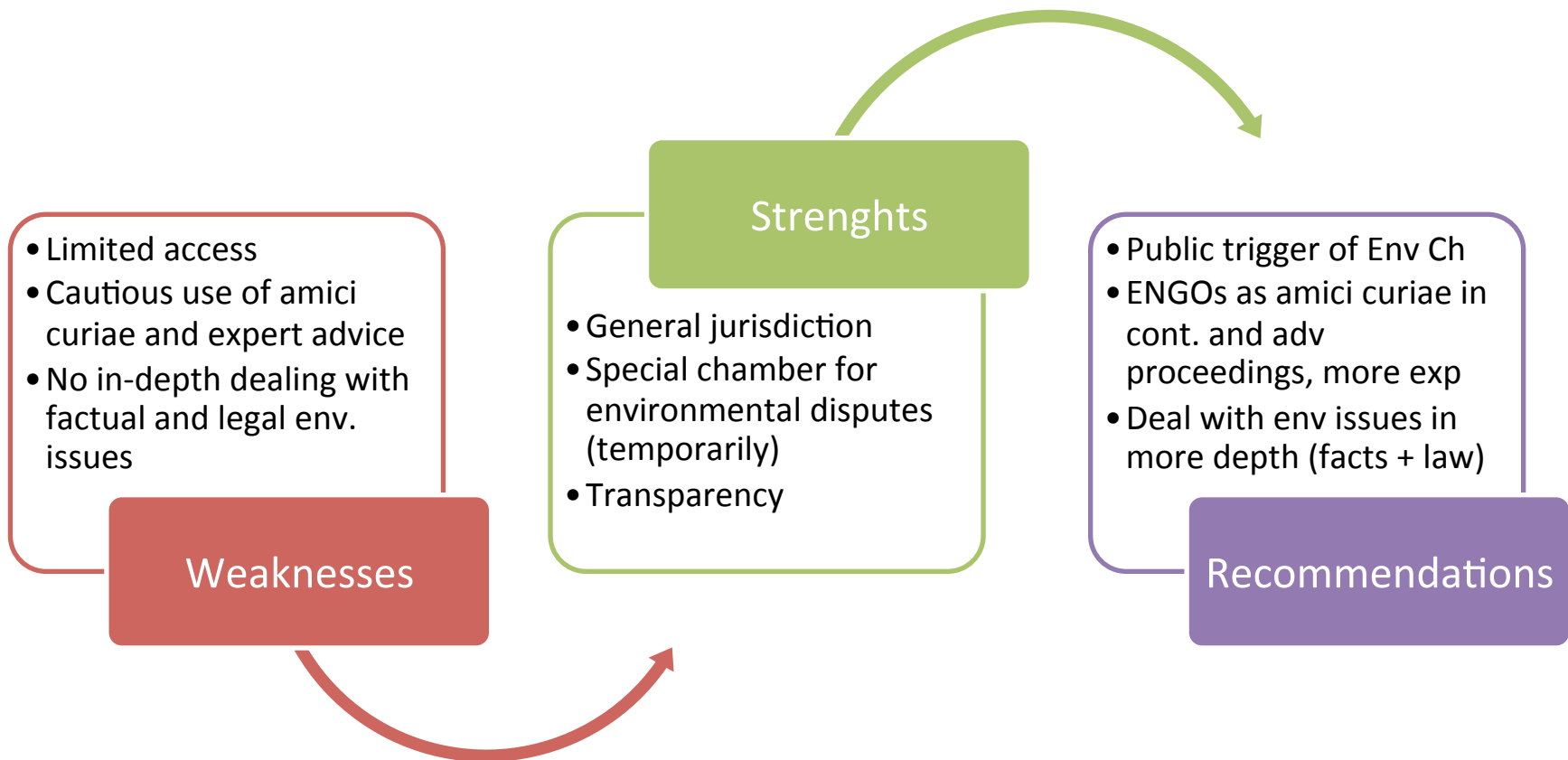
Forum	Act	# Cases	Inst. Arr.	Access			Transparency			
Univ				P/D	Amici rul/case	Exp	Dec	Hear	Doc	Web
Courts										
ICJ	1946	121 cont 26 ad	<i>Env Ch</i>	S UN Or	IGO/- INGO/-	x	x	x	x	x
WTO	1995	423	AB	S	-/NGO	x	x	-	-	-
ITLOS	1996	18 cont 1 ad	2 sp Ch SeabDCh	S, ISA, non-S	IGO/- IGO/NGO	x	x	x	x	x
Arbitral Tribunals										
PCA	1899	57	Env Rules	S, IO, priv p		agr	-	-	-	-
ICSID	1966	331	-	S, priv inv		agr	-	-	-	-
Compliance Committees										
Kyoto CC	2006	7	-	S, ERT	x/-	x	x	x	x	x

Forum	Environmental Case Law	
Univ	Courts	
ICJ		WTO
- Corfu Channel, Barcelona Traction - Nuclear Tests - Nuclear Weapons - Gabcikovo-Nagymaros - Pulp Mills on the River Uruguay - Herbicide Spraying and Whaling		- Tuna-Dolphin - Reformulated Gasoline - Beef Hormones - Asbestos - Shrimp-Turtle - Biotech Products - Seal Products
		ITLOS
		- Prompt Release: Camouco, Monte Confurco, Juno Trader, Hoshinmaru, Volga case - Provisional Measures: Southern Bluefin Tuna, MOX plant, Land Reclamation cases - Advisory Opinion: Activities in the International Seabed
Arbitral Tribunals		
PCA		ICSID
- North Atlantic Coast Fisheries - OSPAR Arbitration - MOX plant case - Iron Rhine Arbitration - Naftrac vs. Ukraine		- Metalclad / Mexico - Tecmed / Mexico - Biwater / Tanzania - Vattenfall / Germany
Compliance Committee: Kyoto CC		
Enforcement Branch Proceedings: Greece, Canada, Croatia		

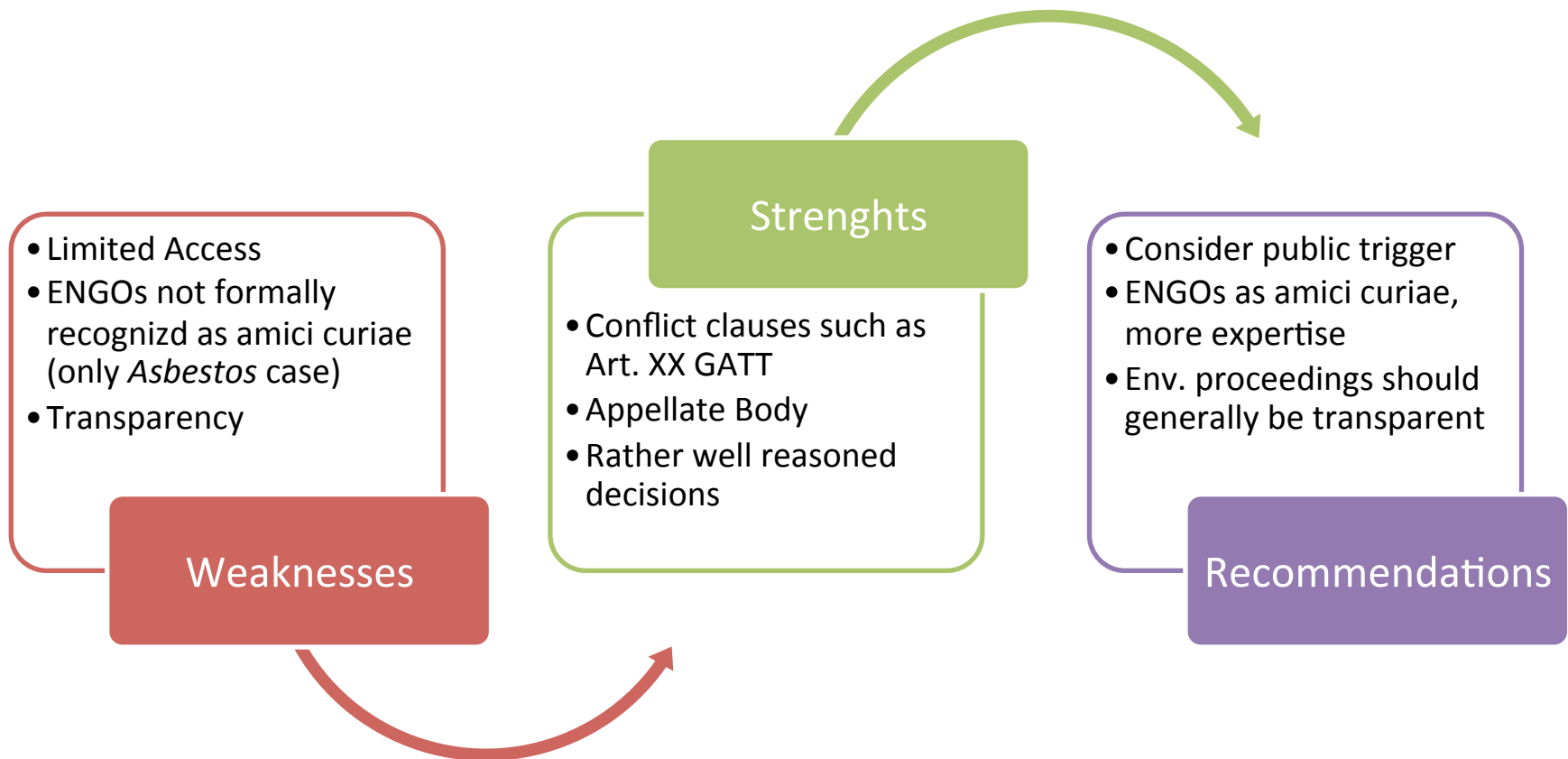
Forum	Act	# Cases	Inst. Arr.	Access			Transparency			
Regio				P/D	Amici rul/case	Exp	Dec	Hear	Doc	Web
Courts										
ECtHR	1959	> 12.000	-	I, S	- / x	x	x	x	x	x
IACtHR	1979	120	-	Com, S	x / x	x	x	x	x	-
AfCHPR	2006	1 cont 0 ad	-	I, NGO, ppl, IGO, S, Com, AU	x / -	x	x	x	x	-
Arbitral Tribunals										
NAFTA	1994	42	-	S, IO, priv p	x / x	agr	-	-	-	-
DR- CAFTA	2006	4	-	S, priv inv	x / x	agr	-	x	x	x
Compliance Committee										
Aarhus CC	2003	59	-	I, NGO, S	- / -	x	x	x	x	x

Forum	Environmental Case Law		
Regio	Courts		
ECtHR	IACtHR	AfCHPR	
- Lopez-Ostra v. Spain - Guerra and others v. Italy - Tatar v. Romania - Kyrtatos v. Greece - L’Erablière A.S.B.L. v. Belgium - Mangouras v. Spain	- Mayagna Awas Tingni Community v. Nicaragua - Maya indigenous com v. Belize - Kichwa Peoples v. Ecuador - Metropolitan Nature Reserve v. Panama	Ogoniland case (Nigeria)	
Arbitral Tribunals			
NAFTA		CAFTA-DR	
- Methanex Corporation v. United States - Glamis Gold Ltd. v. United States - Chemtura v. Canada - S.D. Myers v. Canada		Pacrim Cayman LLC v. El Salvador	
Compliance Committee: Aarhus CC			
- Green Salvation (Kazakhstan) - ClientEarth and others (UK) - ClientEarth (EU)			

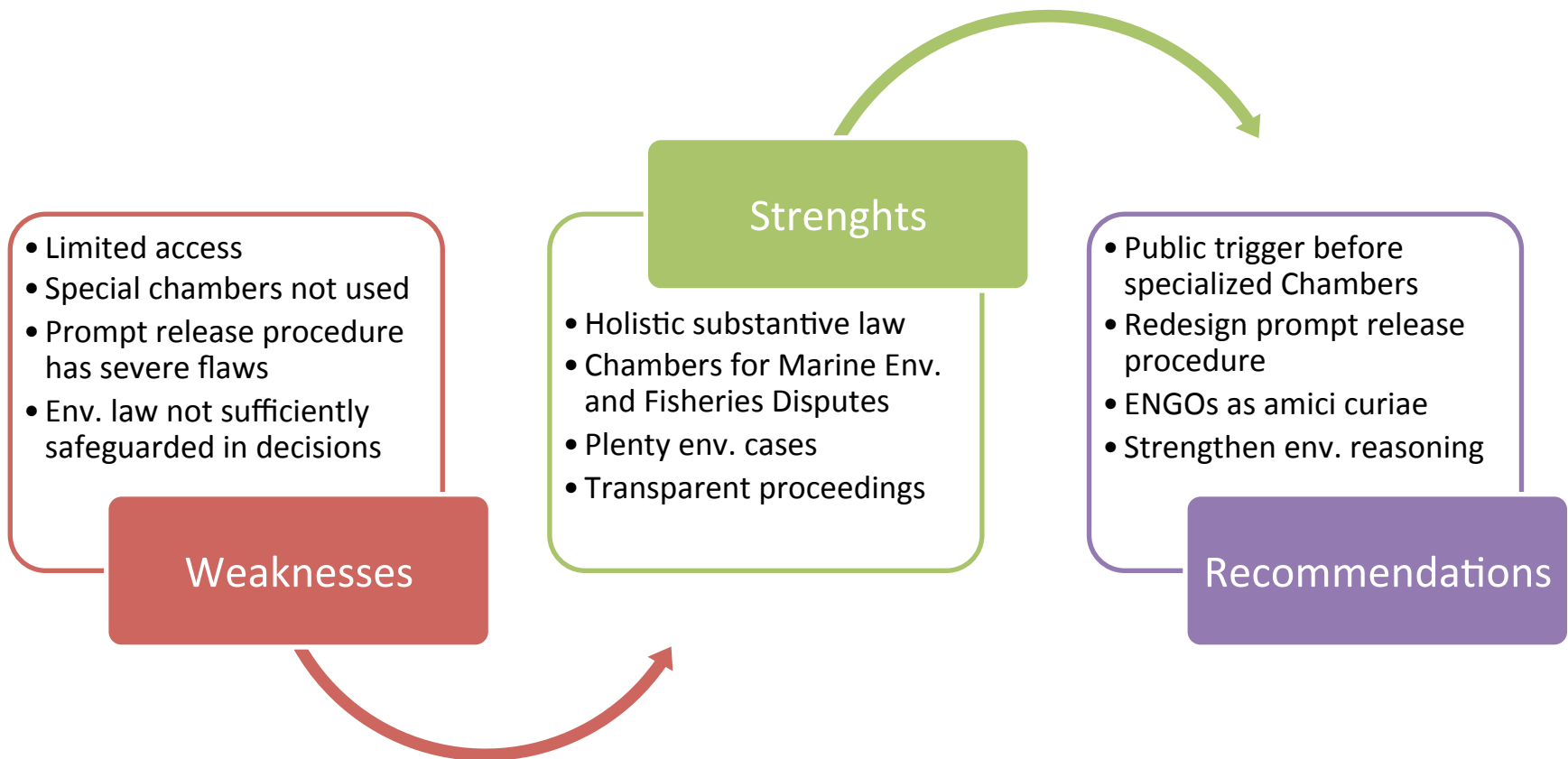
Forum	# Cases	Inst. Arr.	Access			Env. Cases	Transpa rency
			P/D	Amici rul/case	Exp		
ICJ	>130 cont 26 ad	<i>Env Ch</i>	S UN Or	IGO / - INGO / -	x	7	x



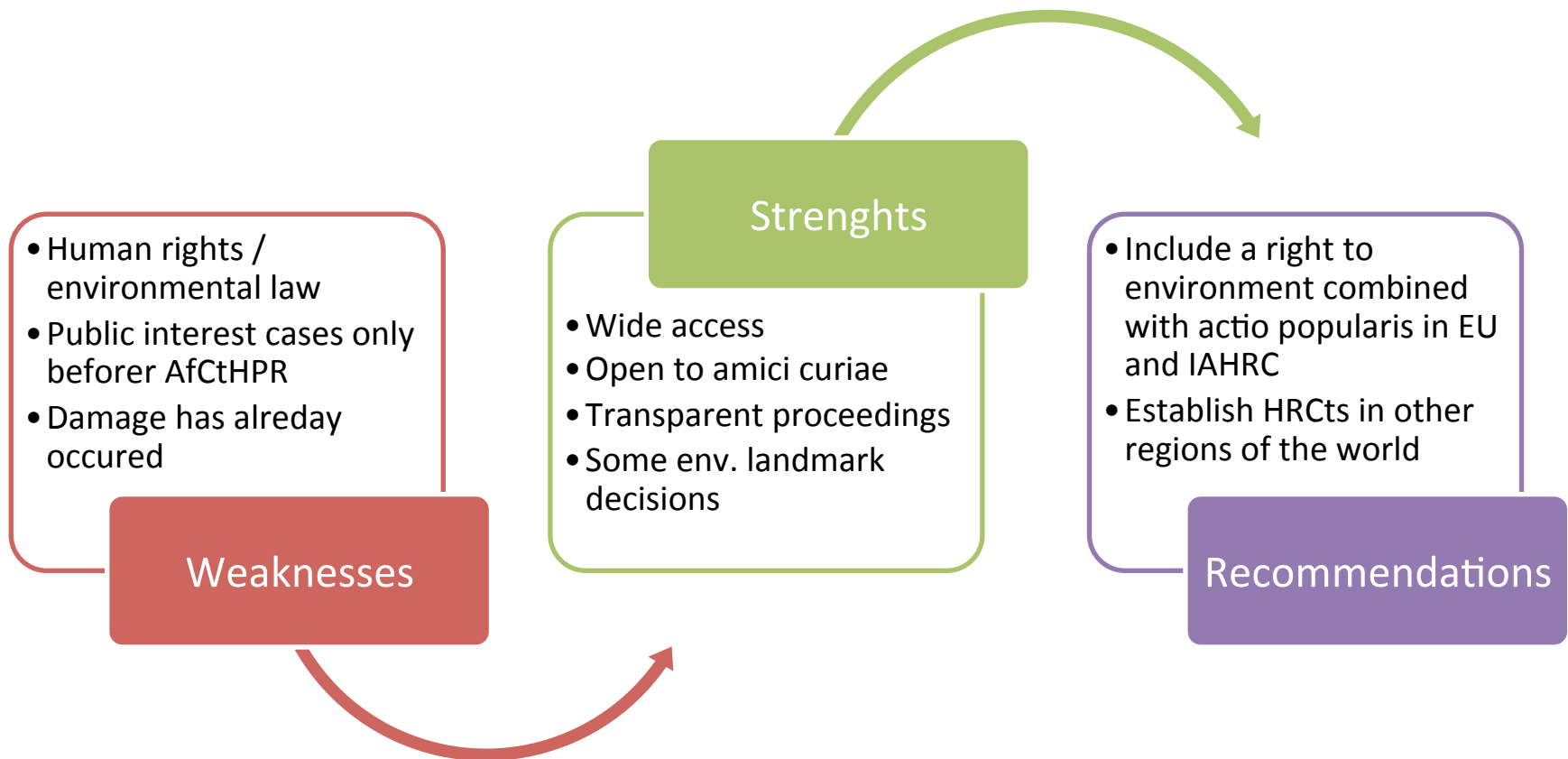
Forum	# Cases	Inst. Arr.	Access			Env. Cases	Transpa rency
			P/D	Amici rul/case	Exp		
WTO	>500	AB	S	- / NGO	x	8	-



Forum	# Cases	Inst. Arr.	Access			Env. Cases	Transpa rency
			P/D	Amici rul/case	Exp		
ITLOS	23 cont 2 ad	2 sp Ch SeabDCh	S, ISA, non-S	IGO/- IGO/NGO	x	10	x

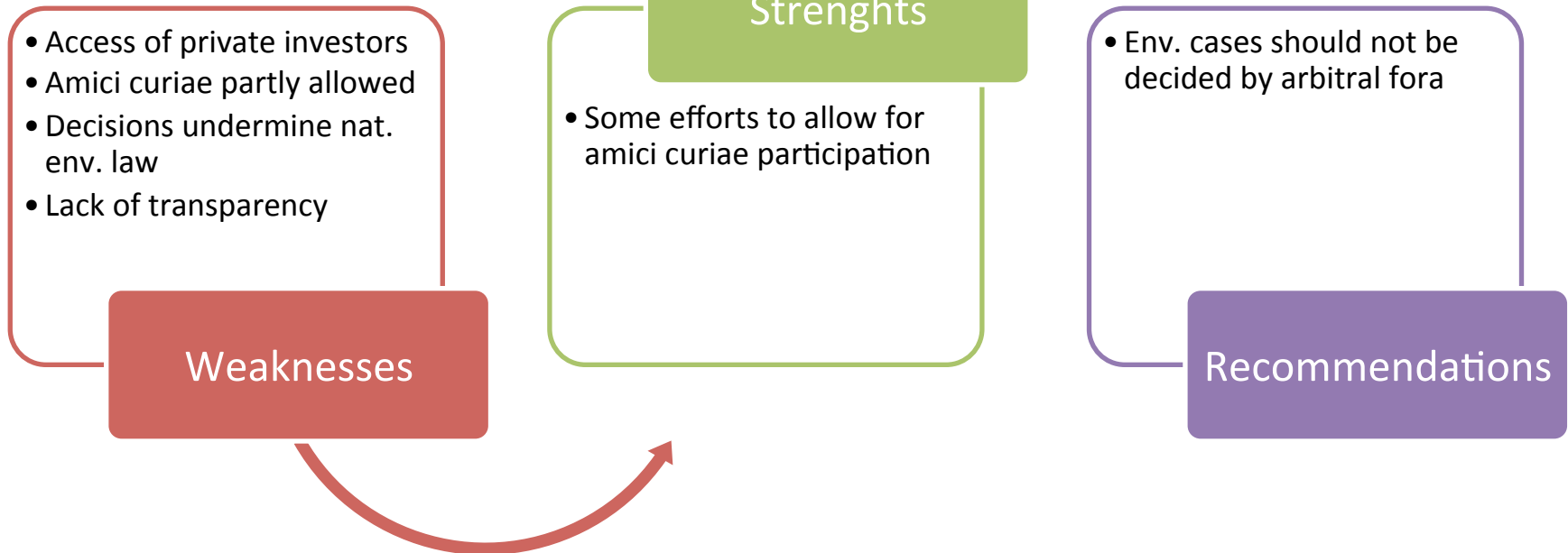


Forum	# Cases	Inst. Arr.	Access			Env. Cases	Transpa rency
			P/D	Amici rules/case	Exp		
HRCts	dep.	-	I, S +	- / x	x	11	x

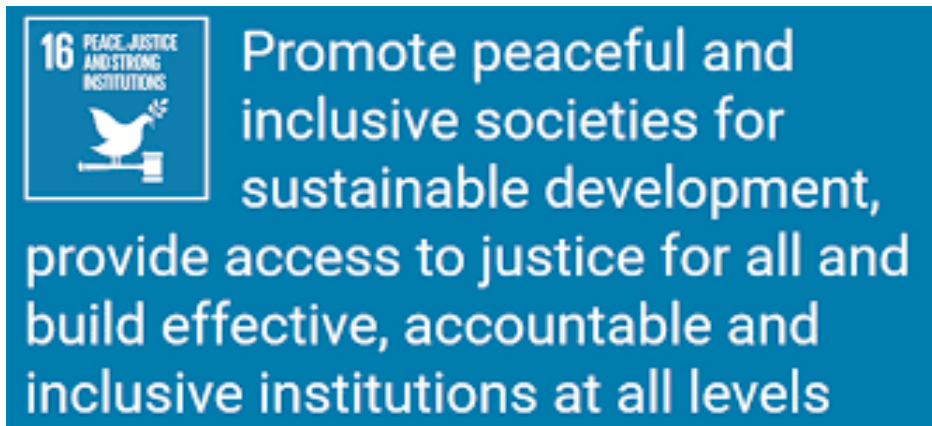
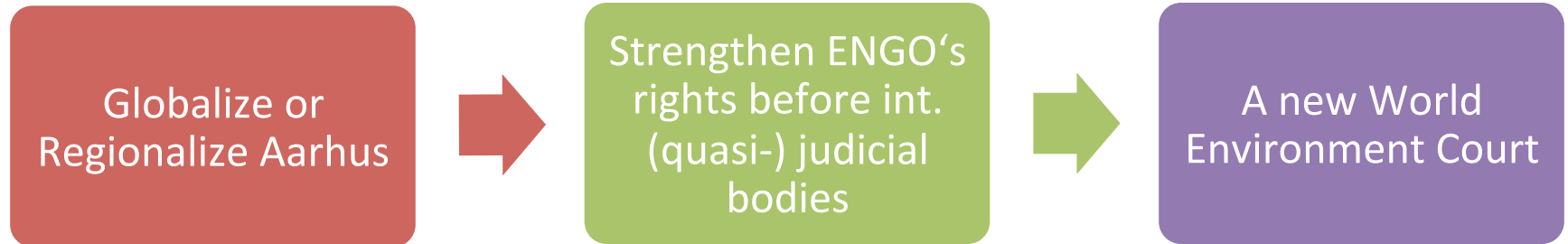


Forum	# Cases	Inst. Arr.	Access			Env. Cases	Transpa rency
			P/D	Amici rul/case	Exp		
ICSID	>500	-	S, priv inv	x / x	agr	4	-

...and other arbitral
trials



Overall Conclusions and Recommendations



16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all

16.6 Develop effective, accountable and transparent institutions at all levels

16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels



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Greening International Jurisprudence

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<http://www.brill.com/greening-international-jurisprudence>

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