

UNEP GLOBAL JUDGES PROGRAMME

APPLICATION OF ENVIRONMENTAL LAW BY NATIONAL
COURTS AND TRIBUNALS

PRESENTATION 6

HOW ENVIRONMENTAL CASES COME BEFORE COURTS

OUTLINE OF PRESENTATION

CLASSES OF CASES

Constitutional rights litigation

Government enforcement and NRD actions

Private party civil litigation

Review of administrative agency decisions

PROCEDURAL ISSUES

locus standi

Pro se litigation

Timeliness of action

Public interest litigation

CONSTITUTIONAL RIGHTS LITIGATION

- Increasing number of constitutions have right to clean environment
- Others have provisions from which an implied right to a clean environment has been inferred
- Assuming enforceability and justiciability, environmental concerns may be presented in the fundamental rights suits

ENFORCEMENT ACTIONS

- Civil and criminal enforcement actions brought under pollution control and natural resource laws, such as:
 - Air, water and land pollution statutes
 - Natural resource management statutes
 - Planning statutes
 - Heritage protection statutes

CIVIL ENFORCEMENT ACTIONS

- Lower standard of proof
- Lower standard of proof can result in lower prosecution costs
- Easier to reach settlement because of diminishing stigma
- Wide array of remedies



ACTIONS IN TORT

- NUISANCE
- NEGLIGENCE
- TRESPASS

Private nuisance

Public nuisance

Damages

Injunctions to stop
particular actions

CRIMINAL PROSECUTIONS

- Maximizes deterrence message
- Most potent stigma in terms of deterring future violations by others
- Remedies often include imprisonment
- Standard of proof (“beyond reasonable doubt”) is more demanding than the civil standard
- Settlement can be more difficult because desire to avoid stigma of criminal conviction can diminish willingness to plead guilty to the charged offence or a lesser offence

THE PROCESS OF PROSECUTION

- Collection of scientific and other evidence
- Role of police
- Specialist environmental prosecutors
- Need to prove elements of the offence

预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index/report?reportId=5_13849

