

JUDICIAL HANDBOOK

ON

ENVIRONMENTAL CONSTITUTIONALISM

UN 
environment

JUDICIAL HANDBOOK

on

Environmental Constitutionalism

By

James R. May and Erin Daly

Published by the United Nations Environment Programme (UN Environment) March 2017

Judicial Handbook on Environmental Constitutionalism – English

Reproduction

This publication may be reproduced in whole or in part and in any form for educational and non profit purposes without special permission from the authors or UN Environment, provided that acknowledgement of the source is made; acknowledgment of Cambridge University Press, publisher of May & Daly, Global Environmental Constitutionalism, should also be made. UN Environment will appreciate receiving a copy of any publication that uses this material as a source.

No use of this publication can be made for the resale or for any other commercial purpose whatsoever without the prior permission in writing of UN Environment. Application for such permission with a statement of purpose of the reproduction should be addressed to the Communications Division, of the UN Environment Programme, P.O BOX 30552, Nairobi 00100 Kenya.

The use of information from this document for publicity of advertising is not permitted.

Disclaimer

The contents and views expressed in this publication do not necessarily reflect the views or policies of the UN Environment Programme or its member states. The designations employed and the presentation of materials in this publication do not imply the expression of any opinion whatsoever on the part of UN Environment concerning the legal status of any country, territory or its authorities, or concerning the delimitation of its frontiers and boundaries.

Mention of a commercial company or product in this document does not imply endorsement by UN Environment.

Trademark names and symbols are used in an editorial fashion with no intention or infringement on trademark or copyright laws.

Produced by

Law Division,
UN Environment Programme
P.O.BOX 30552, Nairobi, Kenya Tel: +254 20 7623365
Email: Law.director@unep.org
www.unep.org

ACKNOWLEDGEMENTS

We have a host of people and institutions to thank for ideas, input and encouragement with this handbook. We assembled and tested a beta version at the inaugural *Judicial Workshop on Environmental Rights*, held at Pretoria University, South Africa, in April 2016, an event sponsored by Widener University Delaware Law School (USA) and North-West University (Potchefstroom, South Africa), with support from the United Nations Environment Programme (UN Environment). The workshop had twin goals of providing both practical and theoretical grounding in the implementation of environmental rights and serving as the springboard for the development of these training materials. We had the pleasure of co-chairing the event, with facilitators John Knox, Loretta Feris, Louis Kotzé, Melanie Murcott, and Caiphaz Soyapi, and observers and advisers Arnold Kreilhuber, Angela Kariuki, Cecilia Njenga, and Megan Wentzel. Participating jurists included Kwabena Asuman Adu, Brian Preston Jody Kollapen, BA Mashile, Selby Mbenenge, Anthony Oppong, Rebecca Naa Shormeh Sittie, Zukisa Thsiqi, Bashier Vally, MP Tsoka, M Victor, Leonie Windell, Merley Afua Wood, Merideth Wright, and Emmanuel Amo Yartey. Each contributed to what you see within these pages.

These materials were made possible with UN Environment's assistance and support. In particular we acknowledge the extraordinary guidance and management of Angela Kariuki, as well as support from Research Professor Louis Kotze of the North-West University in Potchefstroom, South Africa and John H. Knox, Henry C. Lauerman Professor of International Law at Wake Forest University School of Law and United Nations Special Rapporteur on Human Rights and the Environment. In addition, we would like to thank Denise Antolini, Antonio Benjamin, John Berger, Andrea Brusco, Rodrigo da Costa Sales, Claudia de Windt, Soo-Young Hwang, Arnold Kreilhuber, Aaron Laur, Lara Ognibene, and Ramin Pejan, Bashier Vally and Merideth Wright, all of whom in various ways have helped to bring this project to fruition.

We are also grateful for the research assistance of Maggie Stewart Adams and Janet Lindenmuth at Widener University Delaware Law School.

Portions of these materials were adapted from May & Daly, *Global Environmental Constitutionalism* (Cambridge 2015). We hope that you find them to be useful.

-- James R. May & Erin Daly

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	IV
INTRODUCTION	1
CHAPTER 1: THE ROLE OF THE JUDICIARY IN ENVIRONMENTAL CONSTITUTIONALISM	4
A. Reference Materials	12
1. Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.....	12
2. Juan Antonio, Anna Rosario and Jose Alfonso Oposa & Others v. The Honorable Fulgencio S. Factoran, Jr., (Philippines, 1993)	53
3. Robinson Township. v. Commonwealth of Pennsylvania (Pennsylvania, U.S. 2013)	63
CHAPTER 2: A TAXONOMY OF ENVIRONMENTAL CONSTITUTIONALISM	79
A. Substantive Rights	81
B. Procedural Environmental Rights.....	83
C. Other Aspects of Environmental Constitutionalism	84
1. Environmental Obligations, Duties and Policies	84
2. Rights to Water.....	84
3. Rights of Nature	85
4. Sustainability and Public Trust	85
5. Climate Change.....	86
6. Dignity	86
D. Subnational Environmental Constitutionalism.....	87
E. Reference Materials.....	89
1. Pablo Miguel Fabián Martínez Y Otros (Peru, 2006)	90
2. Domitila Rosario Piche Osorio, conocida por Domitila Rosario Piche Estrada, en contra del Ministro y de la Viceministra del Medio Ambiente y Recursos Naturales, (El Salvador, 2010),	111
3. Ashgar Leghari v. Federation of Pakistan (Lahore High Court, Pakistan, 2015).....	119
4. Gbemre v Shell Petroleum Development Company Nigeria Limited and Others, Federal High Court, Nigeria (2005).....	123

CHAPTER 3: JUSTICIABILITY OF ENVIRONMENTAL CONSTITUTIONALISM	129
A. Presumptions About Justiciability	130
B. Who Can Enforce Constitutional Environmental Rights?.....	131
C. Who is Responsible?: Identifying the Appropriate Defendant	138
D. Timing: When is the Right Time to File a Claim?	138
E. Justiciability and Process	140
F. Affirmative Defenses	141
G. Reference Materials	144
1. Expediente sobre permisos de mineras a cielo abierto en los sitios de la UNESCO (Argentina, 2010)	144
CHAPTER 4: ADJUDICATING ENVIRONMENTAL CONSTITUTIONALISM	160
A. Challenges in Adjudicating Environmental Rights	161
1. Interpreting Constitutional Text	161
2. Identifying Breaches	165
B. Four Types of Judicial Interpretation	166
1. Independent Environmental Rights.....	167
2. Dependent Environmental Rights	172
3. Derivative Environmental Rights	173
4. Dormant Environmental Rights.....	177
C. Reference Materials	178
1. La Camaronera en la Reserva Ecológica (Ecuador, 2015)	179
2. Fadeyeva v. Russia (European Court of Human Rights, First Section 2005)	188
3. M.C. Mehta v. Union of India & Others (India 2004).....	203
CHAPTER 5: REMEDIES	212
A. State Obligations under the International Law Framework.	213
B. The Range of Remedies.....	214
1. Preventing Further Environmental Harm.	214
2. Injunctions.....	215
3. Damages.	223
4. Compliance Orders.....	224
5. Imprisonment.....	225
C. Challenges to Enforcement	225
D. Reference Materials	227

1. Beatriz Silvia Mendoza and others v. National State of Argentina (Argentina 2008)	228
2. Padilla Gutierrez, Clara Emilia y otros, todos en su condición de vecinos de lugares aledaños al Parque Nacional Marino Las Baulas de Guanacaste c/ SETENA, Secretaria Técnica Nacional Ambiental (Costa Rica, 2008)	241
3. Consejo de Defensa del Estado c/ García Brocal Julio y otro (Chile, 2013)	248
CONCLUSION	260
APPENDIX: SAMPLE PROVISIONS OF ENVIRONMENTAL CONSTITUTIONALISM	264
BIBLIOGRAPHY	271

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_15468

