

STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW IN THE ASIA-PACIFIC : DEVELOPING ENVIRONMENTAL LAW CHAMPIONS

Siem Reap, 27 November - 1 December 2017

SESSION 10: SUBSTANTIVE & PROCEDURAL RIGHTS IN ENVIRONMENTAL LAW

**Presented by Prof Alexander Paterson
University of Cape Town**



OVERVIEW OF THE SCOPE/CONTENT SESSIONS

- Introduction for environmental law
- Environmental (spatial) planning & EIA law
- Environmental protection law
- Biodiversity and heritage law
- Natural resources management law
- Climate change/clean energy law
- Environmental dispute resolution
- Rights in environmental law
- International environmental law
- Regional environmental law



CONTENT

3 MAIN ISSUES

Human Rights

Substantive Rights

Environmental Rights

Procedural Rights

Aarhus Convention

Rights for Nature

SUBSTANTIVE VS PROCEDURAL RIGHTS

substantive rights

human rights

**right relating to
the substance of being
human**

environmental rights

procedural rights

**right to a procedure
to enforce a
substantive right**

**right to a procedure
to challenge decisions &
enforce legal duties**

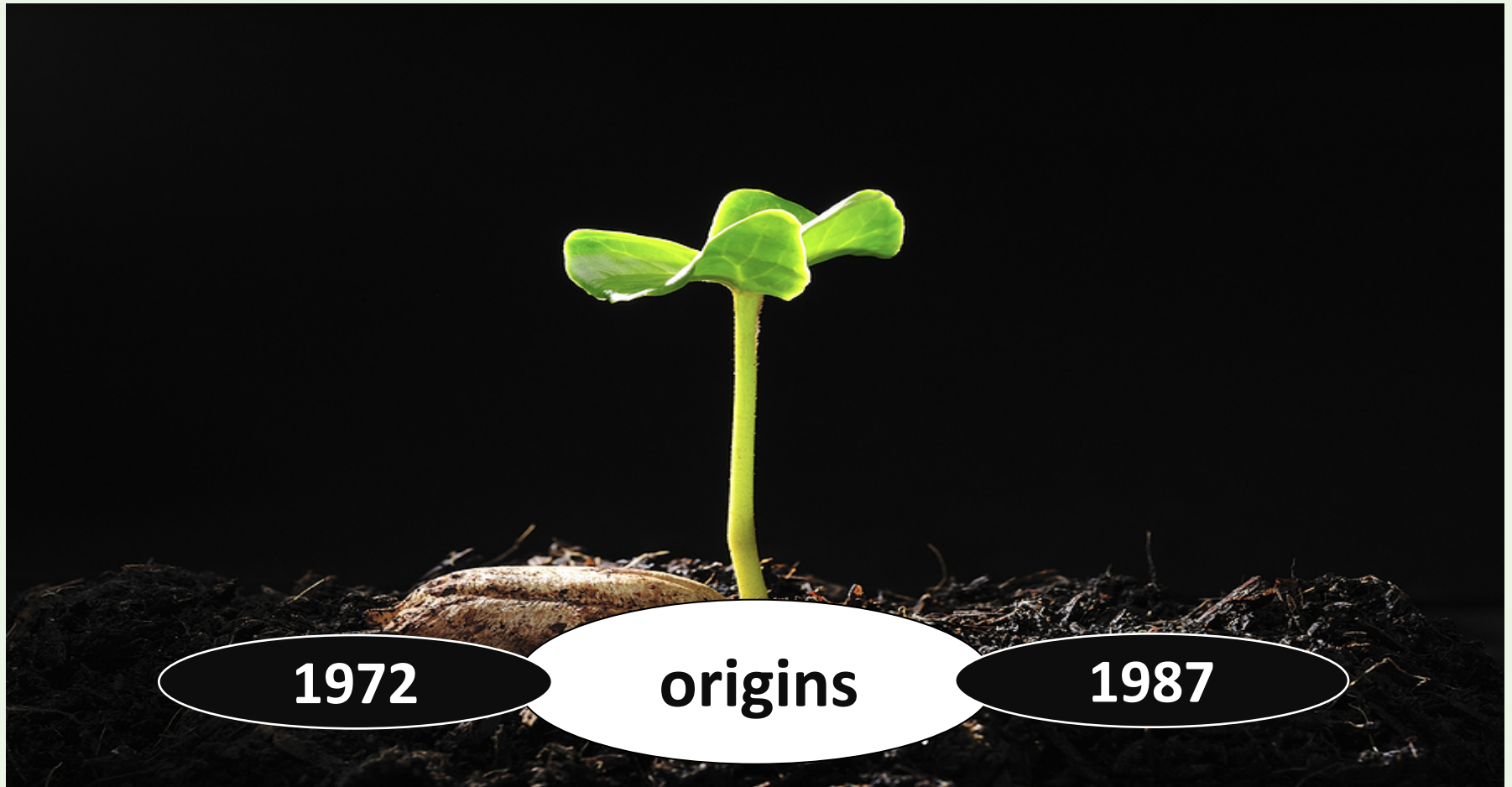
HUMAN RIGHTS

- Right to life
- Right to equality (non-discrimination & equal protection)
- Human dignity
- Freedom of security of person
- Right to privacy
- Freedom of religion, belief and opinion
- Freedom of expression
- Freedom of association
- Freedom of movement

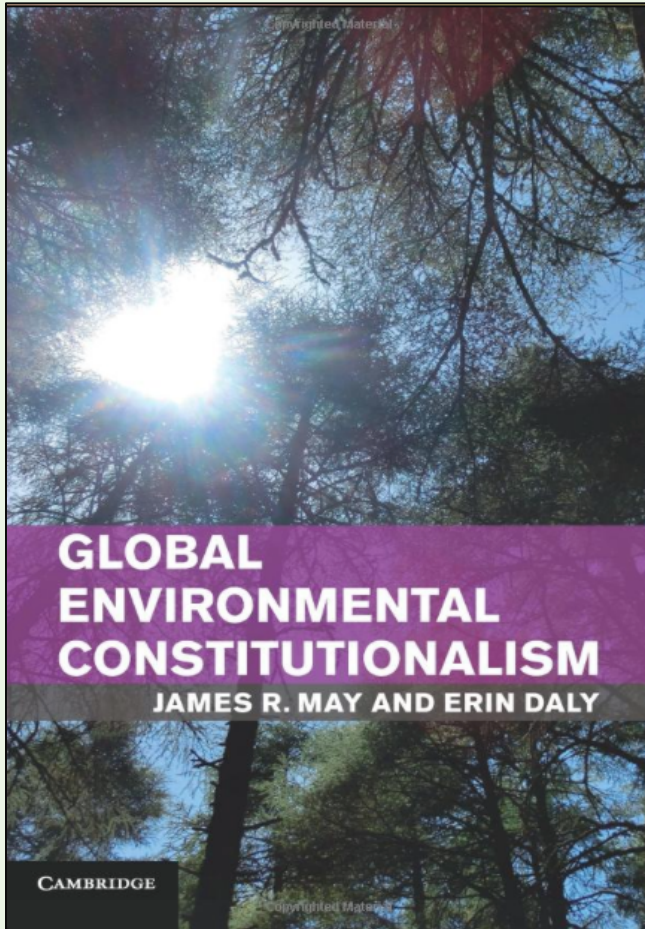
HUMAN RIGHTS...

- Freedom of trade, occupation and profession
- Right to property
- Right to adequate standard of living (food, medicine, clothing, housing, water)
- Children's rights
- Right to education
- Right to self determination
- Environmental rights

ENVIRONMENTAL RIGHTS



ENVIRONMENTAL RIGHTS...



ENVIRONMENTAL RIGHTS...

duty (state)

duty (citizen)

different approaches

right (citizen)

mixture

ENVIRONMENTAL RIGHTS...

- **Duty on State**

- Constitution of the Kingdom of Cambodia (Article 59)
 - 'The State shall protect the environment and balance of abundant natural resources and establish a precise plan of management of land, water, air, wind geology, ecologic system, mines, energy, petrol, and gas, rocks and sand, gems, forests and forest products, wildlife, fish and aquatic resources.'

- **Duty of Citizens**

- Constitution of the Lao People's Democratic Republic (Article 19)
 - 'All organisations and citizens must protect the environment and natural resources: land surfaces, underground [resources,] forests, animals, water sources and the atmosphere.'

ENVIRONMENTAL RIGHTS...

- **Right for Citizens**

- Constitution of South Africa (Article 24(a))
 - 'Everyone has the right to an environment that is not harmful to their health or well-being...'

- **Mixture of Right and Duty**

- Angolan Constitution (Article 24)
 - '(1) All citizens shall have the right to live in a healthy and unpolluted environment.
 - (2) The State shall take the requisite measures to protect the environment and national species of flora and fauna throughout the national territory and maintain ecological balance.
 - (3) Acts that damage or directly or indirectly jeopardize conservation of the environment shall be punishable by law.'

ENVIRONMENTAL RIGHTS...

What if no environmental right?

Other possible relevant rights?

‘right to life’?

**Could it include the right to live in a
clean and healthy environment?**

Pakistan

India

Tanzania

ENVIRONMENTAL RIGHTS...

Can one protect rights of future generations?

Oposa vs Factoran (Secretary of DENR) 1993

Philippines

themselves

applicant representing

future generations

cancel all timber licenses

order wanted

no new timber licenses

govt trustee of resources

main arguments

breach of trusteeship

ENVIRONMENTAL RIGHTS...

Oposa vs Factoran Case...

Philippines

court findings

- Plaintiffs can represent themselves and future generations.
- The right to a 'balanced and healthy ecology is based on the concept of inter-generational responsibility'.
- Such a right considers the 'rhythm and harmony of nature'.
- Such rhythm and harmony must include the 'judicious disposition, utilization, management, renewal and conservation of the country's natural resources'.

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PROCEDURAL RIGHTS

- **Access to information**
- **Decision-making**
 - *Right to Participate* (including public participation)
 - *Procedurally fair* decision-making (follow due process)
 - *Lawful* decision-making (in terms of the law)
 - *Reasonable* decision-making (taking into account the relevant information/facts)
 - *Right to reasons* (for the decision-reached)
- **Access to Justice**

AARHUS CONVENTION

2001

access to environmental information

right to participate in enviro decision-making

access to justice

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RIGHTS OF NATURE...

Ecuadorian Constitution 2008

- Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.
- Every person, people, community or nationality, will be able to demand the recognition of rights for nature before the public organisms. The application and interpretation of these rights will follow the related principles established in the Constitution.

RIGHTS OF NATURE...

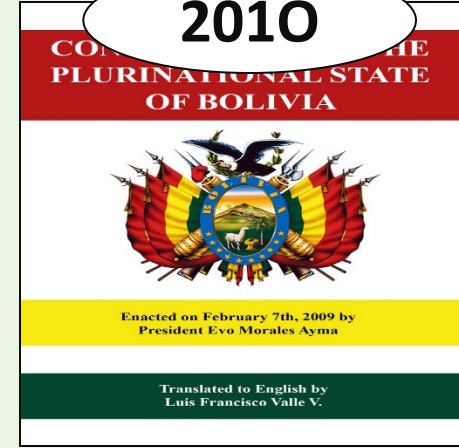
2010



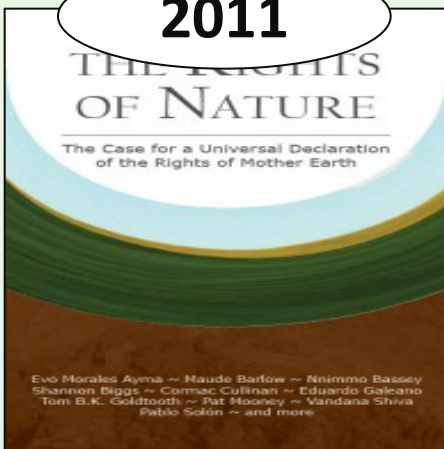
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2010



2011



Mar 2011



Jan 2014



Global Rights of Nature Summit

RIGHTS OF NATURE...

Jan 2014



Dec 2014

Rights of Nature
Ethics Tribunal

Dec 2014



Lima International Rights of
Nature Tribunal Report

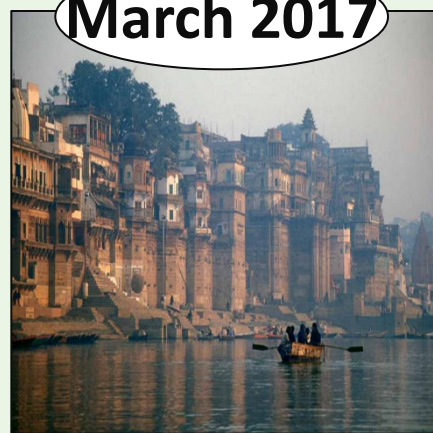
Dec 2015



March 2017



March 2017



Oct 2017



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