

Constitutional Environmental Law:
Giving Force to Fundamental
Principles in Africa

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Giving Force to Fundamental Principles in Africa*
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ATTACHMENT:
 CD-ROM With Complete Constitutions of African States

Executive Summary

The Constitution is above everything. It is the fundamental law which guarantees individual and collective rights and liberties, protects the principle of people's free choice and confers legitimacy to the exercise of powers. It allows the assurance of legal protection and control of the actions of the public authorities in a society wherein prevails the law and man's progress in all its dimensions

—Preamble, Constitution of Algeria (1996)

Constitutional provisions offer broad and powerful tools for protecting the environment, but to date these tools have gone largely underutilized in Africa. Practically all constitutions of African states include substantive provisions that ensure either a “right to a healthy environment” or a “right to life,” which often is held to imply a right to a healthy environment in which to live that life. Opening courts to citizens to enforce their constitutional rights strengthens the judiciary, empowers civil society, and fosters an atmosphere of environmental accountability.

This publication explores how constitutional provisions of African states can be used to create real, enforceable environmental rights. African states have varying legal traditions; namely, common law, civil law, and Islamic law, as well as some hybrid systems. Nevertheless, these legal systems share many common underlying principles and values, particularly fundamental human rights that are embodied in their respective constitutions.

This publication highlights relevant provisions from the constitutions of 52 African countries (excluding the territories of the Canary Islands, the Madeira Islands, Reunion, Somaliland, and Western Sahara)—namely, those provisions that may be used to protect the environment—as well as cases from around the world that illustrate opportunities for implementing constitutional environmental rights. Additionally, given the recently concluded, ongoing, and proposed constitutional reforms in various African countries—such as Kenya, Liberia, Sierra Leone, Sudan, and Swaziland—this publication examines the opportunities that such provisions present for improving environmental governance, addressing issues of environmental and participatory rights, and ensuring implementation and enforcement.

Part I discusses general considerations, including the nature of constitutions and constitutional law, how the different legal traditions in Africa could affect environmental protection, and the “persuasive authority” of cases from other jurisdictions in Africa and elsewhere in the world. Part II surveys the constitutional right to a healthy environment in Africa, and highlights cases from African countries and elsewhere that illustrate how these constitutional provisions may be given force. Part III similarly explores how courts in countries around the world have applied and extended the constitutional right to a healthy environment and how similar provisions in constitutions of African states could be used to protect environmental values. Part IV examines various constitutional procedural rights, such as access to justice through the doctrine of standing, that are essential to effective environmental protection. Part V presents some final thoughts on realizing the promise of constitutional environmental protections.

The CD-ROM attached to this publication includes the full text of the various constitutions of African states.