



Session A: The Preservation of Natural Resources and the Environment

Chief Justice of the Republic of South Africa, Mandisa Maya

VI Congress of the World Conference on Constitutional Justice

29 October 2025, Madrid, Spain

Introduction

Environmental protection is a universal commitment involving individuals, organizations, and governments. It encompasses two main approaches: preservation and conservation.¹ Preservation aims to keep ecosystems, wildlife, and natural areas untouched by human interference to maintain their ecological integrity for future generations while conservation strives for a sustainable balance, managing resources responsibly to meet current needs without compromising the environment's ability to support future life. Both approaches are critical to safeguard the health and well-being of the planet and its inhabitants, and help to maintain ecological balance, prevent the extinction of species, and mitigate the long-term impacts of climate change.²

Essentially, environmental protection at its core recognises that while the environment provides a magnitude of essential resources and services, it is not inexhaustible. Disregarding these ecological limits not only jeopardises environmental integrity but also poses significant social and economic risks which include food and economic insecurity, health problems, and even conflict over scarce resources.

¹ [Think Wildlife Foundation What is the Difference Between Environmental Conservation and Environmental Preservation](#)

² SUCO Conservation vs. Preservation: Why the Difference Matters (12 July 2025), available at <https://suco-sa.org.za/conservation-vs-preservation-why-the-difference-matters/#:~:text=A%20conservationist%20may%20say%20yes,The%20danger%20lies%20in:>

Around the world, the environmental crisis is accelerating. Forests are rapidly diminishing, oceans are warming, biodiversity is declining at an alarming rate, and air pollution continues to choke many of the world's major urban centres.³ Despite decades of international treaties and environmental commitments, our collective patterns of production and consumption remain unsustainable, pushing the planet beyond its ecological boundaries. World Scientists warn that humanity is now facing a "code red" situation. The impacts of climate change are intensifying, with extreme weather events and natural disasters becoming more frequent, severe, and deadly.⁴ Critically, it is the least developed countries and the most vulnerable populations within them that bear the greatest burden, despite contributing the least to the crisis. This stark inequity underscores the urgent need for legally binding commitments and equitable climate action.⁵

Constitutional Protection of the Environment

In response to the WCCJ questionnaire, 18 African States submitted responses. Of these, 16 countries' constitutions enshrine protection of person's environmental rights and impose, to differing extents, affirmative duties on the State to preserve natural resources and the environment.⁶ States such as Mauritania and Mauritius do not provide explicit constitutional protection.⁷

South Africa's legal framework for environmental protection is recognised as highly progressive, grounded firmly on section 24 of the Constitution which guarantees everyone a right to an environment that is not harmful to health or well-being. The South African Constitution also places a positive obligation on the State and private actors to take reasonable legislative and other measures to prevent pollution, secure ecologically sustainable development, and promote conservation. This right is given

³ World Meteorological Organization State of the Global Climate 2024 (2025), available at https://wmo.int/sites/default/files/2025-03/WMO-1368-2024_en.pdf.

⁴ Ripple "World Scientists' Warn of a Climate Emergency 2022" (2022) 72 *BioScience* 1149.

⁵ World Meteorological Organization Africa faces disproportionate burden from climate change and adaptation costs (02 September 2024), available at <https://wmo.int/news/media-centre/africa-faces-disproportionate-burden-from-climate-change-and-adaptation-costs#:~:text=Africa%20bears%20an%20increasingly%20heavy%20burden%20from,climate%20adaptation%2C%20according%20to%20a%20new%20report>.

⁶ [Algeria](#), [Angola](#), [Burundi](#), [Cabo Verde](#), [Chad](#), [Comoros](#), [Democratic Republic of Congo](#), [Egypt](#), [Ethiopia](#), [Madagascar](#), [Mali](#), [Morocco](#), [Mozambique](#), [Namibia](#), [Tanzania](#), and [Zimbabwe](#)

⁷ [Mauritania](#), and [Mauritius](#)

life through the enactment of our environmental statute, the National Environmental Management Act⁸ (NEMA), which governs environmental management and protection and enshrines the principles of sustainability, public participation, and environmental justice. These principles are intended to ensure that environmental governance centres the needs of our people particularly those historically marginalised and the ecosystems that sustain them. Other key statutes such as the Air Quality Act⁹, National Water Act¹⁰ and the Waste Act¹¹ give effect to these values in practice.

Looking onto North America, the Canadian Constitution, via the Canadian Charter of Rights and Freedoms (1982), protects fundamental rights including life, liberty, and security, but does not explicitly impose positive obligations on the State for environmental protection. On the other hand, Mexico's Constitution explicitly imposes positive obligations on the State to protect natural resources and the environment, anchored in Articles 1, 4, 25, 27, 35, and 73. It guarantees the right of every person to a healthy environment and mandates the State to ensure this right. The Supreme Court of Mexico has interpreted these provisions broadly, emphasising principles like progressivity, non-regression, precaution, and intergenerational equity. These two countries represent two distinct but complementary environmental constitutional models. Canada relies more on legislative measures and judicial interpretation within a constitutional framework that protects broad rights but does not explicitly guarantee environmental protection. The Canadian courts are cautious yet acknowledge climate realities and the importance of environmental assessment. Mexico, in contrast, enshrines environmental protection as a fundamental right with positive State obligations and a judiciary actively enforcing wide access to environmental justice.

In South America, Brazil's Federal Constitution of 1988 explicitly declares in Article 225 that "everyone has the right to an ecologically balanced environment", recognising it as a public good essential to a healthy quality of life. This provision imposes direct and enforceable obligations on both the State and society to defend and preserve the

⁸ 107 of 1998.

⁹ 39 of 2004.

¹⁰ 36 of 1998.

¹¹ National Environmental Management: Waste Act 59 of 2008 59 of 2008.



environment for present and future generations¹². The Constitution of Surinam recognises natural resources as national property and mandates their sustainable use for development. Surinam's constitutional legal framework is evolving, balancing resource use with ecological preservation and social justice.¹³ The 2020 Environmental Framework Act establishes government responsibility for environmental protection, coordinated by the National Environment Authority. Similarly, Peru's Constitution guarantees the right to a balanced environment, imposing positive state duties for conservation and prevention. Peru's Constitutional Court actively enforces environmental rights, including significant rulings on pollution and water contamination cases affecting vulnerable communities.

Looking at Asia and the Middle-East, India's Constitution, although it does not explicitly guarantee a right to the environment, it imposes strong obligations on the State and citizens to protect it. Through Article 21, the Supreme Court of India has interpreted the right to life to include a clean and healthy environment. Iraq also affords environmental protection through its Constitution which guarantees environmental protection and biodiversity (Article 33) and outlines shared federal and regional management of oil and gas resources (Article 112) and has a robust legal framework to this end.¹⁴ The Constitutions of other countries such as South Korea, Kyrgyzstan, Mongolia, Türkiye and Pakistan affirms the right to a healthy environment and they establish environmental protection as both a state responsibility and a sacred duty of citizens.

In a majority of the European countries positive obligations are imposed on the State for environmental protection, primarily formalised through constitutional provisions. These obligations are framed either as an explicit State Duty (e.g., Germany¹⁵ in Article 20a and Poland¹⁶ in Article 74(2)) or as a Fundamental Right to a healthy

¹² 1988 Brazilian Federal Constitution places positive obligations on the State to protect natural resources and the environment. See <https://braziliannr.com/brazilian-environmental-legislation/brazilian-federal-constitution-chapter-vi-environment/>.

¹³ [Surinam](#)

¹⁴ [Iraq](#)

¹⁵ [Germany](#).

¹⁶ [Poland](#).

environment guaranteed to citizens (e.g., France¹⁷, Romania¹⁸, Belgium¹⁹, and Ukraine²⁰). The Danish²¹ Constitution does not include a specific provision on environmental protection and does not impose positive obligations on the Danish State regarding safeguarding the environment. However, the European Convention on Human Rights is incorporated into Danish law and obligates Denmark to protect human rights in among other things environmental matters. A central feature across most of these jurisdictions is the requirement for Intergenerational Equity, mandating State action that protects resources and the climate for future generations (Germany, France, Italy²², Poland) and the constitutional recognition of these obligations varies in scope.

Legal Standing in Environmental Harm

On the question of who is responsible to give effect to these constitutional imperatives the questionnaire responses reveal that the varying legal systems fluctuate in who is entitled to bring environmental actions before the courts, but a growing trend favours broad access to justice in defence of natural resources. Most jurisdictions grant both state and non-state actors (including public institutions, individual citizens and NGOs) legal standing to enforce environmental rights before courts. However, the degree of access to justice varies.

Some African States, such as Mali,²³ do not entitle private parties to bring legal proceedings to protect the environment and natural resources. Others such as Comoros²⁴ and Mauritius²⁵ only allow specific private parties to bring legal proceedings while Morocco and²⁶ Namibia²⁷ allow private action, but require a person's rights to be impacted before legal proceedings may be brought. However, in most responding African jurisdictions, individuals, communities, and non-

¹⁷ [France](#).

¹⁸ [Romania](#).

¹⁹ [Belgium](#).

²⁰ [Ukraine](#).

²¹ [Denmark](#).

²² [Italy](#).

²³ [Mali](#),

²⁴ [Comoros](#)

²⁵ [Mauritius](#)

²⁶ [Morocco](#),

²⁷ [Namibia](#)



governmental organisations may institute proceedings without proving direct personal harm.²⁸

Outside the African continent, countries such as Germany and Cyprus, previously limited standing to persons who could demonstrate that they were personally affected by environmental harm. However, new legislation and international environmental obligations have led to the progressive expansion of access to the courts for environmental matters.

Several other jurisdictions, including France, Canada, India, Brazil, Finland and Zimbabwe allow citizens and NGOs to institute proceedings even without showing individual harm. In Asia, India's legal system allows individuals, activists, and judges to initiate environmental cases through public interest litigation, broadening court access for environmental protection. South Africa aligns with this trend and recognizes an *actio popularis* for environmental protection. Our broad *locus standi* framework derives from section 38 of the Constitution and section 32 of the National Environmental Management Act 107 of 1998, which enable individuals, communities and organisations to approach courts in their own interest, on behalf of others, in the public interest or in the interest of protecting the environment itself, thus removing the need to demonstrate personal injury. In essence, while some States tethered standing to proof of personal harm, there is a growing recognition that environmental protection transcends individual interests.

Court decisions on Hazardous Substances, Waste and Climate Change

In South Africa, there have been landmark court judgments that illustrate the environmental legal landscape. In the landmark *Deadly Air* case,²⁹ the South African Supreme Court of Appeal affirmed the constitutional right to clean air and condemned government inaction, thereby exposing unequal environmental harm borne

²⁸ [Algeria](#), [Angola](#), [Burundi](#), [Cabo Verde](#), [Chad](#), [Democratic Republic of Congo](#), [Egypt](#), [Ethiopia](#), [Madagascar](#), [Mozambique](#), [Tanzania](#), and [Zimbabwe](#)

²⁹ *Minister of Environmental Affairs v Trustees for the time being of Groundwork Trust and Others* [2025] ZASCA 43; 2025 (4) SA 98 (SCA).



disproportionately by poor and marginalised communities. Cases like *Xolobeni*³⁰ and *Bengwenyama*³¹, decided in the High Court and Constitutional Court respectively, reinforced that mining rights require prior, informed community consent and rigorous environmental compliance, grounding environmental governance in constitutional fairness, participation, and sustainability. These cases place environmental law within a broader constitutional framework that links ecological protection to land reform, equality, and social justice; underscoring that true environmental governance must give voice to the communities who live on and depend upon the land.

The recent Wild Coast litigation before our Constitutional Court similarly highlights the Judiciary's insistence that development projects should align with Constitutional imperatives by involving genuine community consultation and consider environmental and cultural impacts. In this matter, the Department of Mineral Resources and Energy granted Impact Africa, later joined by Shell, rights to explore for oil and gas along the Wild Coast. Community and environmental groups challenged the decision, arguing that there had been inadequate consultation, disregard for environmental and cultural impacts, and non-compliance with relevant mining law's transformative objectives. The High Court agreed, setting aside the exploration rights, and the Supreme Court of Appeal upheld these findings but suspended the invalidation to allow Shell and Impact to apply for a renewal. Before the Constitutional Court, the applicants argued that this suspension undermined their rights and could not cure the original procedural flaws.

Across the African continent, most apex courts have not yet adjudicated cases involving the production or disposal of hazardous substances or waste. In a similar vein, most African countries³² reported no judgments or pending cases explicitly concerning climate change. Mauritius³³ is an exception, with several recent rulings explicitly referencing climate change considerations.

³⁰ *Baleni and Others v Minister of Mineral Resources and Others* (73768/2016) [2018] ZAGPPHC 829; [2019] 1 All SA 358 (GP); 2019 (2) SA 453 (GP).

³¹ *Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others* [2010] ZACC 26; 2011 (4) SA 113 (CC) ; 2011 (3) BCLR 229 (CC).

³² [Algeria](#), [Angola](#), [Burundi](#), [Cabo Verde](#), [Chad](#), [Democratic Republic of Congo](#), [Comoros](#), [Mali](#), [Egypt](#), [Ethiopia](#), [Madagascar](#), [Mozambique](#), [Mauritania](#), [Morocco](#), [Namibia](#) and [Zimbabwe](#)

³³ [Mauritius](#)



Outside the African borders, Mexico's laws specifically regulate hazardous substances and waste management, with Supreme Court rulings affirming the responsibilities of federal, State, and municipal authorities. Environmental disasters such as the 2014 copper sulfate spill in the Bacanuchi River have prompted extensive litigation and remediation obligations.³⁴ In Surinam, the relatively new Constitutional Court has not yet ruled on environmental matters, but courts have blocked large agricultural expansions threatening Indigenous and Maroon lands and have further adjudicated key environmental challenges which include mining pollution and Indigenous land rights. The Constitutional Court of Indonesia in 2024 ruled a hazardous waste law conditionally unconstitutional due to legal uncertainty, allowing permit holders to operate during review. Though climate change isn't explicitly addressed, the Court ensures environmental laws align with constitutional principles.³⁵ In key rulings before Constitutional Court of Korea the court has affirmed the State's duty to protect the environment and its citizens in matters involving radiation exposure and toxic humidifier disinfectants, the latter prompting a special law to support victims.³⁶

European Courts addressing hazardous substances or waste that cannot be safely managed often confront inter-generational equity. France emphasised preserving future generations' freedom of choice in radioactive waste disposal. Germany struck down a nuclear fuel tax due to legislative competence, not waste management. Poland, Ukraine, Romania, the Netherlands, Denmark, and Slovenia³⁷ have issued no direct rulings on unmanageable hazardous substances, though Romania emphasises State duties and the Netherlands recognises civil class actions for environmental harm. Denmark reports no relevant cases, and Slovenia's Constitutional Court has yet to decide cases explicitly on hazardous substance production.

³⁴ [Mexico](#)

³⁵ [Indonesia](#)

³⁶ [Korea](#)

³⁷ [Slovenia](#).



Environmental disasters causing significant legal issues

Most African countries have reported no major environmental catastrophes that have resulted in significant legal disputes.³⁸ However, the Democratic Republic of Congo noted issues such as deforestation and mining pollution that raise complex legal issues.³⁹ Ethiopia regularly faces droughts, floods, and landslides but has not encountered legal consequences arising from these events, instead responding through reforestation initiatives and public mobilisation under its “Green Legacy” programme.⁴⁰ Morocco⁴¹ reported two major natural disasters (the Al Hoceima earthquake (2004) and the Al Haouz earthquake (2023)). Mozambique has also faced significant environmental events, including the Hulene landfill collapse and displacement linked to resource extraction, where courts ordered compensation and resettlement.⁴² Tanzania has encountered industrial pollution, water contamination, and deforestation that have triggered legal disputes resolved through court actions and regulatory enforcement.⁴³ In South Africa,

International perspective

The protection of the environment and preservation of natural resources traverses geographic boundaries. Polluted air, rising seas, deforestation, and the over-exploitation of natural resources extend beyond the jurisdiction of any single State, and demand transnational legal dialogue, deeper comparative engagement, and harmonised frameworks of accountability and enforcement.

The 17 Sustainable Development Goals (SDGs) adopted by the United Nations are interconnected goals that aim to achieve a more sustainable future for all and environmental protection appears to be the foundational and cross-cutting component that strengthens the achievement of these goals. Most of these goals have direct environmental targets, such as those focused on good health and well-being (Goal 3), clean water and sanitation (Goal 6), affordable and clean energy (Goal 7), responsible

³⁸ [Algeria](#), [Angola](#), [Burundi](#), [Cabo Verde](#), [Chad](#), [Comoros](#), [Egypt](#), [Madagascar](#), [Mali](#), [Mauritania](#), and [Zimbabwe](#)

³⁹ [Democratic Republic of Congo](#),

⁴⁰ [Ethiopia](#)

⁴¹ [Morocco](#)

⁴² [Mozambique](#)

⁴³ [Tanzania](#)



consumption and production (Goal 12), climate action (Goal 13), life below water (Goal 14), and life on land (Goal 15). The SDGs serve as a universal roadmap for eradicating poverty, protecting the planet and advancing social justice and equality for all.

In its recent advisory opinion, the International Court of Justice emphasised that coordinated international action is required to address the dire climate crisis⁴⁴. This duty applies to Judiciaries as well. Courts can and must assist one another in developing a body of principles capable of addressing our shared environmental challenges. By sharing judgments and advisory opinions, and making it more accessible to each other, courts create a body of authority that strengthens decision-making across jurisdictions. This will enable us as judges to draw upon the experiences of our counterparts when faced with what we may perceive as novel environmental disputes. This prevents the fragmentation of legal standards and instead creates a common, consistent jurisprudence of environmental justice.

Incorporating international pronouncements into domestic judgments is key to cross-border judicial cooperation and legal consistency. Recently, three international bodies issued significant environmental advisory opinions supporting this approach. In May 2024, the International Tribunal for the Law of the Sea (ITLOS) recognised climate change as a marine issue and confirmed that States must act to prevent transboundary harm to the oceans and the livelihoods they sustain. Next, in July 2025, the Inter-American Court of Human Rights declared that the prohibition against causing irreversible environmental damage has attained the status of *jus cogens*. The same month, the International Court of Justice determined that States bear a legal duty to adopt coordinated measures to reduce greenhouse gas emissions, and to regulate the conduct of private actors. These historical decisions underscore that environmental preservation is a matter of binding legal obligation which requires cross-border cooperation.

Building on this imperative, it becomes essential to examine how nations across the globe have responded within their own legal systems to the preservation of natural

⁴⁴ International Court of Justice Advisory Opinion: Obligations of States in respect of Climate Change (23 July 2025), available at <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf> . (ICJ Advisory Opinion on Climate Change)



resources and the environment. By exploring the constitutional, statutory, and judicial mechanisms employed by different countries, we gain insight into the evolving landscape of environmental jurisprudence.

Conclusion

Across the world, courts have increasingly recognised their role in addressing climate change through landmark rulings. The different nations are responding in diverse ways while others do so through constitutional mandates, others do so through legislative framework. It is however evident that we are all united in the pursuit of safeguarding our planet. What was once a secondary issue has now become a core element of the relationship between States and their citizens. Environmental protection is no longer optional; it is foundational. We must persist in pushing for more robust constitutional guarantees, more effective implementation, and a renewed spirit of international cooperation. After all, the Earth is not ours to own it is a legacy entrusted to us by future generations.

Thank you.

