Book Review

***Environmental Rights: The Development of Standards*, Stephen J. Turner, Dinah L. Shelton, Jona Razzaque, Owen McIntyre & James R. May eds, 1st ed. UK: Cambridge University Press. May 2019. 407 pp. ISBN 978-1-108-48224-0.**

The growing scholarly interest in the intersection between human rights and environmental issues, catalyzed by the exacerbating threats posed by climate change, air pollution, contamination of oceans with plastics, and other persisting environmental problems,[1] has led to publication of a number of volumes on this topic over the last decade.[2] *Environmental Rights: The Development of Standards* adds a highly important and interesting discussion to this growing body of scholarship, with a collection of contributions from some of the world's most renowned experts, exploring different legal tools that have shaped environmental rights, including developments in statutory law and doctrinal interpretation by national and regional courts as well as regional and international treaty bodies. Importantly, the book extends the existing discussion by focusing on how the abovementioned developments are setting and clarifying environmental standards through rights-based approaches.

The book covers a wide range of issues that can thematically be divided into four categories: (1) development of standards at transnational level, including international human rights law (Chapter 2 by Sumudu Atapattu) and regional developments in Europe (Chapter 3 by Karen Morrow), the Americas (Chapter 4 by Evadné Grant) and Africa (Chapter 5 by Louis J. Kotzé and Anél du Plessis) (2) jurisdiction-specific national developments in India (Chapter 10 by Gitanjali N. Gill), Portugal (Chapter 11 by Alexandra Aragaõ), Argentina (Chapter 12 by Silvia Nonna), South Africa (Chapter 13 by Nathan J. Cooper), France (Chapter 14 by David Marrani and Stephen J. Turner) and Bhutan (Chapter 15 by Stephen J. Turner) as well as subnational developments in the US and Brazil (Chapter 17 by James R. May and Erin Daly); (3) developments in procedural environmental rights under the Aarhus Convention regime (Chapter 6 by Áine Ryall) and other multilateral environmental agreements (Chapter 8 by Lara Ognibene and Angela Kariuki), including standards on free prior and informed consent (Chapter 9 by Jona Razzaque); (4) sectoral and cross-sectoral developments concerning the right of access to water (Chapter 7 by Owen McIntyre) and the rights of nature (Chapter 16 by Craig M. Kauffman and Linda Sheehan). The breadth and depth of the chapters covered in this work shows us that this particular field of enquiry is certainly growing and that environmental rights arguments and discourses are being taken seriously at every level.

The book reveals three principal trends with regard to the development of standards in environmental rights' protection. First, the absence of specific environmental rights in statutory law does not preclude some courts and treaty bodies from extending the application of other, tangential rights to cover this gap – the process known as the 'greening' of rights.[3] This 'greening' process can be observed at every level: for example, in the petitions and communications[4] by the UN Human Rights Committee and the Committee on Economic, Social and Cultural Rights, that have been developing jurisprudence relating to the environment through the articulation of the rights of indigenous peoples, etc. (pages 22–36); the interpretation of the right to respect for private life and other non-explicitly environmental rights in the European Convention on Human Rights by the European Court of Human Rights to cover issues related to environmental degradation (pages 42–45); and the 'greening' of national constitutions, for example, the constitution of India, by courts, including the National Green Tribunal (223–227), as well as other examples identified throughout the book.

Second, the book clearly shows that the universal approach to environmental rights is still highly fragmented. A prominent example of this is the right to healthy environment, which, despite its near-global recognition at the national level,[5] is not universally recognized at the regional and international levels. A possible explanation to this paradox is the absence of a universally agreed standard as to what constitutes (or ought to) a 'healthy' environment.[6] The difference between national

[1] *See* e.g. Report of the Special Rapporteur David Boyd on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, No. A/74/161 (2019).

[2] *See* e.g. *Research Handbook on Human Rights and the Environment* (Anna Grear & Louis J. Kotzé eds, Edward Elgar Publishing 2015); *The Human Right to a Healthy Environment* (John H. Knox & Ramin Pejan eds, Cambridge University Press 2018); Sumudu Atapattu & Andrea Schapper, *Human Rights and the Environment: Key Issues* (Routledge 2019); *Human Rights and the Environment: Legality, Indivisibility, Dignity and Geography* (James R. May & Erin Daly eds, Edward Elgar Publishing 2019).

[3] *See* Foreword by John Knox.

[4] *See* e.g. *Lubicon Lake Band v. Canada*, Communication No. 167/14 (26 Mar. 1990) UN Doc Supp No 40 (N45/40) at 1 (1990); Committee on Economic Social and Cultural Rights, Concluding Observations on the Fifth Period Report of Australia (23 June 2017) UN Doc E/C.12/AUS/CO/5.

[5] For a detailed discussion *see* David R. Boyd *Constitutions, Human Rights, and the Environment: National Approaches*, in *Research Handbook on Human Rights and the Environment* 170–199 (Anna Grear & Louis J. Kotzé eds, Edward Elgar Publishing 2015).

[6] For a detailed discussion on this *see The Human Right to a Healthy Environment, supra* n. 2. *See also* Report of the Special Rapporteur John Knox on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Framework Principles on Human Rights and the Environment, No. A/HRC/37/59 (2018).

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constitutions is another obvious example: while some national constitutions, such as those of Portugal and South Africa, explicitly recognize and protect environmental rights, including 'the right to a healthy and ecologically balanced human living environment', the right 'to have the environment protected for the benefit of present and future generations', etc. (pages 248–249 and 289–291), other constitutions (for example, the constitution of India and the US constitution) do not explicitly contain such rights, although as already mentioned above, this does not in itself pose critical obstacle to the protection of human interests from environmental degradation, since we can arguably use other human rights to obtain some form of environmental-related concession. However, when it comes to procedural rights, these differences in statutory law can indeed determine the level of protection. This is most apparent in cases of different standards on access to justice – the availability of public interest litigation, standing rules, etc., which are arguably particularly crucial when it comes to the protection of not only humans, but the environment itself, or, in other words, the rights of nature (pages 123–125, 344), who is reliant on her human guardians as defender of her rights.

Third, the book suggests that the general trajectory towards greater recognition of environmental rights – whether written, or unwritten – shows robust potential for mainstreaming environmental protection in the human rights agenda. Once again, this process is observed at the international (page 39) and regional levels (pages 82–91), including some major developments in the UN Human Rights Committee's and the Inter-American Court of Human Rights' jurisprudence shortly after the publication of this book,[7] as well as the continuing development of higher standards at the national and subnational levels (pages 376–381), including in such a sensitive area as the rights of nature (pages 342–347). That said, there is still more than ample space for subsequent development, given the numerous, persisting as well as emerging challenges that environmental and human rights protection system must accommodate (pages 399–400).

Overall, I highly recommend this book; it provides an essential reading for academics, legal practitioners and researchers, and students alike, working on or studying the fascinating field of intersection between the environment and human rights.

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[7] *Norma Portillo Cáceres and others v. Paraguay*, views adopted by the UN Human Rights Committee under Art. 5 (4) of the Optional Protocol, concerning communication No. 2751/2016 (20 Sept. 2019); Inter-American Court of Human Rights, *Caso Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) v. Argentina* (6 Feb. 2020).