

Human Rights and the Environment

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Human Rights and the Environment

Cases, Law, and Policy

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*To all our parents,
to daughter Maria,
and to our professional families
at ELAW and EPL.*

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Preface

Courts, legislatures, and experts increasingly recognize *environmental* rights—both substantive and procedural—as enforceable *human* rights. Environmental law can no longer be viewed only as something for legislatures to consider as a matter of policy choices. It is time for new thinking and new teaching. It is time also to view this developing field not as one exclusively of international law, nor national law, nor comparative law. All three are important.

A new casebook

This new casebook provides, for the first time, primary case law and other legal materials edited for study in classes and seminars on the protection of environmental rights. We include international and national court cases from Europe, Africa, Asia, and the Americas that interpret treaties, constitutions, and human rights legislation in light of environmental imperatives. We seek to prepare students to think creatively about human rights instruments when asked by clients to evaluate or take action regarding an environmental problem. In this book, we also ask them to consider the development of the law in countries and cultures other than their own, in hopes that they may gain useful insights.

There is no reason to be coy about our own beliefs. We believe that a human rights approach to environmental protection brings advantages to both fields. Robust and established human rights instruments can help protect the environment. In a clean and safe environment, human rights can be fully enjoyed and realized. We also believe in environmental democracy and the increasing role of non-state actors in international environmental and human rights law. At the same time, in this book we offer materials and ask questions that challenge these and other points of view and encourage students to reach their own conclusions.

Two converging fields of law

The notion that environmental degradation can lead to violations of human rights, first broached nearly 40 years ago, has grown apace in the last two decades. A human right to a safe or healthy environment has appeared not only in scholarly articles and several books, but increasingly in treaties and multilateral environmental agreements and in national constitutions. “Rights” are of limited value if they cannot be enforced by courts or other independent and impartial bodies. That is why development of case law in this field is so important, as well as citizen enforcement in domestic courts and individual complaints in international human rights courts and compliance mechanisms. The jurisprudence of human rights courts, commissions, and committees, as well as that of domestic courts in some countries, has endorsed and expanded environmental rights in various ways. Lawyers have worked to fuse environmental concerns with protection of fundamental rights—rights to life, health, property, private and family life, freedom of expression, petition, self-determination, and culture.

Authors' backgrounds

As professors in the former Soviet Union, Ukraine, and the United States for more than thirty years, the authors have moved from viewing environmental law as a domestic legal discipline to viewing it also in its comparative and international law dimensions. One of this book's authors has been teaching a class titled Human Rights and the Environment for the last six years, which has led to stimulating discussions with numerous students in those classes and has provided the genesis for many of the ideas in this book. The other has been teaching Comparative Environmental Law with a special focus on access to justice.

The authors have worked for national and international governmental and non-governmental organizations. Each co-founded the first environmental law clinic in his or her home country, plus the public interests law firms Ecology-People-Law (EPL) in Ukraine and the Western Environmental Law Center (WELC) in the United States. Both have been involved in drafting and negotiating multinational environmental agreements and helping oversee their implementation, one of us in the capacity of the Vice Chair of the Compliance Committee under the UN ECE Aarhus Convention. One co-founded the Environmental Law Alliance Worldwide (ELAW) and the other started its Ukraine office. ELAW is a network of public interest environmental lawyers in seventy countries, whose lawyers bring cases both in national courts and before international human rights and environmental institutions and support one another with ideas and consultations across national borders. Several lawyers involved in ELAW have offered advice in the preparation of this casebook.

Thanks to many

This book could not have happened without the help of many people. We are especially grateful to the following law students (many of them now lawyers and the others soon to be) who toiled long hours as our heroic and skilled research assistants: Jia Min Cheng, Marianne Dellinger, Rebecca Kammerling, Genevieve LeBlanc, Brook Meakins, Ryan Orr, Kevin Parks, Mark Reece, Erin Roach, Mae Sader, Paul Tassin, Brian Walker, Casey Whelan, and Dinara Ziganshina. They did excellent work under sometimes pressing deadlines, finding cases and scholarly articles, helping to edit them, suggesting ideas, formulating the first drafts of some questions and discussion materials, proofreading, and obtaining copyright permissions. We are also thankful to law students Michael Borges, Judson Brehmer, Betsy Bridge, Morgan Dethman, and Amanda Freeman for their assistance. For specialized translation or substantive help, we appreciate the contributions of our colleagues Astrid Puentes of Colombia, Isabela Figueroa of Ecuador, Su Jeong Suh of Korea, Carla Garcia Zendeja of Mexico, Meche Lu of Peru, and Hanna Khomechko and Elizaveta Aleksyeyeva of Ukraine. We also appreciate invaluable comments on the manuscript and information provided by Professor Donald Anton of Australian National University. Despite the wonderful help from all these bright minds, we assume responsibility for any errors that remain.

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Excerpts and stylistic matters

Despite our intention to give reasonably comprehensive and reliably accurate coverage to the major issues in the field of human rights and the environment, this book is designed for teaching, not for research. Therefore, in editing the cases, treaties, guidelines, articles (including book chapters), and other materials, we have strived to make them readable. To that end, we have changed fonts, deleted paragraph numbering, and omitted most citations and footnotes. Our own footnotes are indicated by letters instead of numbers. We have shown deletions of paragraphs or words with small ellipses (triple dots). For deletions of entire paragraphs or of words at a paragraph's beginning, we appended ellipses to a preceding paragraph. We have left British spelling if used in cases, articles, or legal instruments. We have changed all punctuation to American style. We have used periods in the names of the U.S. and U.N., but omitted periods for other organizations (such as UNEP or ILO).

Some final words

Good advocates are those whose eyes are wide open—not only to alternative legal arguments but to the humanity of those around them. A now-deceased human rights and environmental lawyer and law professor—himself a *desaparecido* in Argentina in the late 1970s—remarked to one of us and to his own students, “In this life, once you have opened your eyes, you can never close them again.” We hope to contribute to that process.

Svitlana Kravchenko and John Bonine
Eugene, Oregon, July 2008

Acknowledgments

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