



STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW IN THE ASIA-PACIFIC : DEVELOPING ENVIRONMENTAL LAW CHAMPIONS
Cebu, 22-26th August

**SESSION 10: Substantive and Procedural Rights in
Environmental Law**

Presented by Professor Donna Craig
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Learning Outcomes

Session Topic

- Understand relationship between human rights and environment
- Understand substantive and Procedural dimensions of HR and Environmental Rights
- Understand international, regional and national legal sources of HR and environmental rights
- Understand constitutional environmental rights
- Understand public participation and role in Aarhus Convention

Teaching Methodology

Small-group structured discussion and report back



Teaching Methodology

- Structured small group discussion
- Guided research exercise (introduction)



Outline

- **Substantive and procedural rights in environmental law**
- **Human rights and environment**
- **Major treaties and soft law**
- **Substantive Environmental Rights and National Law**
- **Linking substantive, procedural HR and Environment: Aarhus Convention**



Human Rights and the Environment*

Introduction – Human Rights are inherent in being humans.
Environmental degradation violates human rights

Sources of Rights

1. 1972 Stockholm Conference on the Human Environment
2. General Assembly Resolution No. 45/94 (1990)
3. Various country's Constitutional and Legislative provisions on environmental rights
4. Tribunals
5. Human Rights Treaties

* See Shelton, D. Human Rights and the Environment: Substantive Rights, 2011.



Stockholm Declaration 1972

Principle 1

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.



Human Rights and the Environment

Substantive Rights

- Environmental protection is essential to the enjoyment of the rights to life, health, healthful and balanced ecology and family life
- Separate from but interdependent with the procedural rights in Environmental Law

Procedural Rights

- Right to information
- Right to participation
- Right to access justice
- Procedural matters to ensure that decision-making has the informed input of those potentially affected by policies and projects and for them to have redress for grievances or resulting harm



The Human Rights Treaties: Global

See PDFs

- The Universal Declaration of Human Rights 1948
- The Covenant on Economic, Social and Cultural Rights 1966
- The Covenant on Civil and Political Rights 1966
- UN Convention on the Rights of the Child



The Human Rights Treaties: Regional

- European Convention on Human Rights and Fundamental Freedoms 1950
- American Convention on Human Rights 1969
- San Salvador Protocol to the American Convention on Human Rights 1988
- African Charter on Human and Peoples' Rights 1981
- ASEAN Declaration on Human Rights 2012
- Proposed Pacific Charter



ASEAN Human Rights Declaration 2012

28. Every person has the right to an adequate standard of living for himself or herself and his or her family including:

- a. **The right to adequate and affordable food**, freedom from hunger and access to safe and nutritious food;
- b. The right to clothing;
- c. The right to adequate and affordable housing;
- d. The right to medical care and necessary social services;
- e. **The right to safe drinking water and sanitation**;
- f. **The right to a safe, clean and sustainable environment.**



Human Rights which may be infringed by certain types of environmental harm, include:

- Right to life
- Right to health
- Right to food
- Right to water & sanitation
- Right to adequate housing
- Right to non-discrimination
- Right to self-determination



Substantive Environmental Rights and National Law

- More than 120 Constitutions in the world guarantee a right to clean and healthy environment
- Example: Philippine Constitution provides that “The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.” (Art II, section 16)



Benefits of Constitutional Rights ?

- Promotes stronger environmental laws and policies
- Increases implementation and enforcement of laws
- Should provide resources for environmental management
- Empowers citizens and communities to participate in decision-making
- Prevents discrimination against vulnerable communities
- Provides remedies for violations of rights
- Increases government and corporate accountability
- Improve environmental performance



Critique of Constitutional Rights

- Too vague to be useful basis for implementation
- May be interpreted as absolute, trumping other rights
- Excessive litigation
- Transfers power from elected legislators to unelected judges?
- Redundant because of existing human rights and environmental laws
- Not enforceable
- May be ineffective
- Human centred - fails to recognize the rights of Nature



LINKING HUMAN RIGHTS AND ENVIRONMENTAL RIGHTS

Aarhus Convention: *The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*

- 1998 - adopted and signed in Aarhus (Denmark)
- 2001 - entry into force
- 2003 - PRTR Protocol adopted and signed in Kiev
- 2005 - GMO Amendment adopted and signed in Almaty (Kazakhstan)



Aarhus Convention

- First binding international instrument to address citizen's environmental rights
- Provides links between environmental protection and:
 - human rights
 - democratization
 - government accountability
- Aarhus Convention in EU
 - Member States implement Aarhus via EU law



Three Pillars

Access to information

passive disclosure – Art. 4

active disclosure – Art. 5

Public participation

- decisions whether to permit specific activities which may have a significant effect on the environment - art 6
- GMO decisions – Art. 6
- plans/programs „relating to environment”– Art. 7
- policies „relating to environment” – Art. 7
- normative acts/legally binding rules that may have a significant effect on the environment”– Art. 8

Access to justice

redress in case of abusing right to information - art.9.1

redress in case of abusing right to participate - art.9.2

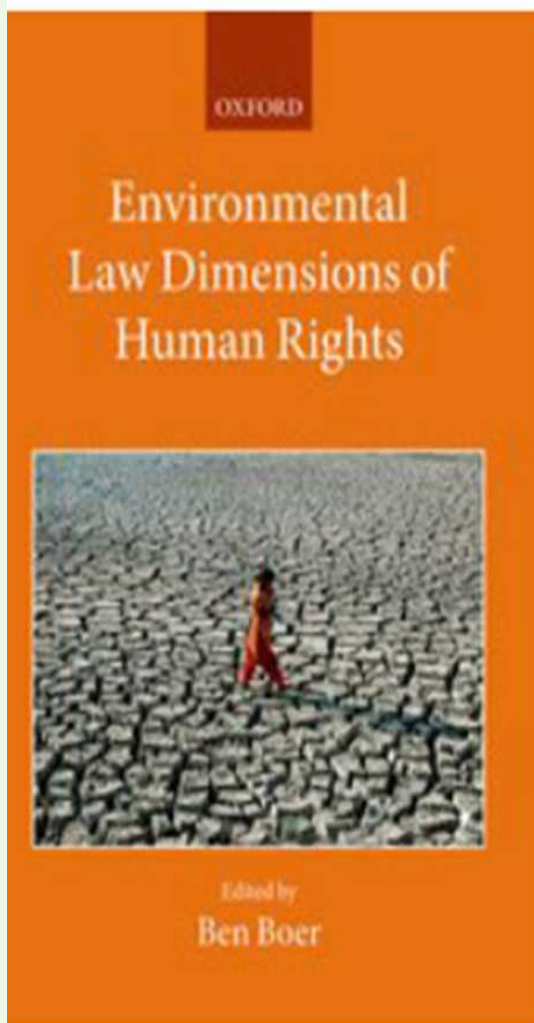
separate right to file a public interest law suit - art.9.3



Public Participation under Aarhus: Procedural or substantive Rights

- Rights–based approach?
- Procedural rights as “guarantee” for a right to environment
- Promotion of public participation in international processes
- Open to non UNECE countries – increasingly global norms





Environmental Law Dimensions of Human Rights

Edited by Ben Boer

Collected Courses of the Academy of European Law

- Broad-ranging themes assist understanding of the complex relationships between human rights and environmental law
- Gives an account of recent developments in Europe, Latin America, and the Asia-Pacific region
- Examines future directions for the development of a human right to a quality environment