

## Human Rights and the Environment in Australia

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## Human Rights and the Environment in Australia

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  - existing civil and political rights
  - existing economic, social and cultural rights
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- Regional Human Rights Law
- National Constitutional Law
- Human Rights and the Environment in Australia
  - existing mechanisms for protection of the environment
  - existing mechanisms for protection of human rights
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'Human rights can not be secured in a degraded or polluted environment. The fundamental right to life is threatened by soil degradation and deforestation and by exposures to toxic chemicals, hazardous wastes and contaminated drinking water.'

Environmental conditions clearly help to determine the extent to which people enjoy their basic rights to life, health, adequate food and housing and traditional livelihood and culture.

It is time to recognise that those who pollute or destroy the natural environment are not just committing a crime against nature, but are violating human rights as well.'

Klaus Toepfer, Executive Director, United Nations Environment Program,  
Statement to the 57th Session of the Commission on Human Rights

## International Human Rights Law and the Environment

- International human rights law recognises a range of fundamental human rights, such as the right to life and the right to health.
- International human rights law has not yet explicitly recognised a universal human right to a healthy environment.
- However, there is a growing recognition that long term fulfilment of basic human rights depends on a healthy and ecologically sound environment.

### *Draft Declaration on the Principles of Human Rights and the Environment*

This declaration was prepared by an international group of experts on human rights and environmental protection:

'All persons have the right to a secure, healthy and ecologically sound environment.'

This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible'.

Note: This draft declaration has not been approved by any intergovernmental forum, and is not currently in effect.

## International Human Rights Law

### *International Covenant on Civil and Political Rights*

- right to life
- right to equality
- right to free speech
- right to freedom of assembly
- right to liberty and security
- right to freedom from arbitrary interference with family or home
- right to self-determination

### *International Covenant on Economic, Social and Cultural Rights*

- right to property
- right to culture
- right to health
- right to food
- right to health
- right to development
- right to self-determination

## Indigenous Rights, Land and Natural Resources

The right to self-determination is regarded as a fundamental principle of international human rights law.

The right to self-determination has traditionally been applied in the context of independence for former colonial territories.

'All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'

All peoples may, for their own ends, freely dispose of their natural wealth and resources ...

The *Draft UN Declaration on the Rights of Indigenous Peoples* states:

'Indigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.'

The UN has not formally recognized a right to self-determination for indigenous peoples.

In practice, indigenous communities are commonly denied control of their traditional lands and natural resources.

In Australia and overseas, opportunities for indigenous communities to exercise genuine control over natural resources are limited.

## Regional Human Rights Law

The relationship between human rights and the environment has been recognised explicitly at a regional level.

For example, the 1981 *African Charter on Human and Peoples' Rights* provides that 'all peoples shall have the right to a generally satisfactory environment favourable to their development'.

The Organisation of American States' 1988 *Protocol of San Salvador* recognises that 'everyone shall have the right to live in a healthy environment'.

The 1990 *European Charter on Environmental Rights and Obligations* affirms the principle that everyone has the right to an environment adequate for general health and well-being.



## Regional Human Rights Law

Other regional instruments recognise the importance of community participation in environment decision-making.

For example, the 1998 *Aarhus Convention* of Europe recognises the right of the public to access information and participate in decision-making in relation to issues that affect the environment and to take legal action to protect the environment.

Regional human rights instruments have the potential to play an important role in the protection of environmental rights.

In 2001, the Inter-American Commission on Human Rights found that certain logging activities in Brazil constituted a violation of the right to health and well-being of affected indigenous peoples.



## Constitutional Protection of Environmental Rights

Protection of environmental rights in national and provincial constitutions provides an opportunity for domestic legal action to challenge government decisions on the basis that they violate constitutionally protected rights.

Over sixty countries around the world have recognised the human right to a healthy environment in their national constitutions.

For example, the Constitution of South Africa states that:

- Everyone has the right:
- to an environment that is not harmful to their health or well-being; and
  - to have the environment protected, for the benefit of present and future generations'.

## Constitutional Protection of Environmental Rights

A number of countries also recognise the duty of governments and citizens to protect the environment. For example, the Indian Constitution states that:

*'It shall be the duty of every citizen of India ... to protect and improve the natural environment, including forests, lakes, rivers and wildlife.'*

Other countries have recognised the right to access information and seek legal remedies for environmental harm. For example, the Constitution of the Russian Federation states that:

*'Everyone shall have the right to a favourable environment, reliable information about its condition and compensation for the damage caused to his or her health or property by ecological violations.'*

## Protection of the Environment in Australia

Each state and territory in Australia has laws to protect the environment. There are also federal laws to protect the environment.

These laws cover a wide range of issues, such as: air pollution, water pollution, contaminated land, forestry, mining, fisheries, wildlife protection, threatened species and protected areas.

These laws help to protect human health, conserve natural resources and preserve the natural environment. In some cases, environmental laws also provide access to information about environmental issues and allow public participation in environmental decision-making.

### Protection of the Environment in Australia

Government agencies and departments play an important role in enforcing environmental laws. In some cases, the community is also able to take legal action to enforce environmental laws.

In most cases, the government has a wide discretion about whether to allow environmentally harmful activities. The government may also change the law to allow environmentally harmful activities.

In Australia, there is no legal guarantee that the government will act to protect the environment.

Government agencies are not generally obliged to enforce environmental laws and there are no constitutional limits on the power of governments to change the law to allow environmentally harmful activities.

### Protection of Human Rights in Australia

The Commonwealth Constitution does not generally provide for protection of individual human rights.

Federal legislation provides for the protection of certain human rights (for example, freedom from racial discrimination). However, this legislation may be subject to amendment by the federal parliament.

The Australian Capital Territory is the only state or territory in Australia with a Bill of Rights. It does not provide explicit protection for environmental rights.

Other jurisdictions, including New South Wales, have established administrative procedures for assessing the extent to which proposed legislation complies with international human rights law.

### Advocacy Strategies for Positive Change

The emerging link between human rights, social justice and the environment present interesting opportunities for innovative advocacy strategies.

For example:

- forging stronger links between organisations engaged in human rights, social justice, indigenous rights and environmental advocacy.
- presenting arguments based on existing and emerging human rights principles in environmental campaigns, law reform debates and litigation.
- raising environmental issues with existing human rights institutions (for example, state and federal legislative review committees).
- utilising, as appropriate, international human rights complaint mechanisms.
- campaigning for constitutional protection of environmental rights in Australia.
- contributing to the ongoing debate about the relationship between human rights, social justice and environmental protection.

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