**environmental justice and Human Rights**

*Karin Lukas*

Elective course for Human Rights/Comparative Constitutional Law LL.M

MA/LLM level course

2 US credits, 4 ECTS credits

Academic year 2022/2023, winter term

**Pre-requisites**: none

**E-learning site:**

**Consultations:** By appointment via email at lukask@ceu.edu.

**Brief Introduction:**

This introductory course focuses on the use of human rights instruments for the protection of the environment and national as well as international litigation to achieve greater environmental justice. We will discuss the main concepts as well as current and emerging trends regarding the right to a clean environment, environmental litigation at national, regional and international levels. Cases, a case story and a film will be among the food for thought. The course will close with an outlook on the future of environmental justice and human rights.

**Goals:**

The course aims at providing students with a substantial knowledge of the existing human rights framework which is or can be used to advance environmental justice. It highlights the particularities of the different human rights regimes, the role of the international community, the state, business and civil society to improve environmental protection, potentials, limitations and future trends. On the basis of the readings, assignments and discussions, students are invited to draw general conclusions on the operation of the current system.

**Learning outcomes:**

1. Ability to benefit from a substantial understanding of the institutional and procedural framework of human rights to protect the environment.
2. Ability to benefit from a substantial understanding of environmental rights litigation at the national and international level.
3. Ability to use legal reasoning – basic level.
4. Ability to construct well-reasoned arguments about human rights issues – basic level
5. Ability to think critically – basic level
6. Ability to draw comparative conclusions – basic level.

**Assessment:**

The final evaluation is based on the following assessment items:

1. Written work: 55 points

 - two (3) written assignments: 20 points (10 points each)

 - 24-hour take-home exam: 35 points

2. Group work: 40 points

- four (4) assignments: 20 points (5 points each)

3. Class participation (not limited to oral assignments): 15 points

**Written Assignments:**

The syllabus contains **two (2) written assignments** for the course. All written assignments shall be in an *essay format* unless indicated otherwise and shall be based on individual work. Students are strongly advised to read the assigned readings for the respective class before starting to work on their written submission. All written assignments shall be submitted through **the course’s E-learning site** before the respective class; late submissions cannot be considered. Written feedback is provided on every assignment.

**Format:** Written assignments shall be submitted in a Word document. Please use spell-check and indicate your name on your submission. Please note that word limits apply (800 words excluding references).

**Take-home Exam:**

The course ends with a 24-hour take-home exam. Students will be submitting an analytical essay (the question will be sent / posted one day before the deadline).

**Group Work:**

The syllabus contains smaller group tasks; for further details see the description of the respective class. Please make sure that you work together as a group and allocate the work fairly among yourselves.

**Course materials:**

All required readings are available on the course’s E-learning site.

**Required readings and assignments**

**Class 1: environmental justice and human rights: history and concepts**

*Topics for discussion:*

1. *Historical background and relevance of environmental justice and human rights.*
2. *Concepts and terminologies: environmental justice; right to a clean and healthy environment; climate change; sustainability; inequalities.*
3. *Pros and cons of a human rights-based approach to environmental protection.*

*Readings:*

* Sumudu Attapattu and Andrea Schnapper: *Human Rights and the Environment* (Routledge 2019), pp. 63-84
* Environmental Justice Foundation (2022): *In Search of Justice. How the climate crisis is driving inequality and eroding human rights*.

*Optional Readings:*

* LSE/Grantham Research Institute for on Climate Change and the Environment (2021): *The 11 nations heralding a new dawn of climate constitutionalism.*

***Oral assignment:***Select one of the terms under point 2 (topics of discussion) and gather as much useful information as possible, including definitions if available. Prepare to present and discuss them in class.

**Class 2: climate change and human rights**

*Topics for discussion:*

1. *From United Nations Framework Convention on Climate Change (UNFCCC) to the Paris Agreement – what has been achieved?*
2. *Effects of climate change from a human rights perspective – what are the findings of the OHCHR report 2009?*
3. *Are climate change impacts a violation of human rights?*
4. *What are the trends in climate change litigation?*

*Readings:*

* Sumudu Attapattu and Andrea Schnapper: *Human Rights and the Environment*, pp. 205-230.
* OHCHR (2009). Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights A/HRC/10/61, 15 January 2009. Geneva: Human Rights Council.
* Joana Setzer and Catherine Higham, Global trends in climate change litigation: 2022 snapshot.

*Optional Readings:*

* Sumudu Attapattu and Andrea Schnapper: *Human Rights and the Environment*, pp. 231-284.

***Written assignment No. 1:*** Are climate change impacts a violation of human rights? Please give an assessment based on the literature (max. 800 words). Present and discuss in class.

**Class 3: specific rights and their use for environmental protection**

*Topics for discussion:*

1. *Which material rights have been used for environmental issues?*
2. *Which procedural rights?*
3. *Which cases illustrate this?*

*Readings:*

* Sumudu Attapattu and Andrea Schnapper: Human Rights and the Environment (Routledge 2019), pp. 108-153.
* Karim, Mohammad Ershadul; Taher, Mohammad Abu; Karim, Mohammad Ataul: Noise Pollution in Dhaka and the Constitutional Right to Life Special Issue: Law in Bangladesh *Australian Journal of Asian Law 2020*, Art. 5: 67-84.

**Class 4: the right to a healthy and clean environment**

*Topics for discussion:*

1. *What is the history of the right to a clean environment?*
2. *What are its features, capacities and limitations?*
3. *Who are the actors to realize this right? Is it a collective or individual right?*

*Readings:*

* Jörg Künzli and Marcel Szabo, *The Right to a Clean Environment*, Elgar Encyclopedia of Human Rights (EE 2022)
* UN General Assembly, The human right to a clean, healthy and sustainable environment, A/RES/76/300, 1 August 2022
* Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 19 July 2018.
* Carmen G. Gonzalez, The Right to a Healthy Environment and the Global South (July 31, 2023). 117 American Journal of International Law (AJIL) Unbound 173 (2023)

**Class 5: national litigation to advance environmental justice # 1**

Environmental litigation has vastly increased in recent years, driven by climate change impacts and growing environmental pollution. This class looks at selected cases before national courts. We will analyze those cases and discuss their potential to advance environmental justice.

*Readings:*

* Climate Litigation Database: https://climaterightsdatabase.com/
* *Juan Antonio Oposa et al v Department of the Environment and Natural Resources et al* (Supreme Court, Philippines) 30 July 1993, GR No 101083, 33 ILM 173.
* *The Maya Leaders Alliance and The Toledo Alcaldes Association et al. v. The Attorney General of Belize and The Minister of Natural Resources and Environment* (Supreme Court Belize) 2010, claim no. 366 of 2008.

***Group exercise:***Students work in 4 groups on this assignment. Group 1 will present the facts and the assessment in the *Oposa* case, while group 2 will act as critical commentators on the case. Group 3 will present the facts and the assessment in the *Maya Leader Alliance* case, while group 4 will act as critical commentators on the case. Presentations and comments should each by around 10 minutes. The whole class will then discuss the overall findings.

**Class 6: national litigation to advance environmental justice # 2**

Discussion continued.

*Readings:*

* *Notre Affaire à Tous and Others v. France* (Paris Administrative Court) 14 October 2021 [summary].
* *Urgenda v State of the Netherlands* (Dutch Supreme Court) December 2019.

***Group exercise:***As in class 5.

**Class 7: guest lecture: environmental litigation in austria**

Attorney at Law Julia Mair will give a lecture on her experiences with the Austrian legal system (administrative procedure and courts), followed by a Q & A session. Special attention will be given to the participation and enforcement of rights (e.g. neighbors) in environmental proceedings, as well as the participation of NGOs as provided by the Aarhus Convention. Please prepare questions along the lines of the topics below and discuss them with Ms. Mair in class.

*Topics for discussion:*

1. *What is the potential and what are the limitations of using the Austrian legal system for environmental issues such as the construction of a hydroelectric power station, a waste disposal site, snow-producing facility or a ski lift?*
2. *What about the environment (rivers, animals, plants) and its participation in the Austrian legal system?*
3. *How can neighbors and NGOs participate in environmental proceedings?*
4. *What can be improved within the system? What should be done in addition?*
5. *What is your view on the recent developments within the Austrian law?*

*Readings:*

* Isabel Staudinger (2020)*, Unleashing the watchdogs of the environment? Qualified participation and review rights for NGOs in Austria.*

*Optional Readings:*

* Text of the Aarhus Convention (1998)

**Class 8: regional litigation to advance environmental justice**

This class looks at selected cases before regional courts. Depending on the regional system, its structure and logic, the regional bodies may take different routes to tackle environmental issues. We will assess those cases, learn how they have been handled and what differences or potential communalities can be derived from them.

*Readings:*

* Social and Economic Rights Action Center (SERAC) and Center of Economic and Social Rights (CESR) v Nigeria, Communication no 155/96 (ACHPR, 27 May 2002).
* Greco, R. Cordella et al v Italy and the effectiveness of human rights law remedies in cases of environmental pollution. RECIEL. 2020.
* Maria Tigre, (2021), Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. American Journal of International Law, 115(4), 706-713.

*Optional readings:*

* Sumudu Attapattu and Andrea Schnapper: *Human Rights and the Environment*, pp. 85-196.

***Group exercise:***Students need to work in three groups on this assignment. Each group chooses one case/article and analyzes it. How have the cases been handled by the regional body? What was the outcome in terms of environmental protection? Each group has 10 minutes to present its findings. The whole class will then discuss the cases, analyzing differences and potential communalities.

**Class 9: international litigation to advance environmental justice**

*Topics for discussion:*

1. *What are environmental crimes? Why is it so difficult to litigate on such grounds?*
2. *How effective is international litigation to advance environmental justice?*

*Readings:*

- Stijn Cornelis van Huis (2019), Environmental Crimes brought before the ICJ and ICC Tribunals: a distant prospect?

- AllRise v Bolsonaro (ICC), Communication under Article 15 of the Rome Statute of the International Criminal Court, submitted on Oct. 12, 2021 (pending) [read communication without the annex].

**Class 10: human rights and environment case story**

Each year, the Tolukuma Gold Mine dumps more than 230,000 tons of mine tailings into Papua New Guinea’s Auga-Angabanga river system. For communities downstream who depend on the river for drinking and washing, fishing and maintaining their vegetable gardens, the consequences of the mine’s waste disposal practices can be severe. Community members attribute illnesses to drinking and washing in the river. They report that fish have died, posing a threat to the community's food supply, and that changes in the river flow have led to flash flooding, making river crossings difficult and preventing access to market gardens.

Women have been particularly affected because they are responsible for the collection of water for their families. Women from some villages along the Angabanga River walk for many hours each day to collect clean water from streams and wells. This has implications for their workloads and for their safety as they pass through land belonging to other villages. The limited availability of clean water has negative consequences for health and hygiene, especially of children. Analysis of the river water commissioned by Oxfam Australia found the presence of arsenic, lead and other heavy metals in the water, in some cases above World Health Organisation standards.

This case story originates from BASESwiki.org, a platform based on wiki style contributions from a virtual network or individuals, companies and organizations with relevant expertise.

***Written assignment no. 2****:* Please answer the following questions: Which human rights are concerned in this case? Who is responsible (human rights obligations) for the human rights violations in question? What could be done to improve the situation? (max. 800 words). Be ready to present your analysis in class.

**Class 11: film ‘the only government we see’**

This film tells the story of the negotiation of General Memoranda of Understanding (GMOUs) between Chevron and communities in the Niger Delta around its facilities. The process began after violent conflict in the region in 2003 led to the withdrawal of the company and the destruction of property, including schools and hospitals the company had built for communities. The film describes the new approach to dialogue with communities that the company adopted on its return. It features the role played by the head of the New Nigeria Foundation, a local NGO that came in to mediate the dialogue and help build the foundations for increased trust between those involved. It conveys how and why the communities decided to engage in the dialogue, what progress and challenges emerged along the way, and the outcomes that have been achieved.

This is one of four films in a series on company-community dialogue produced by the Corporate Social Responsibility Initiative at Harvard Kennedy School on behalf of the mandate of the former Special Representative of the UN Secretary-General for Business and Human Rights, Professor John Ruggie.

Link to the film: https://www.youtube.com/watch?v=ZibwGOWHVIA

*Topics for discussion:*

1. *How can this ‘new form of dialogue’ between Chevron and the local communities be described? How do you see the role of the New Nigeria Foundation?*
2. *How effective is this dialogue in comparison to the past interventions of Chevron in the Niger Delta?*
3. *What are the limitations or even risks of such an approach? Are there better ways to advance environmental justice in this situation?*

***Group exercise:***Students work in small groups (preferably 3 persons) on this assignment. Watch the film, discuss the questions above, and collect any additional critical reflections in your group before class. Be ready to present and discuss them in class (10 minutes for each team).

**Class 12: the future of environmental justice and human rights**

*Topics for discussion:*

1. *Legal personality moves beyond human beings.*
2. *How could intergenerational claims be included?*
3. *How can business be held accountable for environmental abuses?*

*Readings:*

- Sumudu Attapattu and Andrea Schnapper: *Human Rights and the Environment*, pp. 308-346.

- Aikaterini Argyrou & Harry Hummels (2019) Legal personality and economic livelihood of the Whanganui River: a call for community entrepreneurship, Water International, 44:6-7

- EPRS Briefing: Towards a mandatory EU system of due diligence for supply chains, 2020