

Chapter 27

The Evolution of Environmental Rights in Taiwan



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Abstract Without constitutional provisions on environmental rights, democratization and globalization have significantly promoted human rights related to environmental issues. In the last two decades, democratization has raised the rights consciousness of Taiwanese society and mobilized massive environmental movements and legislation. In addition, the process of globalization has not only drawn Taiwan's attention to international environmental issues but also pushed Taiwan to comply with international human rights standards. Taiwan enacted the Act to Implement the ICCPR and ICESCR in 2009, attempting to provide more comprehensive protection of human rights in Taiwan. Yet, in spite of this growth in human rights consciousness, people in Taiwan have little, and very differentiated, understanding of "environmental rights." The question of how to understand and conceptualize environmental rights within Taiwan's development is crucial for future generations. This chapter defines environmental rights as a collection of rights that provide legal protection against environmental problems. By analyzing environmental rights within the dynamics of environmental threats, the social/political context, and laws, it is argued in this chapter that the substance of environmental rights is evolving within these contexts and the times. In Taiwan, environmental rights have evolved alongside political, social and economic development. From personal injury to legal rights and human rights, the evolution of environmental rights in Taiwan can be divided into three distinct periods that coincide with the country's democratization. In the pre-democratic period, environmental harm remained a personal grievance and did not generate legal claims. During the process of democratization, massive enactment of, and progress on, environmental law provided a legal basis for environmental claims and transformed them into legal rights. Following democratic consolidation, however, privatization and climate change have brought new challenges to environmental rights in

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Taiwan. Yet, this period has seen the introduction of international human rights jurisprudence and an increasing emphasis on **procedural rights** in Taiwan that may provide opportunities to further enrich environmental rights in Taiwan.

Keywords Democratization · Environmental rights · ICCPR · ICESCR

1 Introduction: Changing Environmental Rights in Context

There has been a call to legalize environmental rights in Taiwan, yet the meaning of environmental rights has never been clear. Constitutionalizing environmental rights was the main agenda during democratization in the 1990s; however, it was not adopted successfully. Article 10 of the failed Constitutional Amendment stated that “[en]vironmental and ecological protection shall be given equal consideration with economic and technological development.” In 2011, in his third inaugural speech, President Ma Ying-Jeou stressed “sovereignty, human rights and environmental rights” as his policy goals. However, President Ma said nothing about the concept of the right and only stated that “economic development with the cost of environment degradation is not generational justice.” In 2016, President Tsai In-Wen stated in her inaugural speech that “as we pursue economic development, we must not forget our responsibility to the environment. Our New Model for Economic Development will be fully integrated with national land-use planning, regional development and environmental sustainability.” This basically repeats the ideology of Article 10 of the Constitutional Amendment and the rhetoric of President Ma’s speech, only removing the phrase “environmental rights.” These examples indicate that although rights in regard to the environment are frequently mentioned, they remain solely as a slogan for civic groups to challenge pollution and as rhetoric for government policy.

The enactment of the Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (hereinafter Act to Implement the ICCPR and the ICESCR) in 2009 has brought new life to the discussion of environmental rights. Due to the anxiety of **international isolation**, the Taiwanese government has been keen to demonstrate to international society that Taiwan is a “civilized” country that should be recognized. Since the first partisan turnover, the government has been expressing to the international community that Taiwan is a democratic country with high human rights standards and is different from China. After several failed attempts to become a party to the ICCPR and ICESCR, the Legislative Yuan passed the Act to Implement the ICCPR and ICESCR in 2009. Several other important human rights conventions, such as the CEDAW, were also adopted as domestic law. The internalization of international human rights standards has prompted Taiwanese society to talk and think about human rights in a deeper way, especially as two rounds of international reviews on Taiwan’s Human Rights Report exposed various human rights issues and generated significant public debate. Among the issues exposed by the reports,

how **environmental degradation** and **land exploitation** infringe upon human rights has become a salient issue. Despite the lack of a specific article protecting environmental rights, the framework and jurisprudence developed by the ICCPR and the ICESCR are useful tools to analyze and evaluate Taiwan's performance with respect to the protection of environmental rights.

In discussions on environmental rights, however, people have very different understandings and perspectives. In order to better delineate the dynamics, this chapter defines environmental rights in a more abstract and inclusive way, referring to various legal claims that can be exercised in the face of environmental degradation. In other words, environmental rights in this chapter refer to a collection of rights that provide legal protection against environmental problems. With this definition, it is argued that the substance of environmental rights changes within different contexts and over time. By analyzing environmental rights within the dynamics of environmental threats, the social/political context, and the laws, this chapter attempts to present the evolution of environmental rights in Taiwan. From the Japanese colonial period to the present, environmental rights in Taiwan have evolved from personal losses to legal rights to fundamental human rights and may still expand further.

2 Environmental Rights as Victims' Cry: 1945–1980s

The history of environmental degradation in Taiwan can be traced back to the modernization that began in 1895 during the Japanese colonial period. However, it was the policy of the Nationalist government after 1945 that exacerbated the environmental problems in Taiwan.

2.1 Political Background: De-Colonization and a Base for National Salvation

Japan colonized Taiwan from 1895 to 1945 and initiated a policy of modernization in Taiwan. The infrastructure, roads, harbors, railroads, power plants, and factories built by the Japanese government set a basis for later economic development. Like other colonies, Taiwan's resources were exploited to benefit the Japanese, not the Taiwanese. Therefore, environmental sustainability was of no concern in Japan's development policy in Taiwan. When the Nationalist government took over Taiwan following World War Two, Taiwan soon became "the base for national salvation," in which natural resource exploitation had to be maximized to achieve the goal of "rescuing China from the Communists." The Taiwanese government adopted a planned economy policy which prioritized the development of industry in Taiwan. Planning bureaucrats consciously regarded natural resources as resources solely to

be exploited for economic growth. Concerns about environmental protection were not mentioned until the late 1970s.¹

When, in 1971,² the UN replaced the ROC (Taiwan) with the People's Republic of China (China) as the only official representative of the Chinese government in the UN, President of Taiwan, Chiang Kai-shek, withdrew Taiwan's membership from the UN. The Taiwanese government then started to put more effort into its domestic infrastructure and economic policy. Yet the obsession with fast economic growth at any cost left public health and the environment unprotected. During this period, the state and leading industrialists formed a powerful coalition and dominated the market, leading to environmental degradation.

2.2 Legal Framework and State Performance

The law had little function in protecting environmental rights in this period. It was not until 1972 that the first law governing environmental matters, the Drinking Water Management Act, was enacted. The Legislative Yuan continued to pass several important environmental laws during this period, including the Clean Air Act (1975), the Water Pollution Control Act (1974), the Waste Disposal Act (1974) and the National Park Law (1972). The early enactment of environmental laws, however, did not necessarily represent progress in environmental protection in Taiwan. The regulations adopted relatively low standards, with no specific government agency responsible for the execution of environmental laws until the establishment of the Bureau of Environmental Protection in 1982, which was a low-level agency acting under the Department of Health with few resources.

The narrow ideology of economic development and the close relationship between government and big business made the execution of environmental regulation difficult. The government suppressed many environmental controversies, which on some occasions were resolved through political rather than legal means. Since laws provided neither regulations nor dispute-resolution mechanisms for environmental conflicts, discontented people protested on the streets and usually approached legislators or city councilors to negotiate compensation. It is fair to say that environmental law had only a very limited function in the period of economic blooming.

Throughout the period of economic development, the government was the major contributor to environmental degradation. On the one hand, government-owned enterprises, such as China Steel and the Chinese Petroleum Corporation, produced serious pollution. On the other hand, the state allowed, encouraged, and even

¹See Hsiao (1987). According to Hsiao, some local scientists and scholars tried to warn the public about the danger of environmental pollution, yet their voices went largely unheard. See Hsiao (1990), pp. 163–179.

²G.A. Res. 2758 (1971).

facilitated industries to exploit the natural environment for economic profit. Major polluters nowadays are either originally state-owned enterprises or state-facilitated industries. For example, thermal power plants contribute 30% of total greenhouse gas emissions, while petrochemical and iron industries continue to produce serious air and water pollution. The 2014 gas blast in Kaohsiung, which caused 33 deaths and thousands of injuries, was a legacy of the petrochemical industry established in the 1970s.³ Recent movements against illegal industrial waste disposal, the anti-nuclear movement and the movement to reclaim indigenous people's lands are also actions against the legacy of the developmental state.⁴

Without concern for the environment, unrestrained economic growth brought disastrous consequences for the ecological and natural resources of Taiwan.⁵ The ideology of economic growth without regard for the environment remains the dominant ideology in Taiwan and continues to determine the direction of policy. It was not until the 1980s, when environmental awareness grew, that restraints were placed on the environmental impacts of economic growth.

2.3 *Victims' Claims Without a Legal Basis*

During the period of economic growth, the state's development strategy and construction projects directly produced pollution and caused damage to citizens and the environment. If some environmental scandals did not generate public outrage it was because the authoritarian martial-law regime suppressed information against the government, leading to an underdevelopment of rights consciousness among the public. Only when an environmental problem caused serious damage to the property or the health of citizens would it trigger resistance. Yet resistance seldom went through legal mechanisms since the law provided little protection for victims. Victims' injuries remained a personal issue or a reason for political mobilization.

Undoubtedly, **the government was the direct polluter** and should have been held responsible. Yet, interestingly enough, the government was seldom the direct target of protestation. In the early years of the environmental movement in Taiwan, victims primarily expressed their complaints directly against big factories or industrial parks. Governments, especially local governments, were only secondary targets.⁶

It is worth mentioning the infringement of indigenous people's rights in the process of Taiwan's economic development. The land of indigenous people was easily exploited under the guise of development, because their land was less

³On 31 July 2014, a series of gas explosions occurred in Kaohsiung, the second largest city in Taiwan. At least thirty-three people were killed, and 321 others were injured. The accident is attributed to the petrochemical factory, LCY Chemical Corp, which was founded in 1965 as part of the planned economy policy.

⁴For details on the indigenous lands claim movement, see Lo (2013a).

⁵Grano (2015), p. 40.

⁶*Id.*, at pp. 46–47.

populous, and linguistic and cultural differences deterred indigenous people from effectively exercising their legal rights. The **Asia Cement Company** in Shoulin Township, Hualian, is a prime example. In the 1970s, as major members of the company were top officials in the central government, the central authority and local government made it easy for the company to “rent” indigenous land without informed consent.⁷ The land of the Taroko tribe was largely exploited for cement production, resulting in a loss of land and property as well as damage to the community and traditional culture that was closely connected to the land.⁸ The stories of harm to indigenous people in the 1970s–1980s were seldom heard, indicating an underdeveloped rights consciousness among indigenous communities at that time.

It was not until the 1980s that environmental awareness grew in Taiwan’s civil society. On the one hand, environmental degradation became too serious to ignore; on the other hand, **Taiwanese citizens who had traveled abroad** were becoming aware of the importance of environmental protection and tried to inform the public about environmental issues. While rarely articulated using the language of rights, the main concern of the environmental movement in the 1980s was personal health and one’s immediate living environment. According to Hsiao, environmental movements in Taiwan in the 1980s were mostly generated from environmental concerns about their immediate homes and from a “victim consciousness.”⁹ In other words, people initiated protests mostly out of concern for their own property or health, not out of concern for the environment.

3 Environmental Rights as Legal Rights: 1987–2000

Democratization and international pressure are the two primary driving forces that have contributed to the progress of Taiwan’s environmental law and the protection of environmental rights since the 1980s. People who suffered from environmental pollution were able to find a legal basis to transform their losses into exercisable legal rights. The claims for the environment went beyond personal health or property damage, extending to natural resources and the future.

3.1 Political Background: Democratization and International Pressures

Since the 1980s, as discontent with the degree of environmental degradation increased, several movements initiated by grassroots organizations and intellectuals

⁷According to Articles 44 and 45 of the Mining Act (礦業法), a mineral rights-holder can legally rent or buy private land for mining purposes, and the landowners cannot refuse.

⁸For details on the case of Asia Cement Company, see Lo (2013b), pp. 7–8.

⁹See Hsiao (1982).

started to draw attention to environmental problems and challenge the government and industries. The lifting of martial law in 1987 released further energy in civil society, with the establishment of important grassroots environmental groups, such as the Taiwan Environmental Protection Union and the Wild Bird Federation of the Republic of China. Such organizations were capable of organizing and leading discussions and movements on environmental issues. The growth of environmental NGOs demonstrates that environmentalism was no longer restricted to middle-class professionals; focusing on educating the public about nature conservation issues, it became a cross-class collaboration. Moreover, environmentalists were able to shift their targets from industries to the government, blaming it for promoting economic development over ecological protection. Criticism of the authorities developed into the political power of the opposition party: the Democratic Progressive Party (hereinafter DPP).¹⁰ As Ho has pointed out, “environmentalism, using both protests and newly opened institutional venues, became institutionalized as a vital component of political life” in the process of democratization.¹¹ The environmental movement contributed to Taiwan’s democratization, and democratization, in turn, also legitimized the environmental protests. The importance of grassroots organizations in Taiwan’s democratization can be seen by the **Wide Lily Student Movement** and Constitutional Court J.Y. Interpretation No. 261 which in 1990 successfully demanded that the government hold **national elections** for representatives, thus transforming Taiwan into a democratic country.¹²

Aside from the momentum gained domestically through the course of Taiwan’s democratic transition, pressure from the global community also contributed to the growth of Taiwan’s environmentalism. The very first event in which the international community exerted pressure on Taiwan out of environmental concerns was a result of local environmental NGOs. Taiwanese society had a long tradition of practicing Chinese medicine that used not only herbs but also animal parts, such as rhino horns or tiger bones, which were regarded as precious materials. In the early 1990s, local environmental groups announced opposition to the use of endangered animals in Chinese medicine, and soon the British Environmental Investigation Association and several other international environmental groups came to Taiwan to conduct an investigation. International environmental groups later announced that Taiwan had not adopted any measures to protect endangered species, and was thus in

¹⁰The DPP is the current ruling party in Taiwan. Before 2000, the DPP was the major opposition party that regarded environmental protection as one of its main tenets.

¹¹Ho (2011), pp. 283–314.

¹²During the Martial Law period, the government suspended the election of national representatives. The Constitutional Court J.Y. Interpretation No. 31 confirmed the constitutionality of the decision. The Wild Lily Student Movement urged the restoration of national elections and created significant pressure on the government. The Constitutional Court then made J.Y. Interpretation No. 261, holding the practice unconstitutional, and mandated that the government hold a nationwide second-term election of national representatives. See Dafaguan Shizi Di 31 Hao [大法官釋字第 31 號] (J.Y. Interpretation No. 31) (29 Jan 1954), Dafaguan Shizi Di 261 Hao [大法官釋字第 261 號] (J.Y. Interpretation No. 261) (21 June 1990).

violation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter CITES, also known as the Washington Convention). Taiwan soon realized that, though not a contracting party to any environmental conventions and thus under no international obligation concerning environmental protection, it did not necessarily follow that Taiwan was, in reality, exempt from consequences. In 1994, under the urging of CITES authorities and pressures from domestic environmental groups, the U.S. applied the Pelly Amendment to impose trade sanctions on Taiwan. This amendment allows the U.S. President to impose trade restrictions on countries that engage in trade that diminishes the effectiveness of international programs to protect threatened or endangered species. Because most of Taiwan's economic growth depended on international trade, the sanctions significantly affected Taiwan's economy. Although the trade sanctions were lifted in 1996, the experience taught Taiwan a precious lesson about the importance of catching up with the international community in terms of the development of environmental norms. In the years after the trade sanctions were lifted, Taiwan's government has been paying greater attention to international environmental issues.

3.2 *Strong Environmental Legislation with Weak Implementation*

It was under the dual pressures of internal and international protests that Taiwan made significant progress on environmental legislation since the 1980s. Some of the most important environmental laws were passed, or considerably revised, during this time, such as the enactment of the Noise Control Law and the Toxic Chemical Substances Control Act, and the revision of the Clean Air Act and the Water Pollution Control Act. Mostly using the command-and-control model, environmental legislation since the 1980s has established a more comprehensive system of environmental regulations to deter and mitigate environmental degradation. Pressure from international society has also contributed to the environmental legislation in Taiwan. The above-mentioned CITES case, for example, pushed Taiwan to revise the Wild Animal Protection Act in order to meet international standards. The increase in environmental legislation has restrained pollution and facilitated the development of legal mechanisms to address environmental controversies.

By the end of the 1980s, the increasing number of regulatory tasks had gone far beyond the capacity of the low-level Bureau of Environmental Protection at that time. In 1988, the government established the **Environmental Protection Agency** (hereinafter EPA), reflecting the growing importance of environmental policy on the government's agenda. The establishment of the EPA further promoted a more comprehensive environmental law plan, including four dimensions of preventative, regulatory, remedial, and organizational laws.¹³ As environmental regulations in

¹³Yeh (1994), pp. 73–132, 119 (Chapter 3: “Massive Legislation on Environmental Law: Taiwan’s Model, Issues and Solutions”) (confirmed).

Taiwan became stricter, local enterprises sought overseas investment opportunities. By the end of the 1990s, many local factories had closed in order to relocate to markets with weak environmental regulations and cheap labor. The majority of these enterprises re-invested in China and Southeast Asian countries, making Taiwanese industries a source of global pollution.

During this period, the narrative of **economic growth** remained the dominant ideology in Taiwan. Reflecting the preferences of the majority, the government prioritized economic growth as the highest goal on its agenda and marginalized environmental value. Despite huge amounts of environmental regulations, during this period Taiwan still stood in the shadow of the developmental state model, only subject to more legal restraints. The function of the environmental regulatory system was undermined because of the lack of a strong motive and inadequate resources for enforcement.

The prevailing ideology also weakened the effectiveness of environmental regulation. The administrations responsible for environmental regulation received far fewer resources and, as such, were not able to develop a long-term, comprehensive plan for environmental protection or sustainable development. Therefore, the interests of environmental protection had to be evaluated against other values, resulting in piecemeal degradations. While victims and environmental NGOs turned to the courts for redress, they found it difficult in environmental cases, since the requirement of legal standing, the burden of proof, the strict rule of causation and even the ideology of the judges all became obstacles to judicial remedies.

3.3 Beyond Personal Injuries

Democratization and the development of environmental legislation gradually changed the understanding of environmental rights in Taiwan. The first change was to transform environmental claims into legal claims, and the second was to extend protection of the environment and natural resources to future generations.

3.3.1 From Protestation to Legal Rights

One obvious change has been the legalization of environmental claims. Environmentalism is no longer a matter of political struggle; it is a matter of law. In the past, victims of pollution preferred to protest on the streets or to seek political bargaining, but now environmental legislation has empowered victims and NGOs to transform environmental claims into legal rights. Regulations have prescribed the standards which determine illegal pollution, which, in turn, have empowered civil society to seek redress from polluters or to demand that the government provide better policies and execution. In addition to regulatory laws, enactment of the Public Nuisance Dispute Mediation Act (hereinafter PNDMA) in 1992, the Environmental Impact Assessment Act (hereinafter EIAA) in 1994, and creation of citizen-suits clauses in 1999 have contributed the most to transform environmental claims into legal rights.

The enactment of the PNDMA created a legal mechanism to effectively respond to environmental conflicts. Due to the incompetence of the courts, public nuisance controversies in the 1980s usually resulted in protests or political negotiations. This proved to be extremely inefficient as the political resolution of public nuisance cases took a significant amount of time and money, yet provided no guidance for future controversies. In 1992, the PNDMA was enacted as an alternative dispute resolution mechanism for environmental controversies. By providing a lower threshold and more flexible resolutions, more people initiated the public nuisance mediation process, reducing the social and political costs of resolving environmental conflicts and also accumulating legal doctrines for future guidance.

Yet the rights-based judicial system took direct rights-infringements to be contingent on a judiciable case, leaving many natural resources cases unresolved. The Administrative Litigation Law, since its 1999 revision, has provided a legal basis for citizen suits. Article 9 of the revised Administrative Litigation Act provides that citizens can file a lawsuit in the public interest. This signifies a break from the traditional thinking of rights in Taiwan. Now a citizen need not be a direct rights holder or a victim to sue the government; she can sue for the cause of environmental protection. Environmental regulatory laws, more often than not, include citizen suit clauses. In recent years, concerned citizens or environmental groups have frequently initiated citizen suits to address environmental concerns, reflecting an understanding of environmental protection that goes beyond personal injury and covers degradation of the natural environment.

The EIAA of 1992 introduced the mechanism of the Environmental Impact Assessment (EIA) as a “prevention rather than a cure.” The Act requires that the government consider possible environmental costs in the decision-making process of major construction projects or policies. The EIAA was the first attempt not only to establish an *ex ante* procedural requirement to include environmental value in the decision-making process but it also created space for public discussion and participation. The citizen suits clause of the EIAA makes the EIA crucial in Taiwan’s environmental conflicts.¹⁴

The growth of environmental law has enabled victims of pollution and NGOs to develop rights claims through specific legal mechanisms. Those who have suffered as a result of environmental degradation can be identified and their losses can be transformed into legal rights. The growth of citizen suits and environmental laws has also reshaped the state’s role in and obligations toward environmental protection. They clearly prescribe the responsibility of the government to regulate, execute and supervise, ways through which victims and NGOs may more easily make claims when the government fails to fulfill its responsibilities, and to seek remedies through the courts.

¹⁴Section 8, Article 23 of the EIAA provides that, after paper notification, public interest groups may directly file a lawsuit against the government for its negligent behavior in fulfilling its implementation duties in order to seek a ruling ordering the competent authority to carry out implementation. As a result, the EIA and the courts have become the most important battlefield for environmental controversies in contemporary Taiwan.

3.3.2 Environmental Concerns Beyond Personal Interests

During this period, environmental claims began to go beyond immediate personal concerns of health and property. The movement against a fourth **nuclear power plant** in Taiwan is a salient example marking the transformation of environmental rights. When a fourth nuclear power plant was proposed in 1980, several international nuclear accidents such as Chernobyl in Ukraine attracted the attention of Taiwanese intellectuals who raised environmental concerns about a fourth nuclear power plant. With the lifting of martial law, residents of Gongliao and environmental groups joined intellectuals and initiated an anti-nuclear movement. The claim of the movement transcended individual harm and local problems to encompass environmental and ecological issues concerning the entire nation and beyond.¹⁵

Protesters, especially intellectuals and NGOs, did not claim personal compensation but instead extended their claim to the natural environment and ecology, going beyond individual concerns. As such, an awareness of “a right to the environment” was developed to protect the natural environment for present and future generations. A rights-claim related to the environment can include compensating for past pollution and preserving the environment for future generations; it can even transcend local damage to consider damage to national or global ecological systems. The implementation of National Health Insurance may also have contributed to the transformation. Since citizens now have easy access to medical services, concerns about injuries to health from pollution may have shifted to concerns about the natural environment.¹⁶

Moreover, by targeting the state, the anti-nuclear movement also inquired into the obligations of the government in environmental protection. The government was believed to have obligations to make regulations to prevent and control pollution and to make policies to preserve the natural environment for future generations. In this way, the government is regarded as having a preemptive role in protecting citizens from possible environmental harm, rather than a reactive role of mediating conflicts or providing remedies for damage.

4 Environmental Rights as Human Rights: 2000–Present

After the second partisan turnover, Taiwan became a consolidated democratic country. Unfortunately, the government seems incapable of dealing with new environmental threats. The emerging jurisprudence on human rights, however, may further deepen and widen the understanding and function of environmental rights in Taiwan.

¹⁵Ho (2003).

¹⁶Taiwan started its compulsory NHI in 1995 and reached population coverage of 99% in 2014.

4.1 *Democratic Consolidation and New Threats*

In 2000, the opposition DPP won the presidential election and created the first partisan turnover in Taiwan's political history. In 2008, the KMT won the presidential election and accomplished the second partisan turnover. According to Huntington's two-turnover test, Taiwan has survived two turnovers of power and should be recognized as a consolidated democratic country.¹⁷ Taiwan is further changing, in line with the trend towards globalization. Perhaps unexpectedly, new threats to the environment have emerged following Taiwan's democratization and globalization.

The newly adopted policies of privatization and deregulation brought new threats. When the planned economy policy was seriously questioned during the process of democratization, proposals for privatization and deregulation were introduced into Taiwan on agendas for regulatory reform.¹⁸

Deregulation released a new market for private citizens and enterprises, inviting new threats to the natural environment,¹⁹ for example, Qingjing Farm which was established in 1961. The farm was exclusively managed by the Veterans Affairs Council of the Executive Yuan and became a popular tourist destination. In 1992, the government decided to deregulate Qingjing, allowing citizens to buy and sell its land, resulting in unrestrained development. Over 147 hotels and hostels, of which only 4 are legal, are now located on Qingjing, occupying over 5,000 hectares of the mountain's area. Without proper regulation, commercial development of Qingjing has destroyed the beautiful scenery and threatened the ecological and natural environment.

Privatization, including the outright distribution of shares to the general public and "contracting out" and inviting the private sector to carry out publicly organized and financed activities, was believed to be a symbol of liberty and efficiency, but now, as it turns out, may be a new source of environmental degradation.²⁰ Due to financial difficulties, local governments in Taiwan have preferred to take advantage of private capital and private contractors for public construction projects. The expectation is that privatization introduces not only capital but also incentivizes the maximization of profits. A notable approach to public-private cooperation in Taiwan can be seen in the Build-Operate-Transfer (hereinafter BOT) scheme. Numerous cases, such as the

¹⁷Huntington (1993), p. 267.

¹⁸Some politicians and scholars see government regulation as inefficient, costly and undemocratic, proposing to reduce government involvement in the market and civil society. Moreover, they also believe that private enterprise may provide better products and services than the government, suggesting more involvement of private entities in public services and construction.

¹⁹According to the OECD, deregulation is a subset of regulatory reform and refers to complete or partial elimination of regulation in a sector to improve economic performance. Khemani and Shapiro (1993).

²⁰Privatization refers to the transfer of ownership and control of government or state assets, firms and operations to private investors. Organisation for Economic Co-operation and Development (OECD) (1997), p. 11.

Taidong Beautiful Bay Resort²¹ and the Taoyuan Aerotropolis Project,²² as well as the controversy surrounding the Taipei Dome,²³ are all vivid examples which show that, in fulfilling their contractual obligations, the private sector is more than willing to sacrifice environmental protection for the sake of profit.

In addition to threats from the market, the development of climate change has also brought new challenges. The uncertain and large-scale nature of climate change makes it a global environmental issue that requires collective **global action and cooperation**. International society started to combat climate change through treaties with the United Nations Framework Convention on Climate Change (hereinafter UNFCCC) of 1992, and continued to make various agreements and rules to regulate as well as to empower states in climate change mitigation and adaptation. The UNFCCC recognizes climate change as a global environmental problem and requires all parties to take common but differentiated responsibility. The Kyoto Protocol (1997) established a regulatory framework to impose on so-called Annex 1 Parties a compulsory legal obligation to reduce greenhouse gas emissions. The enactment of the UNFCCC and the Kyoto Protocol emphasized the legal obligation of states to protect their own citizens as well as the global environment. Although Taiwan has been deprived of the opportunity to participate in global law making and to receive resources from the global community, climate change has already caused disastrous property loss, injury and death in Taiwan. Answering the question of how to deal with the environmental threats coming from the market and climate change is the most crucial task for contemporary Taiwan.

4.2 Legal Change and State Performance

During democratization there was a proposal to amend the Constitution to include “a right to the environment.” Unfortunately, the ambiguous content of the proposal led to divisions within environmental groups and thus it failed to gain enough support during the process of political negotiation. Environmental groups that failed to constitutionalize an environmental law then sought legislative possibilities.

²¹Taidong Beautiful Bay Resort case was a BOT project involving the illegal operation of the Environmental Impact Assessment process since 1994. For details on the case, see Sect. 4.3.1 of this chapter.

²²Taoyuan Aerotropolis Project seeks to promote the Taoyuan Airport as a hub for East Asia and to enhance the competitive advantage of Taiwan. It will allegedly create NT\$7 trillion in revenue. Phased commercial, industrial and residential development will expropriate an area totaling over 3700 ha, including specific high-quality farmland and 15,000 houses with 46,000 residents. This project invites serious resistance from residents and NGOs for its over-ambitious public interests and flawed procedures.

²³The Taipei Dome is also a BOT project for the establishment of a stadium in Taipei. It was originally scheduled to start construction in 2007. The project involves many controversies, including the improper inclusion of commercial facilities, the destruction of old trees and historical sites, and concerns about public safety and transportation.

In 2002, the Legislative Yuan passed the Basic Environment Act which set up fundamental principles for Taiwan's environmental policy. Article 1 of the Basic Environment Act requires the government pursue sustainable development by promoting environmental protection, while Article 3 further emphasizes the priority of environmental value, stating that "in the event that economic, technological or social development has a seriously negative impact on the environment or endangers the environment, the protection of the environment shall prevail." The law prescribes the government's obligations in environmental protection, including pollution prevention, compensation, environmental education, law and policy making, as well as their implementation. If a competent authority fails in its obligations, persons or public interest groups may file lawsuits to the administrative courts. The Basic Environmental Law also legalizes some important policies, such as the "nuclear-free homeland" policy in Article 23.

In 2009, the Legislative Yuan passed the Act to Implement the ICCPR and ICESCR, making international human rights law a part of Taiwan's domestic law. As mentioned above, the enactment of the two human rights treaties has again animated discussions of human rights in Taiwan. Administrative agencies and the courts increasingly refer to the ICCPR and ICESCR in making decisions.²⁴ These developments have made environmental protection one of the highest values in Taiwan's legal system and have enriched discussions on environmental rights in Taiwan.

4.3 *State Performance*

In the face of coming threats, the performance of the government is disappointing.

4.3.1 **Privatization and Forced Evictions**

Due to the recession in the global economy, competition from China and the East Asian countries as well as the inherent limits of economic growth, the economic growth rate in Taiwan has slowed since 1992 and has dropped below its average growth rate since 2011. The government thus initiated several large-scale projects for industrial or economic redevelopment, many of which required land-use changes, land acquisitions or the exploitation of natural resources.

Democratization may have awoken environmentalism in Taiwan, but it has not changed the **ideology of economic development**. The policies of privatization and deregulation have invited market forces to chase economic profits at the cost of natural resources. Unfortunately, the government has, so far, managed the new

²⁴From 2009 to 2016, there were at least 1,541 judicial rulings citing the ICCPR or ICESCR in their judgments. The Constitutional Court refers to the two Covenants in 21 Interpretations.

market extremely poorly. Taitung Beautiful Bay provides an example of the government's poor management. In December 1994, the Taitung County Government signed a BOT contract with the Beautiful Bay Resort Co., according to which the company would "renovate" and operate existing facilities on Sanyuan beach in Taitung. In 2005, the Beautiful Bay Resort Co. separated 9,997 m² of land from the total 59,956 m² of property in order to shield itself from the legal requirements of EIA procedures and to maximize its profits. The Taitung County Government did not safeguard the natural environment by requiring the project to undergo an EIA. Instead, the county government allowed the Beautiful Bay Resort Co.'s circumvention, going on to facilitate the passing of EIAs on the remaining parts of the project. The Taitung County Government even refused to suspend construction when the court ruled the EIA illegal.²⁵ Although the court ruled in favor of the environmental NGOs, making this the first victory of citizen suits in Taiwan's history, the harm to the environment and indigenous people may be irreversible.²⁶

In addition to the harm to natural resources, some public-private cooperation projects lead to forced evictions, Take Taoyuan Aerotropolis Project (hereinafter TAP) as an example. In order to advance the capacity of Taoyuan airport and make Taiwan more competitive in the changing global market, the Taiwanese government initiated the TAP.²⁷ The initial project was to construct a third air strip in order to increase the capacity of the airport. Yet the project has enlarged its scope several times to include a residential area, a commercial area, and a specific zone for industries, in addition to the airport itself. The project currently covers 4,687 ha, yet only 1,700 hectares are used by the airport, with 945 hectares for other public construction. The project will result in more than 46,000 residents being forced to move from their homes. Similar to the case of Taitung Beautiful Bay, the private investors in the BOT saw an opportunity to make greater profits through the expanded residential and commercial zones. Yet even if the construction of a third air strip is justified as being in the public interest, the legitimacy of the land acquisitions for the sole benefit of commercial companies is questionable. The large-scale land acquisitions not only involve many residents' rights and property; some of the lands are high-quality farmland that is crucial for Taiwan's food self-sufficiency ratio. The project and decisions relating to private land acquisitions may not survive careful constitutional review.

²⁵There are several court rulings on this case. The first one is *TEPU v. Taitung County Government*, 96 Nian Suzi Di 647 Hao Panjue [96 年訴字第 647 號判決] (Kao-Hsiung Admin. High Ct. [高雄高等行政法院] 23 Jan 2007) (Taiwan).

²⁶The court first confirmed the standing of the environmental group as a public interest group to file a citizen suit. The court emphasized the purpose of the EIA is to lessen and prevent possible adverse environmental impacts by major construction projects and then ruled that to merge-and-re-segment the land in order to avoid the EIA process violated the legal requirement of the EIA. *TEPU v. Taitung County Government*, 96 Nian Suzi Di 647 Hao Panjue [96 年訴字第 647 號判決] (Kao-Hsiung Admin. High Ct. [高雄高等行政法院] 23 Jan 2007) (Taiwan).

²⁷For an official introduction to the Taoyuan Aerotropolis Project, visit its official website. Taoyuan Aerotropolis http://taoyuan-aerotropolis.com/en_content/index.aspx (last visited 17 Nov 2017).

Deregulation and privatization releases market forces that may sacrifice the natural environment for private interests, yet the government does little to properly regulate market forces in the public domain, leaving natural resources to be damaged piece by piece. On many occasions, the government has invited private capital but has failed to guard the public interest and human rights. The decision-making processes are usually flawed and **not fully participatory**. The cases of Taitung Beautiful Bay and TAP reflect only a small part of a systemic problem.

4.3.2 Gesture Politics on Climate Change

Taiwan's response to climate change began in May 1992, yet most policies remain ineffective political slogans.

The Executive Yuan established a Working Group for Global Environmental Change, renaming it the Working Group Guiding Global Environmental Change Policy to cope with the normative demands of the 1992 UNFCCC. In August 1997, the Executive Yuan re-organized it as the National Council for Sustainable Development of the Executive Yuan (hereinafter NCSD). One working group under the NCSD is in charge of mitigating greenhouse gas emissions and promoting energy efficiency.²⁸ In 1999, the Council was further elevated and chaired by the Vice-Premier, indicating gradual awareness of climate change in the government.

The Ministry of Economy and the EPA held a National Energy Conference for the first time in 1998, reaching a consensus on the target and agenda of reducing greenhouse gas emissions.²⁹ The conference also confirmed the need for a fourth nuclear power plant. In 2005, in response to the coming into force of the Kyoto Protocol, the Task Force for Responding to the UNFCCC and the Kyoto Protocol was founded, with similar offices later established in relevant agencies in the central and local governments to deal with the issue of carbon reduction.³⁰ The government again set out to work on policies concerning the mitigation of the environmental impact, holding national conferences including the National Energy Conference of 2005, the National Sustainable Development Conference of 2006, and the Conference on Sustaining Taiwan's Economic Development of 2006. The focus of these discussions was on policy for the post-Kyoto Protocol era and the strategies for industrial sectors. In this wave of deliberation, however, the earlier proposed

²⁸Human Rights Council Res. 7/23, UN Doc. A/HRC/7/78 (28 Mar 2008).

²⁹The 1998 National Energy Conference proposed implementation measures which were approved by the Executive Yuan on 11 June 1998. It emphasized energy conservation and called for an accelerated transformation of the energy structure. The goal was to reduce CO₂ emissions from fuel combustion to 2000 levels before year 2020, and to increase renewable energy to 3% of the total energy supply by year 2020.

³⁰According to official reports, Taiwan's total carbon dioxide emissions nationwide are more than 277 million tons per year, with an average growth of 12.4% every year. The energy conversion industry contributed 7% of the emissions; heavy industry contributed 52%; the transportation sector contributed 14%; the commercial sector 6% and private households 12%.

goals of mitigation were found to be difficult to implement and the government proposed to adjust the agenda. Since then, no consensus has been reached on this issue and greenhouse gas emissions have increased at an annual rate of 2.94%.³¹

The Legislative Yuan passed the Long-Lingering Greenhouse Gas Reduction and Management Act some months ahead of the 2016 Paris Conference of the Parties (COP). The Act set up the basic principles for the legal response to climate change. The primary principle is to reduce dependence on fossil fuels, aiming at promoting low-carbon growth. The Act sets a 50% emissions reduction target for 2050, compared to the 2005 greenhouse gases (GHG) levels. The Act also announces a nuclear-free policy, the development of renewable energy and implementation of a tax mechanism on imported fossil fuels.³² These articles reflect past efforts of both the Conference of Parties of the UN Framework Convention on Climate Change and Taiwanese society. However, the government has still, so far, been passive in making effective policy and taking measures on GHG emissions. As such, there has been little progress on the development of renewable energy and green infrastructure.³³

In the government's strategy to address the problems of climate change, the latest development is the National Guideline for Climate Change Adaptation Policy (hereinafter Adaptation Guideline) proposed in 2010, the goal of which is to implement a comprehensive set of policies for adapting to the impact of climate change.³⁴ Although the Adaptation Guideline provides detailed evaluations on the impact of climate change in eight fields, it fails to provide frameworks and organizational or procedural reforms for later programs and actions.

The sluggish progress in climate change mitigation and adaptation has been criticized as merely "gesture politics" intended to comfort domestic NGOs and international society.³⁵

4.4 *Human Rights for the Future*

In the face of growing threats, environmental rights have evolved accordingly. Implementation of the human rights treaties and the procedural turn of rights are

³¹Taiwan Environmental Protection Administration (2015).

³²Wenshi Qiti Jianliang ji Guanlifa [溫室氣體減量及管理法] (Greenhouse Gas Reduction and Management Act), arts. 5–6 (Taiwan).

³³Taiwan imports over 97% of its energy supply from foreign countries due to its limited energy resources. The effort to develop renewable energy started in 2003 when the government guaranteed the price of electricity generated from renewable energy. In 2009, the government passed the Renewable Energy Development Act (REDA), aiming to increase the installed renewable energy capacity in Taiwan to 9.95 GW by 2030. Yet the use of renewable energy has been lower than 5%; solar and wind are two major forms of renewable energy in Taiwan.

³⁴For an English introduction, see Kuo (2013). See also Council for Economic Planning and Development (2012).

³⁵Lin and Yeh (2016).

two of the most important developments in environmental rights in Taiwan. In addition, the human rights approach to climate change may also inform the future development of environmental rights.

4.4.1 Greening Human Rights

It is not clear how the implementation of the ICCPR and the ICESCR changes the substance of environmental rights in Taiwan. Yet the emerging human rights jurisprudence may shed some light on the discussion of environmental rights.

First, the ICCPR and the ICESCR provide a list of rights that are believed to be inherent to all human beings. Although the ICCPR and the ICESCR make no specific reference to protection of the environment,³⁶ it is generally accepted that human rights provisions can apply to environmental problems.³⁷ For example, in 1994 the Ksentini Report prepared for the UN Human Rights Commission argued that all persons have a right to a secure, healthy, and ecologically sound environment.³⁸ Christopher Weeramantry stated in his separate opinion in the *Gabcikovo-Nagymaros Project* case, “the protection of the environment is likewise a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself.”³⁹

The Human Rights Committee (hereinafter CHR) and the Committee on Economic, Social and Cultural Rights (hereinafter CESCR) have published General Comments on the ICCPR and the ICESCR, expressing their interpretations of certain provisions. The CHR and CESCR have already developed a series of general comments, demonstrating an emerging jurisprudence on greening human rights. These General Comments confirm that recognition of environmental rights is fundamental to the inherent dignity of the human person and indispensable to the fulfillment of other human rights. If serious environmental degradation undermines the **rights to life**, health, adequate standard of living, food, water, family or the right to culture, the state has an obligation to protect the environment to the degree that citizens can fully exercise their human rights. For example, the ICCPR General

³⁶Principle 1 of the 1972 Stockholm Declaration on Environment and Development (New York, 1973) declares, “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.”

³⁷The ICESCR, Article 12(2)(b), for example, directs states to adopt measures as may be necessary for the “improvement of all aspects of environmental and industrial hygiene” in order to fully realize the right to health.

³⁸Final Rep. Prepared by Fatma Zohra Ksentini, Spec. Rapporteur, UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, UN Doc. E/CN.4/Sub.2/1994/9 (6 July 1994).

³⁹*Gabcikovo-Nagymaros Project* (Hung. v. Slov.), Judgement, 1997 I.C.J. Rep. 7, 88, 91 (25 Sept), <http://www.icj-cij.org/docket/files/92/7383.pdf> (separate opinion by J. Weeramantry).

Comment No. 31 affirms that the right to life includes threats to life caused by health risks as well as dangers emanating from nuclear waste. CESCR General Comment No. 14 suggests that the right to health includes “the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.”⁴⁰ CESCR General Comment No. 12 especially recognizes the relation between the environment and the right to food, noting that the right to adequate food requires the state to make “appropriate economic, environmental and social policies.”

Secondly, the General Comments suggest that if a state fails to respect, protect or fulfill a citizen’s rights against environmental degradation, the state violates its obligations under the two covenants. The state is obliged not only to **refrain from degrading the environment** but also to **protect citizens from environmental harm** done by other private entities or natural disasters. For example, CESCR General Comment No. 12 suggests that states should take active measures to ensure that even vulnerable groups can fulfill their human rights in a proper environment.⁴¹ On some occasions, states are obliged to take active measures and implement policies to fulfill human rights. In other words, the obligations of a state depend on the extent to which citizens can fully enjoy and exercise their human rights.

The ICCPR and ICESCR have re-interpreted existing human rights provisions to cope with environmental harm, resulting in a human rights law that is “greened” and able to deal with environmental problems. The greening of human rights has substantially enlarged the understanding and application of existing human rights. Nowadays, the resolution of environmental problems is no longer limited to regulation and implementation of environmental law; **environmental problems have become human rights issues**. People are asking, what rights are infringed upon by environmental degradation? As a result, the human rights of disadvantaged groups, such as indigenous people, women and children, have been taken more seriously. For example, General Comment No. 12 underscores the special needs of the vulnerable population, stating that “even where a state faces severe resource constraints, whether caused by a process of economic adjustment, economic recession, climate conditions or other factors, measures should be undertaken to ensure that the right to adequate food is fulfilled especially for vulnerable population groups and individuals.” While the General Comments have resulted in a greening of existing human rights legislation, they have also led to an emphasis on procedural rights to adequate information and participation.

⁴⁰UN Committee on Economic, Social, and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (11 Aug 2000).

⁴¹UN Committee on Economic, Social and Cultural Rights, General Comment No. 12: The right to adequate food (art. 11), UN Doc. E/C.12/1999/5 (12 May 1999).

4.4.2 The Demand for Procedural Rights

Social movements against forced evictions and improper land use have enriched procedural-rights protection in Taiwan.

A series of environmental controversies have directly brought into question the due process of decision-making. When environmental controversies involve complex, professional knowledge and conflicts of values, the courts are reluctant and perhaps incapable of making judgments on substantive issues. The administrative agencies have started to realize that, in such situations, unilateral opinions are no longer able to persuade concerned citizens.

Through constitutional interpretations and court decisions, a **right to due process** in decision-making is gradually being developed in Taiwan. J.Y. Interpretations 709 and 732 are the two most important interpretations establishing the constitutional requirement of due process in administrative procedures.⁴² In J.Y. Interpretation 709, the Constitutional Court declares that due process in administrative procedures includes the existence of an appropriate organization, information disclosure and the opportunity to present opinions. With regard to decisions that might greatly affect people's rights directly, the competent authority should hold official hearings publicly. In J.Y. Interpretation 732, the Court suggests that any official hearing for expropriation should be necessarily required for public construction and for public use, owing to the serious impact on the freedom of residence and citizens' property rights.⁴³

In addition to the court's decisions, and as a result of public pressure, administrative agencies have also put efforts into improving the decision-making process. Evidence of progress in this area can be seen in the above-mentioned TAP case. Complicated cases such as this require an inclusive and deliberative process through which the voices of concerned parties, such as residents and human rights groups, can be heard and the issues involved can be fully debated. In recognition of this need, the Ministry of Transportation and Communication (MOTC) and the Taoyuan City Government held 12 preliminary hearings and 6 formal hearings to allow concerned parties to voice their opinions. Observers still criticized these hearings' failure to clarify key issues and to allow for deliberation of the flawed institutional arrangements.⁴⁴ However, this experience demonstrates significant progress in the decision-making process and has triggered an action on rule-making in hearings by the Ministry of Interior.⁴⁵

⁴²Dafaguan Shizi Di 709 Hao [大法官釋字第 709 號] (J. Y. Interpretation 709) (26 Apr 2013) (R.O.C.). English translation is available at http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=709.

⁴³Dafaguan Shizi Di 732 Hao [大法官釋字第 732 號] (J. Y. Interpretation 732) (25 Sept 2015) (R.O.C.). English translation is available at http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=732.

⁴⁴Abraham (2017).

⁴⁵Operational directions for holding a hearing (2016).

5 Changing Environmental Rights in Taiwan

The meaning and function of environmental rights are not fixed and universal. They are dependent on context and they change with time. In Taiwan, environmental rights have evolved within the political and social contexts as well as within the corresponding legal framework. From **personal injury** to **legal rights** to **human rights**, the evolution of environmental rights in Taiwan can be divided into three periods. In the first period, before democratization, the development agenda caused serious threats to Taiwan's natural environment, while the law provided almost no protection for victims. Victims of environmental degradation may have suffered losses for which they sought to blame the polluter. However, the blame seldom transformed into a legal claim. The law failed to set up standards to determine illegal pollution and corresponding responsibilities. Victims of environmental degradation in this period did not expect the government to take a primary role in environmental protection, nor did they trust the courts to prioritize environmental protection. In this period, claims against environmental degradation were predominantly prompted by victims who had suffered **personal damage** to either property or health. Under the framework of the ICCPR and the ICESCR, these claims could be understood as premature claims of the right to health and property.

The second period from the late 1980s to 2000 has been categorized as **early democratization**. This period not only saw vibrant environmental movements contribute to Taiwan's democratization, but these movements also triggered the implementation of specific environmental legislation. Regulatory laws from this period provided standards to regulate pollution, imposing on the government the responsibility to control pollution. In addition to regulations, the enactment of the PNDMA, EIAA and the emergence of citizen suits clauses made environmental claims enforceable legal rights. Citizens could take advantage of legal mechanisms to resolve **public nuisance** disputes, participate in and supervise the environmental impact of **major construction projects**, and bring suits against the government in the interest of the environment, without personal rights infringements. The new legal framework not only enabled the **transformation of victims' grievances into legal rights** but also enlarged the understanding of the "environment" in general. With the development of the anti-nuclear movement, legalized environmental rights began to be applied to environmental damages beyond personal injuries, such as natural resource degradation and the need to maintain a sustainable environment for future generations.

The third period, since 2000, has seen the development of deregulation, privatization and climate change, all of which have brought new threats to Taiwan's environment. However, the introduction of international human rights law into the domestic legal system may yet promote environmental rights. The policies of deregulation and privatization have generated new motives for the private sector to take advantage of natural resources, while the government has little experience in protecting the environment from the piecemeal degradation threatened by the newly opened market. The development of climate change has provided further challenges

to the government's capacity to protect the environment which, as yet, has provided no effective policy regarding energy structure, greenhouse gas emissions and climate change adaptation. Despite that, environmental rights have become more profound with the progress on procedural rights and international human rights. The introduction of international human rights law has helped to further emphasize environmental rights as inherent conditions for human rights. Moreover, the emerging jurisprudence on environmental rights extends human rights protection to environmental issues and highlights the future face of environmental rights.

The development of environmental rights in Taiwan can be better illustrated by the following table.

Period	Political/social context	Environmental threats	Legal framework and state performance	Environmental rights in reality
Before 1980s	Japanese colony Developmental state	State-owned or state-run enterprises	Development strategy No environmental law	Personal damage rights to health and property rights
1987–2000	Democratic state in transition	State-owned or state-run enterprises	Legislation on environmental law	Environmental rights as legal rights; a right to the environment
2000–present	Democratic consolidated state	Private sector and climate change	Higher environmental law and human rights law	Environmental rights as human rights Generational justice

6 Conclusion

Determining the kinds of rights people can exercise in the face of environmental degradation is crucial for preserving the environment and human dignity. Given the fact that scholars have not reached a consensus on the definition of environmental rights, this chapter has chosen to define these rights broadly to better delineate the changing face of environmental rights in Taiwan.

It is argued in this chapter that while the process of democratic transition has shaped the face of environmental rights in Taiwan, environmental rights can only be fully understood within the dynamics of environmental threats, legal frameworks and social and political contexts. Taiwan's democratic transition can be divided into three periods, each with distinct political and social contexts as well as legal frameworks, and it is only in the dynamics among these factors that we may understand the development of environmental rights in Taiwan. As the scope of environmental rights in Taiwan increases with the development of environmental rights as human rights, the obligations of the state and the legal consequences of violations become ambiguous and diluted. The next question is **how to prevent environmental rights from becoming simple rhetoric**. On this point, whether the

courts and government can effectively respond to the increasing importance of environmental rights may be the key for their realization.

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