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ARTICLES

The Impact and Prospect of the Court-centred Environmental Movement in China – *Qi Gao*

Environmental law enforcement and dispute settlement has been relied on the executive branch of government in China and criticisms have been made repeatedly regarding the marginalisation of courts in environmental governance. Recent years have witnessed a series of legal and institutional reforms promoting access to environmental justice. It is represented by the establishment of environmental courts in various forms, the introduction of public interest litigation and the more recent invention of the so-called "environmental damage compensation litigation". This court-centred environmental movement, however, is rather controversial on its impact and prospect. This article first provides an overview on this movement and then explores the rhetoric and reality of this movement from three main perspectives: the standing to sue expanded beyond individual rights, the role of judiciary in environmental law enforcement and judicial innovations regarding remedies and burden of proof. Finally, the key features of this movements are concluded and potential risks are highlighted. 226

Human Rights and the Environment in the Ogiek Case: Implications for Property Rights in Queensland – *Nicky Jones*

This article focuses on property rights protected under the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights (African Charter) and now the *Human Rights Act 2019* (Qld). In 2017, the African Court on Human and Peoples' Rights decided that the Kenyan Government's forced eviction of the Indigenous Ogiek people from their ancestral lands violated their property rights under the African Charter. The Court found that the right to property may be collective and individual, include Indigenous ancestral lands, and prevail over unsupported environmental claims. Indigenous land-related rights may also be supported by the free, prior and informed consent principle. This article suggests that international law and decisions such as *African Commission on Human and Peoples' Rights v Republic of Kenya* may guide interpretations of property rights under Queensland's *Human Rights Act*, taking the comparative approach permitted under its statutory framework. Could Queensland's right to property also protect Indigenous peoples' rights to traditional lands and resources? 242

Legal Framework for Biodiversity Conservation in Australia and New Zealand: A Comparative Analysis – *Rose Neil-Smith and Mostafa Mahmud Naser*

Australia is one of the most biodiverse countries in the world and it is crucial that its biodiversity is sufficiently protected by law. This article argues that the current state of biodiversity protection in Australia's environmental law framework, which is primarily the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act),

is insufficient and efforts to reform such inadequacies must be made to recast the balance more sustainably in favour of the environment. Further, the article recognises New Zealand as having a suitable environmental law framework, through the *Resource Management Act 1991* (NZ) (RMA), for comparative analysis with Australia and providing a model for effective biodiversity protection. Before conducting a comparative analysis of biodiversity conservation framework between Australia and New Zealand, this article provides an overview of Australia's national environmental law framework, specific to biodiversity protection, including a summary of the instrumental parts of the *EPBC Act* and a brief insight into its effectiveness. Then it provides a brief overview of New Zealand's national environmental law framework, specific to biodiversity protection by including the important aspects of the RMA and providing an initial assessment of the merits of their laws relative to Australia. Finally, in conclusion, this article recommends significant amendments to the EPBC Act to protect biodiversity and prevent drastic and irreversible damage from occurring from continuing biodiversity loss. 254

Indigenous Rights in Freshwater: Mapping the Contested Space in Australia, New Zealand and Canada – *Simon Young, Sarah Down and Sharon Mascher*

Indigenous water rights are emerging as a critical contemporary issue in many countries. In Australia, New Zealand and Canada legal progress in this field has been slow, expensive and selectively dispute driven – and policy progress has been piecemeal, fragile, and often focused on procedure over substance. Yet the socio-political context for consideration of these issues has changed – particularly through the ongoing development of international Indigenous rights standards, the strengthening of local Indigenous voices, and improving public understanding of the issues. A common thread is the resurgence of Indigenous laws and knowledges – which has produced some renaissance in Australian native title doctrine, a re-framing of questions in New Zealand in terms of Māori laws and governance rights, and some "occupation" of recognition space in Canada through the assertion of jurisdiction and traditional legal authority. These are potentially significant developments as regards the contested space of freshwater. Each opens new opportunities for Indigenous voices to be better heard and understood. 276