

ENVIRONMENTAL PROTECTION AND IT IS IMPACTON HUMM RIHTS

حماية البيئة واثرها على حقوق الانسان

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Environmental Protection and it's Impact on Human Rights

Introduction:

The environment was always at the apposition of people's concern People developed their concepts and attitudes toward environment over the centuries. At the turn of the 20th century people's interest in the environment was basically related to the man-taming of wild life. Since the sixties of last century a movement began in people's interest in the environment. They began enjoying wild public sport.

The UN conference of human environment held in Stockholm in 1972 was considered as a starting point in the history of environment education. The increasing public pressure supported scientific resource regarding the consequences of various pollutants and the environment degradation in the late seventies led to stimulate the required political will.

In addition to the debates held in the beginning of the seventies which concentrated on the pollution of air and water which was clearly seen in the public in the north , demonstrated the fact that environment degradation was not due to industry but due to poverty and the lack of development.

Since then the great movement has become interested in all aspects of natural environment earth, water, minerals, all the living beings, living processes, the atmospheric shell, climate polar ice rivers, the depth of the ocean and the outer space. Moreover the environment movement changes transformed its concept from the natural environment itself to its natural relation to the human solution and their prosperity and the international economic operation governing debts period prices of basic goods.

When one recognizes that he everybody has equal and inalienable rights which ensure him his inherent dignity and to live with freedom. Justice and peace in a clean environment as article 3 in universal declaration of human rights stated (Every one has the right to life, liberty and security of person).

The study is divided into three section. The first section deals with Human Rights and environmental linkage. The second section deals with advantages to using a human rights approach. The last section analyzes moral foundation of human rights and the recognition of general principle of international environmental law.

C:\WINDOWS\hinhem.scrC:\WINDOWS\hinhem.scrSection one: Human Rights and environmental linkage

This research considers the linkages between human rights and the environment. How such linkages can assist efforts to protect both human rights and the environment? And further collaboration between these two fields might be pursued.

To day more than ever it is clear that environmental degradation has an adverse impact on the quality of human life, and more specifically on the full enjoyment of human rights. The criteria adopted in assessing the level of development with regard to human rights is the development achieved in the economic social and cultural rights.

Environmental degradation too often refers to violations of human rights including the right of life, health, habitation culture, equality before the law, and the right to property. Conversely the failure to protect and promote human rights prevents progress towards environmental protection and sustainable development .

This is the case for example when there are violations of the rights to information, assembly, press, access to justice, and participation in governance.

Violations of these mostly procedural rights prevent groups affected by environmental degradation from working within their political process to secure the level of environmental protection necessary to protect their health and well being.

Where human rights are weak, civil society is not able to raise environmental concerns effectively.

Indigenous and other vulnerable groups often have limited opportunities to participate in the political process, and can suffer environmental discrimination and a disproportionate burden of environmental degradation as a result.

Thus it is no accident that where the environment has been most devastated from large uncontrolled development projects, human rights abuses are the most severe. Moreover, with enormous wealth at stake in many of these conflicts, environmental and human rights activities are being targeted. Some times directly by the government or at least with its tacit approval.

A well – known example is Ken Saro – wjwa, who was hung by the Nigerian dictatorship in 1996. along with several other activities for raising environmental concerns about oil development by Royal Dutch petroleum in their native Ogoni lands.

In Kenya. Wangari Muta Maathai, the internationally recognized founder of one of the most important developing country grass roots movements, the Green Belt movement, has been teargassed, beaten and arrested. India's Medho pakter and other activists opposing the Narmada dam have regularly been beaten and arrested for their efforts to protect their homes from being flooded. In Brazil ranchers with close ties to local government officials murdered Chico Mendes because of his efforts to protect rubber tapping reserves in the Amazon.

To fight these and other threats, human rights and environmental organizations around the world are joining forces to create networks dedicated to protecting the

human rights of environmental activities¹. Another recurring pattern of environmental abuse that sparks human rights abuse is one in which outside interests, generally multinational corporations are exploiting oil, minerals, timber or other natural resources, in lesser developed countries.

Repression of local communities including indigenous peoples, appears to be the most convenient way to pursue "development" in frontier – lands.

This is in contrast with what might be expected in developed countries. Where the local communities generally have access to the political process to negotiate economic benefits in exchange for the development as well as guarantees for protecting human rights and environment².

All too often transnational corporations (TNCs) and governments inflict devastating environmental harm on local people in developing countries. Typically the damage is obvious and preventable, but ignored by those who cause it.

Political legal practical barriers to TNCs entry into third world economies are rapidly disappearing. Moreover many nations are unwilling or unable to protect their citizen from the kinds of actions described above through domestic law.

Growing awareness of the suffering environmental abuses inflicted has led many observers to consider the extent to which such abuses violate human rights norms.

The fact that government and TNCs often commit brutal civil rights violations, such as summary executions and torture to suppress opposition to ecologically destructive projects strengthens the trend toward viewing environmental degradation itself as a human rights abuse.

Indigenous people are particularly vulnerable to environmental threats, as they are often completely dependent on their immediate environment for survival. This relationship is described in an amicus curiae brief filed in the inter – American Human Rights Commission on behalf of the Wichi and other Lhaka Honhat aboriginal communities from the chaco region of Argentina. The brief urges the commission to recognize the symbiotic relationship between indigenous peoples and their land, the Wichi and the other communities depend on their environment for their food, and culture. The environmental threat comes from a transcontinental highway that will cut through their aboriginal lands as it crosses from the east coast of Brazil to the west of Chile to facilitate international trade. The Wichi fear that heavy truck traffic and pollution will affect the environment. Culture and life style of their communities, and will open up their isolated populations to AIDs and other diseases.

Work already underway in their traditional territory is disrupting their hunting patterns, fishing resources, and natural habitat, putting their cultural and. Ultimately their very survival at risk. The amicus brief requests precautionary measures to halt the road until the government of Argentina prepares an environmental impact assessment and consults with the indigenous peoples threatened by the development³.

See Amnesty international & sierra club. Environmentalists under fire: 10 urgent cases of human rights abuses (2002) ¹ www.sierraclub.org/human-rights.

Richard L. HFRZ. Littering Environmental abuses under the Alien tort claims ACT. A practical assessment. 40 VA.J. ² LNTL L.545, 547-49(2000).

Association of Lhaka Aboriginal communities [Nuestra Tierra/ our land] the state of Argentina, 3-8, center for Human Rights and Environment [CEDHA] & center for international Environmental Law [CIEL], September 19, 2000 www.eedha.org.ar/docs.htm.

Section two: Advantages to using a Human Rights Approach

Over the past fifteen years international environmental law scholars and activities have increasingly looked to the law of human rights as a model for the progressive development of international environmental law as well as an independent legal strategy for protecting the environment. Significantly, and in contrast to international environmental law and institutions, the human rights system already provided various courts commissions and other bodies where individuals and NGOs can raise human rights and associated environmental issues with the legitimate expectation of securing some relief.

These supervisory mechanisms offer models for environmental law years not only to use, but also to borrow and incorporate into the international environmental law system. The mechanisms vary, some are independent commissions that investigate individual assertions of rights, as well as broader investigations into country compliance. Other are specialized courts with compulsory jurisdiction and the power to grant a full range of remedies, including damages and attorneys fees. There are also special rapporteurs to investigate broad thematic areas, such as the UNs special rapporteurs on Human Rights and Environment.

More fundamentally the evolutionary path of human rights law which is anchored more in general, or universal principles, provides insights that may help environmental lawyers accelerate the development of more robust international environmental law. The focus of human rights on the individual also is both a model and an inspiration for reforming international environmental law, which still resists participation by individuals and NGOs.

Finally much can be learned from the rights based approach of human rights law. Environmental law is largely regulatory in its approach. Often based on scientific standards, technological feasibility of pollution control and other technical considerations. While many national law systems have some rights that individuals can enforce including constitutional provisions and common law nuisance actions, which were critical to the preregulatory success of the U.S environmental law movement. The systems in the U.S and Europe lack broad environmental rights that individuals can enforce.

Thus many environmentalists argue for the recognition of environmental rights – based on the fundamental human needs for clean air and water, a stable climate system, the ozone layers protection from ultraviolet radiation and more generally an environment conducive to human life and health. The right to a healthy environment does in fact exist in the African and inter- American human rights systems, as well as in many modern national constitutions in Africa and Latin America.

What are some of the advantages of using a human rights approach to protect the environment as opposed to a regulatory approach or an approach based on tort law, or criminal law?

First: a human rights approach is a strong claim, a claim to an absolute entitlement theoretically immune to the lobbying and trade-offs that characterized bureaucratic decision-making. Its power lies in its ability to trump individual greed and short-term thinking.

Secondly: the procedural dimensions of an environmental right can provide access to justice in a way that bureaucratic regulation, or tort law, simply cannot. A robust environmental right can mobilize redress where other remedies have failed.

Thirdly: a human rights approach may stimulate concomitant political activism on environmental issues. Concerned citizens and NGOs are more likely to rally around a general statement of right than a highly technical, bureaucratic regulation expressed in legalese.

Fourthly: a human rights approach can provide the conceptual link to bring local national and international issues within the same frame of legal judgment. At present environmental damage is unequally distributed at both the national and international level, a non discriminatory human rights standard could facilitate comparison, and faster political mobilization linking local concerns with more global issues.

Fifthly: a general expression of right can be interpreted creatively as issues and contexts change.

Thus definitions and trade – offs evolve gradually in the light of experience rather than needing to be defined comprehensively and rigidly in a single piece of regulatory legislation⁴.

Regardless of whether one favors a rights – based approach to environmental protection the field of human rights will remain vital for environmental protection and achieving sustainable development . Environmental law and human rights are necessarily converging, and the many linkages between their legal and institutional systems demonstrate their underlying indivisibility.

The threats addressed by each can only be fully redressed by a comprehensive legal approach. Mechanisms that might be considered to promote further collaboration and cooperation range from soft law declarations to guide the interpretation of existing human rights instruments to ensure that the proper environmental dimensions are included to the possibility of new regional or international instruments that could guide and direct the interpretation of regional and national law expand existing rights or create new rights as appropriate in addition filling fact – specific actions in the various human rights bodies provides a critical evolutionary force for the further development of both environmental and human rights law.

Section three: Moral foundation of human rights and the recognition of general principles of international environmental law

An examination of the separate evolutionary paths of human rights and environmental protection disclose some important affinities. They both witness and precipitate the gradual erosion of so called domestic jurisdiction. The treatment by the state of its own nationals becomes a matter of international concern. Conservation of the environment and control of pollution become likewise a matter of international concern. The internationalization of human rights protection reached a watershed

⁴ Michael R. Anderson. Human Rights Approach Environmental protection: 1-4,21-23 (1996).

immediately following the horrors of world war II , with the 1948 universal declaration on human rights, although for centuries there has been an ebb and flow between the sphere of domestic jurisdiction and international concern. The internationalization of environmental protection started much later, with widespread recognition by the time of the 1972 Stockholm declaration on the human environment. Both fields of law developed a vast normative corpus of international law mainly in the form of responses to specific challenges leading in many cases to conventions that followed a sectoral approach (e.g. torture, disappearance, water, oceans, wildlife, atmosphere).

Finally concern for human rights can be found in international environmental law and vice versa, concern for the environment can be found in the realm of international human rights law⁵. While world war II was the impetus for much of modern human rights , human rights go back to antiquity.

Concepts of human rights can be traced to antiquity .. eg. The ten commandments, the code of Hammurabi's approach to law as a means of preventing the strong from oppressing the weak, and the rights of Athenian citizens religions . Moral and philosophical origins can be identified not only in biblical and classical history but also in Buddhism, Confucianism, Hinduism. And other faiths.

Right concepts began to appear in national documents such as the Magna Carta of 1215. also in the 13th century, ST. Thomas Aquinas used the theory of natural rights to argue that state sovereignty should not be respected when a government is mistreating its subjects. Following the revolution of [1688] in England parliament enacted the declaration of the rights of man [1689] to protect citizens from violations by the monarchy.

With the rise of nation states in the 17th century. However, classical international law rejected the notion of human rights and favored state sovereignty. During the 18th and 19th centuries, governments took further measures to recognize inherent rights of the individual under national law. The [1776] American declaration of independence proclaimed as self evident , the inalienable rights of all men to life, liberty and the pursuit of happiness. Those rights were based on 18th century theories of natural law philosophers like [Locke and Rousseau] who argued that fundamental rights were beyond state control and that individuals are autonomous in nature.

Belief in such rights produced the French declaration of the rights of man and of the citizen in 1789 and led federated states to insist on adding the bill of rights to the U.S. constitution between 1789 and 1791. a number nations followed the French and U.S. examples in their constitution.

In addition 19th century efforts to abolish the slave trade and protect workers rights evidenced a growing international concern for human rights. And ultimately a woke concern for women's rights.

The parallels between the evolution of international human rights and of international environmental law suggest that we might be able to use the philosophical basis of human rights to devise a process that will help us identify and

See generally, A.A CANCADO TRINDADE. The parallel evolutions of international human rights protection and environmental protection. NRo 13. at 35-76 (1991).

recognize general principles of international environmental law, in addition to the current regulatory approach.

According to Jerome J. Shestack ((human rights are a set of moral principles and their justification lies in the province of moral philosophy⁶, thus, if we understand the moral force of human rights we may be able to use it to reinforce the authority of international environmental law. Particularly valuable for an area lacking legal enforcement mechanisms. The moral justification of human rights gives coherency to the set of principles that govern or should govern the ways we treat one another. It is worth considering how we can use this morality to justify general principles of international environmental law that will determine the right mode of individual conduct towards the environment.

Conclusion

The relationship between humans and the environment has existed since the creation of humans, so it is a very old relationship. Influences exerted by humans on the environment were not that dangerous and threatening even in the industrial revolution. During the first year of the industrial revolution and due to the rapid technological progress, the unbalance between humans and the environment began to increase especially in the second half of the 20th century. The century that witnessed an international movement towards protecting environment and humanity from pollution. This international movement led to Stockholm announcement on the human environment in 1972 and Rio announcement on environment and development in 1992.

Since environment is regarded as a necessary factor in providing humans with the basic rights, enjoying the right in the environment affects negatively or positively the other rights. With regard to the international environmental law resources in general and the human rights in the environmental in particular, except for the original resources and the helping resources to the international environmental law clearly stated in the article 38 there are no recent resources that are not indicated in the article mentioned above. These resources that deal with the human right in the environment directly are considered as direct international resources.

Statements about human rights especially those related to his right in the environment ensured by the international documents are still not activated. They will not be useful and significant unless their application is consolidated and practicing them by individuals is guaranteed.

The relationship between environment protection and human rights can be summarized in the following:-

- 1- human rights cannot be viewed without considering the human right of having a clean environment. All human rights involve human dignity and human right in the environment is an essential condition towards enjoying other rights especially the right of living. These are affected negatively or positively by this right. The international documents of human rights do not just emphasize the multi –

⁶ Shestack, The philosopher. Foundations of Human Rights (1984). at 32.

- dimensions of these rights, but also confirm that these rights are interrelated.
- 2- Although some deals and agreements among individuals and countries did not acknowledge vividly the human right in the environment, it is noticed that these deals form an indirect legal base for this right. These deals realize that the human is the real addressee even if the addressing is indirect. Human is the agent and the real operator of the legal base (article) so it puts human in the superior consideration. The legal base permits advanced explanation taking into account various developments in the international life. (community). These are now more than one hundred international documents on various sides of environments that include explicit or implicit acknowledgment of the human right in the environment.
 - 3- Environment human right protection is represented internationally in the efforts exerted by governmental and non governmental international organizations aiming at enhancing that right as well as resolutions from international courts and judging committees. These included few numbers of cases the dealt with the human right of having a clean environment. The establishment of the environment international court suggested in Rome conference held in 21 – 24 April, 1989 is considered as one of the most important international guarantee to protect and enhance the human right in environment.
 - 4- International protection to the environment and to the human right in it needs more consolidation and more attention from all countries. The right in the environment includes all humans wherever they are. Countries are originally founded for human welfare, since humans are the core of the country and its noble aim.
 - 5- Developing countries are not causing environmental pollution like the developed ones which usually export pollution to other countries since they represent a place where nuclear and poisoning remains are buried. Developed countries are also building factories that cause polluted remains as well. The constituents of these countries didn't refer to any rules or constraints to protect the environment just like the case of Bhopal factory in India.

The United Nations organization must work through its program of the environment and through its related agencies to protect human right in having clean environment in these countries. Environment protection in such countries might be performed through national and international legislations. These legislations oblige multi-identity companies to respect rules of environment protection in the country of industry and in the original country of these companies.

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- 6- developing and improving the environmental awareness in individuals on both the national and the international levels is considered as one of the significant devices to protect human rights in the environment. If this protection is provided, a human will realize that he is the intended being the influential and the influenced by the environment. A human is part of the environment acting in it, making use of it, preserving it as a right for all humans and the common future among the present and the coming generations of humanity.

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