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Pollution Human Rights and Environmental Protection

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Abstract: *In terms of international awareness, the connection between human rights and Environmental protection is steadily grown significantly, given that environmental protection became an important issue on the international agenda. Over the years, environmental legislation has evolved being involved in human rights and recognizing the fundamental rights in relation to the environment. A considerable number of legal instruments at international, regional and national levels have been approved and established specialized bodies to respond to problems identified in human rights and environmental protection. Environmental instruments increasingly include protection of human rights and principles, including the specific procedural rights such as access to information and access to justice and the principles of implementation. At the same time, the development of environmental norms has affected human rights. This paper highlights some of the developments that have occurred at the international, regional and national levels in recognition of the link between the protection of the natural environment and human rights and the impact that they have in achieving the aims of each other.*

INTRODUCTION

Humanity is part of a global ecosystem, where the purpose of protecting human rights and the environment within the parameters of sustainable development requires a higher quality of life in existing natural conditions. (Joint Report OHCHR and UNEP, 2012). Human rights and the environment are interdependent and play an integral role in achieving the objectives of sustainable development. (UNEP, 2004). With the emergence of contemporary concern in relation to environmental protection in the late 1960s, the impact of environmental sustainability on the enjoyment of human rights is strongly perceived.

A significant impact on clarifying the relationship, which exists between the environment and human rights provide various studies and reports carried out by specialized agencies and organizations at the international level, dealing with the issue of protecting human rights. Also, efforts to promote environmental sustainability can be effective only if they occur in the adequate legal context and only if measures are taken for the observance of human rights, such as the right to information, public participation in environmental decision making and access to justice. A considerable number of court cases, national constitutions, legislation and international instruments have recognized a close connection between these areas.

The environmental legislation adds the goal of human rights in order to support life globally by balancing the needs and capabilities of today's generation of all kinds with them in the future. (Joint Report OHCHR and UNEP, 2012). Despite from the interaction between environmental issues and human rights, most organizations and governments have handled recently, violations of human rights and environmental degradation, as a matter unrelated, while environmentalists have tended to focus mainly on the conservation of natural resources without addressing human impacts on the environment. There is three main points of views about the connection between human rights and environmental protection. The first view considers environmental protection as a precondition for the enjoyment of human rights and thus the obligations provided for states, as a tool for ensuring the necessary level of environmental protection needed to allow the full exercise of the rights protected. The second viewpoint considers some human rights, especially the right to information, participation in governance and the right to legal remedies, essential for a better environmental decision making. Instead, the third point of view, considers the right to a safe, healthy and ecologically balanced environment, as an independent human right. However, this latter approach is not accepted by all countries and is not included in any global instrument for human rights at the moment.

SOME OF THE ENVIRONMENTAL LAW INSTRUMENTS AND HUMAN RIGHTS SYSTEMS

Environmental law instruments that link the environment and human rights began to appear as early as 1972, in the Stockholm Declaration on Human Environment, which states that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and wellbeing...” (Training Manual on International Environmental Law, p. 304). In comparison, Principle 1 of the 1992 Rio Declaration on Environment and Development provides that “Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.” With regards to procedural rights, the 1982 World Charter for Nature was one of the first declarations that recognized the right of individuals to participate in decision making and to have access to means of redress when their environment had suffered damage or degradation. (Training Manual on International Environmental Law, p. 304). Principle 10 of the 1992 Rio Declaration on Environment and Development stated the need for these participatory rights. In

1998 the Aarhus Convention was built on above cited Principle 10 of the Rio Declaration and on Principle 1 of the Stockholm Declaration. The Preamble states that every person has the right to live in an environment adequate to his or her health and well-being and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations. The WHO-UNECE Protocol on Water and Health to the 1992 Convention on the Protection and Use of Trans boundary Watercourses and International Lake touches upon the right to a healthy environment. (Training Manual on International Environmental Law, p. 305).

Also others environmental instruments include the Universal Declaration of Human Rights, (Articles 22, 25, and 27 of the Universal Declaration of Human Rights, 1948), the International Covenant on Economic, Social and Cultural Rights, (Articles 1, 6, 7, 11, 12, 13 and 15 of International Covenant on Economic, Social and Cultural Rights, 1976), the Convention on the Elimination of All Forms of Discrimination Against Women, (Articles 11 and 14 of the Convention on the Elimination of All Forms of Discrimination Against Women, 1981) the Convention on the Elimination of All Forms of Racial Discrimination, (Article 2 and 5, Elimination of the Convention on the Rights of the Child, (Article 14 and 27 of the Convention on the Rights of the Child, 1990) and the ILO Indigenous and Tribal Peoples Convention (Article 7 of the ILO Indigenous and Tribal Peoples Convention (No. 169)).

Regional Human Rights Systems include the European Convention on the Protection of Human Rights and Fundamental Freedoms in 1950, which entered into force in 1953, to give effect to some of the civil and political rights contained in the 1948 Universal Declaration of Human Rights. The 1950 ECHR does not contain any specific rights to a clean environment. Likewise, the European Social Charter does not contain any right to environmental quality and the former European Commission on Human Rights held that such a right cannot be directly inferred from the 1950 ECHR.

A similar approach to the environment was taken by the European Union at its Nice Summit. The Charter of Fundamental Rights of the European Union, adopted during the Summit on 7

December 2000 provides in article 37 that “A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

The Inter-American System of Human Rights consists of general and specialized human rights instruments. The basic texts are The Charter of the Organization of American States (“OAS”), the Preamble of the American Declaration of the Rights and Duties of Man, (American Declaration of the Right and Duties of Man 1948) and The American Convention on Human Rights (1969) with its two Protocols. (Training Manual on International Environmental Law, p.307). The 1948 American Declaration, as the principal normative instrument of the system, and the 1969 American Convention, provide a series of individual rights particularly relevant to environmental issues. The Additional Protocol to the American Convention in the Area of Economic Social and Cultural Rights (“Additional Protocol”) was signed in 1988 and the Additional Protocol’s article 11 is highly relevant to the environment.

THE HUMAN RIGHT TO A SAFE AND HEALTHY ENVIRONMENT

Every woman, man, youth, and child has the human right to a safe and healthy environment, and to other fundamental human rights linked to and dependent upon a healthy environment. Human rights relating to the environment are set out in basic human rights treaties and include: (<http://www.pdhre.org/rights/environment.html>).

- The human right to a safe and healthy environment.
- The human right to the highest attainable standard of health.
- The human right to ecologically sustainable development.
- The human right to an adequate standard of living, including access to safe food and water.
- The human right of the child to live in an environment appropriate for physical and mental development.
- The human right to full and equal participation for all persons in environmental decision- making and development planning, and in shaping decisions and policies affecting the community, at the local, national and international levels.
- The human right to safe working conditions, including adequate safeguards for pregnant and lactating women.
- The human right to freedom from any type of discrimination.
- The human right to education and information, including information relating to links between health and the environment.
- The human right to share in the benefits of scientific progress.

THE MAIN DIMENSIONS OF THE INTERRELATIONSHIP BETWEEN HUMAN RIGHTS AND ENVIRONMENT PROTECTION

- The environment as a pre-requisite for the enjoyment of human rights (implying that human rights obligations of States should include the duty to ensure the level of environmental protection necessary to allow the full exercise of protected rights);
- Certain human rights, especially access to information, participation in decision-making, and access to justice in environmental matters, as essential to good environmental decision-making (implying that human rights must be implemented in order to ensure environmental protection); The right to a safe, healthy and ecologically-balanced environment as a human right in itself (this is a debated approach).

JUDICIAL CASES RELATING TO ENVIRONMENTAL PROTECTION

In the case, *Hatton and others v. the United Kingdom*, the European Court of Human Rights was asked to decide whether the government policy on night flights at Heathrow airport gave rise to a violation of the applicants' rights under articles 8 and 13 of the Convention. In its judgement of 2 October 2001, a chamber of the Court noted that a fair balance had to be struck between the competing interests of the individual and the community as a whole and that in both contexts, the State enjoyed a "certain" margin of appreciation in determining the steps to be taken to ensure compliance with the Convention. (Commission on Human Rights, Science, and Environment, 2005). However, the chamber underlined that in striking the required balance States must have regard to the whole range of material considerations. Further, "In the particularly sensitive field of environmental protection, the mere reference to the economic well-being of the country is not sufficient to outweigh the rights of the others" (para. 97). Therefore, the Court found that in the absence of any serious attempt to evaluate the extent or the impact of the interferences with the applicants' sleep patterns, the United Kingdom had failed to strike such a balance, in violation of article 8. (Commission on Human Rights, Science, and Environment, 2005). The judgment was appealed to the Grand Chamber of the European Court, where it was overturned by a judgement of 8 July 2003. Reiterating the "fundamentally subsidiary role of the Convention" (para. 97), the Grand Chamber reaffirmed that it is essentially for the State to strike a fair balance between the economic interest of the country and the conflicting interests of the persons affected by noise disturbances. The Court found that the United Kingdom authorities had not overstepped their "wide" margin of appreciation by failing to strike a fair balance between the right of the affected individuals and the conflicting interests of others and of the community as a whole, and concluded that there had been no violation of article 8 of the Convention.

A tannery waste treatment plant was opened in Lorca, Spain, in July 1988, without the required license. The plant malfunctioned. When it began operations, releasing gas fumes and contamination, which immediately caused health problems and a nuisance to people living in the district. The applicant lived next door with her husband and two daughters, one of whom suffered serious health problems as a result of the pollution. After the Lorca residents complained of stinking smells, fumes, and contamination, the municipal council relocated them for three months. They also ordered the cessation of one of the plant's activities the settling of chemical and organic residues in water tanks but permitted the treatment of wastewater contaminated with chromium to continue. When the applicant and her family returned to their flat after the relocation, there were continuing problems. The applicant applied to the district administrative court for protection of her fundamental rights, including those related to the unlawful interference with her home and her peaceful enjoyment of it. The applicant made a complaint under the European Convention, Article 3 (inhuman and degrading treatment), and Article 8 (right to respect for private and family life), based on Spain's failure to take measures to remedy the smell, noise and contaminating smoke from the plant. The Court considered that the determination of whether an Article 8 violation had occurred should be tested by striking a fair balance between the interest of the town's economic well-being and the applicant's effective enjoyment of the right to respect for their home, private and family life. In doing so, the Court found that the "margin of appreciation," which allows the State certain discretion in determining the appropriate balance, had been exceeded (paras. 52-58). *Lopez Ostra v. Spain* was the first major decision of the European Court of Human Rights on the relationship between the right to a healthy environment and the Article 8 right to respect for private life and home and family life. It also confirmed previous decisions on third party accountability, opening the door to findings of State accountability for (polluting) actions by private companies in its jurisdiction.

CONCLUSIONS

The human rights framework draws attention to the importance of addressing environment and development policies, measured by overall human rights objectives, including through assessing possible effects of such policies and measures on human rights. Environmental protection constitutes the main priority because it can affect basic human rights. Human rights standards and principles should inform and strengthen policy making in the area of sustainable development.

The human rights framework seeks to empower individuals and underlines the critical importance of effective participation of individuals and communities in decision-making processes affecting their lives, including environmental decisions. Equally, human rights standards underline the need to prioritize access of all persons to at least basic levels of economic, social and cultural rights. The human rights framework also stresses the importance of accountability mechanisms in the implementation of measures and policies in the area of climate change and requires access to administrative and judicial remedies in cases of human rights violations.

International actors need to strengthen cooperation in the field of environmental protection and environmental protection should affect the promotion of economic and social policies. Various international acts such as treaties, conventions or other important documents have had a significant influence, causing that environment take priority at national level.

A key role in explaining the connection between the environment and human rights have given international or regional organizations, which are connected to the protection of human rights and also the jurisprudence.

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