



The Expanding Horizon of 'Right to Environment' in the broader framework of Sustainable Development and a New Categorization of Human Rights

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Abstract- Broad concepts like those of development and environment as 'human rights' does not easily fit within the traditional framework of right to environment. Therefore, a more evolutionary and proactive approach is needed in order to overcome the theoretical stalemate between these new rights and the requisites of individualism and judicial enforceability. The conceptualization of a distinct 'Right to Environment' in International Law and the reconfiguration of the human rights system into generalist and specialist rights fit squarely within this context. This paper locates the evolving 'Right to Environment' in the broader frame work of sustainable development and a new categorization of human rights. The paper explores whether the emergence of sustainable development has played a role in furthering or hindering the development of the international 'Right to Environment' and its sub-rights. The paper also examines the rationale behind the proposed reconfiguration of human rights and establishes the connection between each generalist right and its corresponding covenant, including a detailed description of a draft covenant on environmental rights.

Key Words: Right to Environment, Sustainable Development, Draft Covenant on Environmental Rights

"Humankind has not woven the web of life. We are but one thread within it. Whatever we do to the web, we do to ourselves. All things are bound together. All things connect".

– Chief Seattle, 1855

I. INTRODUCTION

India is passing through a phase of recurring conflicts between need to protect environment and need to protect human rights. The increasing global awareness of problems arising from damage to environment activated India to take programs for conservation of environment in a big way on national scale. A multifaceted program of Conservation of Environment and Human Development is India's agenda in the fore-front. In its over-zealous attempt in the directions of conservation of nature and human development, poor, weak or under privileged feel themselves marginalized.

Based on the developments of emerging rights and regional and national environmental provisions, substantive environmental rights are categorized into six sub-rights: the rights of nature, the right to a clean environment, the rights to natural resources, the right to water, the right to food and Indigenous land rights.

The human rights approach to environment and development, materialized in the 'Right to Environment' and the Right to Development, respectively, serves as a common denominator between the development discourse and the environment discourse. Both the 'Right to Development' and 'Right to Environment', which belong to third-generation rights, attempt to achieve social goals such as poverty eradication and the respect for human dignity and nature. Social and ecological dimensions of sustainable development, two contrasting observations emerge.

On one hand, the concept of sustainable development hovers over the international environmental agenda and may impede the development of a distinct 'Right to Environment' and Environmental Human Rights in general. On the other hand, the concept of sustainable development, as the dominant global discourse relating to environment and development has the potential to provide an appropriate conceptual and normative framework for the proposed 'Right to Environment' through the integration of the three pillars of sustainable development and the principles provided in the ILA Declaration. As an umbrella concept, sustainable development offers an integrative approach to the scattered fields of international law, facilitating the adoption of a human rights-based approach to environmental issues.

SUSTAINABLE DEVELOPMENT: LINKAGE BETWEEN DEVELOPMENT AND ENVIRONMENT

Sustainable development as a concept forged its way for the first time into the International Court of Justice (ICJ) in the **Hungary v. Slovakia case**. The ICJ emphasized the historical roots of the practice of sustainable development and its validity for modern economic practices.

In a separate opinion, Judge Weeramantry described in detail the historical underpinnings of the sustainable development concept demonstrating that sustainable development, widely recognized by the international community, is rooted in traditional cultures, which accord more respect for and awe of the natural environment than do modern societies. Drawing upon these cultures, Weeramantry suggested the integration of these ancient environmental principles into our modern international legal systems. The tension between environmental and developmental prerogatives in this case is actually simply a clash of interests between two sovereign states. The root cause of the problem lies in the interpretation and application of the right to development as the right of states to pollute and damage the environment for the sake of economic necessities. This point of view contradicts the spirit of the UN Declaration on the Right to Development (DRTD), which proclaims that "the human person is the central subject of the development process".

To some extent, the solution to the above conflict lies in the harmonization and balance of two competing rights: the right to development and the right to environmental protection. In the **Pulp Mills case**, the ICJ interpreted the concept of sustainable development as the need to safeguard shared natural resources while pursuing lucrative economic projects by emphasizing the "need to safeguard the continued of the riparian States".

These two cases: The Hungary v. Slovakia case and The Pulp Mills case, suggest that the ICJ's interpretation of sustainable development encompasses both economic and ecological interests. To the dismay of deep ecologists, the concept of sustainable development does not guarantee a pristine environment but offers a platform from which judges and politicians can weigh, based on factual evidence, the various interests at stake. As Birnie *et al.* pointed out, sustainable development is not yet a legal obligation but a policy that affects judicial decisions, state practices, international organizations and development of international environmental law.

ENVIRONMENT AND DEVELOPMENT: CONTEMPORARY DISCOURSE FOR HUMAN RIGHTS

Human rights law is an important part of the social dimension of sustainable development. In this regard, the eradication of poverty is necessary for the achievement of social equity, one of the main pillars of sustainable development. Moser and Norton found a legitimate benefit in using the human rights concept in the context of poverty alleviation and designed a conceptual framework based on the links among sustainable development, human rights and 'sustainable livelihoods' of the poor. The study emphasizes the role of human rights in empowering the poor in pursuit of poverty reduction and more equitable and sustainable livelihoods. Fabra observed that many international institutions, such as the International Monetary Fund and the World Health Organization, refer to the concept of sustainable development when formulating links between human rights and environment. Similarly, Pathak observed that "that the framework of human rights, with its emphasis on the social dimension and participation, was more appropriate than the framework of international ecological security."

II. EXPANDING HORIZON OF RIGHT TO ENVIRONMENT

THE RIGHTS OF NATURE

One way to connect rights and the natural world is through the ascription of rights to nature and its biotic and non-biotic components. This formulation can be expressed in the form of the 'right of the environment' or the rights of nature, defined as the rights of 'non-human species, elements of the natural environment and inanimate objects' to 'a continued existence unthreatened by human activities'. Proponents of environmental rights such as Christopher Stone and Laurence Tribe have often argued that conferring rights to an entity guarantees its recognition for its own moral worth without necessarily tying it to human use or benefits. In his landmark article "Should Trees Have Standing?" Stone advocated the attribution of legal rights to "forests, oceans, rivers and other so-called "natural objects" indeed, to the natural environment as a whole."

It might be easy to agree with deep ecologists like Stone and Tribe that non-human entities have inherent values, but it is still theoretically unclear why human beings should have a moral obligation to defend these values. The essence of eco-centrism lies in the notion that human welfare and well-being should not be the ultimate goal that underpins the protection and conservation of the natural environment. In fact, people who defend the rights of the environment from an eco-centric position are, to an extent fulfilling their own anthropocentric needs, such as spiritual connection with nature or self-satisfaction through the adoption of a specific philosophical approach to life. Non-human beings are the main beneficiaries of the eco-centric approach, while human beings benefit most from the anthropocentric attitude towards nature. It is a matter of prioritizing one entity over another, but such altruism does not answer the puzzling question as to whether it is more ethical to protect animals than human beings. In both cases, we humans are the point of reference, and the centrism of the human rationale cannot be avoided. The choice concerns only which dimension of our beings is being fulfilled; it is about the interplay between two sets of values in environmental protection: values associated with spirituality and aestheticism and values associated with materialism and economic abundance.

The concept of human rights revolves around the preservation of human dignity, which goes beyond the physical and mental integrity of the individual human. This dignity can stretch to non-human entities such as animals, effigies, sacred places and natural entities. Human beings can bestow this privilege on anything they value, whether for its intrinsic worth or just for being an integral part of their well-being. In fact, the ascription of rights to nature and ecosystems is no longer a philosophical matter. In 2008, the Ecuador Constitutional Assembly, elected to rewrite the country's constitution, approved provisions that recognize rights for nature and ecosystems. Article 1 of the draft constitution provides that "nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution. Every person, people, community or nationality, will be able to demand the recognitions of rights for nature before the public organisms".

THE RIGHT TO A HEALTHY ENVIRONMENT

The right to a healthy or clean environment is the best-known form of environmental rights. Hancock drew a line between two types of environmental rights: the right to an environment free from toxic pollution and the right to natural resources. The first is identified with the claim to the 'clean', 'healthy' or 'sound' environment often referred to in academic literature, as well as in legal texts such as Indian constitution and international declarations. As for the right to natural resources, it is associated with the right to cultural self-determination and the right to be free from hunger. The right to clean environment is related to the protection of the environment and its vital components-like water, air and soil- from toxins and pollutants.

THE RIGHT TO NATURAL RESOURCES

The right to natural resources constitutes, along with the right to a clean and healthy environment, the building blocks of environmental rights. Natural resources include renewable and non-renewable components of nature. The scarcity or depletion of such resources may jeopardize the life of

human and non-human beings on earth. Renewable resources such as fauna and flora provide humans with food, traditional medicines and economic benefits, while non-renewable sources such as oil, gas, minerals, and gems are often exploited for economic and developmental purposes. Beyond the view of resources as commodities, Zimmerman defined resources as a matter of relationships that cannot be severed from the complex interplay among societies, technologies, cultures, economics and environments.

The conceptualization of resources as relationships is at the heart of the putative right to natural resources, which has great affinity with the well-established right to self-determination and the principle of permanent sovereignty over natural resources because the management or mismanagement of natural resources, whether renewable or not, has tremendous effect on people's livelihoods. Article 1 of the ICCPR stipulates that "all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

The 1994 Draft Declaration recognizes the right of everyone "to benefit equitably from the conservation and sustainable use of nature and natural resources for cultural, ecological, educational, health, livelihood, recreational, spiritual or other purposes. This includes ecologically sound access to nature". This putative right can take different forms. The first form entails the collective accessibility of local communities to vital elements in their environment, such as forests, agricultural lands, fish stocks and other available resources. The paucity or the overexploitation of these essential components of nature can affect deeply and perilously the livelihoods of millions of local, tribal and Indigenous communities around the world. The systemic violation of peoples' rights to natural resources exacerbates the problem of poverty in developing countries.

Another form of the right to natural resources is predicated on the public trust doctrine, where the state is supposed to hold common natural resources for the benefits of its citizens. Accordingly, government authorities are restricted in their use of these public trusts on the grounds that public lands cannot be granted to private parties without the consent of the public. The third form of environmental rights entails the global commons, like the atmosphere, the oceans and even the outer space. For instance, global warming is believed to be the result of the burning of fossil fuels for industrial and personal purposes, which causes the release of greenhouse gases in the atmosphere-a vital global common. Even more futuristic is the idea of dumping toxic or radioactive waste in the space, which will one day be a controversial environmental issue for the international community if it is embraced by some industrialized countries.

THE RIGHT TO WATER

Fresh water, an essential component of our natural environment, is undeniably a precondition, not only for a healthy environment, but also for life itself. In this regard, the provision of safe, potable water and adequate sanitation cannot be successfully achieved without the protection of ecosystems where water resources are located. Therefore, a rights-based approach to water problems falls squarely within the broad scope of environmental rights. The right to water is intrinsically an environmental right because the supply of safe and sufficient water requires healthy and balanced ecosystems: drought, desertification, climate change and pollution are important indicators of the global water crisis.

As with most environmental rights, the adoption of a distinct right to water is justified on the grounds that water is a prerequisite for the enjoyment of other human rights. It is estimated that 1.2 billion people have no access to safe water and 2.6 billion have no adequate sanitation. Human dignity is tremendously degraded when people struggle to satisfy basic needs such as those for clean water and hygiene. According to the 2006 Human Development Report on the water crisis, "upholding the human right to water is an end in itself and a means for giving substance to the wider rights in the Universal Declaration of Human Rights and other legally binding instruments-including the right to life, to education, to health and to adequate housing".

The 2006 Human Development Report clarified that declaring water as a human right will not

end the crisis related to water and sanitation in the short-term, but will mark a useful starting point. The Report noted that “human rights represent a powerful moral claim. They can also act as a source of empowerment and mobilization, creating expectations and enabling poor people to expand their entitlements through legal and political channels and through claims on the resources of national governments and the international community.

THE RIGHT TO FOOD

Approximately 852 million people lack proper food and nutrition, and every five seconds a child dies from hunger. Guaranteeing the right to food is an integral part of poverty eradication and food security. Unlike the right to water, the right to food is explicitly recognized on the international level; this right can be inferred from Article 25 of the UDHR and Article 11 of the ICESCR. While the former affirms the right of everyone “to a standard of living adequate for the health and well-being of himself and of his family, including food”, the latter recognizes the right of everyone to an adequate standard of living, including adequate food and the right of everyone to be free from hunger and malnutrition. According to General Comment 12 issued by the CESCR, the core content of the right to adequate food implies: the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture, and the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

This definition suggests that the right to food depends on four criteria: accessibility to food, its quality, its sustainability and its cultural suitability. The accessibility to food and its quality depend chiefly on environmental sustainability. The intimate connection with the environment is what makes the right to food a part of environmental human rights; it is insufficient to deal with the right to food as a mere socio-economic right when deep environmental problems are at the root of its violation.

INDIGENOUS LAND RIGHTS

The right to environment acquires a special and deeper meaning when it applies to Indigenous peoples. With the spread of economic globalization, tribal and Indigenous communities are witnessing the invasion of their ancestral lands, livelihoods and cultural lifestyles. Despite the diversity of their ethnic origins, the seminal commonality among Indigenous peoples stems from their intimate and vital relationship with the land and its resources. Environmental degradation and land dispossession can threaten the very core of Indigenous livelihoods by disturbing their traditional ways of life and creating poverty and forced evictions.

In Indigenous societies, the conception of private land ownership is different from that of capitalist societies, where land is viewed as a commodity to be exploited for economic and individual purposes. However, in the Indigenous culture, land is viewed as a collective resource and is revered for its spiritual and cultural values. When Indigenous communities claim land rights, they are usually seeking cultural integrity and collective management of local resources, rather than the acquisition of private property rights. The ILO Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries provides a remarkable international legal framework for Indigenous rights to land and natural resources. It was the first international instrument to use the term ‘peoples’ when referring to Indigenous and tribal communities.

This principle of communal ownership is also included in the newly adopted 2007 UN Declaration on the Rights of Indigenous Peoples (2007 Declaration), which expressly recognizes the right of Indigenous peoples to environmental protection and conservation.

In India the Parliament has enacted The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The legislation concerns the rights of forest dwelling communities to land and other resources, denied to them over decades as a result of the continuance of colonial forest laws in India. The government is attacking tribal people by various methods including the following:

- a) Seizing resources through law
- b) Privatising the community's lands and resources
- c) Special economic zones
- d) Denial of constitutional protections of *Adivasi* rights
- e) Ignoring community control as granted through the Panchyats Act
- f) Using military and police force to crush people's resistance
- g) Illegal guidelines issued by the Ministry of Environment and Forests which meant to relocate thousands of people from national parks and sanctuaries.

Supports of the Act claim that it will redress the "historical injustice" committed against forest dwellers, while including provisions for making conservation more effective and more transparent. But the fact is 'Dwellers' in forest areas thrive on forest land and natural resources.

The ILO Convention, the 2007 Declaration and the various international human rights instruments play an important role in sensitizing the international community to the vulnerability of the environments of Indigenous peoples. Since lands and resources are integral parts of any environment, Indigenous land rights could easily fall within the ambit of emerging environmental rights.

III. CONCLUSION

Instead of the generational approach to human rights, this chapter proposed the generalist-specialist approach. In this approach, the umbrella rights identified above- the right to democracy and the rights to development are considered generalist rights. Each generalist right offers a broad framework that binds together the corresponding specialist rights and allows, when necessary, the integration of these rights with other generalist rights.

This amalgam of rights violated by a polluting activity illustrates the complexity of environmental issues that often involve different concepts and interests, e.g. development, eco-centrism, anthropocentrism, human rights and governance. The generalist specialist model, along with the sustainable development concept, provides the judiciary, decision-makers and other stakeholders with a relatively satisfactory conceptual and normative framework on which to deal with these multifaceted matters. Instead of analyzing whether certain specialized rights are violated as a result of an environmental hazard, the judiciary will find it easier to review the content of generalist rights which offer broad guidelines and parameters, along with the interpretive tools necessary to assess the level of harm inflicted on human beings, the environment and the economy. In addition, generalist rights conform to the general and supervisory nature of international human rights law.

REFERENCE

1. Bukhosi Fuyane and Ferenc Madai, "The Hungary-Slovakia Danube River Dispute: Implications for Sustainable Development and Equitable Utilization of Natural Resources in International Law," *International Journal of Global Environmental Issues* 1, No. 3 (2001), P. 330
2. See *Hungary v. Slovakia* (Separate Opinion of Judge Weeramantry), PP. 88-119 See also in *GabCikovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I. C. J. Reports 1997, p. 7
3. *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, ICJ Rep 135 (2006)
4. Patricia Brinie, Alan E. Boyle, Catherine Redgwell, "International Law and the Environment", (Oxford University press, 3rd ed. 2009), P. 127
5. Caroline Moser and Andy Norton, *To Claim Our Rights: Livelihood Security, Human Rights and Sustainable Development*, (Overseas Development Institute, London, 2001), P.40-41.
6. R. S. Pathak, "The Human Rights System as a Conceptual Framework for Environmental Law," in *Environmental Change and International Law: New Challenges and Dimensions*, edited by Edith Brown Weiss, (United Nations University Press, Tokyo Japan, 1992), P. 221

7. Christopher Miller, "Environmental Rights: European Fact or English Fiction?" *Journal of Law and Society* Vol. 22, No. 3, 1995, P. 375
8. Climate and Capitalism, "Ecuadorian Assembly Approves Constitutional Rights for Nature," <http://climateandcapitalism.com/> retrieved on 27 March 2012
9. Richard Howitt, *Rethinking Resource Management: Justice, Sustainability and Indigenous Peoples*, (Routledge, London, 2001), P. 4
10. The 1994 Draft Declaration of Principle on Human Rights and the Environment, Part II (13)
11. United Nations Development Programme (UNDP), "Human Development Report 2006: Beyond Scarcity: Power, Poverty and the Global Water Crisis," <http://hdr.undp.org/en/reports/global/hdr2006/> visited on 25 Oct. 2011
12. Report of the Special Rapporteur on the Right to Food, Jean Ziegler, UN Doc A/61/306 (2006)
13. Article 25, Universal Declaration of Human Rights, 1948
14. Article 11, International Covenant on Economic, Social and Cultural Rights
15. General Comment 12: The Right to Self-Determination of Peoples (Art. 1), par. 8
16. Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, Opened for signature 27 June 1989, 28 ILM 1382 (Entered into force 5 Sept. 1991)
17. 52 JILI (2010) Pg No. 484-485