



ENVIRONMENTAL DYNAMICS OF HUMAN RIGHTS: A TRANSNATIONAL APPROACH

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Abstract

Human rights have an environmental dimension because of their purpose and subject matter. Human rights are influenced by the environment in two ways: directly, when a damaged or polluted environment prevents someone from exercising that right; or indirectly, when poor environmental circumstances make it more difficult for a government to uphold and safeguard the rights of its population. When a person or group of people asserts that their legally protected human rights have been violated by the environmental degradation or the government's inability to redress it, then a legal claim may be framed on these rights. This Article will describe environmental dynamics of human rights. It will also provide a brief assessment of a few notable examples from multiple human rights regimes in the field.

Key Words: Human Rights, Environmental Dynamics, International Human Rights Instruments

Introduction

The right to clean ecologically balanced or healthy environment is one of several specific environmental rights and obligations that are covered under the environmental human rights laws. Many renowned human rights are recognized to include environmental component because of their themes and objectives. It is obvious that protecting the environment is vital to the realization of human rights. Human rights can be directly or indirectly affected by environmental hazards. Because an unfavorable environment will impede directly the abilities of a community or an individual to enjoy a protected human right whereas an unhealthy environment will indirectly harm general capabilities of a person or a community to realize their human rights or it will obstruct the abilities of government to safeguard and uphold rights of its population. Therefore, a healthy environment might be viewed as a prerequisite for fulfilment of human rights for reason that either it makes it easier to exercise and enjoy the human rights generally, or because it is necessary for fulfilment of specific human rights i.e., right to health via access to clean water.



The possibility of bringing a legal claim based on infringement of appropriate human rights law may exist where environmental damage occurs. The effectiveness of this strategy is based on numerous variables, including how the rights are understood and how environment related obligations and canons are specified for appropriate duty holders, typically the states. It also differs based on specific human rights system under which a claim is made, particularly the available enforcement mechanism and how the relevant human rights have been enforced by governing regime. Despite these variations, there have been a number of prominent cases where failure of the government to foresee or avoid environmental damage led to a ruling in favor of claims for human rights infringement.

The following discussion examines that how some of the most significant human rights have been implemented by the human rights authorities and how they relate to the environment. It also examines how judgements have conceptualized the relationship that exists between a human right and environment, and the extent to which current human rights can serve as a legal basis for environmental protection at large. Therefore, it is not required to depend on a particular right to healthy environment. It is obvious from this that the current human rights law gives enough room to handle environmental challenges if they have an impact on human life.

The Right to Life

The right to life may be endangered in cases of extreme environmental deterioration (Atapattu, 2004). Environmental dynamics of a right to life have received attention from the UN Human Rights Committee. The committee acknowledged in “Hope Environmental Group Case 1984” that there may be violation of Article 6 of the International Covenant on Civil and Political Rights if nuclear waste were dumped close to a residential area. However, the Committee found that the particular case was inadmissible in line with Article V(II)(b) of Optional Protocol-I to ICCPR 1996 because the claimant had further legal remedies under domestic law (Cameron, 2010).

The European Court of Human Rights ruled that failure of states to shield their citizens against well-known environmental danger breaches their constitutionally guaranteed right to life. The right to life like other protected rights under the European Convention, consists of both procedural and substantive elements (Alan Boyle, 1996). According to Article 2 of the European Convention on Human Rights 1953, every individual has a right to life. No one is allowed to intentionally end their own life, unless it is required to carry out a court order after they have been convicted of a crime for which the law specifies such a punishment. States must make sure that the necessary legal and procedural frameworks are in place in order to lessen the menace of violation of right to life and they must also take actions to prevent such violations from occurring (ECHR, 1953).

In chapter VIII of the Country Report on Ecuador, the Inter-American Commission on Human Rights noted that one's physical environment is inextricably linked to and dependent upon one's realization of one's right to physical security and life, which are found in Articles I of American Declaration and Articles IV and V of American Convention (Ecuador-Report, 1997).

In Yanomami Indians case, it was decided by Inter-American Commission that dislocation of native



landowners brought on by the building of a road through their holdings had such a negative effect on them that it violated both their right to health and right to life. Several significant negative impacts that include disease outbreak, losing livelihood and the increasing ratio of violence, have been brought about by the violent expulsion of the Yanomami people and the acceptance of new residents who seek to use the natural resources of an area for profit. The Commission concluded that there is a violation, made by the state, of right to life of the Yanomami by failing to protect them from these serious threats ("Yanomami Indians v Brazil," 1985).

The right to life would be in danger in addition to these situations if environmental degradation were so severe as to deprive a community or person from their resources of survival, or endanger their subsistence in some other way (Shelton, 2002). Most recently, these issues were taken into account by the Inter-American Court in its 2017 Advisory Opinion on "Environmental Human Rights". The decision was made, in a reply to a request made by state of Colombia, in order to clarify the nature of duties of states regarding physical integrity, right to life and environmental protection. The Court outlined a number of characteristics that states must meet in order to preserve the indivisible and interdependent relationship that exist between the human rights and the environmental protection. It stated that a state has an obligation to stop major environmental degradation both in and outside their borders to protect and defend the physical integrity and rights to life ("Inter-American Court of Human Rights," 2017).

The Right to Health

The environmental aspects of right to health are simple to comprehend: favorable environmental conditions such as clean water and air, proper sanitation and nourishing and safe food are required for a variety of health results; whereas an unfavorable or polluted environment can seriously harm health. Numerous regional and international human rights agreements safeguard right to the best possible health standards (Popovic, 1995-1996). According to the Stipulates Parties to the current Covenant, Article 12 of the ICESCR 1966 states that everyone is entitled to the highest level of health. Article 19 of the Treaty on the Rights of the Child 1989 provides that all children are protected from damage and abuse, and Article 24 of the same safeguards the right of every child to the best health possible and access to clean water (CRC, 1989).

The ICESCR in its General Comment 14 of 2000, provides clearly that in addition to the right to healthcare, Article 12 of the said Covenant also intends to cover the right to a variety of socioeconomic necessities, including clean water access, sufficient sanitation, safe and hygienic conditions for work, healthy and clean environment. General Comment 14 interprets these numerous environmental dynamics as determining sufficient level of health (ICESCR, 1966).

The Inter-American Commission on Human Rights discussed the issue of extreme environmental deterioration circumstances being incompatible with human rights in Chapter VIII of its Country Report on Ecuador 1997 which causes local population considerable physical sickness, impairment and suffering. In the said report, Inter American Commission had outlined the relationships between environmental safeguards and right to health, asserting that healthy environment is required for population that is healthy, and encouraging the state to prioritize environmental protection in upholding its human rights commitments (Ecuador-Report, 1997).



The significance of environment in facilitating the fulfilment of the right to health in Africa was reaffirmed by the African Commission in its Ogoniland ruling. Ogoniland residents in Nigeria sued their government in the Ogoniland case, alleging that cooperation of the government with “Shell Petroleum Development Corporation” to use the oil resources of the region had infringed their human rights. In addition to other rights, they claimed that Ogoniland's oil extraction activities had left toxic waste and other effects that had infringed their right to health. Everyone is entitled to the best level of physical as well as mental health as per Article 16 of the African Charter of Human and People's Rights of 1981. After the Commission ruled in the claimants' favor, the government of Nigeria was mandated to make reparation and guarantee that most suitable measures were put in place for any potential future developments ("Ogoniland v. Nigerian Government," 2001).

The Right to an Adequate Standard of Living

The Committee on Economic Social and Cultural Rights in its General Comment 15 of 2003 states unequivocally that Article 11 safeguards right to clean water in addition to adequate food, clothing, and shelter, and that a sufficient supply of clean water is necessary for fulfilment of a living standard. General Comment 15 provides that Article 12 links the right to water with right to best possible health standards (CESCR, 2003). States are expected to take measures to safeguard clean water resources from pollution (Nanda, 1984).

All children have the right to the supply of sufficient, nutrient-rich food, as mentioned in Article 24 of the Convention on the Rights of the Child, which takes into account the risks and effects of environmental contamination. Here, the law explains how a particular human right and the environment are related. Even though the human rights law expressly prohibits adults from any equivalent requirement, however the rights to an acceptable living standard and self-determination are taken as precedents for the right to adequate food (Gibson, 1990).

Reference to the right to water is expressly provided in Article 14(2)(h) of the CEDAW 1979 in relation to the provision of adequate living standards for all women. The right to water is directly violated when environmental deterioration, such as pollution, impacts the availability of safe and clean water supplies (McClymonds, 1992).

The Right to Providing Respect for Family and Private Life

The European Courts of Human Rights have made a substantial addition to the body of legislation dealing with human rights and environmental protection. Regardless of the fact that Convention lacks explicit right to a pleasant atmosphere, the protection provided by Article 8 towards the right respecting family and private life has been one of the rights that has been applied in this way the most (ECHR, 1950).

One of the cornerstones of European legal thought is the utilization of the margin of appreciation theory, specifically in dealing with the procedural facets of the protection of the environment. According to this theory, under the convention states are given some latitude when deciding how to fulfil their commitments ("Dubetska v Ukraine," 2011). By striking a reasonable balance between environmental



effects and other justifiable goals, such the growth of public services and infrastructure, the strategy has been successfully used by the government to deny claims of human rights violations in environmental conflicts ("Powell and Rayner v United Kingdom," 1990).

The majority of environmental issues are heard by the European Court in accordance with Article 8 of the European Convention which ensures the right to respect for a person's private and family life (ECHR, 1950). In the Lopez Ostra case, the European Court found that a tannery's pollution violated Article 8 since it had a significant detrimental effect on the applicant's health ("Lopez Ostra v Spain," 1994). Extreme environmental pollution was found to be potentially harmful to people's enjoyment and ability to enjoy their houses, even when it did not directly endanger their health. In the Dzemyuk case, the Court supported a claim for infringement of Article 8 after a local government built a cemetery adjacent to the home of the applicant in defiance of the applicable domestic legislation ("Dzemyuk v Ukraine," 2014). Thus, the argument that environmental degradation violates human rights has been made successfully on various occasions although it has drawbacks as well. As only the individual who is directly affected may file a claim under Article 8 (Martens, 2007).

The Right to Property

Utilizing the safeguards offered by the regional human rights instruments for America, Europe, and Africa, environmental hazards has also been addressed. Protocol 1 to European Convention provides safeguards to property rights in Europe. Article 1 of that document states that everyone, whether legal or natural, has the right to own and peacefully occupy his/her property. Property may not be taken from anyone unless under special circumstances if it is in the public interest (McClymonds, 1992).

Within the Inter-American System, the rights of Native people to property in their ancestral land have repeatedly been the subject of cases. Article 21 of the American Convention of 1969 stipulates that every individual has a right to the enjoyment and utilization of property. The law may give such utilization and enjoyment precedence over community interests. No one's property may be taken away until just recompense is made, it is in their best interest, or it is in the interest of the community. The advancement of human rights law in the United States of America has also improved knowledge of how to protect the bond between native people and their territories (Birnie, Boyle, & Redgwell, 2009).

It was held by the Inter-American Court in the Mayagna Awas Tingni Community case that the Nicaraguan government had infringed the right to property of Awas Tingni Community under Article 21 of the Convention. According to the Court, Article 21 safeguards indigenous people's community property rights, which include both the significant spiritual and cultural dimensions of their connection to the land as well as the practical and economic aspects. The Supreme Court declared that indigenous communities automatically have the freedom to freely live in their own community. The Court added that the foundation of indigenous peoples' spiritual lives, cultures, economic survival and integrity must be recognized and understood as their close ties to the land. To maintain and pass on their cultural heritage to future generations, indigenous groups must fully appreciate their connection to the land. Their attachment to the land goes beyond simple ownership and economic productivity. Based on this conception, the Court found that the construction and logging operations within the territory violated Article 21 ("Mayagna (Sumo) Awas Tingni Community v Nicaragua," 2001).



The Right to Self-determination

Self-determination has been recognized as a fundamental right which belongs to everyone and whose observance is required for maintenance of peace and security (UDHR, 1948). Self-determination was given top emphasis during the decolonization process after World War II, and the United Nations has consistently underlined this concept in Article 1 of the 1945 UN Charter (Glazebrook, 2009). It is considered a fundamental right because it is listed in Article 1 of both the ICCPR 1966, and the ICESCR 1966. The freedom to pursue their political views and social, economic and cultural advancement is provided by this status. The ability of a person to maintain himself can never be taken away (IACHR, 2009).

Environmental issues that undermine or diminish a population's ability to sustain itself through hunting, fishing, agriculture, or other natural ways can have a direct impact on this right (Rodriguez-Rivera, 2001). The African Charter of Human Rights 1981 under Article 21 (1) states that all persons have freedom to dispose of their natural resources freely. This freedom may only be used to benefit the general welfare. Nobody is ever entitled to refuse it to a people (ACHPR, 1981).

Other rights and self-determination are obviously linked as well. It is plainly tied to peoples' rights to own property, particularly indigenous peoples' rights to utilize and enjoy their own lands mentioned earlier. Wherever environmental degradation has an impact on a population's ability to prosper or advance collectively, it also has an impact on how each individual can exercise their individual rights to food, health, life and water (Gormley, 1990).

Conclusion

The discussion above shows that rights already covered by regional and international human rights instruments such as right to life, water, food, adequate living standards, best health possible, self-determination, enjoyment of private as well as family life etc., can directly be impacted by the environment. These rights help in establishing a clear link between human rights and environment because of how they have been defined and applied, which give them environmental dimension.



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