

# INTERLINKAGE BETWEEN HUMAN RIGHTS AND ENVIRONMENT PROTECTION: AN ANALYSIS

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## 1. Introduction

Human rights and environmental protection are two of the main concerns of modern international law. After the establishment of the UN, the main focus of the international community was on the protection and promotion of human rights. It was only in 1972 when the voice about environmental protection rose at the domestic level which subsequently became the global agenda. The momentum, in fact, started from Stockholm declaration<sup>2</sup> and is still continuing by different international conferences<sup>3</sup> in which governments recognized the ecological interdependence of the world and acknowledged an urgent need to take action for the protection of the environment.”<sup>4</sup>

Though the issue of environment protection came later to human rights on the global agenda. Environmental law and Human Rights both are concerned with the development and promotion of human well-being. To live in a healthy and quality environment is the fundamental or basic human right. On the one hand, human rights are deemed to be necessary to the overall development of human personality, material comfort, and on the other, the environment is necessary to safeguard the conditions conducive to such personality development.<sup>5</sup> Human rights and environmental protection are interlinked because both are required in order to achieve the highest quality of life for all. The right to health, the right to safe and healthy working conditions; the right to adequate housing and food; these all are fundamental human rights recognised in international human rights instruments.

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<sup>2</sup>The United Nations Conference on Human Environment held under the leadership of Maurice Strong in the city of Stockholm, Sweden. The conference is rooted in the regional pollution and acid rain problems of northern Europe. The conference provides the first international recognition of environmental issues.

<sup>3</sup>The Stockholm Declaration of 1972, Nairobi Declaration of 1982, World Charter for Nature, 1980, Earth Summit of 1992, Johannesburg Conference on Sustainable Development, 2002 and UN Conference on Sustainable Development, 2012 are some of the outcomes of the worrying state of the world community. The central point of all these conferences is that ignoring the environment in the short run may leave long term bad effects on the humanity and the violation of human rights.

<sup>4</sup>UNGA Res., 2997 (XXVII).

<sup>5</sup>Ajit Lal, Right to live in Healthy Environment *vis-à-vis* Human Excretion, Human Rights in India, B. P. Singh (ed.), Deep and Deep Publication, New Delhi, 1995, p.370.

Traditional international environmental law, that addresses the rights and obligations between states, has little to offer individuals harmed due to environmental damage. In addition, the people harmed by environmental degradation are often ethnic minority groups, indigenous peoples, who are marginalized within their own countries and effectively excluded from political participation or redress under national laws.<sup>6</sup>

## 2. Focus for Interlinkage

The larger part of international environmental law still belongs to the category of soft law. In the last twenty years, from the United Nations Conference on the Human Environment in 1972 to the U.N. Conference on Environment and Development, 1992 utmost attention has been paid to the impact of environmental problems on human rights.<sup>7</sup> Even in 1972, the Stockholm Declaration stated the human right to “*adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.*”<sup>8</sup> The Rio Declaration on Environment and Development, 1992 included the concepts of sustainable development and the rights of future generations to a healthy environment.<sup>9</sup> It states that human beings are at the centre of concerns for sustainable development and that they are entitled to a healthy and productive life in harmony with nature.<sup>10</sup>

The World Summit on Sustainable Development in Johannesburg, 2002 focused on the concept of sustainable development which was affirmed in the Johannesburg Declaration.<sup>11</sup> The final outcome document of the Rio+20 Summit also reaffirmed the importance of the human rights, particularly the rights to health, food and safe drinking water. While most international human rights treaties do not make a specific reference to the environment, healthy environmental

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<sup>6</sup>*Ibid*

<sup>7</sup>*Supra* n. 5 at p.2

<sup>8</sup>Stockholm Declaration, Principle 1, U.N. Doc. A/Conf.48/14, at 2-65 (5-16 June 1972). It states that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations”

<sup>9</sup>The World Commission for Environment and Development defined “sustainable development” as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts: the concept of ‘needs’, in particular the essential needs of the world’s poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs.”

<sup>10</sup>Rio Declaration, U.N. Doc. A/Conf.151/5/rev.1 (13 June 1992).

<sup>11</sup>World Summit on Sustainable Development Johannesburg Declaration on Sustainable Development A/CONF.199/20 (4 September 2002) (Johannesburg Declaration).

conditions is regarded as one of the necessary prerequisites for the enjoyment of human rights—especially the rights to life<sup>12</sup> and health.<sup>13</sup>

Besides these conferences, some progress has also been made in the form of resolutions, special reports and debate by human rights bodies and specialized agencies working in the area of environment and human rights in this regard. The UNGA in its resolution in 1990 observes that environmental protection is indivisible from the achievement of full enjoyment of human rights by all.<sup>14</sup>

One of the most encouraging steps in this direction has been the work by the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities. In 1994, the Special Rapporteur to the sub-commission proposed a set of draft principles providing for a stand alone environmental right, described as the right “to a secure healthy and ecologically sound environment”.<sup>15</sup> In 2002, a Joint Expert Seminar was convened by the UN Commission on Human Rights inviting the High Commissioner for Human Rights and the Executive Director of UNEP which concluded that national and international developments reflect the growing interrelationship between approaches to guaranteeing human rights and environment protection.<sup>16</sup> It is also observed the role of environmental protection as a pre-condition for the effective enjoyment of human rights.<sup>17</sup> The United Nations Secretary-General’s 2005 report on the Relationship between Human Rights and the Environment concluded that since the World

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<sup>12</sup>The Right to Life is protected in several international documents including Article 3 of the Universal Declaration of Human Rights (UDHR); Article 6(1) of the International Covenant of Civil and Political Rights (ICCPR); Article 6 of the Convention on the Rights of the Child (CRC).

<sup>13</sup>See Article 25(1) of the Universal Declaration of Human Rights; Article 12(1) of the International Covenant of Economic, Social and Cultural Rights (ICESCR) ; Article 24 of the Convention on the Rights of the Child; and Article 12 of the Convention on the Elimination of Discrimination Against Women (CEDAW).

<sup>14</sup>Need to Ensure a Healthy Environment for the Well-Being of Individuals UNGA Resolution 45/94 (14 December 1990).

<sup>15</sup>The report of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, established that there exists meaningful precedent in international law for environmental human rights. The Sub-Commission explored the environmental dimension of human rights, and articulated the links between sustainable development, environmental protection and respect for human rights. Final Report on Human Rights and the Environment, Comm’n on Human Rights, Subcomm’n on Prevention of Discrimination and Protection of Minorities, U.N. ESCOR, 46th Sess., U.N. Doc. E/CN.4/Sub.2/1994/9. 74-77 (1994).

<sup>16</sup>Office of the High Commissioner for Human Rights *Meeting of Experts on Human Rights and the Environment* (2002) available at <<http://www.unhchr.ch>> (last accessed at July 15, 2013) at [3].

<sup>17</sup>With regard to substantive rights, the experts *on Human Rights and the Environment* (OHCHR, 2002) agreed on the following points of action: that the link between human rights and environmental protection should be affirmed as an essential tool for the eradication of poverty and the achievement of sustainable development; and that the growing recognition of a right to a secure, healthy and ecologically sound environment, either as a constitutionally guaranteed right or as a guiding principle of national and international law, ought to be supported.

Summit on Sustainable Development (2002), there has been the growing recognition of the connection between environmental protection and human rights.<sup>18</sup>

Human rights concerns are also increasingly integrated into the mainstream of climate change texts.<sup>19</sup> The United Nations Human Rights Council has, in three separate resolutions (7/23, 10/4, and 18/22), noted the threat of climate change to individuals and communities, and its implications on the enjoyment of human rights.<sup>20</sup> The Office of the U.N. High Commissioner for Human Rights (OHCHR) examined the relationship between climate change and human rights, concluding in its report (2009) that climate change threatened the enjoyment of a broad array of human rights. Moreover, human rights law placed duties on states concerning climate change; including an obligation of international cooperation.<sup>21</sup>

At this juncture, the main aspect of worry is the institutional dimensions to carry the linkage forward which appear to be lagging behind. The UN Human Rights Council is currently debating the ways to operationalize the linkage, such as through the creation of a Special Procedure.

### **3. Linkage between Human Rights and Environment Protection**

There are inherent relationships between environmental law and human rights law as environmental degradation leads to many human rights violations at an unexpected level for instance, the right to life cannot be realized without safe water, air and land.<sup>22</sup> Both environment and human rights law have some common points. Since the development of the concept of international community or the world order, almost all the international policies and

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<sup>18</sup>UN Secretary General (2005), Human rights and the environment as part of sustainable development – Report of the Secretary-General, E/CN.4/2005/96, 19 January 2005.

<sup>19</sup>The Malé Declaration on the Human Dimension of Global Climate Change, adopted on 14 November 2007 stated that ‘climate change has clear and immediate implications for the full enjoyment of human rights’, called on the United Nations to treat this as a matter of urgency; The Cancun Agreements make several references to human rights. Noting Resolution 10/4, the preamble of the Cancun LCA Outcome document, which was adopted at the UNFCCC 16th Session of the Conference of the Parties (or COP16) in 2010, emphasizes that ‘Parties should, in all climate change-related actions, fully respect human rights’. (Paragraph 8 of the Preamble of the ‘Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention’)

<sup>20</sup> Human Rights Council Resolution 7/23. Human rights and climate change, 28 March 2008.  
[http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_7\\_23.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf) and; Human Rights Council Resolution 10/4. Human rights and climate change, [http://www.unhcr.org/refugees/pdf/hrc10\\_4.doc&ei=LKDZT6aiCsXWrQf5xOjdBw&usg=AFQjCNGjaNcm8qjmiZkmqRY82v0rukKqPg](http://www.unhcr.org/refugees/pdf/hrc10_4.doc&ei=LKDZT6aiCsXWrQf5xOjdBw&usg=AFQjCNGjaNcm8qjmiZkmqRY82v0rukKqPg) (Last visited on December 15, 2015)

<sup>21</sup>OHCHR, Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights, U.N. Doc. A/HRC/10/61, Jan. 15, 2009

<sup>22</sup>Environment and Human Rights: A New Approach to Sustainable Development, *available at*:<http://www.ringalliance.org/ring> (Last visited on December 15, 2015)



programmes are revolving around two issues i.e. human rights and environmental protection. One started its recognition in the second half of the 20<sup>th</sup> century and the second emerged later in the last quarter of the same century. Both are interrelated, interconnected and mutually responsive as both are intended to the well-being of human being. The safe and healthy environment is the pre-condition for the enjoyment of fundamental human rights.

The reason behind the integration of environmental law with human rights law is that the environmental law regime will take the advantage of already established framework of human rights, whereas human rights framework will also get strength by the inclusion of human rights elements. The close link with these rights clearly shows that a right to the environment can easily be traced out in the core of the human rights protection which ultimate purpose is the blooming of the personality of all human beings in dignity. In accordance with international law theory, all human rights represent universal claims necessary to grant every human being a decent life that is a part of the core moral codes common to all societies.<sup>23</sup>

The linkage between the environment and human rights may be traced in two ways, either by looking at the existing international human rights laws in order to examine whether they talk about environmental rights, or studying international environmental law documents to find out human rights norms present therein. There are certain common points between both the laws i.e. *Firstly*, both environmental law and human rights law have the capacity to affect the people at a larger base due to its socially deepened root. *Secondly*, both disciplines are trans-boundary in nature that is to say that the environmental problem occurred at one place have the capability to affect the people of other parts as well leading to various human rights violations. *Lastly*, to mitigate the problems of both the issues, there is a need of integrated international co-operation with regard to both the laws to tackle the environmental problems very efficiently.

There is no explicit mention of the right to environmental quality in the core international human rights instruments i.e. UDHR, ICCPR and ICESCR. However, the ICESCR mentioned the issue of the environment in relation to hygiene.<sup>24</sup> Under the CRC, the issue of environment

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<sup>23</sup>Philippe Cullet, Definition of Environmental Right in a Human Rights Context, 13 *Netherlands Quarterly of Human Rights* 25 (1995).

<sup>24</sup>Article 7 of the ICESCR.

discussed in terms of prevention of disease and malnutrition.<sup>25</sup> The African Charter on Human and Peoples' Rights and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights make explicit references to the environment. The human rights treaty bodies and regional human rights mechanisms have interpreted their respective human rights instruments in a manner that recognizes the environmental dimensions of protected rights.<sup>26</sup>

#### **4. Approaches regarding Environmental Law and Human Rights Law**

Human rights law and environmental law have traditionally been envisaged as two distinct, independent spheres of rights. Towards the last quarter of the 20th century, however, the perception arose that the cause of protection of the environment could be promoted by setting it in the framework of human rights, which had by then been firmly established as a matter of international law and practice. When these two disciplines interact, it is to be expected that there are different views on how to approach human rights and the environment.<sup>27</sup> In this context, there are three prevailing approaches with regard to the relationship between human rights and environmental protection.

There are three major approaches which came up after detailed discussions happened at different world fora at different point of time. The *first* approach emphasizes that existing human rights instruments i.e. UDHR, ICCPR, ICESCR and CRC etc. are capable enough to address the environmental problems, therefore, human rights provisions should be interpreted in favor of environmental protection. According to this approach, the legal protection of human rights is an effective means to achieve the ends of environmental protection. This approach, therefore, highlights the presently existing human rights as a route to environmental protection.

The *second* approach aims at framing environmental legislations and establishing institutions concerned. This approach views the emergence of a right to a healthy environment as a human right in the international sphere which emerged in the 1970s. The Stockholm Declaration, 1972

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<sup>25</sup>Article 24, paragraph 2 (c) of the Convention on the Rights of the Child, requires States to pursue the full realization of the right of the child to the enjoyment of the highest attainable standard of health taking into consideration the dangers and risks of environmental pollution.

<sup>26</sup>Art. 24 ACHPR and Art. 11 of the San Salvador Protocol to the ACHPR.

<sup>27</sup> Available at [http://supremecourtindia.nic.in/speeches/speeches\\_2005/humanrights.doc](http://supremecourtindia.nic.in/speeches/speeches_2005/humanrights.doc) (Last visited on December 3, 2015).

established that all persons should have the right to live in a quality environment.<sup>28</sup> This idea continued to build momentum by 1990, the UNGA adopted a resolution stating that “*all individuals are entitled to live in an environment adequate for their health and well-being.*”<sup>29</sup> In 1992, the Rio Declaration characterized the right to a healthy environment as an entitlement.<sup>30</sup> Principle 10 of the Rio Declaration establishes the right to information, participation, and access to justice, as well as the central role these rights play in the protection of the environment. Moreover, individuals have the right to effective access to judicial and administrative proceedings.<sup>31</sup>

The *third* approach which finds a middle path between the two above mentioned approaches, that is to say that both should be integrated so as to approach the problems in an efficient way. In this perspective, environmental protection is seen as part of the protection of human rights. Linking human rights to environmental harm allows individuals to use global and regional human rights framework when state violates human rights by allowing substantial environmental degradation. Within this framework, a person can allege that environmental degradation, such as contamination of water and soil has affected certain rights guaranteed under international human rights instruments.

According to Shelton, the third approach allows individuals to use international and regional human rights complaint procedure in case the state violates human rights by allowing substantial environmental degradation. Taking into account the absence of complaint procedures in international treaties and international environmental institutions, the framework of human rights is the only alternative to hold a state accountable for action of omission related to environmental protection.<sup>32</sup>

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<sup>28</sup>U.N.Doc.A/CONF.48/14/Rev.1(1973),Declaration of the U.N Conference on the Human Environment, June 16, 1972, (Principle 1 states: “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”)

<sup>29</sup>G.A. Res. 45/94, U.N. Doc. A/RES/45/94 (Dec. 14, 1990). In 1994, a Draft Declaration of Principles on Human Rights and the Environment was elaborated at the United Nations in Geneva by a group of experts on human rights and environmental protection. Final Report on Human Rights and the Env’t, Comm’n on Human Rights Sub-Comm’n on Prevention of Discrimination and Protection of Minorities, 46th session, Annex I, U.N. Doc. E/CN.4/Sub.2/1994/9 (July 6, 1994).

<sup>30</sup>U.N. GAOR, Report of the United Nations Conference on Environment and Development: Rio Declaration on Environment and Development, Vol. I, Annex I, Principle 1, U.N. Doc. A/CONF.151/26 (1992).

<sup>31</sup>Principle 10, Rio Declaration(UN Doc. A/CONF.151/26 (vol. I) / 31 ILM 874 (1992).

<sup>32</sup>Paula Spieler, The La Oroya Case: The Relationship between Environmental Degradation and Human Rights Violations, Human Rights Brief, Vol. 18, No. 1, 2010, p. 19.

Further, the approach is well recognised at the regional level human rights system. Regional human rights instruments recognize the right to healthy environment more clearly rather than international human rights instruments. There are two regional human rights instruments that expressly recognize the right to a healthy environment i.e. the African Charter on Human and Peoples' Rights<sup>33</sup> and in the Inter-American System, the Protocol of San Salvador, 1988.<sup>34</sup> The European Human Rights System, however, does not have a clause on the right to a healthy environment. Since the 1970s, the Council of Europe has proposed the inclusion of the right to environment to the European Convention on Human Rights several times. It is relevant to mention here that though the regional human rights instruments recognised the right to a healthy environment and the states' obligation to protect, preserve and improve the environment, it does not allow individual to file a petition in case the state is not fulfilling its obligation. Environmental harm can only be alleged by showing that it can cause severe human rights violation guaranteed under ACHR.

With regard to the right to a healthy environment, the role of regional human rights institutions and domestic courts is quite commendable. The right to a quality environment has been recognised by regional human rights tribunals and national courts through the incorporation of environmental jurisprudence, law, principles and standards. Such bodies increasingly utilize environmental standards to adjudicate human rights claims related to the environment.

## 5. Conclusion

The link between human rights and environment protection has been recognized in the outcome documents of all conferences relating to the environment starting from Stockholm Conference, 1972 to Rio+20, 2012. However, the Stockholm Declaration<sup>35</sup> stresses that "*man is both the creature and moulder of his environment*".<sup>36</sup> It was not until the Earth Summit, 1992 in Rio de Janeiro that a framework for environmental and human rights emerged, in the form of the Rio Declaration and in the Agenda 21 Plan of Action. In fact, the Rio Declaration formulates a link

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<sup>33</sup>Article 24 of African Charter on Human and Peoples' Rights recognizes that "all peoples have the right to a generally satisfactory environment favorable for their development."

<sup>34</sup>The 1988 Protocol of San Salvador states in Article 11 that: "Everyone shall have the right to live in a healthy environment and to have access to basic public services; The States Parties shall promote the protection, preservation, and improvement of the environment."

<sup>35</sup>Stockholm Declaration available at: <http://www.unep.org/Documents/Default.asp?documentID=9> (Last visited on December 12, 2015).

<sup>36</sup>Report of the UN Conference on Environment and Development, 3–14 June 1992, Annex 1. available at : <http://www.un.org/esa/dsd/agenda21/> (Last visited on December 24, 2015).



between human rights and environmental protection largely in procedural terms (Principle 108).<sup>37</sup> It states that human beings are at the center of concerns for sustainable development and that they are entitled to a healthy and productive life in harmony with nature. It recognized the concepts of sustainable development and the rights of future generations to a healthy environment.<sup>38</sup> Further, the WSSD, 2002 also retreats the concept in the Johannesburg Declaration.<sup>39</sup> The final outcome document of the Rio+20 Summit, 2012 also reaffirmed the importance of the human rights, particularly the rights to health, food and safe drinking water.<sup>40</sup>

However, the relationship between human rights and environmental protection in international human rights law is far from simple or straightforward. Some major human rights instruments like: UDHR, ICCPR and ICESCR contain no explicit mention of a human right to a healthy environment. It is under the protection of some existing human rights such as: the right to life, the right to health and the right to privacy that claims related to a right to a healthy environment. This recognition regarding the linkage was first envisaged in binding regional human rights instruments.<sup>41</sup>

Whatever perspective one adopts regarding the link between human rights and the environment. It is clear that failure to preserve a healthy environment has a clear and even increasing effect on the enjoyment of human rights. The linkage of human rights to the environment not only helpful to protect the environment but also at the same time, the human rights system would be strengthened by the incorporation of environmental concerns, enabling the expansion of the ambit of human rights in the area of environment.

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<sup>37</sup>The Stockholm Declaration was the first international instrument to expressly recognize the relationship between individual human rights and the quality of the environment. Principle 1 of the Stockholm Declaration 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 well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”

<sup>38</sup>Rio Declaration, U.N. Doc. A/Conf.151/5/rev.1 (13 June 1992). Rio Declaration which was developed at the United Nations Conference on Environment and Development in Rio de Janeiro in 1992.

<sup>39</sup>World Summit on Sustainable Development A/CONF.199/20 (4 September 2002) .

<sup>40</sup>In Rio+20 for the first time the right to safe drinking water and sanitation was reaffirmed by states at a major UN meeting. However, human rights groups like Amnesty International, Human Rights Watch and the Centre of International Environmental Law have pointed out that Rio+20 fell short of fully integrating human rights and environmental protection available at: [http://www.uncsd2012.org/content/documents/774futurewewant\\_english.pdf](http://www.uncsd2012.org/content/documents/774futurewewant_english.pdf) (Last visited on December 24, 2015).

<sup>41</sup>Article 24 of African Charter on Human and Peoples' Rights.