

HUMAN RIGHTS AND ENVIRONMENT LAW AT CROSSROADS

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Abstract

The recent rapid and environmentally unsustainable pace of natural resource depletion is one of the most visible consequences of globalization. The exploitation of natural resources is a key factor in economic development. Further steadily rising global demand for raw materials, industrial inputs, and energy have been the main drivers of the depletion and degradation of natural resources. Human rights obligations of non-state actors will suggest a state responsibility to create an effective regulatory system capable of enforcing those obligations. There is a need to treat global environment and climate as the common concern of humanity. That is why locating the right to a decent environment within the corpus and institutional structures of economic, social, and cultural rights makes more sense. The need for effective protection of the global environment is nowadays evident. National and international communities search for instruments as effective as possible to stop or rather slow the destruction of the environment. While the predominant legal approaches to environmental protection are currently based on public regulation by imposing duties, there has been a new legal approach emerging based on each individual's right to a certain quality of environment, which supposes connections between environmental protection and human rights. The well-established national and international systems of human rights guarantees have been increasingly used as an effective instrument for environmental protection. This paper will focus on interrelationship between human rights and environmental protection. Same can be discussed under 3 heads namely the environment as a pre-requisite for the enjoyment of human 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 and finally the right to a safe, healthy and ecologically-balanced environment as a human right in itself.

Keywords: Climate, Environment, Human Rights, Legal Approach

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INTRODUCTION

“A clean environment is a human right like any other. It is therefore part of our responsibility toward others to ensure that the world we pass on is as healthy, if not healthier, than we found it.”

- Dalai Lama

The relationship between human rights and environmental protection in international law is not straightforward. It has seen various ups and downs and reached the present state of development. Human rights have been a focus of international law for over sixty years now. A human rights approach to environmental concerns was only introduced long after that. The United Nations Charter of 1945 marked the beginning of modern international human rights law, whereas the Stockholm Declaration of 1972 is generally seen as the starting point of a rights based approach to environmental protection. This declaration formulated several principles, including that “Man have 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.”¹ Human rights and environmental law have in common that they are both seen as a challenge to, or limitation on, the traditional understanding of state sovereignty as independence and autonomy.² Despite their separate initial stages, it has become more and more acknowledged over the years that human rights and the environment are inherently interlinked. To give a clear example the right to life, personal integrity, family life, health and development of each human being depends on protecting the environment as the resource base for all life. Human rights are universal and absolute.

HUMAN RIGHT TO ENVIRONMENT

Faced with the results of polluting and destructive actions, many international treaties and local laws and regulations on environmental protection have been introduced in the second half of the 20th century. These at first did not mention human rights in relation to environmental protection. But since the 1970's, links between human rights and the environment have progressively been recognized.

¹ <http://www.righttoenvironment.org/default.asp?pid=81>

² *ibid*

Because each human being depends on protecting the environment as the resource base for all life. And where it started with mere linking acknowledged human rights to cases of environmental disruption, like the Bhopal and Chernobyl disasters³, it has become more acknowledged over the years that human rights and the environment are so inherently interlinked that (a clean and healthy) Environment is a Human Right. At this time there are several regional human rights charters (African Charter and American Convention), other conventions like the Aarhus Convention, and multiple national constitutions that contain an explicit pronouncement of a human right to (a clean and healthy) environment. And late 2007, the UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples⁴, which in article 29 proclaims “Indigenous peoples have the right to the conservation and protection of the environment.

If the enjoyment of human rights depends on environmental protection, in turn, environmental protection depends on the exercise of certain human rights, such as the rights to information, public participation in decision-making and access to justice⁵. Effective compliance with environmental laws and standards necessitates knowledge of them as well as of environmental conditions. In addition, local communities play a vital role in preserving the resources upon which they depend. Allowing those potentially affected to participate in decision-making processes concerning harmful activities may prevent or mitigate the threatened harm and contribute to public support for environmental action, as well as lead to better decisions consistent with sustainable development⁶. In the event the activity goes forward and harm is suffered, access to justice can provide for restoration or remediation of the damaged environment. In general, procedural human rights – access to information, public participation in decision-making and access to justice – linked to environmental protection have received the greatest attention in legal instruments and jurisprudence, as well as in doctrine⁷.

In a speech on July 5 2011, United Nations Secretary-General Ban Ki-Moon noted that the Aarhus Convention on Access to Information, Public Participation and Access to Justice “is

³ Prakash Vir Singh, “Human Rights in relation to Environmental Protection”, SRJIS, Dec-2013, Vol. -I

⁴ Available at <http://pdpa.georgetown.edu/IndigenousPeoples/UNdraft.html>

⁵ www.ohchr.org > OHCHR > English > News and Events

⁶ www.unep.org/.../JointReportOHCHRandUNEPonHumanRightsandtheEnvironment.p...

⁷ Anton, Don, Is the Environment a Human Rights Issue? (April 29, 2008). ANU College of Law Research Paper No. 08-11.

more important than ever”⁸. The “treaty’s powerful twin protections for the environment and human rights can help us respond to many challenges facing our world, from climate change and the loss of biodiversity to air and water pollution. And the Convention’s critical focus on involving the public is helping to keep Governments accountable...” Strengthening capacities of individuals, stakeholders, and institutions to advance a transition to an inclusive green economy.⁹ Strengthening the procedural rights, access to information, public participation and access to justice, will help develop sustainable development and the green economy. The exercise of these rights will provide information to prevent and address environmental degradation and stop the resulting human rights violations, thereby encouraging sustainable development and encouraging actions that promote a green economy. For example, the public informed with accurate environmental information can make choices that consider both short-term benefits of an economic action, as well as the long-term costs that the action may have on the ecosystem services that they rely on. Access to information, public participation and access to justice are discussed in more detail below to highlight options for considering sustainable development issues and opportunities to integrate human rights and environmental protection into sustainable development.

CODIFICATION OF ENVIRONMENT AS A HUMAN RIGHT

A human rights approach to environmental issues elevates the entire spectrum of sustainability, conservation and environmental issues to fundamental values of society on a level equal to other rights and superior to ordinary legislation¹⁰. A level where these issues belong. It will create both rights and obligations and thus more environmental awareness.¹¹ And from a more legal perspective, it will be a strong legal tool to stop and prevent environmental disruption. Victims will have access to international procedures and environmentalist will be supported as (also) being human rights defenders.

HISTORY OF HUMAN RIGHTS AND THE ENVIRONMENT

International concerns with human rights, health and environmental protection have expanded considerably in the past several decades. There are many non rights-based

⁸ www.unece.org/env/pp/mop4.html

⁹ <https://www.unitar.org/egp/what-we-do>

¹⁰ Dr. Meenu Gupta, “human rights and environmentalism : two sides of the same coin” *Journal Of Law And Public Policy*, Vol 1/ Issue 3/ Oct 2015 [ISSN 2394-9295]

¹¹ Bambang Yuniato, “Building Citizen Awareness of Environmental Conservation”, *International Journal of Scientific & Technology Research*, Vol 1/ Issue 7/ August 2012 [ISSN 2277-8616]

regulatory approaches to achieving environmental protection and public health. Economic incentives and disincentives, criminal law, and private liability regimes have all formed part of the framework of international and national environmental law and health law.

The international community has created a vast array of international legal instruments, specialised organs, and agencies at both the global and regional levels to respond to identified problems in each of the three areas. Often these have seemed to develop in isolation from one another. Yet the links between human rights, health and environmental protection were apparent at least as early as the first international conference on the human environment, held in Stockholm in 1972. Indeed, health has seemed to be the subject that bridges the two fields of environmental protection and human rights¹².

At the Stockholm concluding session, the participants proclaimed that: "Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights; even the right to life itself."

The Stockholm Declaration established a foundation for linking human rights, health and environmental protection, declaring 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."¹³In the almost thirty five years since the Stockholm Conference, the links that were established by these first declaratory statements have been reformulated and elaborated in various ways in international legal instruments and the decisions of human rights bodies.

APPROACHES ON HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION

The change in approach towards Human Rights and environmental issues could roughly be

¹² HUMAN RIGHTS, HEALTH AND ENVIRONMENTAL PROTECTION: LINKAGES IN LAW AND PRACTICE, A Background Paper for the WHO1, available at http://www.who.int/hhr/information/Human_Rights_Health_and_Environmental_Protection.pdf

¹³ Declaration of the United Nations Conference on the Human Environment, available at <http://www.unep.org/Documents.Multilingual/Default.Print.asp?documentid=97&articleid=1503>

Set out in three stages¹⁴

First approach

The first rights-based approach, perhaps closest to that of the Stockholm Declaration, understands environmental protection as a pre-condition to the enjoyment of internationally guaranteed human rights, especially the rights to life and health. Environmental protection is thus an essential instrument in the effort to secure the effective universal enjoyment of human rights¹⁵. Those who pollute or destroy the natural environment are not just committing a crime against nature, but are violating human rights as well. While the predominant legal approaches to environmental protection are currently based on public regulation by imposing duties, there has been a new legal approach emerging based on each individual's right to a certain quality of environment.¹⁶

Second approach

The second rights-based approach, most common in international environmental agreements since 1992, is also instrumentalist, but instead of viewing environmental protection as an essential element of human rights, it views certain human rights as essential elements to achieving environmental protection, which has as a principal aim the protection of human health. This approach is well-illustrated by the Rio Declaration on Environment and Development, adopted at the conclusion of the 1992 Conference of Rio de Janeiro on Environment and Development www.eolss.net/sample-chapters/c16/E1-48-43.pdf. It formulates a link between human rights and environmental protection largely in procedural terms, declaring in Principle 10 that access to information, public participation and access to effective judicial and administrative proceedings, including redress and remedy, should be guaranteed because environmental issues are best handled with the participation of all concerned citizens, at the relevant level. Thus, these procedural rights, contained in all human rights instruments, are adopted in environmental texts in order to have better environmental decision-making and enforcement.

Third approach

¹⁴ <http://www.righttoenvironment.org/default.asp?pid=80>

¹⁵ Supra 13

¹⁶ Shelton, D. Human Rights and the Environment: Problems and Possibilities. *Environmental Policy and Law*, 38/1-2 (2008), p. 42.

The third, and most recent approach views the links as indivisible and inseparable and thus the right to a safe and healthy environment as an independent substantive human right.¹⁷ At recent, examples of this are found mainly in regional human rights systems, environmental treaties and national law. And in the UN Declaration on the Rights of Indigenous People. Most formulations of the right to environment qualify it by words such as "healthy", "safe", 'secure' or 'clean', making clear the link between environmental protection and the aim of human health. Some specifically mention environmental protection (including wildlife and/or ecosystems) and some link to the benefit of future generations.

There are three main dimensions of the interrelationship between human rights and environmental protection:¹⁸

- 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); and
- The right to a safe, healthy and ecologically-balanced environment as a human right in itself (this is a debated approach).

Access to Information

Access to environmental information is a prerequisite to public participation in decision-making and to monitoring governmental and private-sector activities¹⁹. The nature of environmental deterioration, which often arises long after a project is completed and can be irreversible, compels early and complete data to make informed choices. Trans boundary impacts also produce significant demands for information across borders. The rights to information and participation, and their particular importance for both human rights and

¹⁷ <http://www.commonlawreview.cz/human-rights-approaches-to-environmental-protection-at-the-international-level-and-their-application-in-the-czech-r>

¹⁸ <http://www.unep.org/environmentalgovernance/Events/HumanRightsandEnvironment/tabid/2046/language/en-US/Default.aspx>

¹⁹ <https://books.google.co.in/books?isbn=1139498525>

environment matters, are well reflected in the international legal framework, in both human rights law and environmental law. Access to information can help impact economic choices by giving involved parties full information regarding the decisions they make.

This will help parties choose decisions that support sustainable development and the green economy by providing information needed to make these decisions. The establishment of the right to access to information is discussed in more detail below, however this report does not cover all treaties in which access to information is raised. The right to information constitutes an essential feature of democratic processes and of the right to participation in public life²⁰. Article 19 of the Universal Declaration of Human Rights states that everyone has the right to freedom of opinion and expression; that right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers. The right is also enshrined in article 19 of the International Covenant on Civil and Political Rights. Article 19(2) stipulates that everyone should have the right to freedom of expression; that right should include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice²¹. Article 19(3) does allow certain restrictions, but they should only be such as are provided by law and are necessary: (a) for the respect of the rights and reputations of others; (b) for the protection of national security or of public order, or of public health and morals. In 2011, the Human Rights Committee issued a new general Comment further detailing the rights under Article 19 of the CCPR. This included, with regards to right of access to information, that “States parties should proactively put in the public domain Government information of public interest.”

RELATIONSHIP BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT: ROAD AHEAD

The linkages between human rights and environmental protection are multi-dimensional and reciprocal. Failure to conserve natural resources and biodiversity can undermine human rights, e.g. by destroying resources and ecosystem services on which many people, especially indigenous and local communities, depend. Failure to provide information or consult affected persons, as well as activities that displace local communities, can negatively impact

²⁰ <https://web.stanford.edu/~ldiamond/iraq/WhaIsDemocracy012004.htm>

²¹ Myres S Mac Dougal, William Michael Reisman, “Power and Policy in Quest of the Law: Essays in Honor of Eugene Victor Rostow”, Dordrecht ; at 261, Boston : M. Nijhoff Publishers ; Hingham, MA, U.S.A. : Distributors for U.S.A. and Canada : Kluwer Academic Press, ©1985.

both human rights and environmental protection²². Conversely, environmental protection supports human rights through securing sustainable availability of critical natural resources and ecosystem services.

Almost from the emergence of contemporary concern with environmental protection in the late 1960s, the impact of environmental sustainability on the enjoyment of human rights was strongly perceived. The linkage figured prominently in the United Nations Conference on the Human Environment, held in Stockholm in 1972²³. In preparation for the Stockholm Conference, governments gathering at the 45th session of the Economic and Social Council specified that the conference was to focus on the impairment of the environment and the effects of this on “the condition of man, his physical and mental well-being, his dignity and his enjoyment of basic human rights in developing as well as developed countries.”²⁴

PROGRESSIVE RECOGNITION OF LINKAGES AT THE INTERNATIONAL LEVEL

The Stockholm Declaration set out 25 common guiding principles for the preservation and enhancement of the human environment. Principle 1 underlined 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.” The governments also proclaimed in the concluding Stockholm Declaration that “the protection and improvement of the human environment is a major issue which affects the well-being of peoples.”²⁵

After Stockholm, environmental scholars and activists began to consider human rights in a more instrumental fashion, identifying those rights whose enjoyment could be considered a prerequisite to effective environmental protection²⁶. They focused in particular on the procedural rights of access to environmental information, public participation in decision making, and access to justice and remedies in the event of environmental harm.

²² www.unep.org/.../JointReportOHCHRandUNEPonHumanRightsandtheEnvironment.pdf

²³ *ibid*

²⁴ ECOSOC resolution 1346 (XLV)

²⁵ Report of the U.N. Conference on the Human Environment, Declaration of the U.N. Conference on the Human Environment, U.N. Doc. A/ CONF.48/14/Rev.1, p. 3 (June 5-16, 1972)

²⁶ Donald K. Anton, Dinah L. Shelton, “Environmental Protection and Human Rights”, at 356, Cambridge University Press, 11-Apr-2011 -

The conclusions of the Brundtland Report²⁷ stressed the need for an integrated approach to development policies and projects that, if environmentally sound, should lead to sustainable economic development in both developed and developing countries. The Report emphasized the need to give higher priority to anticipating and preventing problems. It defined sustainable development as development that meets present and future environment and development objectives and concluded that without an equitable sharing of the costs and benefits of environmental protection within and between countries, neither social justice nor sustainable development can be achieved.

THE RIO AND JOHANNESBURG SUMMITS

Subsequent key UN conferences on environment and sustainable development, notably the 1992 Rio Earth Summit (Rio Declaration and Agenda 21), the 2002 World Summit on Sustainable Development (Johannesburg Summit), and the Millennium Summit, reflected on the relationship between human rights and environment. The Brundtland Report led the United Nations to convene a second global conference on the environment in 1992 in Rio de Janeiro, Brazil, under the title U.N. Conference on Environment and Development (UNCED). The Rio Declaration on Environment and Development that emerged from the Conference recognized the right to development in Principle 3, and was clear in Principle 4 that “in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it²⁸.”

The Rio Declaration also recognized the critical role that the exercise of human rights plays in sustainable development by public participation, access to information and access to judicial remedies, well-recognized procedural rights in environmental matters²⁹. Principle 10 emphasized this in providing: Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy,

²⁷ World Commission on Environment and Development, U.N. Doc. A/42/47 (11 Dec. 1987), reprinted in *Our Common Future* 43 (1987).

²⁸ <https://justiceminar.wordpress.com/2015/07/18/sustainable-development-and-the-rio-conference-1992/>

²⁹ www.ocwjournonline.com/.../product.../29870b9e4df25472da619015931f945b.pdf

shall be provided³⁰. Chapter 23 of Agenda 21, the action plan related to sustainable development on strengthening the role of major groups, proclaims that individuals, groups and organizations should have access to information relevant to the environment and development, held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, as well as information on environmental protection matters. The Preamble to Chapter 23 also calls broad public participation in decision-making “one of the fundamental prerequisites for the achievement of sustainable development³¹.” This includes the need of individuals, groups, and organizations to participate in environmental impact assessment procedures and to know about and participate in decisions, particularly those that potentially affect the communities in which they live and work. Section III of Agenda 21 identifies major groups whose participation is needed: women, young persons, indigenous and local populations, nongovernmental organizations, local authorities, workers, business and industry, scientists, and farmers.

POST RIO AND JOHANNESBURG SUMMITS

In the aftermath of the Rio Summit, virtually every major international convention concerning multilateral cooperation added environmental protection as one of the goals of the state parties. Areas of international action that developed during earlier periods, including human rights, began evolving in new directions to take into account environmental considerations. The result was an infusion of environmental norms into most branches of international law, including free trade agreements that mention environmental cooperation as an aim. U.N. Secretary-General Kofi Annan in his 1998 Annual Report on the Work of the United Nations Organization spoke in favour of a rights-based approach to environmental protection, because it “describes situations not simply in terms of human needs, or of development requirements, but in terms of society’s obligations to respond to the inalienable rights of individuals.”

The International Court of Justice’s Judge Weeramantry, in Case Concerning the Gabikovo-Nagymaros Project,³² recognized that the enjoyment of internationally recognized human rights depends upon environmental protection. The protection of the environment is . . . a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human

³⁰ www.unep.org > ... > Implementation > Principle 10

³¹ <http://www.earthsummit2002.org/msp/report/chapter1.html>

³² [1997] I.C.J. Rep. 7, 91–92

rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments³³.

Commonly linked with the right to water is the right to food, which is also closely associated with the environmental quality. The Human Rights Commission recognized that the links between the issue of right to food with sound environmental policies have already been recognized by Committee on Economic, Social and Cultural Rights and noted that problems related to food shortages can generate additional pressures upon the environment in ecologically fragile areas.³⁴ Moreover, the impact of climate change on food supply is widely recognize and was in 2010 brought to the attention of Committee on Economic, Social and Cultural Rights by the Special Rapporteur on the Right of Food in 2010. The enjoyment of other human rights, such as the right to health, is also inextricably linked to environmental conditions, as recognized in the reports submitted by the relevant UN special rapporteurs. It has been recognized that “[a] fifth of the disease burden in developing countries can be linked to environmental risk factors.”³⁵ A direct causality has been established between malaria and deteriorating ecosystems, where in particular the disease flares up in ecological systems altered by irrigation projects, dams, construction sites, standing water and poorly drained areas. It is estimated, for example, that the deforestation and consequent immigration of people into the Brazilian interior increased malaria prevalence in the region by 500 percent.³⁶ The same trend has been observed between ecological damage and other vector-borne diseases across a range of developing countries. The burden of these diseases falls especially hard on the poor who often lack the resources to seek medical treatment. The enjoyment of internationally-guaranteed rights thus depends upon a sound environment.³⁷

Another area with a long, substantial history of linking human rights, in particular the right to life and health, and environmental protection is the transport and disposal of toxic and dangerous products and wastes. Beginning in the 1970s with the increase of hazardous waste and concerns regarding illicit trafficking and dumping of toxic and dangerous products and

³³ Christopher L. Nobbs, “Economics, Sustainability, and Democracy: Economics in the Era of Climate Change” at 212, Routledge, 2013 - Business & Economics

³⁴ Commission on Human Rights. Res. 2001/25

³⁵ A/HRC/15/L.14, 24 September 2010, “Human rights and access to safe drinking water and sanitation.” Id. at 37

³⁶ Smith A.T.P., *The Wealth of Nations* (MIT Press, Cambridge, MA, 2002).

³⁷ Platt, A.E., *Infecting Ourselves: How Environmental and Social Disruptions Trigger Disease*, Worldwatch Paper 129 (World Watch Institute, Washington, DC, 1996).

wastes, the Commission of Human Rights affirmed that dumping of toxic waste and dangerous products and wastes constitutes a serious threat to the human rights to life and human health. In response to its concerns, the Commission of Human Rights established a Special Rapporteur on Toxic Wastes.

In 1998, the Report of the Bureau of the fifty fourth session of the Commission on Human Rights submitted pursuant to Commission decision 1998/112 (the so-called “Selebi report”) recommended to “Convert the mandate of the Special Rapporteur on toxic wastes into that of Special Rapporteur on human rights and the environment. ” A similar recommendation was made again in February 2000 by the Commission’s intersession open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights.²⁵ However, the transformation to merge the toxic waste mandate into a more generalized special rapporteur on the environment was never made.³⁸

On 22 March 2012, the Human Rights Council adopted by consensus a resolution (19/L.8 Rev.1) on “human rights and the environment,” with at least 72 cosponsors.²⁹ The resolution welcomed OHCHR’s report and decided to appoint for a period of three years, an independent expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment,³⁰ and encourages the OHCHR to participate at Rio+20 in June 2012 in order to promote a human rights perspective.

Thereafter 2015 Paris Summit has 176 signatories till July 2016. Despite not been binding agreement, voluntary Intended Nationally Determined Contribution (INDC) is given by counties. It is agreed that there will be regular updating by counties to the secretariat regarding the ground realities. As well it is agreed that after every 5 years countries will review their INDC. Further it is agreed that the greenhouse gas will tried to be reduced at the level of 1.5 and which will try to match up to environment standard of prior to industrialized state. It is also agreed that the fossil fuel usage should be reduced and renewable energy generation and usage should be expedited.

JURISPRUDENTIAL ISSUES RELATED TO HUMAN RIGHTS AND ENVIRONMENT

³⁸ A/HRC/19/L.8/Rev.1

International tribunals have dealt with human-rights based challenges to environmental regulation, in cases where measures designed to protect the natural environment or provide clean energy alternatives conflict with individual interests, particularly property interests. These cases show willingness of international judges to consider the special importance of environmental goals in weighing government action against private claims.³⁹ The ICJ has decided several cases relevant to the discussion of human rights and the environment. In an advisory opinion on Legality of the Threat or Use of Nuclear Weapons the ICJ found out that although international environmental. In conclusion, the ICJ found that although international environmental law did not prohibit the use of nuclear weapons, it did indicate “important environmental factors that are properly to be taken into account in the context of the implementation of the principles and rules of the law applicable in armed conflict” (para. 33). In another case *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*⁴⁰ it was held by Judge Weeramantry that the close relationship between environment and human rights (page 114). “[T]he protection of the environment is a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments” (page 92).

CONCLUSION

The linkage of human rights to the environment not only helpful to protect the environment but at the same time the human rights system would be strengthened by the incorporation of environmental concerns, enabling the expansion of the scope of human rights protection in the area of environment.⁴¹ Despite the evident relationship between environmental degradation and human suffering, human rights violations and environmental degradation have been treated by most organizations and governments as unrelated issues. Just as human rights advocates have tended to place only civil and political rights onto their agendas, environmentalists have tended to focus primarily on natural resource preservation without addressing human impacts of environmental abuse. As a result, victims of environmental degradation are unprotected by the laws and mechanisms established to address human rights

³⁹ <http://www.unep.org/delc/HumanRightsandTheEnvironment/tabid/54409/Default.aspx>

⁴⁰ 1997 I.C.J. 140 (Sept. 25, 1997)

⁴¹ <http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html>

abuses.⁴² The need to bring the environmental and human rights movements together has been rendered both urgent and vital by the impending climate change catastrophe⁴³ within the human rights community. There is a growing recognition of the fact that (a) environmental protection represents a precondition to the enjoyment of internationally recognised human rights, and (b) certain human rights – such as the right of association and assembly or the right of access to information – are essential tools for achieving environmental protection. They also show that human rights are universal, indivisible, interdependent and interrelated, and thus that environmental degradation or pollution may affect negatively the enjoyment of several universally protected rights. Environmental protection and human rights are interrelated, interconnected, and mutually responsive as both of them intended to the well-being of humanity. Safe and healthy environment is the precondition for the enjoyment of fundamental human rights.

“The destruction of the earth’s environment is the human rights challenge of our time.”

- Desmond Tutu

⁴² <http://www.uapress.arizona.edu/Books/bid1492.htm>

⁴³ http://www.conorgearty.co.uk/pdfs/Do_human_rights_help_or_hinder_environmental_protection.pdf