

Legal Analysis of Recognition of Right to a Healthy Environment at International Level and Regional Level

Salai Biak Za Nawl¹

Abstract

Healthy environment is vital to human life as it allows a person to grow physically, mentally and intellectually healthy. Most international human rights instruments were drafted and adopted before the emergence of environmental law as a common concern and, as a result, they do not specifically mention the environment. It can be said that a human right to a healthy environment has slowly been emerging in international law over the past 45 years, but it is not clear whether this right will ever become solidified in international law. In the four decades since the Stockholm Declaration, the right to a healthy environment rapidly migrated around the globe. This paper analyzed the right to a healthy environment by legal point of view in first at the international level and then at the regional level. The link between human rights and environmental quality is more frequently couched in terms of rights in regional instruments than in instruments of a more global nature.

Introduction

The environment plays a central role in the life of human beings. Since the United Nations Conference on the Human Environment 1972, the relationship between human rights and the environment has led to a vigorous intellectual discussion regarding a number of critical issues. There is no consensus about what the substance of the right to a healthy environment is or what it means. The lack of an appropriate definition is one of the main obstacles to the development of this right. A human right to a healthy environment needs to be advocated because it is an essential prerequisite to the fulfilment of many fundamental human rights, such as the rights to life, health, etc. The right to a healthy environment is examined here in first at the international level and then at the regional level.

1. Right to a Healthy Environment at International Level

At an international level, the basic human rights documents do not include any direct reference to rights relating to the environment. In 1968, the United Nations passed a resolution entitled Problems of the Human Environment², which drew the link between the impairment of the quality of the human environment and its effects on the condition humans and their physical, mental and social well-being, dignity, and enjoyment of basic human rights. That resolution also resolved to convene the 1972 United Nations Conference on the Human Environment.

1.1 Right to a Healthy Environment under Related Conventions

The Convention on the Rights of the Child (CRC) was unanimously adopted on 20 November 1989 and entry into force on 2 September 1990 in accordance with article 49.³ It is the most universally ratified human rights treaty in the history of the UN and includes 54 Articles. 196 parties (as of 7.6.2018) have committed themselves to respect for and implementation of the rights enshrined in the CRC.⁴ While the Convention does not include a specific right to a healthy environment, the link is made in Article 24(2)(c), which calls for appropriate measures to combat disease and malnutrition through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution. Information and education is to be provided to all segments of society

¹ Assistant Lecturer, Department of Law, Dagon University.

² UNGA Res. 2398 (XXIII) Problems of the Human Environment.

³ Convention on the Rights of the Child, General Assembly Resolution 44/25 of 20 November 1989.

⁴ Garbarino, J., & Sigman, G., A Child's Right to a Healthy Environment, 2010, Springer, p.139.

on hygiene and environmental sanitation in Article 24(2)(e).¹ This underlines the role of the environment in the fulfillment of other human rights such as the right to health.

C169 Indigenous and Tribal Peoples Convention 1989 was adopted on 27 June, 1989 in Geneva and entered into force on September 5, 1991. It has been ratified by 22 states (as of 2017) mainly from Latin America and includes 44 Articles.² Article 2 provides that actions respecting indigenous peoples shall be developed with the participation of the peoples concerned. In accordance with article 6 and 7, parties must consult indigenous peoples and provide for their participation in formulating national and regional development plans that may affect them.³ This convention protects the indigenous environmental rights and recognized especially to procedural human right to a healthy environment.

1.2 Right to a Healthy Environment under Related Declarations

The United Nations Conference on the Human Environment was held in Stockholm, Sweden from June 5 – 16 in 1972 and attended from 122 countries. 26 principles were declared on this conference on human environment. The concept of a human right to a healthy environment has developed from the first principle of the Declaration which 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”. The Declaration does not specify the right to a healthy environment, but it does claim the right to adequate conditions of life in a temporal perspective to safeguard the environment for future generations. There is an implication in this principle that a healthy environment is necessary for the appreciation of other human rights. In fact many national constitutions now include the right to a healthy environment and to conservation of the environment.⁴ The Stockholm Declaration was the first international instrument to expressly recognize the relationship between individual human rights and the quality of the environment.

On 11 March 1989, the Hague Declaration on the Environment was adopted by 24 States and includes Principles (a) to (e). The Declaration first paragraph stating that ‘the right to live is the right from which all other rights stem. Guaranteeing this right is the paramount duty of those in charge to all States throughout the World’.⁵ The declaration state that as a consequence of the right to live in dignity in a viable global environment, there is a duty on the community of nations vis-à-vis present and future generations to do all that can be done to preserve the quality of the atmosphere.⁶ The Declaration recognizes the right to a viable environment in the context of atmospheric pollution.

In 1992, United Nations Conference on Environment and Development was held in Rio de Janeiro, Brazil, attended by 176 States and 27 principles were declared. However, the initial emphasis on the environment and human rights found in Stockholm Declaration had now been replaced by a focus on the environment and sustainable development.⁷ Principle 1 states that

¹ Article 24(2), Convention on the Rights of the Child 1989.

² Kurukulasuriya, L., and Robinson, N. A., Training Manual on International Environmental Law, 2006, UNEP/Earthprint, p. 305.

³ Articles 2, 6, 7, ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989.

⁴ Horn, L., The Implications of the Concept of Common Concern of a Human Kind on a Human Right to a Healthy Environment, 2004, Macquarie J. Int'l & Comp. Env'tl. L., 1, p. 2.

⁵ American Society of International Law, Hague Declaration on the Environment 1989, Cambridge University Press.

⁶ The Asia Pacific Forum of National Human Rights Institutions, Human Rights and the Environment, 2007, Background Paper, Sydney, Australia, p. 29-30.

⁷ The Asia Pacific Forum of National Human Rights Institutions, Human Rights and the Environment, 2007, Background Paper, Sydney, Australia, p.17.

'human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.' The use of the word 'entitled' does not have the same strong connotation as use of the word 'right' in the provisions of the Stockholm Declaration.¹ Principle 10 provides that environmental issues are best handled with the participation of all concerned citizens, at the relevant level. This principle has become a central aspect of procedural environmental rights, and laid the basis for the 1998 Aarhus Convention.² To sum up, the Rio Declaration fails to develop the notion of a human right to a healthy environment as first established in the Stockholm Declaration. The Declaration focuses on the environment, sustainable development and seeks to extend procedural rights.

The UN General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples on 13 September 2007 and includes 46 articles. Article 29(1) states that 'indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination'.³ The Declaration also details procedural rights concerning access to and prompt decision making through 'just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights'.⁴ The declaration recognizes the conservation and protection of the environment and resources as a human right for indigenous people.

1.3 Right to a Healthy Environment under Related Reports

The World Commission on Environment and Development (WCED), established in 1983 by UN, produced a report in 1987 entitled *Our Common Future*, also known as the 'Brundtland Report'.⁵ WCED was dissolved in December 1987 after having released our common future and the report includes a list of proposed legal principles for environmental protection and sustainable development which the right to a healthy environment can be inferred. The first principle proclaims that all human beings have the fundamental right to an environment adequate for their health and well-being, while Principle 6 advocates environmental procedural rights such as the right to information, equal access and due process in administrative and judicial proceedings.⁶

In 1990, the Commission on Human Rights adopted Resolution 1990/41, entitled "human rights and the environment", which emphasized the link between environmental preservation and the promotion of human rights.⁷ In August 1990, the Sub-Commission entrusted Ms. Fatma Zohra Ksentini with the task of undertaking a study on human rights and the environment.⁸ The Special Rapporteur produced a preliminary report in 1991 and two

¹ Boer, B., *Environmental Principles and the Right to a Quality Environment*, 2017, Legal Studies Research Paper No. 17/05, Sydney Law School, p. 6.

² *Ibid.*,

³ Article 29, United Nations Declaration on the Rights of Indigenous Peoples 2007.

⁴ Articles 18 & 19, United Nations Declaration on the Rights of Indigenous Peoples 2007.

⁵ Boer, B., *Environmental Principles and the Right to a Quality Environment*, 2017, Legal Studies Research Paper No. 17/05, Sydney Law School, p. 5.

⁶ Article 1, 6, *Our Common Future*, Annexe 1: Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development. Linda Hajjar Leib, *Human Rights and the Environment: Philosophical, Theoretical and Legal Perspectives*, (Vol. 3), Martinus Nijhoff Publishers, Boston, 2011, p. 102.

⁷ Boer, B., *Environmental Principles and the Right to a Quality Environment*, Legal Studies Research Paper No. 17/05, Sydney Law School, January 2017, p. 6.

⁸ United Nations Environment Programme for the Geneva Environment Network, *Human rights and the Environment: Proceedings of a Geneva Environment Network Roundtable*, 2004, p. 35.

progress reports in 1992 and 1993. In 1994, Ms. Ksentini submitted her final report to the Sub-Commission. In this report, the Special Rapporteur noted that normative developments at the international, regional and domestic levels since the Stockholm Declaration had led to the recognition of the right to a healthy and satisfactory environment as a human right and right to a healthy environment is part of existing international law and that it is able to be implemented immediately using existing human rights instruments and bodies.¹ In addition, the report included in Annex I a draft Declaration of Principles on Human Rights and the Environment, which includes 27 principles. The principles included a specific recognition of a substantive right to a healthy environment that provides ‘all persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.’² The report was a landmark precedent that detailed the interconnection of environmental problems and human rights. A set of principles on human rights and environment was also annexed to the report, but no action was taken on the principles.

At the World Conservation Congress in 2016, a resolution on ‘humanity’s right to a healthy environment’ was passed. The operative provisions proclaimed that humanity and all living beings have a right to the conservation, protection and restoration of the health and integrity of ecosystems and affirmed that each human generation is the guarantor of the Earth’s resources for future generations.³ Importantly, it invited states and all stakeholders to support the adoption of international and regional instrument that contribute to the recognition of the rights of nature, humanity and all living beings to the environment.⁴ This resolution was passed to recognize humanity’s right to a healthy environment rather than individual rights.

2. Right to a Healthy Environment at Regional Level

At the regional level, there are a number of instruments dealing with human right to a healthy environment. Formulations of the right to a healthy environment are found in the African region, the Inter-American region, the European region, Arab world and most recently in the Southeast Asian region.

2.1 Right to a Healthy Environment under Conventions and Protocol

The Council of Europe adopted the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1950 at Rome, which entered into force on 3 September 1953, includes 59 articles and has 47 parties include all Council of Europe member states. The ECHR established a European Commission on Human Rights, which ceased to exist with the procedural reforms of 1998, and the European Court of Human Rights. Individuals and groups who claim to be victims of violations of rights in the ECHR can file cases at the European Court after exhausting all domestic remedies. Inter-State cases can also be filed.⁵ The ECHR has no explicit provision on the right to a healthy environment. However, the European Court of Human Rights has considered environmental issues in relation to other

¹ Giorgetta, S., *The Right to a Healthy Environment, Human Rights and Sustainable Development*, 2002, *International Environmental Agreements: Politic, Law and Economics* 2(2), Kluwer Academic Publishers, p. 179-180.

² Principle 2, *Draft Principles on Human Rights and the Environment*, 1994. E/CN.4/Sub.2/1994/9.

³ IUCN, *IUCN Resolutions, Recommendations and other Decisions*, Gland, Switzerland, 2016, p. 188. WCC-2016-Res-081-EN.

⁴ Boer, B., *Environmental Principles and the Right to a Quality Environment*, 2017, *Legal Studies Research Paper* No. 17/05, Sydney Law School, p. 9.

⁵ Kurukulasuriya, L., and Robinson, N. A., *Training Manual on International Environmental Law*, 2006, UNEP/Earthprint, p. 306.

provisions such as the right to life, privacy and family life and freedom of expression.¹ One of the most important cases was *Lopez-Ostra vs. Spain (1994)*.² Mrs Lopez-Ostra lived 12 metres from a plant treating liquid and solid wastes and she alleged that the plant emitted fumes, noise and smell that made her family's living conditions intolerable and caused serious health problems of her family. Expert evidence stated that hydrogen sulfide emissions from the plant exceeded the permitted limit and could endanger the health of those living nearby. The Court concluded that the state did not strike a proper balance as between the individual and public interests and that Spain had violated article 8 of the ECHR. The Court unanimously ordered that the respondent State is to pay the applicant, within three months, four million pesetas for damage and one million five hundred thousand pesetas for costs and expenses.³ The Committee of Ministers invited Spain to inform it of the measures and the Government gave the Committee information about the measures taken in consequence of the judgment. On 22 February 1995, the Spain Government paid the applicant the sum provided for in the judgment of 9 December 1994.⁴ Thus, López Ostra was the first case where the court identified a violation of the ECHR as a result of environmental conditions. The case therefore represents a landmark in the court's jurisprudence.⁵

The Council of Europe has adopted the 1990 Dublin Declaration on "The Environmental Imperative" stating that the objective of the Community action for the protection of the environment "must be to guarantee citizens the right to a clean and healthy environment".⁶ In addition, the Parliamentary Assembly of the Council of Europe has officially recommended for a "Human Right to a Healthy and Clean Environment" in the European Convention and made reference to this and other human rights approaches to environmental issues in PA Recommendations 1130(1990), 1431(1999) and 1614(2003).⁷ The Committee of Ministers denied all three recommendations.⁸ In conclusion, the ECHR does not contain any specific rights to a healthy environment, but environmental concerns have found their way through the interpretation of existing human rights. There has been a range of attempts within the European Union to formulate a substantive right to environment, but none have come to fruition.

In Inter-American Region, the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador) was signed in San Salvador, El Salvador, on November 17, 1988 and entered into force on 16th November 1999. It includes 22 articles and has been ratified by 16 States. Article 11 provides that "everyone shall have a right to live in a healthy environment and to have access to basic public services. The State Parties shall promote the protection, preservation, and improvement of the environment".⁹ Unlike the African Charter, the Protocol creates an individual right rather than a right of peoples. However, Article 19(6) does not include the right to a healthy environment among the rights whose violation can give rise to individual

¹ Boer, B., *Environmental Principles and the Right to a Quality Environment*, 2017, Legal Studies Research Paper No. 17/05, Sydney Law School, p. 10.

² European Court of Human Rights, *Case of Lopez Ostra v. Spain*, Application no. 16798/90, Strasbourg, 09 December 1994.

³ *Ibid.*,

⁴ Committee of Ministers Resolution 54.

⁵ Kurukulasuriya, L., and Robinson, N. A., *Training Manual on International Environmental Law*, 2006, UNEP/Earthprint, p. 307.

⁶ Declaration by the European Council on the Environmental Imperative 1990, SN 60/1/90.

⁷ Parliamentary Assembly Recommendations 1130(1990), 1431(1999) and 1614(2003).

⁸ Parliamentary Assembly of the Council of Europe, Committee of Ministers (2010).

⁹ Article 11, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights 1988.

petitions.¹ Thus, the main function of the Commission regarding this right is just to be receiving annual reports from States on their observation of this right. This is because there is no provision for individual applications to the Inter-American Commission or Court regarding alleged violations of the San Salvador Protocol. In any case, the Commission and the Court have been able to link environmental degradation and human rights on several occasions.² The case of *Awas Tingni Mayagna (Sumo) Indigenous Community v. Nicaragua*³ involved the protection of forests owned by the Awas Tingni. The Awas Tingni filed a case at the Inter-American Commission on October 2, 1995, alleging that the government violated their rights to cultural integrity, religion, equal protection and participation in government. The Commission found that the government had violated the human rights of the Awas Tingni and brought the case before the Court on June 4, 1998.⁴ On 31st August 2001, the Court unanimously decided that the State violated the 1969 American Convention's right to judicial protection (article 25) and the right to property (article 21) and the State must carry out the delimitation, demarcation, and titling of the corresponding lands of the members of the Awas Tingni Community. Moreover, the Court declared that the State must invest, in the course of 12 months, the total sum of \$50,000 in public works and services of collective benefit to the Awas Tingni as a form of reparations for immaterial damages and the State must also pay \$30,000 for legal fees and expenses.⁵ In 2008, the government of Nicaragua awarded the Awas Tingni Community title to 73,000 hectares of its land, marking a major step forward in the resolution of the case.⁶ To conclude, the right to a healthy environment was included in the Protocol of San Salvador, but the Inter-American Court dealt with cases involving the right to a healthy environment before its entry into force. The provisions of this Protocol are much more protective of environmental rights than Article 24 of the African Charter.

In Europe in 1996, the United Nations Economic Commission for Europe (UNECE) adopted the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) on 25th June 1998 in Aarhus, Denmark and entered into force on October 30, 2001. It includes 22 articles, Annex I & II, has 47 parties and signed by the European Union and 38 other members as of 2017.⁷ The Preamble also acknowledges substantive rights to a healthy environment that 'every person has the right to live in an environment adequate to his or her health and well-being, and the duty both individually and in association with others, to protect and improve the environment for the benefit of present and future generations'.⁸ The environmental procedural rights embedded in the Aarhus Convention, often referred to as the 'three pillars', are access to environmental information, the right to participate in environmental decision-making and access to justice. According to Article 2, environmental information encompasses all forms of information on the state of all components of the environment including air, water, soil and biological diversity. Public authorities are required to periodically collect, disseminate and release

¹ Kurukulasuriya, L., and Robinson, N. A., Training Manual on International Environmental Law, 2006, UNEP/Earthprint, p. 309.

² Gwangndi, M. I. Dr., Muhammad, Y. A. Dr., & Tagi, S. M. Dr., The Impact Of Environmental Degradation On Human Health And Its Relevance To The Right To Health Under International Law, 2016, European Scientific Journal, vol.12, No.10, p. 493.

³ Inter-American Court of Human Rights, Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, San Jose', Costa Rica, 31 August 2001.

⁴ *Ibid.*, para 1 & 29.

⁵ *Ibid.*, para, 173.

⁶ Boyd, D. R., The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment, 2012, UBC Press, p. 98.

⁷ United Nations Treaty Collection, Chapter XXVII, 13, Treaty Section, Office of Legal Affairs.

⁸ Preamble, Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus, Denmark, 25 June 1998.

information on the state of the environment.¹ According to the Convention, States Parties are required to assign fixed periods, to publish draft rules and to allow the public to express its opinion through representative consultative bodies. States Parties are obligated to facilitate the participation of their citizens in decisions involving the granting of permits or licenses in vital activities such as energy production, metal production and processing, etc.² Article 9 obligates each Party to ensure that its citizens have access to judicial review procedures before courts and administrative authorities if requested information is denied. To sum up, environmental procedural rights have a preventive and proactive role in managing and protecting the environment and encourage citizens to claim their rights to environmental information and to have their opinions in decision making related to the environment in which they live. However, procedural rights should not be perceived as a substitute for substantive environmental rights.

2.2 Right to a Healthy Environment under Charters

The African (Banjul) Charter of Human and Peoples' Rights was adopted by the Organization of African Unity (OAU) in Nairobi, Kenya, on June 27, 1981 and entered into force in 1986. It includes 63 articles, signed and ratified by 53 States and did not sign nor ratified only by South Sudan (as of 2018). Article 24 declares that "all peoples shall have the right to a general satisfactory environment favourable to their development".³ Article 24 indicates that African people are entitled to a collective right to environment, rather than an individual one. The African Commission on Human and Peoples' Rights elaborated on the obligations under Article 24 in *the Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria communication of 1996*.⁴ The complainants alleged that the military government of Nigeria had directly participated in the unsustainable oil development practices in Ogoni land and had caused environmental degradation, including wide-spread contamination of soil, water, and air, the destruction of homes, the burning of crops, and it had led to health problems amongst the Ogoni people. The Commission concluded that although Nigeria had the right to produce oil, the State had not protected the articles 16 and 24 rights and recommended that stopping all attacks on Ogoni communities, leaders and permitting free access to the territory; adequate compensation to victims and undertaking a comprehensive cleanup of lands and rivers; ensuring that appropriate environmental and social impact assessments are prepared for any future oil development.⁵ A Protocol to the African Charter entitled Rights of Women in Africa 2003 (Maputo Protocol) included a more specific formulation. Article 18(1) provides that 'women shall have the right to live in a healthy and sustainable environment.'⁶ These provisions were reiterated in 2003 the African Convention on the Conservation of Nature and Natural Resources (Revised Edition). Article 3 states that 'in taking action to achieve the objectives of this Convention and implement its provisions, the Parties shall be guided by the following: 1. the right of all peoples to a satisfactory environment favourable to their development'.⁷ African Charter was

¹ Article 5(1), 5(9), 4(3), 4(4), Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus, Denmark, 25 June 1998.

² Article 8, Paragraphs 1-5 of Annex I, Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus, Denmark, 25 June 1998.

³ Article 16 (1), 24, African Charter on Human and Peoples Rights.

⁴ African Commission on Human and Peoples' Rights, Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria 155/96. 30th Ordinary session, Banjul, The Gambia, 13-27 October 2001.

⁵ *Ibid.*,

⁶ Article 18(1), Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003.

⁷ Article 3(1), African Convention on the Conservation of Nature and Natural Resources 2003. Ben Boer, Environmental Principles and the Right to a Quality Environment, Legal Studies Research Paper No. 17/05, Sydney Law School, January 2017, p. 10.

the first binding instrument to provide for a direct right to a clean and healthy environment. However, it indicates a collective right to a healthy environment rather than an individual one.

In Arab World, the Arab Charter on Human Rights (includes 53 Articles) was adopted in Tunisia on May 23, 2004 and entered into force on March 15, 2008.¹ As of November 2013, 13 of the 22 members of the League of Arab States have ratified the Charter.² The 2004 Revised Arab Charter also contains a right to a safe and healthy environment. Article 38 of this Charter specifies that ‘everyone shall have the right to an adequate standard of living for himself and his family, ensuring well-being and a decent life, including adequate food, clothing, housing, services and the right to a healthy environment. The State Parties shall take appropriate measures within their available resources to ensure the realization of this right’.³ The Charter provides for the creation of an Arab Human Rights Committee to review reports from states parties and does not have the authority to receive petitions or complaints from individuals or NGOs. Although the Statute of the Arab Court of Human Rights was approved by the Ministerial Council of the League of Arab States on 7 September 2014, Arab Court on Human Rights is being discussed but is not yet established.⁴ The Tehran Declaration on Human Rights and the Environment 2010 also noted in its Preamble that ‘convinced that stewardship of the environment is a fundamental responsibility of all people and that individuals and communities have the right to live in a clean and healthy environment’, and recommended that ‘specific provisions be included in national constitutions and legislation in relation to the right to a clean and healthy environment as a fundamental aspect of the achievement of human rights.’⁵ In conclusion, Arab Charter explicitly recognizes the right to a healthy environment, but it does not establish any other enforcement mechanism. The expert Committee receives periodic reports from States parties but there is no mechanism for petitions from a State party or an individual.

2.3 Right to a Healthy Environment under Declarations

The Declaration of Santa Cruz was adopted in Bolivia 1996 by 34 States at the Hemispheric Summit on Sustainable Development, includes 10 principles.⁶ It reaffirms Principle 1 of the Rio Declaration stating that “we reaffirm that human beings are entitled to a healthy and productive life in harmony with nature..”⁷ Principle 10 (c) states that planning and decision-making for sustainable development require understanding and integrating environmental considerations, as well as social and economic factors. Another declaration is the Declaration of Bizkaia on the Right to the Environment 1999. It was adopted on 12 February and includes 9 articles.⁸ The Declaration emphasizes the need for recognition of a human right to the environment in legal instruments of universal scope. Article 1 proclaims that the right of everyone, individually or in association with others, to enjoy a healthy and

¹ Mattar, M. Y., Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards, 2013, Harvard Human Rights Journal, Vol. 26, p. 92 – 93.

² *Ibid.*,

³ Article 38, Arab Charter on Human Rights 2004.

⁴ Boyd, D. R., The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment, 2012, UBC Press, p.88.

⁵ Tehran Declaration on Human Rights and the Environment 2009.

⁶ Eacott, E., Clean and Healthy Environment: The Barriers and Limitations of This Emerging Human Right, 2001, A. Dalhousie J. Legal Stud., 10, p. 81.

⁷ Principle 1 & 2, Declaration of Santa Cruz 1996.

⁸ Declaration of Bizkaia on the Right to the Environment 1999. 30 C/INF.11.

ecologically balanced environment and may be exercised before public bodies and private entities, whatever their legal status under national and international law.¹

The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967. It is the only Asian sub-region to have its own environmental treaty, entitled the ASEAN Agreement on the Conservation of Nature and Natural Resources. Southeast Asia is also the only Asian sub-region to have its own human rights instrument, the 2012 ASEAN Human Rights Declaration.² The ASEAN Human Rights Declaration (includes 40 Articles) was adopted on 18 November 2012 at Phnom Penh, Cambodia.³ In particular with regard to the environment, Article 28 provides that ‘every person has the right to an adequate standard of living for himself or herself and his or her family including:...(f) the right to a safe, clean and sustainable environment’.⁴ It is noted that the implementation of the Declaration may be restricted by the Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights established in 2009, because it operates on the principle that decision-making is to be based on ‘consultation and consensus’, thus limiting its capacity to make specific determinations.⁵ In comparison with the development of other regional human rights instruments, the Human Rights Declaration is a rather late inclusion in the various legal and policy instruments produced by ASEAN. In comparison with the other Asian sub-regions and the Pacific region, the Declaration is a clear step forward.⁶

Conclusion & Findings

The quality of human rights is conditioned by the human being’s relationship with the surrounding ecology. Since the Stockholm Declaration, the right to a healthy environment rapidly migrated around the world. In this paper, nine instruments direct or indirect recognized the right to a healthy environment at international level and eight regional instruments recognized this right. While there is not yet global unanimity regarding the right to a healthy environment, the right to live in a healthy environment is now a firmly established legal principle in Africa, Latin America, and Europe. It is emerging in Asia and the Middle East.

References

Books, Journals and Magazines

- Boer, B. (2017). “Environmental Principles and the Right to a Quality Environment”, Legal Studies Research Paper No. 17/05, Sydney Law School
- Boer, B. (2015). “Environmental Law and Human Rights in the Asia-Pacific”, Oxford University Press
- Boyd, D. R. (2012). “The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment”, UBC Press
- Eacott, E. (2001). “Clean and Healthy Environment: The Barriers and Limitations of This Emerging Human Right”, *A. Dalhousie J. Legal Stud.*, 10
- Garbarino, J., and Sigman, G. (2010). “A Child’s Right to a Healthy Environment”, Springer
- Giorgetta, S. (2002). “The Right to a Healthy Environment, Human Rights and Sustainable Development”, *International Environmental Agreements: Politic, Law and Economics 2(2)*, Kluwer Academic Publishers

¹ Articles 1, Declaration of Bizkaia on the Right to the Environment 1999. 30 C/INF.11. Giorgetta, S., *The Right to a Healthy Environment, Human Rights and Sustainable Development*, 2002, *International Environmental Agreements: Politic, Law and Economics 2(2)*, Kluwer Academic Publishers, p. 176.

² Boer, B., *Environmental Law and Human Rights in the Asia-Pacific*, 2015, Oxford University Press, p. 4.

³ The ASEAN Secretariat, *ASEAN Human Rights Declaration and the Phnom Penh Statement on the adoption of the ASEAN Human Rights Declaration*, Jakarta, February 2013.

⁴ Article 28, *ASEAN Human Rights Declaration 2012*.

⁵ Boer, B., *Environmental Principles and the Right to a Quality Environment*, 2017, Legal Studies Research Paper No. 17/05, Sydney Law School, p. 12.

⁶ Boer, B., *Environmental Law and Human Rights in the Asia-Pacific*, 2015, Oxford University Press, p. 21.

Gwangndi, M. I. Dr., Muhammad., Y. A. Dr., & Tagi, S. M. Dr., (2016). “The Impact of Environmental Degradation on Human Health And Its Relevance to the Right to Health Under International Law”, *European Scientific Journal*, vol.12, No.10

Horn, L. (2004). “The Implications of the Concept of Common Concern of a Human Kind on a Human Right to a Healthy Environment”, *Macquarie J. Int'l & Comp. Env'tl. L.*, 1

Kurukulasuriya,L.,and Robinson,N.A.(2006). “Training Manual on International Environmental Law”, UNEP/Earthprint

Mattar, M. Y. (2013). “Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards”, *Harvard Human Rights Journal*, Vol. 26

The Asia Pacific Forum of National Human Rights Institutions. (2007). “Human Rights and the Environment: Background Paper”, Sydney, Australia;

The ASEAN Secretariat. (2013). “ASEAN Human Rights Declaration and the Phnom Penh Statement on the adoption of the ASEAN Human Rights Declaration”, Jakarta

United Nations Environment Programme for the Geneva Environment Network. (2004). “Human Rights and the Environment”, *Proceedings of a Geneva Environment Network Roundtable*

Conventions, Declarations, Reports, Resolutions and Recommendations

Arab Charter on Human Rights 2004; African Charter on Human and Peoples Rights 1981; African Convention on the Conservation of Nature and Natural Resources 2003; American Society of International Law, Hague Declaration on the Environment 1989, Cambridge University Press; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights 1988; Committee of Ministers Resolution 54; Convention on the Rights of the Child, General Assembly Resolution 44/25 of 20 November 1989; Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus, Denmark, 25 June 1998; Declaration by the European Council on the Environmental Imperative 1990; Declaration of Santa Cruz 1996; Declaration of Bizkaia on the Right to the Environment 1999; Draft Principles on Human Rights and the Environment, 1994. E/CN.4/Sub.2/1994/9; ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989; IUCN, IUCN Resolutions, Recommendations and other Decisions, Gland, Switzerland, 2016; Our Common Future, Annex 1: Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development 1987; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003; Parliamentary Assembly Recommendations 1130(1990), 1431(1999) and 1614(2003); Tehran Declaration on Human Rights and the Environment 2009; United Nations, Report of the United Nations Conference on the Human Environment, 1972; United Nations Declaration on the Rights of Indigenous Peoples 2007; UNGA Res. 2398 (XXIII) Problems of the Human Environment

Cases

African Commission on Human and Peoples' Rights, Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria 155/96. 30th Ordinary session, Banjul, The Gambia, 13-27 October 2001

European Court of Human Rights, Case of Lopez Ostra v. Spain, Application no. 16798/90, Strasbourg, 09 December 1994

Inter-American Court of Human Rights, Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, San Jose', Costa Rica, 31 August 2001