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HUMAN RIGHTS AND THE ENVIRONMENT

PRAWA CZŁOWIEKA I ŚRODOWISKO

ABSTRACT

Human Rights and the environmental protection law are two, separately created and evolved systems. It was not earlier than the end of the twentieth century when the linkages between these two concepts started to be developed. The obvious correlation between the conditions of the life of a person and the environment in which this person lives has long waited to be discovered and reflected in a normative form. Human rights may foster the protection of the environment and the environmental law may to some extent, protect human beings as an element of nature. However the possibility to use human rights instruments to protect the environment is limited by the

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anthropocentrism of human rights, the lack of proper legal definitions of basic concepts connected with the right to the environment and the fact that both systems lack not a normative background, but an effective system of providing protection. This is the reason why the procedural rights are now an area of interest to lawyers and politicians. This article tries to answer a question about the possible future development in the field of environmental rights. If the human rights perspective can add new quality to environment protection, or is it just a way of repeating same concepts in a little bit more politically attractive way?

Keywords

Human environmental rights, procedural environmental rights, material environmental rights, anthropocentrism in environmental human rights protection.

STRESZCZENIE

Prawa człowieka i prawo ochrony środowiska są systemami które ewoluowały niezależnie od siebie. Przez długi czas związki między nimi były słabo dostrzegalne. Rozwój każdego z nich spowodował jednak, że obszar regulacji zaczął się na siebie nakładać. Niewątpliwie podstawowe znaczenie dla tego procesu miało uznanie podczas Konferencji Sztokholmskiej, że prawo do środowiska stanowi jedno z praw człowieka. Rozwój praw człowieka w obszarze środowiska naturalnego jest dwutorowy. Z jednej strony powstają zaczątki gwarancji materialnoprawnych dotyczących jakości środowiska naturalnego. Z drugiej strony odkryć można prężnie rozwijające się proceduralne prawa człowieka dotyczące partycypacji w ochronie środowiska, dostępu do informacji o środowisku, czy wreszcie dostępu do sprawiedliwości w sferze ochrony środowiska. Czy jednak wykorzystywanie instrumentów mających charakter antropocentryczny jakim bez wątpienia są prawa człowieka zawsze służy ochronie środowiska? W jaki sposób odnaleźć i zidentyfikować obszary w których warto jest korzystać z niejednokrotnie lepiej zorganizowanego a na pewno bardziej powszechnie akceptowanego instrumentarium ochrony praw człowieka? W jakich obszarach z kolei narzucenie antropocentrycznych rozwiązań może mieć szkodliwy wpływ na środowisko naturalne? Te pytania zdają się nadawać współcześnie kształt dyskusji nad problematyką ochrony praw człowieka do środowiska.

Słowa kluczowe
Prawa człowieka do środowiska, procesowe prawa człowieka do środowiska, materialne prawa człowieka do środowiska, antropocentryzm w ochronie praw człowieka do środowiska.

INTRODUCTION

Protecting human rights and safeguarding the environment, along with achieving peace and security, are fundamental values of modern international society. The many linkages between protection of human rights and protection of the environment have long been recognized. It is beyond doubt that in today's world, the quality of the environment in which a human being is living can influence their well-being[1]. Poor quality of the environment may diminish the ability to take advantage of other human rights, including even the right to life and the right to live in conditions which would be safe for health. Although it was just at the end of XX century when those links started to be able to change the perspective on environment and its protection[2]. It is also worth mentioning that in this system there exists the potential tension between human rights and the environment which may appear to be in the conflict between human rights and the environment e.g. in the field of exploitation of natural resources or the execution to right of property[3]. Second problem is the fact that functioning of human rights to the environment is dependent from the existence and functioning of the protection

[1] M. Kenig-Witkowska, *Międzynarodowe Prawo Ochrony Środowiska (International Environmental Protection Law)*, Wolters Kluwer Warszawa: 2011, p. 40; J. Ciechanowicz-McLean, *Międzynarodowe prawo ochrony środowiska* (*International Environmental Protection Law*), PWN, Warszawa 1999, p. 189––194.

[2] M. Anderson, *Human Rights Approaches to Environmental Protection: An Overview,* [in] *Human Rights Approaches to Environmental Protection*, A. Boyle, M. Anderson (ed.), Clarendon Press, Oxford 1996, p. 1.

[3] P. Birnie, A. Boyle, *International Law and the Environment*, ed. 2, Oxford Univeristy Press, Oxford 2002, p. 255.

of third category of human rights – solidarity rights[4]. Still some authors refuse to give this category of rights a full legal power underlining problems with their effective execution[5]. One should analyze whether in mostly separately developed systems – one form is the protection of the environment, the second for the protection of human rights have anything to offer each other?

The obvious answer which can be given even without making any scientific researches is the affirmative. Human rights and environment protection are very strongly correlated with one and other. It shall be remembered that only in a clean and sustainable environment a human being may fully take advantage of his human rights[6]. On the other hand *the effective enjoyment of all human rights, including the right to education and the rights of assembly and freedom of expression as well as full enjoyment of economic, social and cultural rights, could foster better environmental protection by creating conditions conducive to modification of behavior patterns that lead to environmental degradation*[7].

The 1972 United Nations Conference on the Human Environment[8] *declared that "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"*[9]. This was the first time when a link between human rights and the environment was established[10]. Although in a soft law

[4] C. Mik, *Zbiorowe prawa człowieka. Analiza krytycznych koncepcji,* Uniwersytet Mikołaja Kopernika – Rozprawy, Toruń: 1992, p. 68.

[5] T. Jasudowicz, *Administracja wobec praw człowieka.* TNOIK, Toruń: 1996 p. 41; P. Alston, *Conjuring Up New Human Rights: A Proposal for Quality Control* American Journal of International Law (1984) vol. 78, p. 607.

[6] J. Sozański, *Prawa człowieka w Unii Europejskiej. Po Traktacie Lizbońskim*, Iuris, Warszawa–Poznań: 2011, p.83.

[7] UN Resolution Human Rights And Environment 5 June 2001 AG/RES. 1819 (XXXI-O/01).

[8] Declaration of the United Nations Conference on the Human Environment (A/CONF.48/14/Rev.1).

[9] A. Kiss, D. Shelton, *International Environmental Law, Third Edition*, Transnational Publishers, New York: 2006, p. 667–725.

[10] W. Czapliński, *Podstawowe zagadnienia prawa międzynarodowego publicznego. Zarys wykładu,* Centrum Europejskie UW, Warszawa: 2010.

form of declaration Principle 1 of the Stockholm Declaration established a foundation for linking human rights and environmental protection, declaring that *man has a 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*. It also announced the responsibility of each person to protect and improve the environment for present and future generations[11]. Almost twenty years later, in resolution 45/94 the UN General Assembly recalled the language of Stockholm, stating that all individuals are entitled to live in an environment adequate to their health and well-being. The resolution called for enhanced efforts towards ensuring a better and healthier environment.

State and non-state actors participating in the Stockholm Conference initiated the enduring process of appraising the relationship between environmental protection and human rights. In contrast to the Stockholm Conference documents, the 1992 Conference of Rio de Janeiro on Environment and Development did not put too much focus on the material warranties of environment protection. This may be a consequence of its pro-development character. It mentions only briefly in Principle 1 that human beings are "entitled to a healthy and productive life in harmony with nature"[12]. The Rio de Janeiro documents formulated the procedural link between human rights and environmental protection.

Rights to information, participation and remedies in respect to environmental conditions thus formed the focus of the Rio Declaration. In addition to Principle 10, the Declaration includes provisions on the participation of different components of the population: women (Principle 20), youth (Principle 21), and indigenous peoples and local communities (Principle 22). These two above mentioned acts formed a conceptual base for future works on linkages between human rights and the

[11] J. Ciechanowicz-McLean, *Międzynarodowe prawo ochrony środowiska,* PWN, Warszawa: 1999 p. 194.

[12] Report of the UN Conference on Environment and Development (New York 1992) UN Doc. A/CONF.151/26/Rev.1.

environment. They also constructed the most common division of human rights to the environment – material and procedural rights.

1. PROS AND CONS OF HUMAN RIGHTS PERSPECTIVE ON ENVIRONMENT PROTECTION

1.1. DEFINITIONAL PROBLEMS

One of the most important problems with linking international protection of human rights with the environment is the problem of definitions. International human rights protection regimes neither define the environment itself nor the conditions of the environment which they want to achieve in a way which would constitute a material definition. Adding to this also cultural difference in attitude to the environment between East and West and especially between North and South we may be sure that in a situation of lack of firm and precise definitions the probability of successful use of human rights argument in environmental disputes is very low. What is interesting the problems is not only in defining the environment or the scope of the protection but even in defining what kinds of rights in the field of environment protection does the entity have. Even the United Nations agencies and commissions are not precise in these terms. Stockholm declaration warrants the right to an "*environment of a quality that permits life of dignity and well-being*", African Charter on Human and Peoples' Rights mentions the "*general satisfactory environment favorable to their …(human an peoples)… development*", in other documents we may observe right to "*healthy and flourishing environment*" or "*satisfactory environment*"[13]. In everyday legal practice, it is not easy to construct a legal claim on the distinction of what is

[13] P. Birnie, A. Boyle, *International Law and the Environment*, ed. 2, Oxford Univeristy Press, Oxford 2002, p. 256.

healthy or not healthy. This still is far less subjective than the notion of satisfaction from the environment, or the environment that satisfies the feeling of dignity.

Definitional problems can however, be solved. Some authors present a concept that enables defining the environment in abstract form. A solution proposed by them is to allow the courts to redefine the scope and characteristic of the right to the environment in a case by case manner[14]. This concept has many advantages. First of all, it may solve the problem of cultural and regional implication to the scope of environmental rights. Secondly, it allows judicial control over the way in which this right is being executed. One big disadvantage is the fact that it is risky to talk about fundamental human rights in the language of legal relativism.

1.2. ANTHROPOCENTRICITY

Human rights protection instruments are designed to protect the rights of the entity or collectivity of humans. Authors who analyze the international law regime presents an opinion that values protected by the international legal order can be split into two categories. First category is values which are independent. They are the main aim of the protection by different international legal acts. Second category is values which are instrumental. They are being protected only because their existence enables independent values to function without any disturbance[15]. In such a case, we may be sure that the protection of the environment will be granted by the human rights law to the extent in which the environment will be found useful for assuring the protection of human well-being. This surely limits the scope of the protection of the environment by the human rights law.

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[14] A. Kiss, D. Shelton, *International Environmental Law*, Transnational Pub. New York 2004, p. 24–26.

[15] J. Gilas, *Sprawiedliwość międzynarodowa,* Studia Iuridica vol. 3 (XVIII) 1991, p. 21.

By implementing human rights instruments for environment protection we create the collective rights of humans[16]. These rights serve both the nature and the human kind only when we use them in the context of the environment as a whole, including a mankind and also future generations of a mankind. However, if we go further and analyze environment protection in the form of individual rights, then the convergence of these rights can be destroyed. It can be a problem especially, when we analyze the problem from the economic rights perspective. From the potentially broad scope of interested (the future generations, the environment itself, other species etc.) only human entity will have a right to make a claim in a potential courts case. In a situation of lack of supervisory institutions and organizations functioning as the common interest advocates the effect can be fair from optimum from the environmental perspective[17]. Human rights perspective on the environment is also risky as environmental harm is always made by other human being – often during execution of this persons human rights[18].

2. MATERIAL WARRANTIES

Theoretically there should not be any problems in linking the material warranties on the environment with human rights. The future of humanity depends on maintaining a habitable planet. Effective measures to protect the environment are crucial to any project for advancing human rights[19]. It should

[16] A. Boyle, *Human Rights or Environmental Rights? A Reassessment,* (2007) 18 Fordham Journal of Environmental Law, p. 474.

[17] P. Birnie, A. Boyle, *International Law and the Environment*, ed. 2, Oxford Univeristy Press, Oxford 2002, p. 258.

[18] T. Jasudowicz, *Administracja wobec praw człowieka.* TNOIK, Toruń: 1996, p. 41.

[19] J. Merrills, *Environmental Rights*, [in] D. Bodansky, J. Brunnee, E. Hey, *The Oxford Handbook of International Environmental Law*, Oxford University Press, Oxford/New York 2007, p. 664.

than be easy find in human rights acts environmental content. It is however not so easy for a country to agree on international human rights protection agreement which would include rights to the environment. It is hard especially from the political point of view decision for a government to agree on such warranties. The right (and especially human right) contains concrete entitlement which is being protected by a claim[20], the human right is intended to ensure basic conditions needed for a right-holder to pursue his goal[21]. The consequence of it would mean that it would be possible to formulate claims relating to environment in terms of material warranties of human rights[22]. Especially in developed countries in which the awareness of human rights is high and the condition of the environment is quite poor[23]. This may be the reason for the opposition of OECD countries to develop human rights to the environment[24]. Most direct material warranties are being given by the countries in which execution of human rights is fair from the Western World standards of effectiveness[25]. It is worth mentioning that the effective execution of third category of human rights, including the right to the environment is still a question of future development of those rights[26].

Material human rights to the environment may either take the form of rights directly aimed at the protection of the

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[20] J. Merrills, *Environmental Rights*, [in] D. Bodansky, J. Brunnee, E. Hey, *The Oxford Handbook of International Environmental Law*, Oxford University Press, Oxford/New York 2007, p. 665.

[21] L. Lomasky, *Persons Rights and the Moral Community*, Oxford University Press, Oxford 1987, p. 16–37.

[22] D. Shelton, *Environmental rights*, [in:] P. Alston (ed.) *Peoples' Rights,* Oxford University Press, Oxford: 2001, p. 185.

[23] A. Michalska, *Prawa człowieka w systemie norm międzynarodowych*, PWN, Warszawa–Poznań 1982, p. 225, 226.

[24] P. Birnie, A. Boyle, *International Law and the Environment*, ed. 2, Oxford Univeristy Press, Oxford 2002, p. 263.

[25] J. Sozański, *Prawa człowieka w Unii Europejskiej. Po Traktacie Lizbońskim*, Iuris, Warszawa–Poznań: 2011, p. 85.

[26] W. Czapliński, A. Wyrozumska, *Prawo międzynarodowe publiczne. Zagadnienia systemowe (International public law. The System),* W. Czapliński, A. Wyrozumska (ed.), CH Beck, Warszawa 2004, p. 426, 427.

environment or the right to the environment can be derived from other human rights. The first category is a limited one, whereas the second category has a much wider potential as human well-being is closely connected to the condition of the environment. Human rights form a coherent system of rights. Adding new rights to the catalogue of human rights can have a far reaching consequence. It is easy to name only a possible impact of development of new rights to the environment to the right on self-determination or development[27].

Protection of the environment by the human rights in the form of material warranties is also achieved as a kind of instrumental rights which enable the protection of fundamental human rights. Human rights to the environment cannot be treated in isolation. A good example of such attitude can be the protection of human right to life. International human rights protection legal acts among other hazards of life[28] point at the destruction of natural environment[29]. Right to life is being identified worldwide and in numerous acts to name only United Nations Covenant on Civil and Political Rights (1966), European Convention on Human Rights (1950) and American Convention on Human Rights (1969). Potential scope of environmental use of the right to life has been shown in numerous cases in human rights courts. In case Mullin v. Union Territory of Delhi the court stated that *the right to life includes the right to live with human dignity and all that goes along with it, including the right to live in a healthy environment with minimal disturbance of the ecological balance*[30]. Similarly a failure of a State to control industrial pollution has been found to be a breach of the human right to

[27] D. Makinson, *Rights of Peoples: Point of View of a Logician*, [in:] J. Crawford (ed.) *The Rights of Peoples*, Oxford University Press, Clarendon 1988, p. 83–92.

[28] A. Redelbach, *Natura Praw Człowieka. Strasburskie standardy ich ochrony*, TNOIK, Toruń 2001, p. 164–165.

[29] D. Ostrowska, *Wybrane prawa człowieka. Omówienie*, [in:] J. Hołda, Z. Hołda, D. Ostrowska, J. Rybczyńska *Prawa człowieka. Zarys wykładu*, wyd. 3Wolters Kluwer, Warszawa 2011, p. 87.

[30] P. Birnie, A. Boyle, *International Law and the Environment*, ed. 2, Oxford University Press, Oxford 2002, p. 259.

the protection of private life such as in cases of Lopez Ostra vs. Spain and Guerra vs. Italy[31]. In all above mentioned cases an important role of courts in greening of human rights should be underlined.

Some basic standards of human right to the environment can be derived from the Universal Declaration of Human Rights (1948) itself. Article 25 states that *everyone has the right to a standard of living adequate for the health and well-being of himself and of his family including for clothing, housing and medical care and necessary social services…* Although not directly it is a base on which a connection between a right to health and an adequate standard of living and the environment can be derived. Satisfying the standard of the Declaration necessitates the environment being of a standard with sufficient quality to maintain human health and well-being.

Even more fundamental human rights are being protected by the International Covenant on Civil and Political Rights (1966). This legal act concentrated on matters which at first do not have much to do with the environment in article 6 which states that *every human has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.* What has already been proved above there is a direct link between the quality of the environment and human health. Such a link can be found where there may be an environment of such a poor quality that it would make it unable to live. Main argument for this approach is that it privilege environmental quality as a value, giving it a status that can be compared to other economic and social rights[32]. Putting the environmental rights in the same category of rights as rights to development or other economic rights is also fruitful as those rights are very often used as an argument for the destruction of the environment – development at the cost of pollution.

The proper conditions for living are essential especially for children, as human beings which are endangered by the

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[31] Ibidem.

[32] A. Boyle, *Human Rights or Environmental Rights? A Reassessment.* (2007) 18 Fordham Environmental Law Review, p. 471.

pollution in their process of growing up. This problem has been identified by the Convention on the Rights of the Child (1989). In article 24.2.c the Convention states that *Parties shall take appropriate measures to combat disease and malnutrition through the provision of adequate nutritious food and clean drinking water, taking into the consideration the dangers and risks of environmental pollution*. The problem of human right to clean water is also directly recognized by the Convention on the Elimination of All Forms of Discrimination against Women (1979). Article 14.2.h confirms that [women] *enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication*.

The most direct association of human rights and material environmental rights can be found in the 1988 Protocol of San Salvador and in the 1981 African Charter of Human and People's Rights. The first of them in article 11.1 states that *everyone shall have the right to live in a healthy environment and have access to public services.* The second act in Article 24 *states that all peoples shall have the right to a generally satisfactory environment favorable to their development.*

It is also worth mentioning that also in the documents orientated on the protection of the environment the problem of the protection of human rights appears. Legal Principles for Environmental Protection and Sustainable Development (1987) prepared by the famous Brundtland Group in article 1 states that *all human beings have the fundamental right to an environment adequate to their health and well-being.* Similarly Rio Declaration of 1992 in principle 14 underlines the need to protect human health against harmful activities and substances.

Another very important report was prepared by the U.N. Special Rapporteur, Mme Ksentini in 1994[33]. The Report was a study on the interrelations between human rights and the environment, inspired by (but not limited to) already existing

[33] Report from the 6 July 1994 Human Rights and the Environment E/CN.4/Sub.2/1994/9.

human rights standards[34]. It was also the first attempt to codify in a complex way all human environmental rights. Ksentini Report has an annex 1 which are Draft Principles on Human Rights and the Environment. Draft Principles contain both material and procedural human rights to the environment. It confirms the already developed right to healthy, secure and ecologically sound environment (Art. 2), in access to which there should be no discrimination (Art. 3). Among other principles there can be identified freedom from pollution and environmental degradation (Art. 5), right to preservation of different elements of ecosystem (Art. 6), right to clean and healthy water and food (Art. 8). Mme Ksentini in her Report and the Draft Principles also confirms and gives additional ecological perspective to already existing human rights like the right to housing or a right not to be evicted from home for the purpose or as a consequence of decisions affecting the environment (Art. 11). Report contains also the procedural rights like right to environmental information (Art. 15), the right to express opinion regarding the environmental matters (Art. 16) the right to participate in planning and decision making in the plans and decisions affecting the environment, as well as the right to associate (Art. 19) and the right to effective remedy and redress for environmental harm (Art. 20). The modern attitude of the document is clearly visible in the fact that apart from the rights the Draft Principles mention also the human obligation which states that all persons individually and collectively have an obligation to preserve the environment (Art. 21).

3. PROCEDURAL WARRANTIES

Another interesting area of coexistence of human rights and environment are procedural warranties of environmental rights. Those rights are often called participatory rights as they

[34] M. Kenig-Witkowska, *Międzynarodowe Prawo Ochrony Środowiska*, Wolters Kluwer, Warszawa 2011, p. 45.

define the aspects of public participation in the protection of the environment. They are deeply rooted in democratic philosophy and what can be proved on the basis with a comparison of the state of the environment in democratic and totalitarian countries[35]. Participatory rights apply to the environmental matters arguments for democratic governance as a human right[36]. Governments which operate with openness, accountability and civic participation are more likely to promote environmental values and considerations in their decisions.

The most important document which provides participatory rights is a Rio Declaration. Principle 10 provides that *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, shall be provided.* The special focus on environmental matters differentiates this act from human right act which are orientated on political rights, like International Covenant on Civil and Political Rights. On the base of Rio Declaration and other legal acts which provide for procedural rights in the field of environmental protection one may formulate three basic categories (pillars) of such rights – rights to environmental information, rights to the participation in environmental decision making and right to the access to effective remedies for environmental harm. Some representatives of the doctrine postulate to add to those rights also right to environmental impact assessment, right to prior information about the environmental risk, right to *locus standi*

[35] P. Birnie, A. Boyle, *International Law and the Environment wyd. 2* Oxford Univeristy Press, Oxford 2002, p. 261.

[36] Ibidem.

in order to defend common interest and the right to real and effective remuneration for environmental loss[37].

The ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (Geneva, June 27, 1989. contains numerous references to the lands, resources and environment of indigenous peoples. Article 2 provides actions respecting indigenous peoples which shall be developed with the participation of the people concerned. Special measures are to be adopted for safeguarding the environment of such peoples consistent with their freely-expressed wishes. (Article 4), states that parties must consult indigenous peoples, (Article 6) and provide for their participation in formulating national and regional development plans that may affect them (Article 7). Environmental impact assessment must be done with planned development activities with the co-operation of the peoples concerned (Article 7(3) and *Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit* (Article 7(4). Rights and remedies are provided in Article 12. Part II of the Convention addresses land issues, including the rights of the peoples concerned to the natural resources pertaining to their lands. The rights include *the right to participate in the use management and conservation of these resources*. (Article 15). Article 30 requires governments to make known to the peoples concerned of their rights and duties.

The African Charter on Human and Peoples' Rights, (Banjul June 26, 1981) contains several provisions related to environmental rights. Article 21 provides that *all peoples shall freely dispose of their wealth and natural resources* and adds that this right shall be *exercised in the exclusive interest of the people*. Article 24, which could be seen to complement or perhaps conflict with Article 21, states that *all peoples shall have the right to a general satisfactory environment favorable to their development*. Article 7 provides that *every individual shall have the right to have his cause heard*.

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[37] M. Kenig-Witkowska, *Międzynarodowe Prawo Ochrony Środowiska* Woltrs Kluwer, Warszawa 2011, p. 41.

The European Convention on the Exercise of Children's Rights (Strasbourg January 25, 1996) aims at ensuring access to information and participation by children in decisions relevant to them, as well as appropriate remedies. Articles 1, 3.[38]

The Aarhus Convention is a new kind of environmental agreement. It links environmental rights to human rights. What is more it goes far beyond the narrow focus on human health and in some aspects can claim not to be antrophocentric[39]. It acknowledges that we owe an obligation to future generations. It establishes that sustainable development can be achieved only through the involvement of all stakeholders. The Convention links government accountability and environmental protection. The focus is put on inter-actions between the public and public authorities in a democratic context and it forges a new process for public participation in the negation and implementation of international agreements. The Aarhus Convention secures citizens' rights through: access to information, public participation, access to justice for a healthy environment[40].

The subject of the Aarhus Convention goes to the heart of the relationship between people and governments. The Convention is not only an environmental agreement, it is also a Convention about government accountability, transparency and responsiveness. The Aarhus Convention grants the public rights and imposes on Parties and public authorities obligations regarding access to information and public participation. It backs up these rights with access-to-justice provisions that go some way towards putting teeth into the Convention. In fact, the preamble immediately links environmental protection to

[38] D. Shelton, Human Rights op. cit., p. 14–19; J. Ebbesson, *Information, Participation and Access to Justice: the Model of the Aarhus Convention*, Yearbook of human rights & environment 3 (2003) p. 43–58; J. Jendrośka, M. Bar, *Dostęp do informacji, wyd. 6 (Access to the information),* Skrypt, Wrocław 2008, p. 46–65.

[39] R. Churchill, *Environmental Rights in Existing Human Rights Treaties.* [in:] Human Rights Approaches to Environmental Protection. A. Boyle, M. Anderson (eds.) Oxford 1996, p. 89–108.

[40] *The Aarhus Convention: an Implementation Guide*. United Nations Economic Commission for Europe, Geneva 2005, 1, 4–7.

human rights norms and raises environmental rights to the level of other human rights.

Whereas most multi-lateral environment agreements cover obligations that Parties have to each other, the Aarhus Convention covers obligations that Parties have to the public. It goes further than any other convention in imposing clear obligations on Parties and public authorities towards the public as far as access to information, public participation and access to justice are concerned. The Aarhus Convention stands on three "pillars": access to information, public participation and access to justice, provided for under its Articles 4 to 9. The three pillars depend on each other for full implementation of the Convention's objectives.

3.1. THE RIGHT TO ENVIRONMENTAL INFORMATION

Access to information stands as the first of these pillars of procedural rights. It is mentioned first, since effective public participation in decision-making depends upon full, accurate, up-to-date information. It can also stand alone, in the sense that the public may seek access to information for any number of purposes, not just to participate.

A "right to information" can mean, narrowly, freedom to seek information, or, more broadly, a right of access to information, or even a right to receive it. As noted above, Rio Principles 10 calls for States to provide environmental information. Similarly, Chapter 23 of Agenda 21 on strengthening the role of major groups proclaims individuals, groups and organizations should have access to information relevant to the environment and development, held by national authorities. This includes information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection matters.

Informational rights are widely found in environmental treaties, in weak and strong versions. The Framework Convention on Climate Change Article 6 exemplifies the weak approach. The 1992 Helsinki Convention on the Protection and

Use of Trans-boundary Watercourses and International Lakes (Article 16), the 1992 Espoo Convention Environmental Impact Assessment in a Transboundary Context (Article 3/8) and other treaties require State parties to inform the public of specific environmental hazards.

The widest scope of the right to environmental information may be found in the Aarhus Convention. The word information in this legal act means access to any information in visual, written, sound, electronic or incorporated in any other form of broadcast. The Convention adds also additional group of information holders who have (although a little bit softened) obligation to provide information to the public voluntarily – the business. In the Aarhus Convention the access-to-information pillar is split in two. The first part concerns the right of the public to seek information from public authorities and the obligation of public authorities to provide information in response to a request. This type of access is called "passive" and is covered by Article 4. The second part of the information pillar concerns the right of the public to receive information and the obligations of authorities to collect and disseminate information of public interest without the need for a specific request. This is called "active" access to information and is covered by Article 5.

3.2. PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION MAKING

Public Participation is also emphasized in Agenda 21. The Preamble to the Chapter states: *One of fundamental pre-requisite for the achievement of sustainable development is broad public participation in decision-making. Furthermore, in the more specific context of environment and development, the need for new forms of participation has emerged. 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. 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, and information on environmental protection measures.

Section III identifies major groups whose participation is needed: women, youth, indigenous and local populations, non-governmental organizations, local authorities, workers, business and industry, scientists and farmers.

The trend towards including rights of public participation is followed in many multi-lateral environmental agreements, i.e., Convention for the Protection of the Marine Environment of the Baltic Sea (Helsinki, April 9, 1992), Article 17; Convention on Civil Responsibility for Damage resulting from Activities Dangerous to the Environment (Lugano, June 21, 1993, Articles 13–16), Kyoto Protocol to the United Nations Framework Convention on Climate Change (December 11, 1997), Article 6 (3).

Public participation is also regulated by the Aarhus Convention. It relies upon the other two pillars for its effectiveness-the information pillar to ensure that the public can participate in an informed fashion, and the access-to-justice pillar to ensure that participation happens in reality and not just on paper. First of them means that the information about the start of administrative procedure which will end with the decision which has an impact on the environment should be provided to everyone interested. Second aims at providing procedural means of providing opinions and findings so that they will be taken into the consideration in decision making process.

The public participation pillar is divided into three parts. The first part concerns participation by the public that may be affected by or is otherwise interested in decision-making on a specific activity and is covered by Article 6. The second part concerns the participation of the public in the development of plans, programs and policies relating to the environment and is covered by Article 7. Finally, Article 8 covers participation of the public in the preparation of laws, rules and legally binding norms.

3.3. THE RIGHT TO A REMEDY FOR ENVIRONMENTAL HARM

Principle 10 of the Rio Declaration provides that effective access to judicial and administrative proceedings, including redress and remedy, shall be provided. UNCLOS also provides that States shall ensure that recourse is available for prompt and adequate compensation or other relief in respect to damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction[41].

The third pillar of the Aarhus Convention is the access-to-justice pillar. It enforces both the information and the participation pillars in domestic legal systems and strengthens enforcement of domestic environmental law. It is covered by Article 9. Specific provisions in Article 9 enforce the provisions of the Convention that convey rights on to members of the public. These are article 4, on passive information, Article 6, on public participation in decisions on specific activities and whatever other provisions of the Convention Parties choose to enforce in this manner. The justice pillar also provides a mechanism for the public to enforce environmental law directly.

4. CASES: HUMAN RIGHTS AND THE ENVIRONMENT

4.1. APIRANA MAHUIKA ET AL V. NEW ZEALAND[42]

The case posed the problem of balancing indigenous rights to natural resources with Government efforts conserve natural resources. The communication, filed by the Maori Legal

[41] Article 235 (2) UNCLOS.; By April 2006, the UNCLOS has 149 Parties. V. Frank, *The European Community and Marine Environmental Protection in the International Law of the Sea*, Martinus Nijhoff Publishers, Leiden/Boston 2006, p. 409–425.

[42] D. Shelton, *Human Rights and the Environment*. *Jurisprudence of Human Right Bodies*. Environmental policy and law 32/3-4 (2002), p. 161; Ch. D. A. Milne, *Handbook of Environmental Law*, Royal Forest and Bird Protection Society of New Zealand. Wellington 1996, p. 275–286.

Service on behalf of eighteen petitioners, claimed violations of the rights on self-determination, right to remedy, freedom of association, freedom of conscience, non-discrimination and minority rights. The communication challenged New Zealand's efforts to regulate commercial and non-commercial fishing in light of the dramatic growth of the fishing industry in the past three decades.

The Treaty of Waitangi, legally unenforceable, absences specific legislation, guarantees to Maori the full exclusive and undisturbed possession of their lands, forests, fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession. Since the 1880's, the Government has sought to determine Maori fishing claims.

After extensive negotiations, on September 23, 1992 a Deed of Settlement was executed by representatives of the Government and the Maori to regulate all fisheries issues between the parties. In all, 110 signatories signed the Deed.

The authors of the communication represent tribes that objected to the Settlement. They first brought their claims to the Courts of New Zealand, then to the Waitangi Tribunal. All concluded that the Settlement was valid except for some aspects that could be rectified in anticipated legislation. Having exhausted local remedies, the petitioners filed their complaint with the Human Rights Committee.

According to the petitioners, the contents of the Settlement were not always adequately disclosed or explained and thus informed decision-making was seriously inhibited. They also argued that the negotiators did not represent individual tribes and sub-tribes. They claimed that the Settlement denies their right to freely determine their political status and interferes with their right to freely pursue their economic, social and cultural development in violation of the right of self-determination contained in the Covenant on Civil and Political Rights. They also alleged threats to their way of life and the culture of the tribes in violation of Article 27 of the Covenant.

The Government accepted that the enjoyment of Maori Culture encompasses the right to engage in fishing activities.

It acknowledged its obligations to ensure recognition of the right. In its view, the Settlement expressed both the right and the obligation. It noted that minority rights contained in Article 27 are not unlimited but may be subject to reasonable and objective justification, balancing the concerns of the Maori and the need to introduce measures to ensure the sustainability of the fishing resources. The system of fishing quotas that was introduced reflected the need for effective measures to conserve the depleted inshore fishery, carrying out the Government's duty to all New Zealanders to conserve and manage the resource for future generations. Its regime was abased on the reasonable and objective needs of overall sustainable management.

4.2. SAN MATEO CASE (PERU) IMPACTS OF MINING ON HUMAN RIGHTS

In 2004, the IACHR (Inter-American Convention on Human Rights), accepted CIEL's, (Centrum of Environmental Law in Washington), request for precautionary measures to protect the San Mateo Community affected by toxic waste from mining operations and the waste that had been dumped in the community. This is a landmark ruling that reflects environment and human rights. In the summer of 2006, CIEL presented its brief on the violation of *inter alia*, the civil and political rights to personal integrity and life. They intervened when mine workers threatened to harm and kill Margarita Perez of the Afectados por la Mineria en Mayoc (Committee of People Affected by the Mining) Commission hearing that year. Since the death threats began, CIEL has denounced the Commission's call on the Peruvian Government to take the necessary measures to help other human rights defenders. In response, Peru has provided police protection and the Partners will continue to do everything they can to support community members and continue to monitor the implementation of the ruling[43].

[43] www.ciel.org/Hre/HRE San Mateo html accessed 20.05.2012.

The IACHR's request to the Peruvian Government was to take precautionary measures to life and personal integrity of the many Peruvian Communities that have suffered harm. Also, the IACHR's ruling recognizes the "human rights and environment" linkage on human, and especially, children's health. The recognition of such linkages has been on the ground that pollution is a matter of environmental management and that every person needs levels of protection. Furthermore, the IACHR's decision sets an important precaution of responsibility with respect to toxic waste dumps that affect surrounding communities.

In November 2004, the IACHR decided that the petition in the San Mateo case was to explore a *"friendly settlement"*. The IACHR reached its decision on the admission of the Peruvian Government. Indeed, Peru had argued that the petition was inadmissible and had exhausted domestic remedies.

There are several key issues that need to be resolved, without which, by not carrying out its duty to respect and guarantee the human rights of the community at all, the State did not comply with several of the precautionary measures requested to implement a program for specialized medical care for the San Mateo residents. They did not carry out remediation of the environment, soil, subsoil, water or land which had been contaminated by toxic mine tailings. These measures should carry out immediately.

Also special attention should be given to the children that were affected by the contamination which been shown to have long and sometimes irreversible impact on intellectual development. Finally, the State has not compensated the victims in their material losses, which include lost crops, animals, time at work and this case, the victims.

4.3. ACCESS TO ENVIRONMENTAL INFORMATION. REFERENCE FOR A PRELIMINARY RULING IN THE PROCEEDINGS BETWEEN W. MECKLENBURG AND KREIS PINNEBERG – DER LANDRAT (1998) ECR I-3809[44]

Mr. Mecklenburg and the County (Kreis) Pinneburg disagreed about the right of access to information relating to the environment.

Kreis Pinneburg prepared planning approval for the construction of a road. Mr. Mecklenburg asked the Kreis to send him a copy of the statement of views which the competent countryside protection authority had issued with regard to the planning approval of the road. The Kreis refused, arguing that the statement of views was not information relating to the environment, but rather an assessment of available information. Also, it considered that the planning approval procedure was a "procedure" under Article 3(2) of Directive 90/313, which allowed the competent authority to refuse access to information.

During the administrative appeal procedure, Mr. Mecklenburg could not obtain more positive decision by the administration; thus, he introduced court proceedings. The administrative court rejected his application. On appeal, the Appeal Court asked the Court of Justice for a preliminary ruling whether the statement of views of a "subordinate countryside protection authority" which participated in development proceedings as a representative of public interests was a measure which, under Directive 90/313, gave individuals the right of access to information, i.e. to seeing that statement; furthermore, the Appeal Court asked whether the proceedings of an administrative authority were "preliminary investigation proceedings" in the meaning of Directive 90/313.

In 1998, the United Nations (Economic Commission for Europe) opened for signature, the Aarhus Convention on access

[44] Case C-321/96 Mecklenburg v Kreis Pinneberg-Der Landrat [1998] ECR I-3809.

to information, public participation in decision-making and access to justice in environmental matters.

The Convention was signed by the European Community and all its Member States, though with some delay by Germany, it entered into force in autumn 2001. The Convention is, as regards its structure, modeled on Directive 90/313. It makes access to environmental information available to "the public" upon request, without an interest having to be stated. For the rest, it extends the definitions of "information relating to the environment" and "public authority" with regard to the definitions of Directive 90/313, provides for further details on the form in which the information has to be made available, shortens the deadlines for the administrations' reactions and restricts the possibility to refuse access to information.

The Community is preparing to adhere to the Convention. As regards the provisions of the Convention relating to access to information, the Commission submitted, in summer 2000, a proposal for a directive on access to information which is intended to replace, after its adoption, Directive 90/313 and to provide for–minor–adjustments, in order to make the new text fully compatible with the provisions of the Aarhus Convention; at the same time, the Commission published a report on the application of Directive 90/313 in the Member States.

CONCLUDING REMARKS

Many international agreements concluded after the 1972 same as numerous acts of non-binding force promote human rights in relation to the environment. They promote and protect human rights in relation to environmental questions and in the framework of Agenda 21. The environmental values may be identified in bot bilateral and multilateral human rights acts both universal and regional jurisdiction. In some of them one can identify rights directly focusing on the environmental problems in other protection of the environment is a consequence or even precondition of the protection of human health, good conditions of living or development

Development of human rights to the environment started with the creation of material warranties of environment which is healthy and suitable for living. At the global level, some human rights treaties include the value of the environment in their systems of protection, such as the Convention on the Rights of the Child and ILO Convention 169 concerning Indigenous and Tribal Peoples in the Independent Countries. The experts noted that, at the regional level, the African Charter on Human and Peoples' Rights and the Protocol of San Salvador to the American Convention on Human Rights expressly recognize the right to live in a healthy or satisfactory environment. Similarly, a number of environmental treaties embody human rights approaches.

The acts which contained material rights to the environment were either very imprecise or did not have a binding force. Problems with potential practical use of material human rights for the protection of the environment shifted the attention of policymakers towards procedural human rights and their potential influence on the environment. The experts found that the national and international levels Principle 10 of the Rio Declaration (on access to information, participation and effective remedies has played an important role in fostering connections between human rights and environmental approaches. Te experts observed that multi-lateral agreements at the global and regional level have developed Principle 10 of the Rio Declaration by establishing mechanisms for the exercise of procedural rights, in particular, the right to environmental information and to public participation in decision-making. This was reflected, for example, in the 1998 Aarhus Convention on Access to information, Public Participation and Access to Justice in Environmental Matters, which aims to provide effective means for the exercise of procedural rights in the field of the environment. Other international developments, for example, treaties dealing with civil liability regimes, have developed mechanisms of redress for individuals in relation to environmental and related harms[45].

[45] A. Kiss, D. Shelton, *International Environmental Law*, Martinus Nijhoff Publishers, Leiden 2004, p. 725–731.

In relation to procedural matters, the experts noted that broad recognition of the linkage between human rights and the environment since the UNCED, (United Nations Central Environmental Development) has come through the development of Principle 10 of the Rio Declaration on Environment and Development States and international organizations are increasingly recognizing the rights of access to information, public participation and access to justice. A notable example of such progress was the entry into force of the 1998 Aarhus Convention. The experts recognized the need for further developments in this regard, including through the adoption of new international legal instruments (at the regional level or, some suggest, the global level) to provide effectively for rights of access to information, public participation in decision-making and access to justice.

In relation to substantive matters, a growing body of case law from many national jurisdictions is clarifying the linkages between human rights and the environment, in particular by: (1) recognizing the right to a healthy environment as a fundamental human right; (2) allowing litigation based on this right and facilitating its enforceability in domestic law by liberalizing provisions on standing; (3) acknowledging that other human rights recognized in domestic legal systems can be violated as a result of environmental degradation. The experts recognized the important role that the judiciary (national and international) can play in this regard, and emphasized the need to sensitize and provide further training for judges, lawyers and public officials.

We should support the growing recognition of a right to a secure, healthy and ecologically sound environment, either as a constitutionally guaranteed entitlement/right or as a guiding principle of national and international law.

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