

The right to be green:
using human rights law to achieve
environmental protection

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Outline

- How does human rights law make space for environmental concerns?
- Do we have a right to an environment of a particular quality?
- Should such a right be added to international human rights law?
- Would a right to a good environment be compatible with human rights theory?
- With wild law??
- What can human rights law offer in terms of achieving environmental objectives?

The environment in human rights law

1. A healthy environment as a precondition of the enjoyment of fundamental human rights;
2. A separate right to an environment of a certain standard

Environmental dimensions of existing rights:

- Environmental factors impact on enjoyment of human rights:
 - direct impact – specific environmental problem impedes individual's or community's ability to enjoy a specific right
 - Indirect impact - poor environmental conditions affect capacity to enjoy rights generally, or impede government's ability to protect rights
- Environmental protection is necessary to achieve full enjoyment of human rights
- Environmental harm can amount to a violation of human rights

The right to health

- *International Covenant on Economic, Social and Cultural Rights*: 'right of everyone to the highest attainable standard of physical and mental health' (art 12)
- *Convention on the Rights of the Child; CERD & CEDAW*
- General Comment 14: includes wide range of socio-economic factors and underlying determinants of health, including 'food, nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment'.
- Also includes 'the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.'

The right to an adequate standard of living

- ICESCR: 'the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions' (art 11)
- General Comment 12: implies right to adequate food
- General Comment 15: implies right to water

Rights of indigenous peoples and minority groups

- *International Covenant on Civil and Political Rights*: Members of ethnic, religious or linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practice their own religion, or to use their own language (art 27)
- International Labour Organisation, Convention 169: protects the environment of indigenous territories and traditional activities such as hunting, fishing, trapping and gathering

A right to a good environment?

- A proposed new addition to human rights law
- Many suggested definitions:
 - Right to a good environment
 - A clean environment
 - A decent environment
 - A healthy environment
 - A healthful environment
 - A safe environment
 - A sound environment

How would it work?

- All people could claim a right to a good environment
- Environmental degradation would be a violation of human rights
- Right would stand independent of other rights – no need to prove violation of other existing rights (eg health, life, privacy)
- States would have corresponding obligation to safeguard the environment

Current status of right to a good environment

- No broad multi-lateral treaty includes the right
- Regional human rights treaties:
 - *San Salvador Protocol to the American Convention on Human Rights*: ‘everyone shall have the right to live in a healthy environment and to have access to basic public services’
 - *African Charter on Human and People’s Rights*: ‘all peoples have the right to a general satisfactory environment favourable to their development’.
- Soft-law: *Stockholm Declaration*; *UN Declaration on Human Rights and the Environment*.

Current status – national constitutions

The constitutions of around 100 nations include a right to a good environment in some form

- Some protect the right of individuals / peoples to an environment of a particular quality
- Some protect the right of individuals / peoples to an environment which is fit for their development or for other human needs
- Some provide that the State has an obligation to protect the environment
- Some provide that the natural world has rights which are to be protected by the State
- Some impose an obligation to preserve the environment for the benefit of future generations

Current status – customary international law?

- Consistent state practice?
 - *Opinio juris?*

 - Wide range of language
 - Ambiguous meaning
 - Various degrees of justiciability and enforceability
- Unlikely right has achieved status as customary norm

Criticism facing the right to a good environment

- Unnecessary proliferation of new rights – undermines existing rights
- Inconsistent with human rights theory – not appropriate to make the environment an independent right
- Anthropocentrism – not appropriate to use human rights doctrine for environmental protection
 - Reinforces perception that the environment is there to be used by humans and to fulfil their needs
 - Makes humans the ‘victims’ of environmental harm
 - Subjugates rights of other species/natural systems

Some counter-arguments

- Interest theory of rights: we have rights to things which are in the human interest
 - We are all members of the global ecosystem and have an interest in its protection and preservation
 - A good environment is in the human interest, even where it does not fulfil other human rights, and could therefore be the subject of an independent human right.
 - Independence from other human needs or objectives can temper anthropocentrism
 - And acknowledge the inherent worth of the natural world

Benefits offered by human rights law

- Capacity building through human rights:
 - Fulfilling basic human needs and addressing poverty
 - Less likely to pursue development at any environmental cost
 - Less vulnerable to exploitation
- Corresponding obligations on States to respect, protect and fulfil; refrain from activities which violate human rights.

Benefits cont/...

- Enforcement mechanisms
 - International level (eg reporting procedures and complaints to Human Rights Committee or CESCR)
 - Regional level (eg European and Inter-American Courts of Human Rights)
 - National level (eg enforceable constitutional rights)
- Normative framework for decision making - if independent right to a good environment is included it could be balanced against other competing rights (eg economic and development rights)