

# HUMAN RIGHTS APPROACH TO SUSTAINABLE DEVELOPMENT

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**Abstract:** The Present day consensus reflects three foundational aspirations. First, that human beings should be able to enjoy a decent quality of life, second, that humanity should become capable of respecting the finiteness of the biosphere, and third, that neither the aspiration for good life, nor the recognition of biophysical limits should preclude the search for greater justice in the world. In a planetary system of finite resources, human activities motivated by an attitude of rampant consumerism and unsustainable patterns of production and consumption have never been as inhuman and callous towards environment as in the modern era of scientific and technological innovations. Man's greed attacks nature, environment and ecology and wounded nature backlashes on the human future. During the past few decades numerous incredible and devastating events have focused the domestic and global attention to the impending danger of environmental devastation, the depletion of resources, and a massive extinction of species. Issues such as climate change, trends in global warming, ozone depletion, acid rain, deforestation, desertification, toxic wastes and loss of biological diversity have resulted in increasing global awareness of the problems facing the planet earth. An unprecedented rise in human population has overburdened ecological and social systems. The foundations of global security are threatened. The global concern has been aptly echoed in the preambular assertion made at the Earth Summit in the year 1992.

Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well-being. Earth's resources are finite and there are ecological limits to growth which, unless we alter our ways, will sooner rather than later be exhausted. Environmental crisis involves social, political and economic aspects and also poses a philosophical problem. The most vital task is to build an environmental ethics that constructs an adequate

theory of intrinsic value of nature as a whole. Many theorists therefore suggested that environment management be approached from a human rights perspective. It is undeniable that the ecological balance is disturbed by human activity, yet humans are the ultimate victims of such degradation and therefore approaching environment management from a human rights point of view would go a long way in tackling the ecological concerns. Additionally, such an approach would help solve the aforementioned problems as human rights represent a core space which the State is obliged to respect and help effectively realise. The concept of sustainable development was placed on the international agenda with the release of the report *Our Common Future* by World Commission on Environment and Development (*Brundtland Report*) in 1987, where it was envisaged that

Human survival and well-being depends on success in elevating sustainable development to a global ethic. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice-versa, but there should be development while taking, due care and ensuring the protection of environment. To resolve this issue, the experts worldwide have come up with a doctrine called 'sustainable development' i.e. there must be a balance between development and ecology. In the past several years the field of sustainable development has shifted to an integration of international economic, social and environmental law with the goal of reducing poverty in developing nations.

Ever since man came on this earth, there has been an in born and intrinsic tendency to save his person and property. Expressed differently, the protection of one's person and property is inherent in the nature of man. Human rights are those rights, which any

human being on this earth must enjoy because of his being a human being. The most fundamental of all rights is threatened by environmental degradation and unsustainable development -- the right to life. Right to life being foremost human right implicates right to live without deleterious and perilous invasions of pollution, environmental degradation and ecological imbalances. Environment today is no longer a scientist's esoteric but one of the paramount legal concerns, jurist's curative commitments and focal agenda of modern socio-legal order. A legal system, therefore, is expected to rise to creative heights to indoctrinate environmentalism, deep ecological values and eco-centrism to augur an equitable and sustainable socio-legal regime.

**Keywords:** environmental degradation, biophysical limits, health and literacy

## INTRODUCTION

### Human Rights: Meaning and Concept

“**T**he right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised”.<sup>1</sup> Though the expression human rights seem to have a modern face, *Human Rights* are as old as human civilisation. Ever since man came on this earth, there has been an in born and intrinsic tendency to save his person and property. Expressed differently, the protection of one's person and property is inherent in the nature of man. Human rights are those rights, which any human being on this earth must enjoy because of his being a human being.<sup>2</sup>

The most fundamental of all rights is threatened by environmental degradation and unsustainable development -- the right to life. Right to life being foremost human right implicates right to live without deleterious and perilous invasions of pollution, environmental degradation and ecological imbalances. Environment today is no longer a scientist's esoteric but one of the paramount legal concerns, jurist's curative commitments and focal agenda of modern socio-legal order. A legal system, therefore, is expected to rise to creative heights to indoctrinate environmentalism, deep ecological values and ecocentrism to augur an equitable and

sustainable socio-legal regime.<sup>3</sup> However the task is quite assiduous because scientific and technological developments have either suppressed or surpassed the sublime harmony of creation. The terrorism of reckless technology has obliterated the happy fusion of science and human wellbeing. The arrogance of money-maniac vice of man repressed the rule of nature to achieve the rule over nature.<sup>4</sup>

International Human Rights norms received an impetus 50 years ago following the harrowing experience of mankind of the two world wars and the holocaust. The world community was appalled by man's capacity to destroy himself. For the first time the concept of human rights asserted itself formally and prominently in an official international document, namely the United Nations Charter. An Economic and Social Council was established under the Charter to initiate studies and reports with regard to international economic, social, cultural educational, health and related matters. Its mandate includes the promotion of human rights and fundamental freedoms for all.<sup>5</sup>

The United Nations Charter hoped to save succeeding generations from self destruction by proclaiming and establishing equal and inalienable rights of all members of the human family - great or small, virtuous or vicious, rich or poor, wise or foolish and their inherent dignity, regardless of birth, status, race, colour, sex, language, religion or political or other opinion.

Article 55 of the Charter of the United Nations requires the United Nations to promote: "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". Article 56 enjoins that: "all members pledge themselves to take joint and separate action in cooperation with the organisation for the achievement of the purposes set forth in Article 55".

The Universal Declaration of Human Rights which followed on the 10th December, 1948 was a standard setting declaration of value judgments; but had no legal sanction of its own. It was not a self-executing document. Although a non-binding instrument, the UDHR is widely acclaimed as laying the foundation for international human rights law. The UDHR contains both civil and political rights, and economic,

<sup>1</sup> The Declaration on the Right to Development, UNGA Res. 41/128, Article 1/1, December 04, 1986.

<sup>2</sup> Ranbir Singh, "Human Rights and the People of India", 40 *JILI* 116 (1998).

<sup>3</sup> Md. Zafar Mahfooz Nomani, "Enviro-Constitutional Ethos in Right-Duty Discourse: Towards Creation of Equitable and Sustainable Socio-Legal Order", 42: 2-4 *JILI* 432 (2000).

<sup>4</sup> A. Naess, *The Shallow and Deep Long-Range Ecology Movement: A Summary*, 53 (1993).

<sup>5</sup> UN Charter, Article 62.

social and cultural rights. The right relevant for the present discussion is contained in Article 25 which provides that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services".

Twenty years later, state Parties recognized in a binding instrument "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".<sup>6</sup> Although access to water is not mentioned here, this void was filled in 2002 when the Committee on Economic, Social and Cultural Rights, through its General Comments, recognized the right to water as a basic human right under Article 11 of the ICESCR. The General Comment provides that "The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements".<sup>7</sup> Unfortunately, these basic rights have remained elusive to the majority of the world's population. Despite the developments in the human rights field, many people have got poorer and marginalized, with a degrading environment exacerbating the issue, and the reference to the "continuous improvement of living conditions" has become a non-starter as many millions of people in the world today continue to live in squalor and starvation.

#### DEVELOPMENT AND HUMAN RIGHTS

The relationship between development and human rights has a long history, both in concept and in practice. It is important to recall that the story goes way back to the end of the Second World War, the most atrocious and destructive conflict humanity had ever experienced. No wonder that the founding fathers of the United Nations had pledged a strong commitment to the promotion and protection of human rights. In fact, the architecture of the United Nations, by its very Charter, is built on three main pillars: peace and security, development and human rights. Conceptually, these three pillars were linked, interrelated and interdependent, so much so, that there could be no peace and security without

development, no development without human rights and no human rights without peace and security. This trilogy was and remains the conceptual underpinning and basic mandate of the United Nations.

We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights.<sup>8</sup>

In practice, the interrelationship between peace and security, development, and human rights has not always been evident over the years. In fact, during the long period of the cold war, these three basic pillars of the United Nations architecture grew and evolved quite separately from one another without much interaction among them. As a consequence, during that period there were somehow three separate systems and communities at work within the United Nations, i.e. the United Nations collective security system, the United Nations development system and the United Nations human rights system. It is recalled that up to the late 1980s, there was little or no connectivity and linkages as far as these three systems were concerned. They were operating within the strict confines of their mandate, having their own separate constituencies both at the level of United Nations member States as well as at the level of the United Nations Secretariat. Those were the years when the United Nations Security Council was not dealing with development issues or human rights considerations, when the United Nations Development Programme (UNDP) was focusing almost exclusively on economic development issues without integrating human rights into its programme analysis and planning, and when the then United Nations Centre for Human Rights spent most of its energy and resources on the promotion of the major United Nations human rights covenants, in priority over the United Nations Covenant on Civil and Political Rights, and this much in isolation from peace and security considerations and from the United Nations development community.

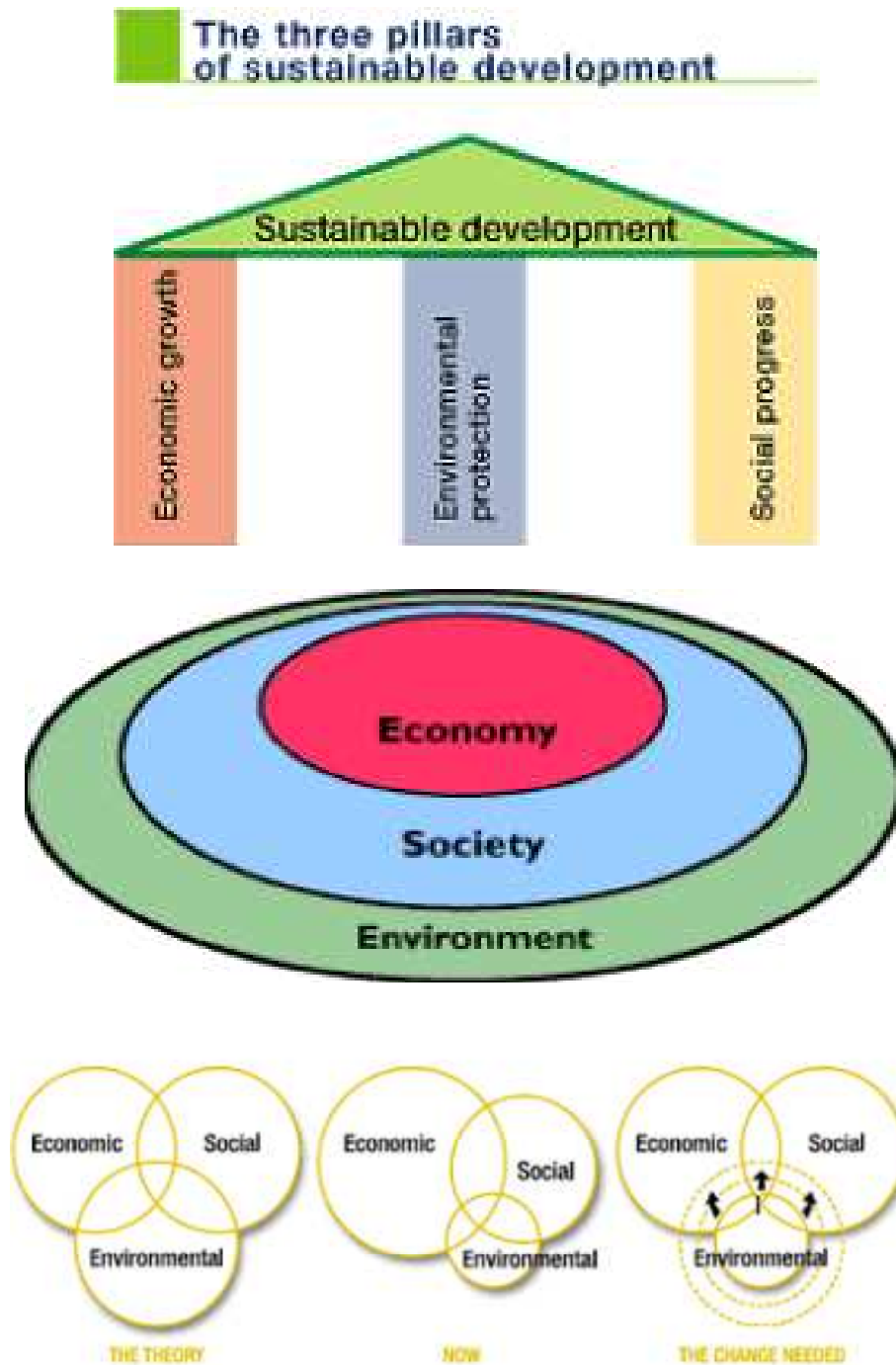
The right to development implies the right to improvement and advancement of economic, social, cultural and political conditions. Improvement of global quality of life means implementation of change that ensures every person a life of dignity; or life in a society that respects and helps realize all human rights.

Social development implies that the basic needs of the human beings are met through the implementation and realization of human rights.

<sup>6</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Article 11.

<sup>7</sup> *General Comment No. 15* (2002) on "The Right to Water", E/C.12/2002/11, 26 November 2002.

<sup>8</sup> Former UN Secretary General Kofi Annan, *Larger Freedom: Towards Development, Security and Human Rights for All*, 3 (2005).



**Figure 1 :** The three pillars of sustainable development, the theory, the reality and the change needed to better balance the model

Source: <http://www.cmsdata.iucn.org>

### The reciprocal relationship between rights holders and duty bearers



**Figure 2 :** The reciprocal relationship between rights holders and duty bearers

Basic needs include access to education, health services, food, housing, employment, and the fair distribution of income. Social development promotes democracy to bring about the participation of the public in determining policy, as well as creating an environment for accountable governance. Social development works to empower the poor to expand their use of available resources in order to meet their own needs, and change their own lives. Special attention is paid to ensure equitable treatment of women, children, people of indigenous cultures, people with disabilities, and all members of populations considered most vulnerable to the conditions of poverty.

Economic development expands the availability of work and the ability of individuals to secure an income to support themselves and their families. Economic development includes industry, sustainable agriculture, as well as integration and full participation in the global economy. Social and economic developments reinforce and are dependent on one another for full realization. Sustainable Development ensures the wellbeing of humans by integrating social development, economic development and environmental conservation and protection. Integrating these components is definitely not easy.

Sustainability is a simple concept, actions taken in the present to improve the human conditions and the earth system in which we live need to be lasting and benefit future generations.<sup>9</sup> To achieve sustainability,

<sup>9</sup> *Ibid.*

decisions at all levels must consider the three interconnected pillars of sustainable development—socio-cultural, economic and environmental systems.

#### THREE VISUAL REPRESENTATIONS OF SUSTAINABLE DEVELOPMENT: PILLARS, CIRCLES, INTERLOCKING CIRCLES

A diagram indicating the relationship between the three pillars of sustainability suggesting that both economy and society are constrained by environmental limits.

“A broad vision of human rights must be entrenched to achieve sustainable human development. When adhered to in practice as well as in principle, the two concepts make up a self-reinforcing virtuous circle”.<sup>10</sup>

As reflected in the International Law Association New Delhi Declaration,<sup>11</sup> the essential relevance of human rights to sustainable development requires it to be integrated into the concept in broader terms; **human rights** can be regarded as mainly relating to the social pillar, **development law** as relating to the economic pillar, and **environmental law** to the environmental pillar of sustainable development.

Concerns surrounding development policies and their economic and ecological impact are *human rights issues*. Reinforcing the right of every woman, man,

<sup>10</sup> *Ibid.*

<sup>11</sup> ILA, New Delhi Declaration of Principles of International Law Relating to Sustainable Development, The 70<sup>th</sup> Conference of the International Law Association, April 2-6, 2002.

youth and child to ecologically sound development are universal human rights standards defined in the Universal Declaration of Human Rights, The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenants and other widely adhered to international human rights treaties and Declarations serve as powerful tools that must be put to use in implementing Agenda 21 and the other commitments made at Rio!

"We are deeply convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people. Equitable social development that recognizes empowering the poor, particularly women living in poverty, to utilize environmental resources sustainably is a necessary foundation for sustainable development".<sup>12</sup>

Human rights are legal rights enshrined in the Universal Declaration of Human Rights; various human rights Covenants, Conventions, Treaties and Declarations; Regional Charters; National Constitutions and laws. But human rights are rights not solely because they are recognized in legal instruments.

Human Rights are central to human development. Human Rights refer to those rights that are inherent to the person and belong to all human beings regardless of their race, colour, sex, language, religion, political, national or social origin, poverty, birth or other status. They define and affirm our humanity. They exist to ensure that human life remains sacred. Human rights and sustainable human development are interdependent and mutually reinforcing. Development is unsustainable where the rule of law and equity do not exist; where ethnic, religious or sexual discrimination are rampant; or where large numbers of people live in abject and degrading poverty. Similarly, human rights are enhanced when gender equity or poverty reduction programmes empower people. They exist to guarantee that injustice is prevented or redressed. Human rights, and in particular the human right to development, provide the values, principles and standards essential to safeguard that most precious of all rights — the right to be human.

(a) Human rights, when upheld, spell the difference between being and merely existing. (b) They safeguard both human dignity and human identity (individual and collective) and thus bring purpose and worth to existence. (c) They protect the physical integrity of a person and the human security of all peoples. (d) Freedom from fear and freedom from want constitute the minimal essential conditions of being, for individuals, communities and peoples. (e) Human rights are holistic and interdependent, as indeed they must be since they inhere in the human person. Human rights are both individual and collective, as indeed they must be since no person is an island. Indeed our individual, solitary existence draws meaning from our social interactions: with family, friends and community.

Hence, human rights define and defend the future of the human race, being an essential component to achieving sustainable human development. Any effort toward this goal, including present development focus on efficiency and effectiveness, would benefit from the legitimacy and urgency that the human rights based approach carries.

#### THE EVOLVING CONCEPTS

The situation has significantly evolved and changed over the last two decades. The first signpost of change came about with the adoption by the United Nations General Assembly of the Declaration on the Right to Development which explicitly affirmed the human right to development. This proclamation was strengthened by the 1993 Vienna World Conference on Human Rights as well as by the various world conferences and summits which took place under United Nations auspices during the 1990s, bringing basic human rights and freedoms to the fore, and culminating with the Millennium Declaration and the Millennium Development Goals (MDGs), based on an integrated and interdependent set of human rights, identified as the underpinning of the process of economic and social development.<sup>13</sup> In parallel, there was a redefinition of the process of development itself, a shift away from the purely "economistic" approach to development, towards development defined as human development, as a comprehensive, people centred economic, social, cultural and political process through which all the human rights and fundamental freedoms of all individuals and entire

<sup>12</sup> Fourth World Conference on Women: Action for Equality, Development and Peace, Beijing, China – participated by 189 Governments and more than 5,000 representatives from 2100 non-governmental organisations, September, 1995.

<sup>13</sup> A brief analysis of the UN Summits of the 1990s, see *The World Conferences: Developing Priorities for the 21st Century*, UN Briefing Papers, DPI, United Nations, 1997.

populations can be realised, civil and political rights, economic, social and cultural rights.<sup>14</sup>

Added to this came the concept of sustainability, first formulated by the World Commission on Environment and Development, the Brundtland Report, defining the concept of sustainability as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".<sup>15</sup> The "Earth Summit" in Rio (1992) further reaffirmed and defined the principle of sustainability in its final declaration and set a specific agenda (Agenda 21) for its implementation.<sup>16</sup> In short, the human dimension in the quest for sustainable development has become the key factor and main ingredient.

Thus, sustainable development today has become the prevailing development paradigm both in terms of process and outcome. It can only be achieved through the gradual integration and realisation of the basic human rights and fundamental human freedoms. In this sense, human rights and sustainable human development are interdependent and mutually reinforcing concepts. One cannot be achieved without the other. This is what is essentially meant by the rights-based approach to development, an approach increasingly advocated and practiced by the United Nations development agencies and programmes. Reference is also made to the 1997 reform programme of the United Nations Secretary General, a strong call to mainstream human rights across all areas of the organization's work, including operational activities at country level. In response, the Office of the High Commissioner for Human Rights (OHCHR) is playing an increasingly important role in support of this mainstreaming effort, exemplified by entering into partnership arrangements (MOUs) with a number of development-oriented United Nations bodies which are integrating or intend to develop human rights approaches in their economic and social policy work.

It is impossible to separate the well-being of the human being from the well-being of the earth. Therefore truly sustainable development places just as much importance on the protection of the earth and the earth's resources. International documents that include the environmental aspect of development

<sup>14</sup> *The Human Development Report, 2000* on the relationship between Human Rights and Human Development.

<sup>15</sup> Our Common Future, Report of the World Commission on Environment and Development, 43 (1987).

<sup>16</sup> A Summary of the outcomes of the UN Conference on Environment and Development, *UN Briefing Papers*, 21-27.

affirm and reaffirm that "human beings are at the centre of concern for sustainable development. ...". As the goal of sustainable development is to permanently improve the living conditions of human beings, social and economic developments must be carried out in a way that is environmentally and ecologically sound; ensuring the continual rejuvenation and availability of natural resources for future generations.

Active participation in sustainable development ensures that those who are affected by the changes are the ones determining the changes. The result is the enjoyment and sharing of the benefits and products generated by the change. Participation is not exclusive, ensuring equitable input, self-determination and empowerment of both genders and all races and cultural groups.

### **Environment, Sustainable Development and Human Rights**

"Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.... In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it . . . ." - *Rio Declaration*

### **Brundtland Commission Report**

As a matter of fundamental human right, the importance of environmental protection in the context of sustainable development was first clearly enunciated in the 1987 Brundtland Commission Report ("Our Common Future"). It defined the concept of sustainable development as follows:

"Humanity has the ability to make development sustainable -- to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs".

The Brundtland Commission also included a set of General Principles, Rights and Responsibilities for achieving environmental protection and sustainable development. Its broad first principle of human rights was presented as follows: "All human beings have the fundamental right to an environment adequate for their health and well-being".

### **Agenda 21, Rio Declaration and the World Summit on Sustainable Development**

Since the initial publication of the Brundtland Commission Report, global population has increased from 5.0 billion in 1987, over 6.2 billion in mid-2002 to 7 billion in 2011, with current estimates of 9 billion people living on earth in 2050. This unprecedented population growth has placed an

immense strain on human communities and natural ecosystems around the world. This is especially true in developing countries, where many of its inhabitants continue to reside in abject poverty, where they lack life's basic needs and amenities, such as adequate shelter and food, clean drinking water, unpolluted air, proper sanitation facilities or access to primary health care.

At the *United Nations Conference on Environment and Development* (UNCED, also known as the "Earth Summit") held in Rio de Janeiro in June 1992, some 178 countries adopted *Agenda 21*, the centerpiece report of UNCED, which enunciated a detailed road map for achieving a more ecologically sound and economically sustainable future. In its preamble, *Agenda 21* stated that "Integration of environment and development concerns and greater attention to them will lead to the fulfillment of basic needs, improved living standards for all, better protected and managed ecosystems and a safer, more prosperous future. No nation can achieve this on its own, but together we can -- in a global partnership for sustainable development".

In the *Rio Declaration on Environment and Development*, which was also adopted at the 1992 UNCED meeting, representatives from developed and developing countries recognized the right to a clean and healthy environment as an overarching human entitlement: Principle 1: Human beings are at the Centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

In addition, the *Rio Declaration* explicitly affirmed the rights of indigenous communities in managing their environment in order to preserve their "identity, culture and interests and their effective participation in the achievement of sustainable development" (*Article 22*), and for the protection of the "environment and natural resources of people under oppression, domination and occupation" (*Article 23*).

The UN's World Summit on Sustainable Development (WSSD) held in Johannesburg, 2002, stated in its **Plan of Implementation** that "Peace, security, stability and respect for human rights and fundamental freedoms, including the right to development, as well as respect for cultural diversity, are essential for achieving sustainable development and ensuring that sustainable development benefits all."

The relationship between a safe and healthy environment and human rights has been on the global agenda since the preparations for the 1972 Stockholm Conference on the Human Environment, when the 45th session of the Economic and Social Council noted the effect of environmental factors on "the

condition of man, his physical and mental well-being, his dignity and his enjoyment of basic human rights in developing as well as developed countries".

This idea was reflected in principle 1 of the 1972 Stockholm Declaration, which stated that man's natural and self-made environment is "**essential to his well-being and to the enjoyment of basic human rights and the right to life itself**". Despite this strong statement, such a human rights based argument has not been followed in subsequent environmental declarations, such as the 1992 Rio Declaration. Instead, these declarations have linked human well-being to the state of the environment without any explicit reference to human rights.

The link between human rights and the environment has developed in a fragmented manner across national, regional and international levels in case law, regulations and international agreements. As a result, much of the linkage between human rights and environmental law has been highlighted through decisions of national courts and regional human rights bodies. This has resulted in rapid development of jurisprudence, but the piecemeal development has lacked a comprehensive framework linking human rights and the environment. This has resulted in a number of gaps in our understanding of the linkage between the two concepts.

In general, there are three broad approaches to linking human rights and the environment. The **first** is to view a quality environment as an underlying precondition for the enjoyment of existing human rights, rather than a specific right in itself. This approach is being increasingly followed in the decisions of regional human rights bodies relying on, for example, the right to life and the right to privacy.

The second approach involves focusing on the procedural rights of people in relation to control over their environment, such as right to participation in environmental decision-making and access to justice. The UNECE Aarhus Convention provides an example of a regional treaty that takes this approach.<sup>17</sup>

The final, and most contested, approach involves a substantive justiciable right to a certain quality of environment. Provisions to this effect are found in some national constitutions, such as those of South Africa, the Russian Federation and Spain, and in the African Charter on Human and Peoples' Rights. South African jurisprudence and the *Ogoniland*

<sup>17</sup> John Drexhage and Deborah Murphy, *Sustainable Development: From Brundtland to Rio 2012, Background Paper*, UN Headquarters, New York, (September, 2010).



decision<sup>18</sup> of the African Commission on Human and Peoples' Rights outline how these provisions, even when qualified or limited, can still impose a minimum standard on States to protect the environment.

Several efforts have sought to clarify the linkage between these important concepts at the international level. In 1994, a draft declaration on Principles on Human Rights and the Environment was prepared by a group of experts, and it was presented before the UN Commission on Human Rights in 1995. **This declaration proposed a substantive right to "a secure, healthy, and ecologically sound environment" and included the concept of intergenerational equity.**

However, both the Commission and States, particularly the United States and European countries, did not favour this approach, and thus no further progress was made. In 2002, the UN Commission on Human Rights invited the United Nations Environment Programme (UNEP) and the Office of the High Commissioner for Human Rights (OHCHR) to convene an experts meeting on Human Rights and the Environment in Geneva. The Commission was further prompted to consider the issue by a report of the Secretary-General titled, 'human rights and the environment as part of sustainable development.' Following these activities, the Commission on Human Rights adopted Resolution, which invited the relevant UN Agencies to "continue to coordinate their efforts in activities relating to human rights and the environment" across various aspects of the development agenda. This resolution focused on increasing consideration of the impact on the environment within other areas. Despite this, momentum on this issue has been hard to gather, particularly following the replacement of the Commission of Human Rights by the Human Rights Council in 2006, after which the topic was not readdressed.

Growing recognition of the human impact on environmental problems and the spectre of unstoppable climate change have placed this issue on the international agenda once more. Key to moving this process forward has been the landmark 2009 resolution of the Human Rights Council, which for the first time acknowledged at the international level that climate change has both direct and indirect effects on the enjoyment of Human Rights. This resolution has served to underline again the close linkages between human rights and environment and

the need to clarify these linkages at the international level.<sup>19</sup>

A group of 40 distinguished scholars, experts, and representatives of intergovernmental organisations met for two days in Nairobi, to discuss the link between Human Rights and the Environment. This *High Level Expert Meeting on the New Future of Human Rights and Environment: Moving the Global Agenda Forward* was co-organised by UNEP and OHCHR. The goal of the meeting was to provide guidance to both organisations on how best to move forward on this issue, and how to clarify the linkages between the two concepts on the international level. The experts took note of the three approaches identified above to linking human rights and the environment. While, not expressing a preference for a particular path, the experts provided an assessment of the advantages and disadvantages of each approach. In particular given that the first two approaches (the environment as precondition for human rights and procedural rights over the environment) involve the application of existing obligations, they may provide a quicker and easier path than developing a new human right, particularly given the disputes over the justiciability and definition of a substantive right.

Considering the nature of the link, four strategies for consideration were outlined by OHCHR and UNEP to help bring greater coherence to this area: (a) pursuing an international declaration; (b) seeking a UNEP Governing Council or Human Rights Council resolution; (c) mandating an expert group to produce a comprehensive outline of the law in the area; (d) appointing a Special Rapporteur on human rights and the environment. There was general agreement between all parties that whatever strategy was pursued, there was an urgent need to conduct a review of international, national and regional case law and practice, to clarify how the linkages between human rights and a certain quality of environment have already been demonstrated and implemented.

The need to be both ambitious and realistic in approaching these strategies was emphasised by many experts. While an intergovernmental declaration might be the most authoritative way to address the linkages, this process could take many years, undermining the urgency for action in this area. On the other hand, while expert reports can be developed faster, they are less authoritative

<sup>18</sup> *Maya Indigenous Community of the Toledo Dist. v. Belize*, Case 12.053, Inter-Am C.H.R., Report No. 40/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 at 727 (2004).

<sup>19</sup> "United Nations Environment Programme, Environment for Development, High Level Expert Meeting on the new future of Human rights and Environment", 30 November – 1 December 2009, available at <http://www.Unep.org/environmentalgovernance/event/s/humanrightandenvironment>

instruments. Given how much international law has already been developed in this area, any process forward should concentrate on obligations that governments have already agreed to and address gaps in a consistent manner, rather than attempt to develop entirely new obligations.

Certain specific emerging issues on the linkage between human rights and the environment are, (a) issues of strengthening existing procedural rights, (b) intergenerational equity, (c) climate change and human rights, (d) toxic wastes and human rights, and (e) indigenous peoples' rights. The relationship between indigenous peoples' rights and environmental protection generated a lot of discussion, with experts noting that environmental problems in developing countries almost always involve this dimension. This also highlighted a need for greater integration of human rights into the UN environmental agenda, both within agencies such as UNEP and UN-HABITAT and UN Country Programmes, as well as a greater awareness of environmental issues within UN human rights bodies.

The discussions resulted in an ambitious yet realistic roadmap for the future of Human Rights and the Environment, which advises UNEP and OHCHR on how to move forward and outline what further work is required. The first proposed step was a Joint Report between OHCHR and UNEP on the topic of Human Rights and Environment. This experts' meeting provided a clear outline of the various pathways that could be followed to carry the global agenda forward and the advantages and disadvantages of each.<sup>20</sup>

#### **PROCEDURAL RIGHTS: THE ECE AARHUS CONVENTION**

Procedural rights, such as rights to information, participation and access to justice, have the potential to empower civil society groups to make social and environmental claims and to hold State bodies and private sector actors accountable for their actions or omissions, while exercising basic civil and political rights to be free from harassment and abuse. While a number of states still refuse to recognize the human right to a clean environment, the international jurisprudence developed around numerous universally-recognized substantive rights, such as the right to life, health, food and housing, offers robust legal and conceptual bridges between the social, economic and environmental dimensions of sustainable development, and could shift priorities in the political economy of resource allocation and distribution.

Improvements have taken place over the years in terms of articulating the link between human rights

and the environment through the adoption of new regional and national legal instruments that give expression to procedural rights, mainly the right to access to information, public participation in decision making, and access to justice. The application of procedural rights rests on the principle of public participation in environmental protection and sustainable development affairs in the public sphere through existing civil and political rights; i.e. freedom of expression, freedom of association, equal protection of the law and non-discrimination.

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), which was drafted under the auspices of the United Nations Economic Commission for Europe (ECE), entered into force in October 2001. It constitutes an example of a regional legal instrument giving effect to procedural rights in the context of environmental questions, and offers what former UN Secretary-General Kofi Annan has characterized as "by far the most impressive elaboration of Principle 10 of the Rio Declaration".<sup>21</sup> He also pointed out that although the Convention is regional in scope, its significance would be global.

The Aarhus Convention ensures public access to environmental information held by public authorities, and establishes mechanisms to collect and disseminate such information. Public participation in decision making relates to: (a) Specific activities, such as permit procedures that may have an effect on the environment; (b) Early public participation in plans, programmes and policies relating to the environment; (c) Executive regulations and rules that have a general application on environmental questions. In laying out provisions on access to justice, the Convention covers cases of violations of procedural rights, i.e. participatory and informational rights, as well as cases questioning the substantive legality of a decision.

#### **SUBSTANTIVE RIGHTS AND SUSTAINABLE DEVELOPMENT**

Most global and regional human rights bodies have considered the impact of environmental harm on the realization of fundamental human rights without necessarily upholding a basic right to a safe and healthy environment. Instead, these judicial bodies have based their rulings on violations of existing, universally recognized substantive rights, such as the rights to life, property, health, and information, as a result of water and air pollution, deforestation, and other types of environmental damage. A large number of cases presented before the Human Rights

<sup>20</sup>

*Ibid.*

<sup>21</sup>

*Supra* note 8.

Committee (HRC) on violations of the human rights of indigenous peoples arise out of infringements of land rights in combination with environmental degradation. The HRC considered, for instance, *Lubicon Lake Band v. Canada*,<sup>22</sup> the threat posed by oil and gas exploitation to the lives and traditional ways and culture of the Lubicon Lake Band, a Cree Indigenous community living within the borders of Canada in the Province of Alberta. The HRC found that such oil and gas concessions in the Band's land were disregarding their minority and cultural rights as stipulated in Article 27 of the International Covenant on Civil and Political Rights.<sup>23</sup>

#### UNDERSTANDING THE RIGHTS-BASED APPROACH

It makes perfect sense to link human rights to sustainable development: the right to life cannot be realized without basic rights to safe water, air and land. A human rights approach allows the quality of life of all people to be a central part of decision-making.<sup>24</sup>

Human rights approaches to sustainable development have both a national and international dimension. While, State Parties to the various international human rights treaties are responsible for protecting and promoting the rights of people under their own jurisdiction, they also have a duty to cooperate internationally and afford international assistance where needed in the realization of the human rights of all people. This duty stands in sharp contrast to some of the more salient concerns raised in the review of implementation of the 1992 Earth Summit agreements (notably on the role of the international community in financing the implementation of Agenda 21), as well as to concerns raised about current forms of governance of global trade and finance.

It was actually at the historic UN Stockholm Conference on Environment and Development in 1972 that the notion of sustainable development was

<sup>22</sup> *Lubicon Lake Band v. Canada*, Communication No. 167/1984 (26 March 1990), U.N. Doc. Supp. No. 40 (A/45/40) at 1 (1990). Submitted by Chief Bernard Ominayak and the Lubicon Lake Band (represented by Counsel).

<sup>23</sup> Article 27, In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

<sup>24</sup> International Institute for Environment and Development Opinion paper, available at [www.iied.org](http://www.iied.org).

born, and the interconnection between environment and development was finally brought together under one concept. Again in 1992, the Rio Earth Summit brought the international community together to address global sustainable development challenges including issues such as climate change, health and the environment, biodiversity protection, and poverty alleviation.

However, still, many people are living in poverty, and disparity between the rich and the poor is increasing gradually over time. Furthermore, the environmental, the economic, and socio-cultural pillars of sustainable development continue to be addressed separately.

In light of this minimal progress, a rights-based approach has been proposed. Rights are central to every aspect of development, and a people-centered approach may be more successful at addressing the vicious cycle of poverty, environmental degradation, and conflict.<sup>25</sup>

Proponents of the rights based approach are supporting three main areas of focus upon which to base the movement towards increased sustainability: (a) The right to a clean and safe environment (b) Access to information and public participation in decision-making (c) The right to promote and defend the protection of the environment and human rights.

This approach is based on international human rights standards and is directed towards promoting, enforcing and protecting the presence of human rights. In theory, the rights-based approach aims to integrate established human rights standards into the discussions, policies, conventions, and processes that address sustainable development. It also seeks to emphasize the need for new rights that will explicitly recognize the right to a healthy environment for all.

The easiest way to understand the linkages between human rights and sustainable development is to take any local or global issue which is presently considered a challenge to the state of world affairs e.g. oil spills in public waters and analyse it with the following questions:<sup>26</sup>

(a) Who is benefiting from this situation? (b) What are the negative consequences of this situation, and who is bearing the burden? (c) Are the interests of the humans being identified above equally represented in the decision-making process? (d) Will the

<sup>25</sup> C. Miller, *Environmental Rights; Critical Perspectives*, 52 (1998).

<sup>26</sup> Margreet Wewerinkle, Vicente Paolo, *Addressing Climate change through Sustainable development and the Promotion of Human Rights*, South Centre, 2010.

consequences of this event, and the actions taken to moderate it, have an impact on future generations?

These four questions demonstrate to us that the ability to sustain basic standards of living in a healthy environment is not shared equally by all, as some people bear a disproportionate amount of the burden and do not always have their interests represented in the decision-making process. According to the UNHCHR, the rights-based approach to sustainable development includes the following elements:<sup>27</sup>

(a) Linkages to rights in all systems (b) Accountability of decision-making bodies to those entitled to rights (c) Empowerment of the recipients of development programmes (d) Participation from all sectors of the public (e) Non-discrimination and attention to vulnerable groups

So, integrating this Rights-based approach to sustainable development, will stress the need to educate the public so that civil society and decision-makers consider issues of development and the environment in the context of human rights where any activity which impinges on the rights of the people involved, will be considered inappropriate. This will indirectly entrench consideration of human rights as central to gauging the value of any programme or policy.

But more importantly, the rights-based approach can take us beyond indirect environmental rights that are not officially recognized, and work towards the development of explicit rights to a healthy environment for all.<sup>28</sup>

Before 1997, most UN development agencies pursued a 'basic needs' approach; they identified basic requirements of beneficiaries and either supported initiatives to improve service delivery or advocated for their fulfilment. However, there is a critical distinction: A *need* not fulfilled leads to dissatisfaction. In contrast, a *right* that is not respected leads to a violation, and its redress or reparation can be legally and legitimately claimed. A human rights-based approach to programming differs from the basic needs approach in that it recognizes the existence of rights. It also reinforces capacities of duty bearers (usually governments) to respect, protect and guarantee these rights.

In a rights-based approach, every human being is recognized both as a person and as a right-holder. A

rights-based approach strives to secure the freedom, well-being and dignity of all people everywhere, within the framework of essential standards and principles, duties and obligations. The rights-based approach supports mechanisms to ensure that entitlements are attained and safeguarded.

Governments have three levels of obligation: to respect, protect and fulfil every right.

(a) To *respect* a right means refraining from interfering with the enjoyment of the right. (b) To *protect* the right means enacting laws that create mechanisms to prevent violation of the right by state authorities or by non-state actors. This protection is to be granted equally to all. (c) To *fulfil* the right means to take active steps to put in place institutions and procedures, including the allocation of resources to enable people to enjoy the right. A rights-based approach develops the capacity of duty-bearers to meet their obligations and encourages rights holders to claim their rights

The extent to which developing country parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country parties.<sup>29</sup>

## CONCLUSION

From the forgoing discussion it can be concluded that respect for and enforcement of human rights is a precondition for sustainable development. This implies that without acknowledging and acting to defend the rights of people, sustainable development is not possible. **It is people who are at the centre of sustainable development: human beings are entitled to certain basic living conditions.** By effectively linking human rights and sustainable development, the increasing state of uncertainty for the environment that surrounds and nurtures us is given face, directly impacting the well-being of all.

<sup>27</sup> Mary Robinson, Former United Nations High Commissioner for Human Rights, "The Human Rights Approach to Sustainable Development: Environmental Rights, Public Participation and Human Security" available at [www.iied.org](http://www.iied.org).

<sup>28</sup> *Ibid.*

<sup>29</sup> John H. Knox, "Linking Human Rights and Climate Change at the United Nations", 33(1) *Harvard Environmental Law Review*, 477 (2009).