



Environmental law and governance as antecedent factors to sustainable development in developing states

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Abstract

In facing ever increasing complexities regarding our planet, people everywhere view environmental rights, environmental law and jurisprudence and environmental governance as becoming increasingly central to resolving problems of environmental justice. Admittedly, 'governance' has acquired the status of a hackneyed concept and has since 1990 been applied by institutions, states, policy-makers, researchers and other commentators to diverse 'zones' of human endeavor (Graham *et al.*, 2013). When placed within the environmental context, the concept is generally defined as encompassing the relations and interplay among government and non-governmental entities, processes and normative frameworks, where powers and functions directly or indirectly influence the use, management and control of the environment. Environmental governance thus concerns how legal and policy decisions are made, with particular emphasis on participation by the human beings who will thereby be directly affected by the outcome of such decisions. Even though this concept originated within the purview of the international community's concerted responses to the environmental challenges of the mid-1980s and the decades following, there has been an unmistakable recognition that international responses and initiatives would only thrive when effective normative, institutional and policy frameworks are established at the domestic level. This thinking has even gained added relevance through the prevalent idea that environmental governance holds the potential of promoting the goals of sustainable development. In connection with the United Nations Conference on Sustainable Development, Rio+20, UNEP organized the World Congress on Justice, Governance and Law for Environmental Sustainability. Through the World Congress, over 250 of the world's Chief Justices, Attorneys General and Auditors General seized a generational opportunity to contribute to the debates on the environment and declare that any diplomatic outcomes related to the environment and sustainable development, including from Rio+20, will remain unimplemented without adherence to the rule of law, without open, just and dependable legal orders. This paper explores the significance of environmental law and governance as key factors to sustainable development with particular focus on developing states where sustainable development remains elusive.

Keywords: Environmental Law, Environmental Governance, Sustainable Development, Developing State

1. Introduction

"Our biggest challenge in this new century is to take an idea that seems abstract-sustainable development - and turn it into a reality for all the world's people"

-Kofi Annan (2001), Secretary General of the United Nations

Admittedly, 'governance' has acquired the status of a hackneyed concept and has for long been applied by institutions, states, policy-makers, researchers and other commentators to diverse 'zones' of human endeavor (Graham *et al.*, 2013) [3]. When placed within the environmental context, the concept is generally defined as encompassing the relations and interplay among government and non-governmental entities, processes and normative frameworks, where powers and functions directly or indirectly influence the use, management and control of the environment (Norichika, 2014) [8]. Environmental governance thus concerns how legal and policy decisions are made, with particular emphasis on participation by the human beings who will thereby be directly affected by the outcome of such decisions.

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established at the domestic level. This thinking has even gained added relevance through the prevalent idea that environmental governance holds the potential of promoting the goals of sustainable development (Regina, 2010) [11].

While enormous amounts of literature have been circulating on the subject of environmental law and governance, what seems not to be keeping pace is the linkage of national challenges in legal and policy to current multilateral approaches and thinking? Kanie and Haas capture this scenario in the following words:

There is growing interest in identifying the ways and means of creating a more effective synergy between the multitude of environmental institutions that exist at the local, national, regional, and global levels, and between those levels. The need for a common understanding of the interrelationships between different elements and dimensions of the environment, and sustainable development, extends well beyond the limitations of current scientific knowledge. The multilateral approach to these issues remains fragmented in terms of methods and mechanisms of scientific assessment and the development of consensual knowledge. This is also the case in regard to human capacity-building and the arts of domestic-regional international interfacing in policy making (Kanie & Haas, 2009) [6].

Apart from the challenge of synergy, there are also peculiar weaknesses and constraints within national jurisdictions that global efforts are not adequately responding to. In the case of the developing countries of the African continent, the body of scholarly literature has remained quite scanty, and in some cases nonexistent, in the investigation of the theoretical and practical parameters of environmental governance and in charting the path for synergizing critical environmental governance issues with global discourses. It is against the backdrop of the foregoing that this essay emerges as a modest attempt at providing insight into an otherwise recondite terrain.

2. The Concept of Sustainable Development

Sustainable development, which is often used as a “trademark” for “promoting environmentally sound approaches to economic development” (Pezzoli, 2007, p. 549) ^[10], is interpreted ambiguously and the debates on definitions deserve special attention. The concept of sustainable development is the outcome of scientifically influenced and socio-economic development, the discussion beginning in the 1970's, when a large number of papers were devoted to the issues of natural resources and environmental pollution. The analysis of national legal sustainable strategies and other policies would be more efficient with background knowledge of the historical roots of the concept.

Several major milestones, which were made within the UN system, could be identified as important ones in the forming of the concept of sustainable development: United Nations Conference on the Human Environment in Stockholm (1972), World Commission on Environment and Development (1987) that spread the term, Rio Conference on Environment and Development (1992) and finally the Johannesburg Earth Summit (2002). The United Nations Conference on the Human Environment, which took place in June 1972 in Stockholm (Sweden), has played the decisive role in the primary formation of the concept of sustainable development. The principles of Stockholm Declaration on the Human Environment contained a set of “soft laws” for international conservation efforts. The Stockholm conference formulated the right of people to live “in the environment of a quality that suggests a life of dignity and prosperity” (UNCHE, 1972).

Since that time, a significant number of international organizations and governments of various countries have adopted the basic documents and national constitutions that recognize the basic human right to a healthy environment. Moreover, the environment was included in the list of priorities at regional and national levels. The conference confirmed the necessity of a long-term development strategy, taking into account the interconnection and interdependence of contemporary issues. The term sustainable development became widespread in 1987, when a report “Our Common Future” was published by the World Commission on Environment and Development. Steurer and Martinuzzi (2007, p.149) ^[17] evaluated the report as “the first global sustainable development program or strategy in a broader sense that explored the future of both “what?” and “how?” of policy making”.

Hopkins (2007) ^[5] argues that the report helped to promote the expression “sustainable development” in general, but he estimates that the impact materialized only in this century. The definition of sustainable development stated in “Our Common Future” can be summarized as the “development that meets the

needs of the present time, but does not jeopardize the ability of future generations to meet their own needs” (WCED, 1987). The definition of “sustainable development” proposed by the Brundtland Commission is widely used. However, it reflects only the strategic objective, rather than pointing the way for concrete action and can also be criticized for its vagueness as it should explicitly include the idea of preserving the environment.

Official recognition of the sustainable development view was made at the UN Conference on Environment and Development in Rio de Janeiro in 1992, when a new principle of development of the world's productive forces was set. According to Elkington (2007) ^[12], the globalization processes turned the ideas of policy-makers towards the necessity of sustainable development. Together with globalization changes in social, economic and environmental areas started to happen in step and these processes resulted in the competitive relations between “environmental protection” and “economic development” (Martens & Raza, 2010; Gamage & Boyle, 2008) ^[7]. The adopted document “Agenda 21” starts with a point that “integration of environment and development concerns (...) will lead to the fulfillment of basic needs, improved living standards for all and (...) more prosperous future” (UNCED, 1992) ^[18]. Hopkins (2007) ^[5] agrees with the point that sustainability itself is developed to improve human lives but argues that nowadays it is more devoted to the future. The Earth Summit, or the World Summit on Sustainable Development (WSSD), held in September 2002 in Johannesburg (South Africa), reaffirmed the devotion to the ideas of sustainable development. Whereas at the conference in Rio de Janeiro the problem was dominated by the environment to achieve sustainable development, in Johannesburg this problem has been given the same attention as the discussion of social and economic issues. It was noted that the problem of global degradation of nature was exacerbated by poverty and unequal distribution of benefits; the task of “environment for development” was committed in the first place.

Therefore, in the two documents adopted by the Johannesburg Summit (The Johannesburg Declaration on Sustainable Development and the Plan of Implementation of the World Summit on Sustainable Development), priority has been given to social issues for achieving sustainable development, particularly poverty eradication, promotion of health and, especially, sanitation, including provision of clean drinking water. It is important to notice that not only governments but also non-governmental and intergovernmental organizations and commercial structures took part in the Johannesburg commitment. These organizations came up with initiatives for greater access to water and sanitation, energy development, increase agricultural production, the proper use of toxic chemicals, maintenance of biological diversity and better management of ecosystems. It was seen that environmental and economic aspects of sustainability are not sufficient to implement the concept of sustainable development in practice: they must now be complemented by other aspects: social, information, management (The Johannesburg Declaration on Sustainable Development, 2002).

Environmental issues started to be seen in the context of sustainability and were discussed, e.g. the maintenance of the natural resource's base for economic and social development and management, stating the impossibility to separate solutions for environmental, economic and social problems (ibid). Thus,

global actors accepted a new paradigm of development. It was mentioned for the first time that measures to address degradation of the environment should be adopted at the governmental level. Guiding principles of SD include balance between nature and society, balance within the society at the present stage of development, balance between current and future state of mankind as a "target function" of development ("Our common future", 1987). Such definitions were transformed into the three-pillar approach, which shows the links and interconnections between economic, social and environmental parts. Some authors as Elkington (2007) ^[2] give this approach another name - "triple bottom line" which still has the same meaning and includes "environmental responsibility, social awareness and economic profitability". Referring to the scientific debates, sustainable development can be characterized as a controversial but an effective concept which is on the agenda of different governmental institutions. The guiding idea of collective cooperation towards sustainability is still an ongoing process of building efficient cooperative structures. However, the new scientific debates have changed significantly the meaning of sustainable development since the Brundtland report. It is worth mentioning, that some scholars nowadays are trying to avoid this three-pillar approach and transform it into the more comprehensive theory (Ott & Thapa, 2013) ^[9]. Seghezzi (2009, p. 540) ^[15] underlines limitations of the Brundtland definition and invents an "alternative sustainability triangle formed by "Place", "Permanence" and "Persons". He demonstrates the higher sensitivity of the new approach and explains how the exploration of space, time and persons could help to improve the formulation of regional or national policies. Pezzoli (2007, p. 558) ^[10], for example, points out the ideas of scholars from political ecology, where "societies and environments are the mutually interactive co-evolving systems". According to that the impact of human action and the emerging climate change and other global environmental problems are interconnected, thus sustainable development requires environmental learning, planning and research of "human understandings". From this point of view authors in Pezzoli's overview blame the Brundtland Commission for expanding world's attention on the economic growth to "provide sustainable solutions to interlocking problems of environment and development" (Pezzoli, 2007, p. 566) ^[10]. Smith and Stirling (2010) ^[13, 14] emphasize the role of socio-technical solutions to sustainability problems. They argue that technologies with positive effects are considered to be useful instruments for sustainable development. In this case new green technologies bring results to the "social, economic, and political systems" (Smith & Stirling, 2010, p. 2) ^[13, 14]. With the example of carbon emissions, authors highlight the need of overall changes in the energy infrastructure worldwide. However, the issue is controversial. Gamage and Boyle (2008) ^[4] outline sustainable development from the consumerist point of view. In regard to globalization and growing use of resources negative outcomes appear in the globalized economy. Consumerist changes and threats are connected with sustainable development and with "the welfare of the social and environmental dimensions" (Gamage, Boyle, 2008, p. 55) ^[4]. That is why national strategies for sustainable development could not be created on the basis of the traditional universal ideas and values, patterns of thinking. They require the development of new scientific, political skills and

philosophical approaches that are appropriate not only to modern realities, but also the prospects for the development in the new millennium.

3. Background and Contextual Issues to Global Environmental Governance

Over the past decade, concerns about the environment have converged on the concept of global change. In this context, 'global change' refers to the tendency for the rapidly expanding and economically active world populations to alter the basic physical and biological processes of the planet Earth. Of particular concern are artificial changes in the chemistry of the atmosphere that cause acid deposits, depletion of the ozone layer, and climate changes. Beyond these concerns, however, numerous other environmental problems demand attention, such as the spread of deserts, water scarcity, destruction of forests, loss of biodiversity, pollution and depletion of marine resources, and dumping of toxic wastes.

In the context of this paper, focus is on the legal and policy initiatives towards the establishment of an effective regime of environmental protection and the promotion of sustainable development in developing countries. Neither the turning of the global spotlight on developing nations in Africa nor the robust discussion of international environmental law framework in this essay is abstract or esoteric. After all, the interrelatedness of the universal environment is beyond disputation. Indeed very few people would differ that synchronized international action is essential to protecting the earth, its climate, conserving biodiversity, and managing aquatic and other shared resources. In short, the need for an articulate system of international environmental governance is clear. However, constructing such a system and maintaining its efficiency in the face of the many competing interests among developing states has proven very complicated.

The difficulty in pursuing environmental governance at a universal scale is compounded by the fact that there is no central institutional 'sovereign' to craft sweeping environmental protections at the international level and to insist on compliance. In the absence of such an arrangement, therefore, a fluid system of international environmental governance persists. The current system largely reflects the strengths and dysfunctions of international politics and shows the complexity of stimulating efficient collaboration among the divergent community of nations; not the least in environmental matters that demand universal action.

The unbridled movement and dumping of permitted pesticides, polychlorinated biphenyls (PCBs), general industrial chemicals, laboratory chemicals, oil, bitumen, timber treatment chemicals, and fertilizers, many of which have been proven capable of causing adverse health effects on people, animals and marine life in developing nations becomes a major subject of investigation (UNCED, 2011). This concern is not bogus or negligible. Way back in 1992, the United Nations Conference on Environment and Development (UNCED) had sought to conscientise the international community to the critical challenges confronting developing states, and in particular those in Africa. In the UNCED's own words:

Although the total volumes of waste produced may not be large compared to other countries, the effects of the disposal of increasing amounts of waste on fragile small islands environments in Africa are likely to be extreme

and constitute a very serious constraint to sustainable development. This is particularly true for atolls with limited fresh water supplies and inshore lagoon marine ecosystems that are easily contaminated (UNCED, 2009) ^[18].

While observing that there yet remains the need for greater coherence in the applicable legal and policy frameworks, this paper emphasizes the need to maximize the benefits of the existing frameworks in fostering environmental governance.

4. International Policy and Legal Frameworks for Environmental Governance

A substantial evolution in global environmental governance has occurred since the landmark United Nations (UN) Conference on the Human Environment held in Stockholm in 1972. A series of single-theme world conferences have also discussed specific environmental problems and drawn action plans for addressing them. New international institutions have been created, the most notable being the United Nations Environment Program (UNEP) and the United Nations Commission on Sustainable Development, and previously existing organizations such as the Food and Agriculture Organization (FAO), the World Meteorological Organization (WMO), the International Maritime Organization (IMO), United Nations Educational, Scientific and Cultural organization (UNESCO), the European Union (EU), and the World Bank have expanded their activities in the environmental realm. Furthermore, hundreds of international treaties and other international agreements have been concluded on subjects ranging from the marine environment to outer space and from species preservation to protection of the ozone layer (Redgwell, 2007) ^[12].

Particularly significant among these legal and policy frameworks are the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972), the United Nations Convention on the Law of the Sea (UNCLOS) (1982) (Part XII), the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal (1989), the Convention on Biological Diversity (1992), the UN Framework Convention on Climate Change (UNFCCC) (1992), the UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks (1995), and the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (2000) (Cullet & Guatieri, 2009). To these must be added the numerous non-binding policy statements emanating from the international community since the UN Conference on the Human Environment held in Stockholm in 1972.

The underpinning theme of all these normative and policy instruments is the increasing global recognition that the conservation of biological diversity and the protection of the environment is about more than plants, animals and micro-organisms and their ecosystems—it is also about human beings and their need for food security, medicines, fresh air and water, shelter, and a clean and healthy environment in which to live (Alexander & Dinah, 2008) ^[1].

5. Strategies for Strengthening Environmental Governance in Developing States

The importance of law in promoting effective environmental governance cannot be underestimated. The legislative arm of

government can be a useful tool and a powerful agent of change in sustainable environmental governance. There is a need for a principal statute for the management of the environment in developing states. Developing states in Africa are in need of an integrated and coherent framework for their environmental management. Such countries need a strong legislative system if they are to achieve their environmental commitments and goals. Consideration for a reformed regime, taking into account both the economic and social benefits of preserving the environment needs to be looked into. Developing states therefore need a more robust all-encompassing and well-focused environmental regime to serve as a core principal legislation on the management of their environment. The capacity of the developing states legislature needs to be strengthened not only to enable it legislate for sustainable environmental governance, but also to enable it promote institutional reforms that will bring about sustainable environmental governance.

Environmental sustainability should be made an integral part of economic planning at all levels of governance and integrated into all policies in developing states. Economic policies which aim at balancing sustainability initiatives backed by conscious efforts to safeguard and protect the environment should also be made use of. It is also important to have adequate institutional machinery for supervising implementation of environmental obligations/commitments. The legal and political frameworks for environmental governance require effective enforcement mechanisms. There is a need for the full utilization of the law as an instrument of social change or social engineering to achieve a balance between environmental protection and development activities. Public participation, which is a central element of sustainable development, has a role to play in achieving sustainable environmental governance.

Developing states should encourage broad based participation to enable them deal effectively with their environmental challenges. Such public participation should include local communities and their representatives as well as indigenous people and other marginalized groups who should be given opportunities to inject their knowledge and understandings into policies for sustainability as a matter of rights. Local governments should be assigned a greater role in the administration of environmental management. They should also concern themselves with the consultation of members of their communities. Stakeholders at all levels have a critical role to play in strengthening environmental governance. Good environmental governance which takes into account the role of all actors that impact on the environment should be explored.

Civil society offers a wealth of expertise, knowledge and implementation experience. The contribution of the participation of civil society in environmental governance needs to be enhanced particularly through a strengthened and more formalized structure to engage them. There is therefore a need to ensure the strengthening of the roles of civil society and especially non-governmental organizations within a new or a restructured national environmental governance system in order to facilitate the participation of civil society in national environmental governance in developing states. Improved access and participation of civil society would also improve the transparency and accountability in environmental governance. Legal measures should be taken to ensure the full and effective participation of civil society in environmental governance at all

levels and in the decision making processes that lead to its reform.

6. Conclusion

This paper has attempted to examine the role of environmental law and governance in fostering sustainable development in developing states. As acknowledged at the onset, developing states encounter formidable challenges in institutional, normative and policy terms. This paper has particularly dealt with the issue of pollution and its long- and short-term implications for these nations. An underpinning reality highlighted in this paper is the state-centric approach to the totality of environmental governance issues in developing states. While noting the abundance of significant treaties, municipal laws and diverse policy mechanisms, this paper has been able to identify gaps and weaknesses, making suggestions for their reform and enhancement. Recognizing that the path to the future lies in a synergy of initiatives and inputs among the government, the people and all other stakeholders in the environmental well-being of developing states, therefore, this paper proffers some viable trajectories for strategic responses. Far from being an *ex-cathedra* pronouncement on all the dynamics of environmental governance in developing states, this paper will have served its purpose if it stimulates further discourses on the promotion of environmental protection and sustainable development efforts in developing states and the world as a whole.

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