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The Relevance of a Globally Recognised Rights-based Approach to Environmental Protection

Man Lu [1, 2]

[1] Stirling University, Stirling FK94NH, United Kingdom
[2] Southwest Petroleum University, Chengdu 610500, China

Abstract: A rights-based approach is an international framework centered on the promotion and protection of human rights consistent with international human rights standards. Since the United Nations General Assembly in Stockholm in 1972 first linked human rights and environmental protection, there has been a growing tendency to include rights-based guarantees in environmental protection topics. After more than a decade of judicial practice in environmental protection, rights-based environmental litigation has become more and more evident. On this basis, a human rights-based approach has been put forward to address the issue in a way that is shared between "government" and "businesses". The human rights-based approach is of great significance to environmental protection and sustainable environmental development, and the relationship between the two is also of value for research.

Keywords: Right Based Approach; Environmental Protection; Law.

1. Introduction

Rights-Based Approaches is an international framework focus on human rights promotion and protection under international human rights standards. [20] Since the relationship between human rights and environmental protection was first raised at the international level at the Stockholm Conference in 1972, there has been a growing trend towards embedding rights guarantees in environmental protection issues. [14] The rights-based approach to global environmental protection is gradually gaining global recognition in judicial practice. The integration of human rights and the environment is supported not only by international hard law, such as the United Nations Convention on Climate Change (UFCCC), the Kyoto Protocol and the Paris Agreement, but also by soft law, such as the United Nations Guiding Principles (UNGP) on Business and Human Rights. [10] After nearly a decade of environmental justice practice, a trend towards strategic climate litigation based on a rights-based approach to the process of environmental protection has gradually become clear. The human rights approach concretises vague principles of environmental protection into the responsibilities of the State and business and expands the scope of environmental litigation subjects and duty-bearers. The human rights approach has important implications for the goals of a healthy environment and environmental sustainability. The use of a rights-based approach to environmental protection issues will become an increasingly clear trend.

2. Evolution of the Rights-based Approach to Environmental Protection

2.1. How Rights-Based Approach to Environmental Protection become Globally Recognised

Over the years, the international community has gained a certain degree of awareness and taken positive measures to address environmental protection and climate change. the international recognition of the rights-based approach to environmental protection is supported by both soft and hard law. Hard law as the UNFCCC adopted in 1992 [8], the Kyoto Protocol to the United Nations Framework Convention on Climate Change adopted in 1997 [5], and the Paris Agreement on Climate Change reached in 2015, and other important documents to address environmental protection and climate change, constructed a certain period of history of mankind's most universal and authoritative mechanism of global environmental governance. Soft law as the 1972 Declaration on the Human Environment established environmental rights as fundamental human rights. Since the 1972 Stockholm Conference, the connection between environmental protection and human rights has been globally mentioned.[9] From the 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs) to the Human Rights-Based Climate Action proposed by the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Human Rights Approach (HRA) has been recognised and used in the judicial practice of environmental litigation at the international level. [10] The role of the human rights approach to environmental protection is notable for the fact that the 2015 Paris Agreement has brought the issue of rights-based environmental protection right to the forefront of the global environment. [1] In the last decade, there has been a significant increase in the number of international litigation cases against environmental violations, some of which have been brought on the basis of environmental human rights.

In recent years, there has been an increase in the number of environmental litigation cases around the world in which human rights have been used as a claim. As of August 2023, there have been 128 rights-based environmental lawsuits globally [21], which has been referred to by scholars as the "rights-based shift" in environmental litigation. Rights and environmental protection are two concepts that are inextricably linked. Human rights have long been a hot topic in the international community. Environmental protection is an increasingly important topic worldwide, and the combination of rights guarantees can make environmental

protection more concrete and practical.

2.2. Continuous Activation of the Rights Approach in the Environmental Litigation Process

Understanding the "holistic" path of the human rights due diligence doctrine requires interpreting human rights considering mutually reinforcing principles in environmental, climate and human rights law. A review of the increasing frequency of environmental and climate change-related litigation illustrates the development of the concept of "climate due diligence". [22] Following the introduction of the Paris Agreement in 2015, the trend in international environmental litigation has gradually focused on the narrow topic of upholding human rights. As a result, there has been an increasing trend towards the application of a rights-based approach to international litigation on environmental protection. In April 2019, Milieudefensie and other NGOs filed a court summons against Royal Dutch Shell alleging a breach of the company's duty of care under Dutch law, human rights law, and the Paris Agreement [6]. The allegation is based on a combined interpretation of corporate human rights due diligence based on human rights law and climate law standards. The subpoena referred to human rights instruments, including the Guiding Principles on Business, and argued that businesses must assess the impacts of climate change as part of their human rights due diligence processes and should have a duty not to "undermine the State's ability to fulfil its own human rights obligations". (Ibid, para 712) The summons also referred to the social standard of the Dutch law duty of care adopted by the Court in Uganda, based on which it argued that "Articles 2 and 8 of the European Convention on Human Rights (ECHR) are the basis for a reasonable expectation of a duty of care on the part of Shell". The Court also argued that "Shell has a huge role to play in global greenhouse gas emissions and the response to climate change, Shell controls the 'fate' of individuals to the same extent as the state." (Ibid, paras 723 724) Plaintiffs maintain that Shell has a duty to adapt its policies and practices to the goals of the Paris Agreement with due regard to the precautionary principle. Although there are still relatively few international judicial cases focusing on environmental protection and human rights, the use of human rights as one of the judicial bases for environmental protection has shown a trend towards the application of the "human rights approach" to environmental protection issues.

2.3. Trends of Rights-based Approach in Environmentally Sustainable Development

The "rights-based approach " provides a vision of what development should look like, a set of tools and the necessary standards of reference. The 2030 Agenda for Sustainable Development, the outcome document adopted at the United Nations Summit on Sustainable Development (UNSSD) in September 2015, has included important elements relating to the environment, climate change and human health in its agenda. [23] The United Nations Human Rights Council (UNHRC) on 8 October 2021 and the United Nations General Assembly (UNGA) on 30 July 2022 adopted historic resolutions declaring that "a clean, healthy and sustainable environment is a universal human right".[2] This is a new understanding of the environment, climate change, sustainable development and human rights protection. A rights-based approach can contribute to the advancement of environmental protection and sustainable development goals if it is utilized to play its proper role in the process of achieving the United Nations environmental protection and sustainable development goals. The "rights-based approach" does not simply "add" human rights to environmental protection and development cooperation activities, nor can "development" be understood as being primarily about economic development. [3] The "rights-based approach" refers to the integration of rights standards and principles into the planning and implementation of all development cooperation. Development processes must fulfil human rights standards and must be guided by human rights principles.

The rights-based approach to environmental protection has been undermined in recent years by international developments, with protectionism, unilateralism, and populism becoming increasingly prevalent, and the human rights-based approach to the Sustainable Development Goals (SDGs) being underutilised. Achievement of the environmental sustainability goals continues to be slow, and large-scale inequalities persist globally. Specific groups that are vulnerable in terms of their rights, such as the elderly, persons with disabilities, children, women, migrants and refugees, are vulnerable to neglect. [24] At the level of environmental protection, there should also be reasonable differences in rights, such as the more backward developing countries, small island states, human rights protection is more urgent. [7] Therefore, the trend towards a rights-based approach to environmental protection is bound to become more and more widespread in the international community and in judicial practice. The "rights-based approach " can provide a human rights-based framework for the fulfilment of the United Nations sustainable development goals, and the functional study of the " rights-based approach" is of great significance for environmental protection and sustainable development goals.

3. Relevance of the Interdependence between Human Rights and the Environment

3.1. Relationship between Globally Recognized Human Rights to Environmental Protection

The relationship between rights-based approaches and healthy environments is interactive. On the one hand, the trend towards the integration of rights-based approaches into international environmental governance facilitates the concretisation of vague international principles and legal provisions in practice. The imposition of environmental protection obligations and responsibilities guided by specific rights further apportions environmental responsibilities as obligations of States, enterprises and societies. The "human rights turn" in environmental protection and climate change thus plays an important role in the practice of environmental justice.

On the other hand, the process of governance of healthy environments can re-enforce human rights guarantees. Judicial practice in environmental protection activates the judicial protection of environmental rights by responding to human rights claims in a timely manner. At the same time, the rights-based approach has been further transformed from theoretical material to normative basis through the international certification of environmental judicial practice.

3.2. Human Rights-Based Approach Concretises Environmental Litigation

The rights-based approach concretises the principled theory of environmental protection in the judicial practice of environmental protection. Rights-based environmental litigation refers to the type of litigation in which citizens and non-governmental organisations (NGOs) are engage in rights-based litigation with the goal of moving beyond damages in individual cases to focus on the application of environmental policies by governments and businesses. [12] Using the rights clause as a normative basis to argue for environmental protection obligations such as emission reduction by the state and enterprises can concretise the general and vague principle-based provisions into obligations for the state and enterprises. In the Shell case in 2019, for example, the district court extended the subject of climate abatement obligations to businesses by interpreting the technical basis for interpreting the duty of care under the Dutch Civil Code considering the UNGP on Business and Human Rights as a document of international soft law. [6] In addition, the rights-based approach further extends the scope of subjects responsible for environmental protection. In the 2012 case of Urgenda Foundation v. The Government of the Netherlands, the subject of the lawsuit was extended to NGOs and the subject of the obligation was extended to enterprises. [11] Finally, the rights approach is embedded in environmental justice, moving the administration of justice from a case-by-case to a socially responsive one. By seeking wider social policy change for posterity and exploring human rights issues, environmental litigation seeks to transform social pressures into opportunities to examine existing policies. [7]

3.3. Translating The Rules of the Rights-Based Approach with Sustainable Development

The use of rights as arguments during environmental litigation will be judicially certified, thus further moving the rights-based approach from theory to practice. This process serves to activate and strengthen rights in environmental litigation. The "rights-based approach" should play a greater role and complete the repositioning of its functions. As mentioned above, although the rights-based approach plays an important role in environmental protection, it still faces many problems that slow down the progress of rights protection. The importance of the "rights-based approach" should be emphasised in the journey towards the achievement of the Sustainable Development Goals (SDGs). [4] The goal of protecting the environment ultimately leads to the further fulfilment of the human rights enshrined in international human rights instruments, and rights standards and human rights monitoring mechanisms should be integrated throughout the programme.

The “rights-based approach” should play three roles in environmental protection: an evaluator of development policies, a monitor of State action, and a protector of the "laggards". [25] Firstly, human rights can be used as a means and a starting point for development, observing the process of promoting human rights for development and then expanding human rights with development. Secondly, to reaffirm the importance of the "human rights approach" in the context of the environmentally sustainable development goals, to ensure that the principles of equality and non-discrimination are put into practice and that vulnerable groups are further empowered. Lastly, existing international human rights mechanisms, including the UNHRC, should be used to provide targeted advice on national human rights guarantees. [26] International human rights mechanisms can also be used as important monitoring and accountability mechanisms for achieving the goal of environmentally sustainable development.

4. Conclusion

The environmental debate has created a real need for an international legal system that is no longer able to address today's challenges of environmental problems in practice. The use of a rights-based approach to environmental litigation throughout the process has become a driving force behind the trend towards reform of environmental litigation. Environmental litigation has become the driving force behind the rights-based approach. From its beginnings as a pleading to the formation of substantive standards, the rights-based approach has demonstrated its suitability for environmental protection objectives. The rights-based approach has helped the practice of environmental protection to objectively break the status quo of traditional individual remedies in environmental justice. The change has been from a focus on individual remedies to a focus on balancing individual remedies with the needs of society. In addition, the rights-based approach also serves as a "policy development impetus", "monitoring mechanism" and "protection of vulnerable groups" for the sustainable development of the environment. [18] In the process of judicial practice of environmental protection, the judicial authority of human rights is constantly strengthened, and the development of human rights is promoted through legal interpretation. Therefore, the benign interaction between the rights-based approach and environmental protection will have a longer-term impact.

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