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# **HUMAN RIGHTS AND ENVIRONMENT**

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## **ABSTRACT**

Melting ice, rising ocean levels, and changing weather conditions inferable from environmental change progressively influence day to day existence for millions, and maybe billions, of individuals. At the point when the climate endures, individuals endure. Environmental change progressively slows down the acknowledgment of essential, globally perceived common liberties including the right to life, to wellbeing, to culture, to food, to self-assurance, to property, and to improvement. The least fortunate and most weak will experience first, and maybe most, at the end of the day the emergency will arrive at us all.

The importance of the environment to the fulfillment of human rights is widely accepted at international law. What is less well-accepted is the proposition that we, as humans, possess rights to the environment beyond what is necessary to support our basic human needs.

As it is said that, Where there is right there is duty. If humans have right to use environment for their purpose it's their duty to work for environment. Man has the basic right to Freedom, equity and sufficient states of life, in a climate of a quality that allows an existence of pride and prosperity, and he bears a serious obligation to secure and work on the climate for present and people in the future. A human rights perspective directly addresses environmental impacts on the life, health, private life, and property of individual humans rather than on other states or the environment in general. A human rights focus may serve to secure higher standards of environmental quality, based on the obligation of States to take measures to control pollution affecting health and private life.

## **INTRODUCTION**

The relationship between human rights and the environment was first recognized by the UN General Assembly in the late 1960s. In 1972, the direct relationship between the environment and the right to life was recognized by the United Nations Conference on the Human Environment. The Preamble stated that Man is both creature and moulder of his environment,

which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth.

The two parts of man's current circumstance, the regular and the artificial, are crucial for his prosperity and to the delight in essential common freedoms - even the right to life itself. Principle 1 of the Stockholm Declaration laid out a further starting point for connecting basic liberties and ecological security, pronouncing that Man has the essential right to opportunity, uniformity and satisfactory states of life, in a climate of a quality that allows an existence of poise and prosperity. In 1982 the World Charter for Nature recognized that Humankind is a piece of nature and life relies upon the continuous working of regular frameworks which guarantee the stockpile of energy and supplements.<sup>1</sup> In 1992, the United Conference on Environment and Development (also called as Earth Summit) expressed that Human beings are at the centre of concerns for sustainable development.

They are entitled to a healthy and productive life in harmony with nature. The Declaration also provided for the right of access to environmental information and of public participation in environmental decision making. In 2002, the World Summit on Sustainable Development merely acknowledged the position that there exists a possible relationship between environment and human rights.

In addition, the UN Human Rights Commission adopted several resolutions linking human rights and the environment, such as Res. 2005/60 entitled Human rights and the environment as part of sustainable development. The resolution called on states to take all necessary measures to protect the legitimate exercise of everyone's human rights when promoting environmental protection and sustainable development and reaffirmed, in this context, that everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

## **ENVIRONMENTAL RIGHTS**

Environmental rights means any proclamation of a human right to environmental conditions of a specified quality. Environmental rights are composed of substantive rights (fundamental rights) and procedural rights (tools used to achieve substantial rights).

## **SUBSTANTIVE RIGHTS**

Substantive are those in which the environment has a direct effect on the existence or the enjoyment of the right itself. Substantive rights comprise of: civil and political rights, such as the rights to life, freedom of association and freedom from discrimination; economic and social rights such as rights to health, food and an adequate standard of living; cultural rights such as rights to access religious sites; and collective rights affected by environmental degradation, such as the rights of indigenous peoples.

## **PROCEDURAL RIGHTS**

Procedural rights prescribe formal steps to be taken in enforcing legal rights. Procedural rights include 3 Fundamental Access Rights, These are:-

1. Access to information
2. Public participation
3. Access to justice

## **ROLE OF INTERNATIONAL CONVENTION IN PROTECTION OF ENVIORNMENT**

Principle 21 of Stockholm declaration is of great importance. Principle 21 states that in accordance to UN Charter and principles of international law the state has a sovereign right to exploit its resources and the responsibility to ensure that activities within their jurisdiction or control do not damage to the environment of other states. Moreover international community imposes a duty towards member states to include environment protection in domestic constitution.

In 1992, The United Conference on Environment and Development (UNCED) was held in RIO DEE JANEIRO. UNCED focused rather on development related subjects (mostly North-South related topics) Indeed, the term "human Rights" is only used three times in the Rio Declaration on Environment and Development (RIO DECLARATION)

Environmentalists suggest that the purpose of environmental law is egocentric. Obligations and duties are imposed on governments, companies, individual human beings or groups in order to reach these goals. The Antarctica Treaty (1959), the world Heritage Convention (1972), the Convention on International Trade in Endangered Species (1973) and the world charter for Nature (1982) are some examples.

## **INTERNATIONAL HUMAN RIGHTS LAW INCLUDES RIGHT TO HAVE CLEAN ENVIRONMENT**

Only two regional human right treaties contain an identifiable right to environment, namely the article 24 of ACHPR and article 11 of the San Salvador Protocol to ACHR. Article 24 ACHPR will be taken as example.

Article 24 of ACHPR is called “third generation human right”. Article 24 ACHPR entitles a right to environment which should be general, satisfactory and favorable to development<sup>3</sup>.

## **CONSTITUTIONAL RIGHT TO CLEAN ENVIRONMENT IN INDIA**

The chapter on fundamental duties of the Indian Constitution clearly imposes duty on every citizen to protect environment. Article 51-A (g), says that it shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

Article 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The improvement of public health also includes the protection and improvement of environment without which public health cannot be assured. Article 48 deals with organization of agriculture and animal husbandry. It directs the State to take steps to organize agriculture and animal husbandry on modern and scientific lines.

In particular, it should take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle. Article 48 -A of the constitution says that the state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

The Constitution of India under part III guarantees fundamental rights which are essential for the development of every individual and to which a person is inherently entitled by virtue of being human alone. Right to environment is also a right without which development of individual and realization of his or her full potential shall not be possible. Articles 21, 14 and 19 of this part have been used for environmental protection.

According to Article 21 of the constitution, no person shall be deprived of his life or personal liberty except according to procedure established by law . Article 21 has received liberal interpretation from time to time after the decision of the Supreme Court in Maneka Gandhi vs.

Union of India, (AIR 1978 SC 597)[5]. Article 21 guarantees fundamental right to life. Right to environment, free of danger of disease and infection is inherent in it. Right to healthy environment is important attribute of right to live with human dignity.

Human Rights in India are guaranteed as fundamental rights under Part III(Article 12-35) of the constitution. The Indian Supreme Court decided in 1980 that Part III and Part IV were complementing. Whereas, Part IV imposes obligations on the state, Part III is the control mechanism. Therefore, citizens can theoretically demand the state to fulfill its duties, as if it were their fundamental rights.

In KOOLWAL VS RAJASTHAN, the Rajasthan High Court even decided in favor of environmental rights, although no injuries to the population were alleged in the particular case. This shows how serious Indian Court take environmental issues.

The High Court of Rajasthan decided that 'Article 51A gives a right to the citizen to move the Court for the enforcement of the duty cast on state instrumentalities, agencies, departments ,local bodies and statutory authorities.'<sup>2</sup>

In India,the jurisdiction of the supreme Court widened the scope of the right to life in Article 21 and included the right to a wholesome environment. In various cases of M.C Mehta courts reiterated that right to have a clean environment is a basic human right.

### **SUBHASH KUMAR VS STATE OF BIHAR**

The Supreme Court ruled that "Article 32 is designed for the enforcement of fundamental rights of a citizen by the apex court" and the "right to life is a fundamental right under article 21 of the constitution and it include the right of enjoyment of pollution free water and air for full enjoyment of life".(AIR 1991)

Article 21 have proven to be substantial legal basis to claim environmental rights, and its application was widened by the Indian jurisprudence during the years. Courts always tries to give importance to aspect of sustainable development through its judgments<sup>3</sup>.

### **HUMAN RIGHT AND ENVIRONMENT**

The relationship between human rights and the environment was first recognized by the UN General Assembly in the late 1960s. In 1972, the direct relationship between the environment and the right to life was recognized by the United Nations Conference on the Human

Environment. The Preamble stated that Man is both creature and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth.

Both aspects of man's environment, the natural and the manmade, are essential to his well-being and to the enjoyment of basic human rights –even the right to life itself. Principle 1 of the Stockholm Declaration established a further foundation for linking human rights and environmental protection, declaring that Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and wellbeing. In 1982 the World Charter for Nature acknowledged that Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients. In 1992, the United Nations Conference on Environment and Development (also known as the Earth Summit) stated that Human beings are at the centre of concerns for sustainable development.

They are entitled to a healthy and productive life in harmony with nature. The Declaration also provided for the right of access to environmental information and of public participation in environmental decision making. In 2002, the World Summit on Sustainable Development merely acknowledged the position that there exists a possible relationship between environment and human rights.

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In addition, the UN Human Rights Commission adopted several resolutions linking human rights and the environment, such as Res. 2005/60 entitled Human rights and the environment as part of sustainable development. The resolution called on states to take all necessary measures to protect the legitimate exercise of everyone's human rights when promoting environmental protection and sustainable development and reaffirmed, in this context, that everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

The resolution emphasized the needs of the vulnerable members of society and also encouraged efforts towards the implementation of the Rio Declaration on Environment and Development to ensure this right, although there is little evidence of work to make this happen. Over the last year there has been increasing interest in these issues. ANPED have made this a key focus for work towards the 2002 Summit. As part of this work ANPED is building links with NGOs and other agencies in all parts of the world. There is no doubt that the timing of this activity is appropriate:

the 2001 meeting of the UN High Commission on Human Rights has called for an international seminar on these issues to be jointly run by UNEP and the UNCHR.

Work towards sustainable development is increasingly recognising the importance of a human rights approach. This should not be surprising: the protection of human life in relation to life, health, culture and living standards is central to any social, environmental or economic programmes. The right to life cannot be realized without the basic right to clean, water, air and land. A human rights approach allows the quality of life of people, in particular the most vulnerable, to be integrated into environmental decision making.

There are two main approaches to human rights and the environment:

# The use of existing human rights, and

# The need for new human rights for a safe and clean environment.

The rights we have already are:

1. Civil and political and

2. Economic, social and cultural. Civil and political rights provide for moral and political order.

Such rights include the right to life, equality, political participation and association. They are couched most clearly in the Universal Declaration of Human Rights (1948) and International Covenant on Civil and Political Rights (1966). When realized civil and political rights are fundamental to guaranteeing a political order supportive of sustainable development. They can protect civil mobilization around environmental protection and equity. Economic, social and cultural rights are often referred to as 'second generation' rights. These provide substantive standards for an individual's well-being.

### **The need for environmental rights**

It is nearly thirty years since the UN Stockholm Conference in 1972 put environmental issues on the international agenda. Since then there has been much hard work to protect and improve the environment globally, nationally and locally. There has been much progress, but it is clear that in all parts of the world our environment is under threat and that many problems are becoming more serious. The Rio summit recognised these problems and sought to resolve them through Agenda 21 and the various UNCED Conventions.

Work on implementing these conventions, which are based on the principle of common but

differentiated responsibility , has gradually revealed that these less than perfect bargains have:

1. Failed to place constraints on national strategies that may lead to unsustainable growth.
2. Failed to ensure the implementation of national framework laws and enforcement strategies such as National Environmental Action Plans (NEAP).
3. Failed to control perverse state resource use and damaged intergenerational equity.
4. Increasingly revealed the inadequacies of funding by those agencies which fund strictly environmental work that does not consider socio-economic factors. It is failures such as these that have led to calls for a new approach to sustainable development.

A further driver for change has been the increased pressure resulting from globalisation. It is clear that non-mandatory (soft law) agreements are an inadequate basis for ensuring effective control of these processes. The need for change has been acknowledged, but some will question whether the introduction of inalienable human rights to a safe environment is the way forward. It has been suggested during our initial work that adequate rights already exist.

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This is simply not the case. There are a few key international rights, but substantive rights to a safe environment the rights are still largely implied rather than explicit. In theory, existing human rights legislation should protect our environment but this does not happen in practice.

Many groups have tried to use Human Rights legislation to protect the environment, such as the Right to Life defined by Article 2 of the European Convention on Human Rights, which states that everyone has a right to life protected by law . Most attempts to do this have been unsuccessful, although some successful cases exist. We believe that this is an inadequate way to

provide for our rights.

### **Indian Laws Relating to Environment and Human Rights**

The chapter on fundamental duties of the Indian Constitution clearly imposes duty on every citizen to protect environment. Article 51-A (g), says that It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. Article 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The improvement of public health also includes the protection and improvement of environment without which public health cannot be assured. Article 48 deals with organization of agriculture and animal husbandry. It directs the State to take steps to organize agriculture and animal husbandry on modern and scientific lines.

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### **Policy and Laws in Medieval India (1638-1800 AD)**

To Mughal rulers, forest meant no more than woodlands where they could hunt. The history of medieval India is dominated by Muslim Rulers where no noteworthy development of environmental jurisprudence took place except during the rule of Mughal Emperor Akbar. During Akbar's rule except rulers others are prohibited from hunting or shikar. But no major initiatives took place during medieval period to prevent environmental protection and conservation of natural resources as the rulers were only interested in war, religion propagation and empire building. Barring royal trees which enjoyed patronage from being cut except upon a fee, there was no restriction on cutting of other trees, hunting animals, etc. Forests during this period shrank steadily in size.<sup>9</sup>

### **Laws in British India (1800-1947 AD)**

- # Shore Nuisance (Bombay and Kolaba) Act, 1853 imposed restrictions on the fouling of seawater.
- # Merchant Shipping Act of 1858 dealt with prevention of sea pollution by oil.
- # The Fisheries Act, 1897
- # The Bengal Smoke Nuisance Act of 1905
- # Bombay Smoke Nuisance Act of 1912
- # Wild Birds and Animals Protection Act, 1912

### **Laws after Independence (1947)**

The Indian Constitution, as adopted in 1950, did not deal with that the subject of environment or prevention and control of pollution as such (until 1976 Amendment). The post independent Indian approach was centred on economic development and poverty alleviation and not on resource conservation.

The year 1972 was a landmark in the field of environment, when United Nations Conference on the Human Environment was held at Stockholm (Sweden) from 5th to 16th June, in which Declaration on the Human Environment was adopted. This may be considered as the beginning of environment movement in the world.

The Stockholm Declaration of 1972 was perhaps the first major attempt to conserve and protect the human environment at the international level. The preamble of it states, 'the need for a

common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment.

As a consequence of this Declaration, the States were required to adopt legislative measures to protect and improve the environment. Accordingly, Indian Parliament inserted two Articles, i.e., 48A and 51A in the Constitution of India in 1976.

In India a separate ministry namely The Department of Environment was established in 1980 to ensure a healthy environment for the country.

**The main acts for environment protection in India are as follows:**

1. The Forest Conservation Act, 1980
2. The Prevention of Air and Water Pollution, 1974, 1981 (The Central Pollution Control Board) (CPCB) was constituted under this act.
3. The Air Prevention and Control of Pollution, 1981.
4. The Atomic Energy Act. 1982.
5. The Environmental Protection Act, 1986. (It came into force soon after the Bhopal Gas Tragedy)
6. The Environmental Conservation Act. 1989.
7. The National Environmental Tribunal, 1995.
8. National Environmental Appellate Authority Act, 1997.
9. National Environment Management Act (NEMA), 1998

**Councils to Protect Environment**

The United Nations Environment Assembly is the world's highest-level decision-making body on the environment. It addresses the critical environmental challenges facing the world today.

Understanding these challenges and preserving and rehabilitating our environment is at the heart of the 2030 Agenda for Sustainable Development.

The Environment Assembly meets biennially to set priorities for global environmental policies and develop international environmental law. Through its resolutions and calls to action, the Assembly provides leadership and catalyses intergovernmental action on the environment. Decision-making requires broad participation, which is why the Assembly provides an opportunity for all peoples to help design solutions for our planet's health.

### **HOW ARE FIRST WORLD COUNTRIES RESPONSIBLE FOR POLLUTION IN DEVELOPING COUNTRIES**



Although the richest, most developed countries in the world are overwhelmingly to blame for the catastrophe of global climate change, they are not the ones who will suffer the most from it. Who will? You guessed it: the poorest countries.

The unfairness of that is self-evident, but so is the truth of it. For more than a century, the largest emitters of greenhouse gases, in total as well as per capita, have been the big developed nations, most notably the United States and the countries of Europe, which grew their economies by burning fossil fuels and spewing carbon from their factories, homes and cars. Today they still emit carbon and other greenhouse gasses disproportionately into the environment, although other big countries such as China and India have caught up.

Yet even as the wealthy nations drive the world toward ecological disaster, it is clearly the poor countries that will face the gravest consequences and have the most difficulty coping. For instance, low-lying Bangladesh, already battered by increasingly powerful cyclones, could lose 10% of its territory to the ocean within a few decades, displacing 18 million people.

Political instability and violence, influenced in part by droughts and poor harvests, have already driven millions of people from their homes in sub-Saharan Africa and Central America.

A recent study from Stanford University found that climate change is exacerbating global income inequality between wealthy nations in cooler regions, and poor nations in hotter parts of the world. This is due, at least in part, to the relative inability of poorer countries to pay for the projects necessary to mitigate the effects of climate change, including more extreme weather events and the deterioration of arable land in subsistence economies.

For instance, Miami Beach is spending hundreds of millions of dollars to raise streets and install pumps in preparation for the expected flooding from rising seas — but Port-au-Prince, Haiti, only

700 miles away, simply doesn't have the resources for such projects.

A report released last week found that extreme weather displaced 7 million people from their homes during the first half of 2019, especially in Asia and Africa. That set a new record, but researchers warned that the number of such events would increase as the climate continues to change.

So whose problem is this to fix? The simple answer, of course, is that the responsibility for mitigating climate change belongs to all of us: A global problem requires a global solution. We must all change our behavior and our policies.

But the effort must be led by the nations that reaped so many of the benefits of economic development and increased wealth through industrialization for so long. The poorest countries in the world need help finding the money, resources and technology to move toward a sustainable future without plunging themselves much further into crushing poverty and inequality. The richer countries, though they will have enormous costs of their own, have a moral obligation to step up.

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The call for “climate justice” is not new. In 2010 and then again at the 2015 Paris agreement on climate change, wealthier nations pledged to donate to the so-called Green Climate Fund, building up to \$100 billion per year by 2020. The fund was created under the auspices of the United Nations to help developing countries reduce the emissions that lead to climate change and adapt to the inevitable effects of it that are already underway. The goal of the fund is to use “public investment to stimulate private finance” for climate-related projects. It is governed by a board of representatives from 24 nations.

But in 2018, Oxfam found that the donor nations had fallen behind in meeting their pledge. The organization’s senior climate change policy advisor called the money moving from rich countries to the least developed and most vulnerable “sadly inadequate.” We would add: shameful. While the world burns, the politicians and bureaucrats fiddle.

So far, donor nations have coughed up only \$10.3 billion and the Green Climate Fund has committed \$5.2 billion of that to 111 projects around the world. President Trump, true to form, has vowed to “terminate” American contributions to the fund; to date, the U.S. has only sent \$1 billion of the \$3 billion that President Obama had pledged

When the Environmental Protection Agency released its plan earlier this month for addressing marine litter, it named five Asian nations—China, Indonesia, the Philippines, Thailand, and Vietnam—as responsible for more than half of the plastic waste flowing into the oceans every year.

“The United States has some of the most beautiful beaches and oceans in the world, and the coastlines are incredible,” President Trump says in enlarged type on the plan’s first page. “As president, I will continue to do everything I can to stop other nations from making our oceans into their landfills.”<sup>14</sup>

The trouble with that framing, scientists say, is it distorts the complexities of a global problem and contributes to a sense of complacency in the United States that marine litter is Asia's problem.

Now, new research, published Friday in *Science Advances*, reexamines the U.S.'s role as a plastic consumer and concludes that the country has much more work to do at home to manage its waste.

China may be the world's largest manufacturer of plastic, the report finds, but the United States is by far the world's largest generator of plastic waste—it produced about 42 million metric tons of the stuff (46 million U.S. tons) in 2016. The U.S. also ranks as high as third among coastal nations for contributing litter, illegally dumped trash and other mismanaged waste to its shorelines.

Meanwhile, less than 10 percent of American plastic waste is recycled, and the U.S. has a 30-year history of shipping half of its recyclable plastic overseas, primarily to China and other developing nations lacking the infrastructure to manage it. That practice was drastically reduced only when China stopped buying plastic scrap in 2018 as part of a green campaign to clean up its own environment.

The study's authors say they conducted it, in part, because the “finger-pointing” has not helped draw the world together to work on a global solution.

“Let's face it, we have a large coastal population [in the U.S.]. We are massive consumers and that has consequences, and we have to get out of this silliness that all we have to do is stop Asians from dumping in the ocean and we'd be all set,” says Ted Siegler, an economist and partner at DSM Environmental Services in Windsor, Vermont, and a co-author of the study.

The new research is not the only analysis of the United States's handling of plastic waste. The National Academies of Sciences held its first public meeting this week for an 18-month assessment of the United States' contribution to plastic waste that was commissioned by Congress and is due at the end of 2021. That research is included in legislation that funds the marine debris program operated by the National Oceanic and Atmospheric Administration, which will oversee the project.

In convening the meeting, Amy Uhrin, chief scientist of NOAA's marine debris program, reminded her audience, "It's not strictly a Southeast Asia problem."

The blame-Asia storyline dates to 2015

Ironically, the Asia storyline took hold after some of the same authors of the new Science Advances study published the first comprehensive assessment of the global waste problem in 2015

. Using World Bank data from 192 coastal nations, they concluded that an average of 8 million

In that 2015 study, the scientists also published a chart listing the top 20 nations contributing plastic waste, which has since been widely circulated. The top five plastic polluters included China, Indonesia, the Philippines, Vietnam, and Thailand. The United States ranked twentieth, the only wealthy nation on the list.

To be sure, heavily populated developing nations in Asia and Africa that have an expanding middle class, a growing appetite for consumer products, and a lack of infrastructure to properly manage waste are indeed major contributors to the global problem.

But Dave Ford, a former advertising executive, finds that narrative unhelpful. In 2019, he enlisted Soul Buffalo, the leadership network he founded, to bring industry titans and environmentalists together in search of solutions to the plastic waste problem.

"We've got 70 of the top organizations in the world on board and 25 brands," he says. "We're in regular dialogue with top industry leaders. But I've had at least a dozen U.S. companies tell me they didn't feel like it made sense for them to join because this is largely an Asian issue."

Winnie Lau, a scientist at the Pew Charitable Trusts who was not involved in the Science Advances study, says it "sheds light on the true extent of the contributions of high-income countries like the U.S., to the global marine plastic pollution problem." She says the findings reinforce conclusions reached by Pew's own research on plastic waste.

Earlier this year, in partnership with SYSTEMQ, a London-based environmental consulting firm, Pew forecast that plastic waste in the oceans will triple by 2040 unless the world acts urgently to

reduce plastic use and gain control of trash.

The new work

The pioneering 2015 study of marine plastic didn't include illegal dumping and export of plastic waste. In the new analysis, the team considered those actions, but only for the U.S. They say data for other nations were inconsistent or didn't exist.

"We were not attempting to re-do the 2015 study," says Kara Lavender Law, a marine scientist at the Sea Education Association in Woods Hole, Massachusetts, and the new study's lead author. "The whole point was to examine the United States."

However, the scientists did find that many developing nations with poor waste management in the 2015 study, which used 2010 data, have since reported improvements in waste management and construction of infrastructure. The top five Asian nations also reported gains. China, for example, reported a 60 percent decrease in waste generation and a 51 percent decrease in inadequately managed waste, primarily due to rapid construction of incineration plants.

## **Conclusion**

Articulating a right to a decent or healthy environment within the context of economic, social, and cultural rights is not inherently problematic. Clarifying the existence of such a right would entail giving greater weight to the global public interest in protecting the environment and promoting sustainable development, but this could be achieved without doing damage to the fabric of human rights law, and in a manner which fully respects the wide margin of appreciation that states are entitled to exercise when balancing economic, environmental, and social policy objectives. It would build on existing precedents under the ICESCR, and reflect international policy on sustainable development endorsed at Rio in 1992 and in subsequent international conferences.

The further elaboration of procedural rights, based on the Aarhus Convention, would facilitate the implementation of such a right, and give greater prominence globally to the role of NGOs in

public interest litigation and advocacy. These two developments go hand in hand. They are not a necessary part of any declaration or protocol on human rights and the environment, but they do represent a logical extension of existing policies and would represent a real exercise in progressive development of the law.

A declaration or protocol on human rights and the environment thus makes sense provided it brings together existing civil, political, economic, and social rights in one coherent whole, while at the same time re-conceptualizing in the language of economic and social rights the idea of the environment as a common good. It would, in other words, recognize the global environment as a public interest that states have a responsibility to protect, even if they only implement that responsibility progressively and insofar as resources allow.

Using existing human rights law to grapple with climate change is more challenging. Giving human rights extraterritorial scope in environmental cases is not the problematic issue, however. As we have seen, the argument that transboundary victims come within the jurisdiction or control of the polluting state can be made, is consistent with existing human rights law, and is supported by developments in international environmental law.

If that is correct then a state does have to take account of transboundary environmental impacts on human rights and it is obliged to facilitate access to remedies and other procedures. But climate change is a global problem. It cannot easily be addressed by the simple process of giving existing human rights law transboundary effect.

It affects many states and much of humanity. Its causes, and those responsible, are too numerous and too widely spread to respond usefully to individual human rights claims. Moreover, much of the economic policy which drives greenhouse gas emissions worldwide is presently lawful and consistent with the terms of the UNFCCC and the Kyoto Protocol. It is no more likely to be derailed by human rights litigation based on ICCPR rights than the UK's policy on Heathrow airport in the Hatton Case.

The response of human rights law – if it is to have one – needs to be in global terms, treating the global environment and climate as the common concern of humanity. That is why locating the right to a decent environment within the corpus and institutional structures of economic, social, and cultural rights makes more sense. In that context the policies of individual states on energy use, reduction of greenhouse gas emissions, land use, and deforestation could be scrutinized and balanced against the evidence of their global impact on human rights and the environment.

This is not a panacea for deadlock in the UNFCCC negotiations, but it would give the rights of humanity as a whole a voice that at present is scarcely heard.

Whether the UNHRC wishes to travel down this road is another question, for politicians to answer rather than lawyers, but that is where it must go if it wishes to do more than posture on climate change.

