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**THE IMPACT OF ECOLOGICAL DAMAGE ON HUMAN RIGHTS IN  
INTERNATIONAL LAW**

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**Abstract.** This study explores the environmental impact of the ecological damage on human rights today, when the protection of environmental human rights reaches a global level, being reflected not only in national laws, but also in international treaties.

The twenty-first century should bring new challenges to the traditional view and interpretation of human rights. The environmental harm highly contributes to the violation of the right to life and health of many people all over the world.

*“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. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights - even the right to life itself”.*

*From Declaration of the United Nations Conference on the Human Environment, Stockholm, 1972*

The binding between environmental impact and human rights was first definitely acknowledged in 1972, in the Stockholm Declaration, adopted by the United Nations Conference on the Human Environment, according to Principle 1, a human 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 well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations [1].

Recognizing humanity as a part of nature leads to recognizing human rights as intertwined with the environment. Ecological damage interferes environmental human rights, and the exercise of human rights helps to protect the environment and to promote sustainable development. A safe, clean, healthy and sustainable environment is necessary for the full enjoyment of human rights, including the rights to life, to the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to safe drinking water and sanitation, to housing, to participation in cultural life and to development, as well as the right to a healthy environment itself, which is recognized in regional agreements and most national constitutions [2]. Human rights instruments further reflect a wide array of principles applied in the context of environmental law, including solidarity, accountability, transparency, participation, access to information and remedies, the precautionary principle, equality and equity.

The right to live in a healthy environment is recognized only by a few sector-specific binding international and regional conventions [3]. In existing regional and international documents on this issue there is a lack of universal or full definition of the scope and content of this right. Regional agreements recognizing the right to a healthy environment, generally relate to the areas of human rights and do not take into account the specifics of environmental issues. Some agreements do not allow individuals or groups to sue for personal protection or public interest. Besides, currently there is no relevant international environmental legal framework for the protection of environmental rights' defenders.

Nowadays 155 states recognize the human right to a healthy environment in their constitutions or sub constitutional regulations [4]. Also such a right is declared in Stockholm and Rio Declarations, mentioning 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 well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.

Environmental displacement has an impact on millions of people and is likely to involve the millions in the near future. Global human impact on the environment is creating a new kind of casualty - the environmental refugee. Environmentally induced movements may be either temporary, with the possibility of return, or permanent, without the possibility of return and the necessity to resettle in another area [5].

The most of ecological problems and their impacts are transboundary which led to recognition that international cooperation among states all over the world through appropriate legal frameworks was essential to the creation of effective solutions.

Principle 21 of the Stockholm Declaration in 1972 and Principle 2 of the Rio Declaration in 1992 propound the responsibility of states to ensure that activities under their jurisdiction or control would not cause damage to environment of other states or areas located beyond the limits of their national jurisdiction

Strictly speaking, the narrow definition of environmental damage is limited to damage to natural resources, namely air, water, soil, fauna and flora, and their interaction. However, in more extensive approach, environmental damage includes harm to natural resources, cultural heritage, landscape and environmental amenity [6]. This evolution in the meaning of environmental damage shows the correlation between ecological impact and human and legal factors in international law. In this context, the definition of environmental damage not only includes natural environment but also all aspects of the human life and sustainable development of natural resources and cultural heritage. It is clear that ecological damage is directly interacted to human activities. Consequently, no international environmental treaties tried to define environmental damage at the time of accident [7].

It is necessary to underline that the environmental damage is variously defined in various legal systems. National and international legal documents contain different definitions of the concept of environmental damage.

In particular, The Environmental Code of the Republic of Kazakhstan dated 9 January, 2007 No.212 defines the environmental damage as “environmental pollution or the seizure of natural resources in excess of established standards, causing or causing the degradation and depletion of natural resources or the death of living organisms” [8]. The Environmental Code, obviously, does not provide a broad interpretation of the environmental damage, having focused on harm to nature, and deviating from harm to human rights and society. In particular, there is no cohesion between ecological harm and human rights in ecological damage definition.

Nonetheless, the article 31 of the Constitution of the Republic of Kazakhstan, adopted on August 30, 1995 at the republican referendum, allows environment to intertwine with fundamental human rights, declaring that:

1. The state shall aim to protect the environment in favor of human life and health.
2. Officials shall be held accountable for the concealment of facts and circumstances endangering the life and health of the people in accordance with the law [9].

In order to implement international environmental law, Kazakhstan has acceded to the most important international treaties on climate change, combating desertification and biodiversity conservation, ratified the Aarhus Convention and transboundary Conventions of the European Economic Commission (ECE), UN, Kyoto Protocol, and became a member of the UN Sustainable Development Commission.

Today the ecological legislation of Kazakhstan is evolving through the introduction of coincident legal provisions arising from multilateral environmental agreements. However, evolution of human rights-related instruments is still on the initial stage. National implementation is straitened by a deficiency of appropriate local legislation and institutional capabilities. The structure of international environmental governance is designated by institutional fragmentation and diversity, revealing important consistency and coordination challenges. Coherence, synergy and coordination at the international level could ease implementation at the national level, as demonstrated by the “synergies process” under the Basel, Rotterdam and Stockholm Conventions, but is largely limited. [10].

While the traditional sources of international law stated in article 38 of the Statute of the International Court of Justice have obligate states to protect of the environment and provide the sustainable use of natural resources, there is insufficiency of legal regulation and a large number of international legal problems that are associated with the realization of the right to a safe, clean, healthy and sustainable environment. The reasons are the lack of special rules governing international environmental law in general, gaps in the regulation of the provision and protection of environmental human rights, and, inter alia, the lack of a specialized international judicial body, the decisions of which could be binding [11].

The Stockholm and Rio Declarations underlined the importance of liability and redress for transboundary environmental harm as well as the paucity of international norms on the subject.

In *Gabčíkovo-Nagymaros*, the International Court of Justice faced the difficult task of the rights of parties under circumstances where the probability and extent of environmental harm remained unknown [12]. This underlined the dearth of rules or principles concerning unrealized harm, which is a problematic status quo in time between acts and their effects on the environment.

Degradation of ecology interferes with the enjoyment of a broad range of human rights, including those related to housing, water and sanitation, food, health, development and an adequate standard of living. Under international human rights law, states have an obligation to prevent foreseeable human rights harms, including those caused by environmental degradation. Human rights instruments further reflect a wide array of principles applied in the context of environmental law, including solidarity, accountability, transparency, participation, access to information and remedies, the precautionary principle, equality and equity.

According to *Framework Principles on Human Rights and the Environment* by John H. Knox, UN Special Rapporteur on Human Rights and the Environment, The obligations of states to respect human rights, to protect the enjoyment of human rights from harmful interference and to fulfil human rights by working towards their full realization all apply in the environmental context. States should therefore refrain from violating human rights through causing or allowing environmental harm; protect against harmful environmental interference from other sources, including business enterprises, other private actors and natural causes; and take effective steps to ensure the conservation and sustainable use of the ecosystems and biological diversity on which the full enjoyment of human rights depends [13].

Environmental principles show the way in which environmental treaties can be interpreted, and may fill gaps between the rules laid out in treaties. Such principles include the duty of states to prevent significant environmental harm beyond their national boundaries, exercise precaution in making decisions which may harm the environment, provide reparation for environmental harm, provide public access to information and decision-making involving potentially significant environmental harm and cooperate in environmental protection. Some of the principles have been incorporated into the specific contexts of many multilateral environmental agreements. In addition, several international courts and tribunals have confirmed the

existence of rules of customary international law relating to environmental protection [14], in particular, the obligation to prevent environmental harm beyond national jurisdiction, the performance of due diligence, the duty to conduct an environmental impact assessment and the obligation of reparation for environmental damage.

Right to a clean and healthy environment is one the most important principles, proclaiming that every human has a right to live in a healthful and safe environment, including air, water and earth, and to food and other material necessities, all of which should be sufficiently free from contamination and other elements which detract from the health or life of man [15].

Principle 10 of the *Rio Declaration on Environment and Development* adopted by the United Nations Conference on Environment and Development on 14 June 1992, states “environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes.

States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided” [16].

The concept of environmental democracy is generally constituted by the principles of access to information, participation in decision-making and access to environmental justice. This principle includes protection of human rights on international and local governance, in particular, protection of nature-defenders and indigenous peoples' rights. The effective exercise of procedural rights in environmental matters is made possible by the existence of certain mechanisms specifically intended for dealing with environmental issues or simply used for that purpose. This is the case for the mechanisms devised by international organizations allowing people tangibly to avail themselves of one of these procedural rights – the right to information – or permitting the judicial or non-judicial review of the exercise of such rights [17].

Principle of prevention is requiring states to exercise their sovereignty over natural resources in a manner which ensures that activities within their jurisdiction or control do not significantly damage the environment and people beyond their territorial boundaries. Since it first appeared in the 1938 Trail Smelter arbitration, the prevention of transboundary harm has been framed as a principle in foundational instruments of international environmental law. This principle is intrinsic to a core preference in international law for preventing environmental harm rather than compensating for harm that has already occurred [18]. Precaution principle stipulates that states are required to adopt a precautionary approach when taking decisions or in regard to potential emissions which may harm the environment. Such a duty remains intact irrespective of the absence of scientific certainty as to the existence or extent of such risk.

In accordance with the provisions of the Universal Declaration of Human Rights of 1948 and the International Covenant on Economic, Social and Cultural Rights of 1966, everyone has the right to an adequate standard of living for his own health and well-being and that of his family and to the continuous improvement of living conditions [19]. The impact of environmental pollution on human health is well documented, and environmental quality standards for the protection of human health have been established for different pollutants and environmental media, based on scientific research to determine “no adverse effect” concentration and exposure levels below which there is no significant health impact. Such standards have been set both at the national and international level [20].

The right to healthy environment is interlaced with the right to health, both arising from human right to life in a vital and safe environment. As it was declared in the World Charter for Nature: “Mankind is part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients”. Human rights are interdependent, indivisible and interrelated. This means that environmental damage violates fundamental human rights, in particular, the right to health, but may also impair the enjoyment of other human rights, such as the rights to education or work.

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