



Edited by

Yves Le Bouthillier • Miriam Alfie Cohen

Jose Juan Gonzalez Marquez • Albert Mumma

Susan Smith

Poverty Alleviation and Environmental Law



IUCN Academy of
Environmental Law Series



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1. Introduction

We can all agree that the international community, through legal and other means, needs to pursue both the alleviation of poverty and the protection of the environment. Ending poverty would be to truly respect Article 1 of the Universal Declaration of Human Rights that states that 'All human beings are born free and equal in dignity and rights'. Protecting the environment is the only way to ensure the survival of this and future generations and to also acknowledge, as stated in Article 1 of the Earth Charter, that 'all beings are interdependent and every form of life has value regardless of its worth to human beings.'

The relationship between the alleviation of poverty and the protection of the environment is a complex one. There is every reason to believe that poverty and environmental degradation go hand in hand: extreme poverty, with the need to survive until the next day or the next year, can lead to severe environmental depletion and irreversible damages. In turn, depletion of natural resources by both private and public actors, resources on which communities have relied for their economic, social and cultural well being, can cause a long slide into poverty. All around the world, poverty is found in contaminated lands, near waste sites, and close to polluting industries. This is no mere coincidence (Shelton, Sabzwari and Scott, Cohen and Jáuregui, Paddock). There are, however, situations where alleviation of poverty and the protection of the environment appear to be at odds with one another: when the need to increase the standard of living of poor communities can disrupt fragile ecosystems (Mumma) or when economic sustainability through the preservation of traditional practices can arguably constitute a threat to the conservation of species at risk (Couzens). In other cases, economic development threatens both the environment and the cultural heritage of poor ethnic minorities (Gruber). As will be seen throughout this volume, the role that law plays in the relationship between poverty and the environment will vary depending on the situation and will be more successful at pursuing environmental justice in some cases than in others.

This volume is the result of a conference organized in Mexico by the IUCN Academy of Environmental Law on the theme of Poverty and the Environment. The Academy is an international network of more than 150 law faculties and academic research institutions around the world. Its mission is to

promote the teaching and research of environmental law at the international, regional and national level, with a particular emphasis on developing countries. Following the Mexico City conference, the editors selected 14 papers for publication. Together they provide an excellent sample of the many issues that were explored at the conference.

The book is divided into six Parts: (1) linkages between human rights, the environment and poverty; (2) environmental degradation and poverty: what is at stake for Aboriginal peoples? (3) the need for public participation in environmental issues to combat poverty; (4) states' approaches to environmental degradation and poverty; (5) the role of environmental courts and tribunal in the fight against poverty and environmental degradation; (6) global challenges: international mechanisms to address poverty and environmental degradation.

1.1 LINKAGES BETWEEN HUMAN RIGHTS, THE ENVIRONMENT AND POVERTY

In 'Using Law and Equity for the Poor and the Environment', Dinah Shelton (United States) explains how poverty alleviation and environmental protection are interdependent and how the pursuit of environmental justice is essential to achieve these two objectives. Looking at key principles of environmental justice, she explores how these have manifested themselves in the interplay between human rights law and environmental law and have contributed to the protection of the most vulnerable groups in society and the least developed states in the international community. She identifies four legal constructs that have, at the domestic and international level, incorporated these principles, with a particular emphasis on the rights-based approach. Her careful analysis of the latter approach allows the reader to appreciate its benefits and limits. This comprehensive chapter touches on many themes that are revisited in specific contexts in subsequent chapters and provides an excellent initial analysis to the theme of this volume.

By contrast to the broad approach of Shelton, Michael Kidd's chapter (South Africa), 'The Right of Access to Water in South Africa', focuses on a recent case dealing with the access to clean water by impoverished individuals living in the Phiri Township in South Africa. At the core of the decision is the question of the appropriate balance between the rights of individuals versus the public interest. The case made its way through three levels of courts. The decision of the last tribunal, the Constitutional Court, unfortunately illustrates the limits of the rights-based approach as Kidd concludes that: 'At the end of the day, there are people in Phiri who do not have access to even 25 litres per person per day, something which the Court did not realize or chose to ignore.'

1.2 ENVIRONMENTAL DEGRADATION AND POVERTY: WHAT IS AT STAKE FOR ABORIGINAL PEOPLES?

Modern society, with its emphasis on progress and development, has left very little space and resources for Aboriginal peoples and their traditional values. Aboriginal peoples are among the most impoverished groups in all corners of the world. Organizers of the conference at the genesis of this book were therefore not surprised to receive a number of submissions on this topic. The three chapters in this Part illustrate the diversity of challenges facing these Aboriginal groups around the world.

The cost of climate change will be disproportionately high for Aboriginal peoples. In Australia, for instance, a significant proportion of Aboriginal communities are located in remote or, in some cases, very remote areas. Because these remote communities also face a high level of poverty, they are particularly ill-equipped to adapt to climate change. Therefore, the government has to be alert and sensitive to the unique challenges facing aboriginal peoples. When designing policies and laws to reduce greenhouse gas emissions, such as carbon pricing, the government needs to be able to rely on solid data concerning the impact of these policies on Aboriginal peoples. Of course, it should also seek the active participation of Aboriginal peoples in the process to develop relevant laws and policies. In her chapter, 'Climate change impacts on the poor – a case-study of Australia's indigenous population and the impact of Australia's response on the population', Karen Bubna-Litic (Australia) questions the approach of the Australian government on both scores.

Three 'Rs' are what comes to mind when ones reads the chapter by Sidra Sabzwari and Dayna Nadine Scott (Canada): Resilience, Resistance and Respect. 'The Quest for Environmental Justice on a Canadian Aboriginal Reserve' is the story of the continued struggle of a small Aboriginal community, the Aamjiwnaang First Nation, to preserve its health and dignity as its traditional territory is surrounded by chemical factories. Having to deal with the health consequences of the long term cumulative effects from multiple pollution sources, the community has decided to deploy its own empowerment strategies. While in her chapter Karen Bubna-Litic deplors the gaps in the data collected by the Australian government regarding Aboriginal Australians, in this chapter the authors explain that the community has to produce its own data through biomonitoring and 'bucket brigades'. In doing so, the community has not only gathered crucial information that would not otherwise have been available but has also prompted action by the government. For Sabzwari and Scott, aboriginal communities around the world can draw positive lessons from this case study: 'For aboriginal communities to obtain environmental justice, they need to share strategies for community empowerment and for the generation of data and knowledge that can change the conventional dynamics

of power, authority and credibility that prevail with respect to environmental law and policy.'

'A clash of rights and interest' is how Ed Couzens (South Africa) characterizes the negotiations in the International Whaling Commission on the issue of quotas for aboriginal subsistence whaling. His chapter, 'Whaling and Dealing: Aboriginal Subsistence Whaling, Politics and Poverty', provides an in-depth and fascinating account of the last 30 years of discussion on this issue within the Commission. While the core question is how to protect endangered species and at the same time preserve traditional fishing practices in communities that have depended on whale fishing since time immemorial, Couzens argues that political dealing has been marked by a great deal of hypocrisy at various times on the part of parties supporting one or the other position. He concludes that until this issue is resolved 'Poverty, culture and conservation will continue to be horses traded in a dodgy marketplace – and both indigenous peoples and whales might in the end be the poorer for it.' His analysis demonstrates how it can be difficult in the international arena to find the right balance between conservation, poverty and cultural issues when the interests of powerful States are involved and there are disagreements on key concepts such as 'traditional peoples' as well as on scientific evidence.

1.3 THE NEED FOR PUBLIC PARTICIPATION IN ENVIRONMENTAL ISSUES TO COMBAT POVERTY

Some of the authors in earlier Parts of this volume have noted the key role of public information and public participation in the pursuit of environmental justice for poorer communities (Bubna-Litic; Sabzwari and Scott). This important question is the central theme of the next two chapters.

LeRoy C. Paddock (United States), in his chapter titled 'The Role of Public Engagement in Achieving Environmental Justice', provides an overview of initiatives in the last 25 years by the federal government as well as some states in the United States to more effectively engage the public, and in particular low income communities and communities with large minority populations, in environmental issues that affect them. Like Sabzwari and Scott, his starting point is that environmental justice is very much about remedying the disproportionate adverse environmental burden placed on these communities. This can only be achieved by ensuring their meaningful involvement in the decision-making process. As Paddock convincingly explains, this means much more than simply setting up a public meeting. His study of various current practices in the United States provides an impressive list of innovative methods by which public participation can be made more inclusive and effective.

Carla D. Aceves-Avila (Mexico), in her chapter, 'The Right of Access to Information as a Tool for Environmental Protection and Poverty Eradication in Mexico', details the various databases in existence in Mexico, and the key actors responsible to provide environmental information. However, there are serious problems that need to be tackled such as the poor quality of some of the information, insufficient attention to the means by which this information is conveyed to marginalized groups, and a need to adopt an active approach to access to information. There is a public information infrastructure to build on but more resources as well as political will are needed to make it effective.

1.4 STATES' APPROACHES TO ADDRESS ENVIRONMENTAL DEGRADATION AND POVERTY

How can a state achieve conservation objectives effectively through environmental regulation while benefiting the poorer segments of society? This is the issue that Paul Martin (Australia) explores in 'Embedding Social Justice in the Design of Environmental Regulation'. State constraints or market instruments will likely result in inequalities unless regulatory regimes integrate social justice values alongside economic concerns. Therefore, Martin puts forward a number of proposals that could go a long way to ensure that the process of regulatory review in the environmental realm results in social equity.

Improved urban planning to address poverty and environmental degradation in megacities is the key topic of Miriam Alfie Cohen and Oscar Flores Jauregui's chapter (Mexico), 'Planning and Environment in Mexico City's Metropolitan Zone: Trying to Defeat Poverty'. Economic growth and urbanization has and will continue to produce environmental degradation and increase in inequalities until urban governance is driven by transversal and integral environmental-poverty plans. The need for a comprehensive and innovative approach to local governance is exemplified by a look at recent initiatives by municipal authorities and community groups in Mexico City.

1.5 THE ROLE OF ENVIRONMENTAL COURTS IN THE FIGHT AGAINST POVERTY AND ENVIRONMENTAL DEGRADATION

As thoroughly demonstrated by George (Rock) Pring and Catherine (Kitty) Pring (United States) in 'Specialized Environmental Courts & Tribunals: Improved Access to Justice for Those Living in Poverty', an increasing number of countries have opted to create environmental courts and tribunals.

The two authors have recently published the most comprehensive multidisciplinary study to date on the topic. In that study they identified 12 building blocks that are essential to consider in the development and implementation of these institutions. For the purpose of this volume, they have emphasized six of these blocks as particularly relevant to ensure greater access to environmental justice for the poor. These factors are (1) geographic coverage; (2) standing; (3) costs; (4) expert evidence; (5) alternative dispute resolution; and (6) operational tools.

Albert Mumma's chapter (Kenya), 'The Resolution of Urban Housing Development Disputes as a Mechanism for Poverty Alleviation: A Case Study of Kenya's National Environment Tribunal' dovetails nicely with the previous chapter. In the specific context of the role of the National Environmental Tribunal in housing projects in Kenya, Mumma identifies and discusses how some of an administrative tribunal's key attributes, can work to the advantage of poor communities. The three elements he focuses on (costs, timely process, rules on standing) are among those listed by Catherine and Rock Pring as important to the pursuit of environmental justice. Similarly to Michael Kidd's discussion in the water context, Mumma also explores the need for balancing between conflicting interests, in this case the need for housing projects for poor communities on one hand, and environmental protection on the other. His overall assessment of the Tribunal's contribution to find the right balance is positive. In the last part of the chapter, the author considers whether the Tribunal should have a larger competence in matters of environmental protection.

1.6 GLOBAL CHALLENGES: INTERNATIONAL MECHANISMS TO ADDRESS POVERTY AND ENVIRONMENTAL DEGRADATION

The dual challenge of reducing poverty and preventing environmental degradation calls for international mechanisms that effectively tackle both issues. As illustrated in the first two chapters in this Part, legal instruments developed by the international community to address specific problems, namely the development of the Clean Development Mechanism in the fight against climate change and the adoption of the World Heritage Convention for the preservation of unique cultural sites, could be improved upon to better meet these challenges. It is fitting that the third text of this Part, and the last one in the book, suggest a new legal mechanism as new ideas have to be considered to give hope for significant progress in combating poverty and environmental issues in the current century.