

Green Equity: Environmental Justice for more Inclusive Growth

By Kishan Khoday and Leisa Perch

I. Introduction

This June sees world leaders and civil society convene for the UN Conference on Sustainable Development (Rio+20). It will focus on reviewing progress in achieving the goals of the original 1992 UN Conference on Environment and Development (the 1992 Rio Earth Summit). A main issue at the heart of the sustainable development paradigm, and the Rio+20 Summit, will be the extent to which the world has been able to find synergies between dual challenges of poverty reduction and ecological protection. As we look back over the past twenty years, an important trend has been the rise of rights-based approaches and a transnational environmental justice movement in which citizens confront both the State and the international community on the impacts of growth on social and ecological well-being. The escalating development challenges, defined by the nexus between poverty and ecological degradation, are also conditioned by the lack of accountability and rule of law surrounding natural resource use and the control of pollution. Vulnerable communities are the ones who most suffer the burden of ecological change, while being least able to mobilize against these trends. For the poor, unsustainable resource use and pollution bring risks to their ability to earn a livelihood and live a healthy life; it is the new face of long-term structural inequality.

Environmental justice can be defined as an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs related to the impacts of ecological change on the poor and vulnerable in society. The formal terminology of 'environmental justice' movements originally arose in the West as a means for poor and socially excluded communities to confront the disproportionate impact of pollution on their health and well-being, an offshoot of the broader civil rights movements of the 1960-70s. It also represented social protest against the location of toxic industrial plants in poorer neighbourhoods. But environmental injustice as a phenomenon has been a reality going much farther back all over the world, including in the South, where threats to environment have constituted threats to life, livelihood and health ever since the onset of industrialization during the colonial and post-colonial eras. Environmental justice entails social empowerment as well as the expansion of freedom from the inequities that often result from traditional systems of resource exploitation. Three key aspects of environmental justice are explored in this Policy Brief:

- *First*, in terms of the normative framework for advancing environmental justice claims, important strides have been made on expanding environmental rights and access to justice. At the time of the first Rio Summit in 1992, only about 60 Constitutions had environmental rights provisions; by 2012 has more than doubled to about 140 Constitutions.
- *Second*, environmental justice issues move forward in the context of changes to the structure of global society and order. While in 1992 about 90 per cent of the poor lived in Least Developed Countries, by 2012 the majority now reside in Middle Income Countries. A key focus of environmental justice movements today is the rapid rise of consumption among affluent parts of society across industrialized and Middle Income countries and the growing ecological change felt directly by the poor.
- *Third*, while environmental justice movements retain a strong basis in modernist conceptions of rights and justice, the emergence of a multi-polar world order has opened space for advocates of change to explore a greater diversity of worldviews and epistemologies, possibly leading to new visions on the relation between society, environment and justice.

II. Normative Evolution of Environmental Rights & Access to Justice

Both the 1972 Stockholm Declaration on the Human Environment and the 1992 Rio Declaration on Environment and Development focused on rights-based approaches to environmental protection. Principle 1 of the Stockholm Declaration stated that people have "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". Principle 10 of the Rio Declaration further stated that "each individual shall have appropriate access to information concerning the environment... and the opportunity to participate in decision-making processes. Effective access to judicial and administrative proceeds, including redress and remedy, shall be provided." This was echoed by the International Court of Justice finding in the 1997 Gabcikovo Nagymaros case that "protection of the environment is a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights, such as the right to

health and the right to life". The UN Special Rapporteur on Human Rights and the Environment went further, advocating for a right to prevention of ecological harm as part and parcel of the right to development. The recent 2011 report of the UN Human Rights Council on human rights and the environment also serves as an important benchmark.

In measuring progress on environmental justice at the local level, a key trend has been the global expansion of national Constitutions that express citizen environmental rights. At the time of the first Rio Summit in 1992, only about 60 countries had such provisions. By 2012, this has more than doubled, with about 70% or 140 Constitutions today incorporating principles of environmental rights.

Such provisions are an important base for claims against the State and are critical to communities seeking access to justice. An innovative example is in Bangladesh where a proposed revision to Article 15 of the Constitution on the basic necessities of life would provide a duty on the State to "take appropriate response measures, including mitigation and adaptation, against anthropogenic-accelerated global-warming-induced climate change and sea-level rise" (Ali Sanwar, 2011).

This has also been reflected at the international level, including in the African Charter Article 24 of which states, "All peoples shall have the right to a general satisfactory environment favorable to their development", an important provision which has supported environmental justice claims by countries like Nigeria and Kenya (Rajamani, 2010). Another example is the recent proposal by island state of Palau to seek an Advisory Opinion from the International Court of Justice (ICJ) on climate change damage. Palau intends to ask the ICJ to provide guidance on how the 'no harm rule' in international law can support the disproportionate impact of climate change of small island developing states.

The role of courts is of particular importance, evolving a special role in many countries in addressing the environmental plight of communities. They act as a check and balance against the majoritarian forces of the legislature and executive, which seeks to exploit the environment for the greater good but often at the expense of the poor and vulnerable. The integration of environmental principles at the Constitutional level also has broader political value, recognizing at the highest level links between ecological change and social justice and catalyzing legal reforms. For example, based on these normative provisions, there are now over 350 specialized environmental courts and tribunals established across 40 countries providing greater citizen access to environmental justice. Recent examples in the emerging South include both India and China.

As **India** marks twenty years since launch of its economic liberalization policy in 1992, issues of ecology and social justice have been the focus of a surge of social movements in recent years. In 1991, the Indian Supreme Court observed that "[t]he right to live is a fundamental right under Article 21 of the Constitution, and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life." This landmark set the base for expansion of rights-based approaches to challenging the impacts of growth and

use of the courts. This was followed over the past twenty years by a series of lawsuits where the judiciary upheld citizen rights to clean air and water, and mandating public agencies to enforce laws in line with concerns of social and environmental justice. In an effort to consolidate these trends, in 2010 India passed a National Green Tribunal Act, setting the base for the world's most extensive system of environmental courts. Once implemented, India could well serve as an example of how global principles of environmental justice can translate at the local level, in a context of finding a new balance in an emerging economy with strong democratic systems.

As **China** marks twenty years since launch of its socialist market economy policy, it also faces the rise of movements calling for access to information, participation and justice. Environmental NGOs form the largest segment of NGOs in the country, and in 2011 China saw one of its largest protests in recent history, the Dalian PX mass protest over toxic pollution. This was one among hundreds perhaps thousands of protests over environmental impacts on vulnerable and poor communities arisen across the country in recent years. In response, China passed an Environmental Rights Section in its first-ever Human Rights Action Plan (2009), which aims to "strengthen rule of law to safeguard public's environmental rights" alongside established of more than 47 local environmental courts and tribunals and a Law on Public Participation in Environment Matters (2006) and Measures on Open Environmental Information (2008).

These and other measures are signs of a re-working of the socialist market economy to engage the transformative vision of environmental justice and rights.

III. Ecological Change as Structural Violence

While communities around the world turn to the rule of law and systems of rights to address growing environment impacts on their well-being, they also confront the fact that in many ways systems of law and justice have been complicit in creating the very problems communities face.

The dominant forms of political economy in many countries serve to "reinforce instead of challenge the stratification of people...and place. Current systems have institutionalized unequal enforcement of safety precautions, traded human health for profit...exploited the vulnerability of economically and political disenfranchised communities" and "subsidized ecological destruction" (Bullard, 2005).

While social movements have succeeded in incorporating environmental elements into mainstream systems of law and justice as noted above, these innovations in many ways remain at the periphery of the core development process.

In addition to above noted progress on the normative front, a central focus for environmental justice movements is also on systemic change at the core of development, to move beyond forms of political-economy that create and reinforce problems of ecological change and social injustice to forms that can prevent them. Structural violence "because it is so readily ignored by a hard-charging capitalism" exacerbates the vulnerability of ecosystems and of people who are poor, disempowered" (Nixon, 2011).

This is particularly important for emerging economies. The world is going through a structural shift to a more multi-polar economy, with emerging economies now leading about 80 per cent of new global GDP growth. Emerging economies are now playing lead roles in global politics and growth, while simultaneously facing intense local movements for change, catalyzing adaptation to political and economic systems.

While in 1992 at the time of the first Rio Earth Summit about 90 per cent of the world's poor lived in least developed countries, by 2012 the majority of the poor now reside in emerging economies. In this context of dynamism and change, environmental justice movements are playing an important role, finding resonance with marginalized communities to redress social injustice and ecological damage. Environmental justice leaders have emerged across the global South from the Accion Ecologia and related movements in South America and the neo-Gandhian green Satyagraha movement in India, to the indigenous Adat rights movement in Indonesia and Saro-Wiwa and his environmental rights campaigners in Nigeria.

Also of top priority is the specific structural disempowerment felt by rural women across the world. They also too have been at the forefront of grassroots efforts to reset the balance and to broaden consensus on a multi-layered approach to environmental justice. The courageous Wangari Maathai in Africa and other women leaders following in her footsteps around the world serve as critical examples of this facet of "people-power". The sharing of the 2011 Nobel Peace Prize by three women is further evidence of the social, economic and environmental benefits of women's empowerment and access to justice.

As more and more countries move into the middle income and industrially developed category, issues of environmental justice will traverse not only the traditional North-South boundaries, which remain central to issues of global sustainability and justice, but also the growing gaps between developed and developing regions within emerging economies.

In the early post-colonial days of state building, the social compact in many countries was defined by a balance between the state control of the environment and provision of growth and development results. In analyzing the political economy of the environment, it becomes clear that political power and economic wealth have been generated from strategic use of the environment.

Higher expectations have now emerged for more effective, accountable and participatory use of the environment as a public good, and preventing the impact of pollution on the poor and vulnerable. Challenges exist in maintaining the status quo in the face of rapid change

Box 1 **Environmental Justice from Below**

Nigeria – Toxic Torts

The indigenous Ogoni of the Niger Delta have long suffered from toxic pollution from the oil sector, leading to a non-violent Movement for the Survival of the Ogoni claiming environmental rights abuses. Its founder Ken Saro-Wiwa and others were executed in the mid-1990s years, leading to heavy confrontation. A class action lawsuit was initiated in London in recent years related to oil waste dumping by Trafigura, leading in 2011 to acceptance of responsibility by Shell for oil spills in the Niger Delta. Also in 2011, claims were submitted to the US Supreme Court under the Alien Tort Statute, with the Court agreeing to hear the landmark case, *Kiobel v Royal Dutch Shell Petroleum Plc*, to consider if corporations can be liable for rights violations committed overseas including alleged complicity in the executions of Ken Saro-Wiwa and fellow environmental activists.

Indonesia – Special Autonomy and the Environment

In 2011 indigenous group scaled up non-violent protests against the Government and the Freeport-McMoran Mining corporation at the Grasberg mine in Indonesia's Papua Province, world's largest copper-gold mine. The focus of many years of confrontation, communities have long called for environmental justice owing to toxic impacts on health and livelihoods, lack of participation in decision-making and misuse of land and resources. A 2001 Special Autonomy Act for Papua was passed after the Indonesian revolution of 1998, and while bringing some formal recognition for indigenous rights and customs, its implementation has been ineffective with little redress of environmental rights grievances. 2011 saw a resumption of agitation for autonomy and renewed calls for full independence.

Egypt – Environmental Rights in the Revolution

In 2011, a large demonstration took place in the Nile Delta town of Damietta, with communities confronting local Government and the MOPCO fertilizer company over alleged toxic pollution impacts over the years, impacts on human health and fisheries, and plans for expansion in 2012. One of Egypt's more intense protests in 2011, it led to death of protestors and closure of the plant. Broader calls for change have provided a platform for addressing long-standing environmental justice issues.

Peru – Indigenous Rights

Recent years have seen a surge of community protests in Peru over upcoming mining investments, largely focused on potential environmental impacts on health and livelihoods including the right to clean water. Major protests in 2011 led to a number of deaths among protestors and cancellation of two mega-projects, the Tia Maria copper project by Southern Copper, world's second-biggest copper mining company, and the \$4.8 billion Conga gold-copper project by Newmont, Peru's biggest such investment. By end-2011 Peru was even forced to enact a State of Emergency owing to the heightened level of social disruption.

and increasingly stark impacts on the vulnerable and poor in society. The growing challenges of "inequality (especially that of grinding poverty in a world of unprecedented prosperity) and of public goods (that is, goods people share together, such as the environment) will almost certainly call for institutions that take us beyond the capitalist market economy" as highlighted by Sen in various works in the 90s and 2000s.

Environmental justice movements seek to adapt the capitalist model, calling for non-socialist alternatives to the standard model of political economy (Speth, 2008).

IV. Rethinking Nature and Justice

While pushing for change, the environmental justice movement also fights internal contradictions existing within the paradigms of development, rights and justice.

The dominant epistemological frameworks which underpin these principles retain a bias towards Enlightenment worldviews of human progress, often with an emphasis on the pursuit of human well-being through mastery over nature. Before the modern environmental movement took shape following the 1972 Stockholm Conference on the Human Environment, the dominant discourse was a long-standing one, that the environment was in a 'state of nature', "a domain of utility, to be mastered and brought under man's control, compelled to satisfy his needs and administer his happiness. Opponents of this approach were viewed as primitive, traditional and underdeveloped" (Argyrou, 2005).

The efficient exploitation of ecosystems, and subjugation of the traditional societies which inhabited them, became identified with the pursuit of universal freedom and individual liberty. The conquest of nature took on a mythic character at the base of a new constitutional order and political economy made global through the colonial era. Colonial era development policy and its strong focus on efficient use of the environment had enduring impacts on poor and vulnerable communities around the world.

Colonialism gave many powers unparalleled access to land, minerals and labour in order to grow and expand their economies (Bandiera et al., 2005), with consequences for both global and local ecosystems.

This colonial legacy continues to negatively influence the structure of the world economy and levels of ecological risk, exposure and vulnerability (Adger et al. 2006). Thus, environmental justice movements today maintain a strong focus on post-colonial perspectives, seeking to address historical injustices related to abuse of society and ecology, and seeking to empower traditional conceptions on justice and nature deferred during the process of colonialism and post-colonial modernization.

As ecological change now emerges as an existential threat, calling into question the principle that human progress will necessarily make the future look better than the past, paradigms of development, rights and justice need to be redefined.

The UN Millennium Declaration (2000) set the Respect for Nature as a basic principle and condition for achieving and sustaining development in the 21st century.

As noted by Vaclav Havel, "the only option is a change in the sphere of the spirit, in the sphere of human conscience. It is not enough to invent new machines, new regulations, new institutions. Only by making such a fundamental shift will we be able to create new models of behavior and a new set of values for the planet." Understanding the evolving synthesis of global and local norms will be critical to understanding the future of environmental justice principles.

One example is in Ecuador which in 2008 enacted a new chapter on the Rights of Nature into its Constitution recognizing, for the first time at the apex of political and legal order, a traditional indigenous conception of society, justice and the environment. Article 1 states that "Nature, or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, functions and evolutionary processes." This coupled with other provisions provides for the first time a constitutionally-recognized existential right of nature independently of the utilitarian value to humanity. It stands in stark contrast to the standard human-centered Kantian conceptions of justice and rights, and also serves as a political landmark in the ability of the environmental justice movement to introduce indigenous worldviews into the debate.

This agenda for change went further when in 2009 the UN General Assembly and the UN Permanent Forum on Indigenous Peoples held a series of debates on ways to upscale traditional values into global environment and development policy. In the wake of disappointment at the 2009 Copenhagen climate summit, Bolivia hosted a World Conference on the Rights of Mother Earth, bringing together in 2010 governments and civil society leaders to rethink paradigms of development, rights and justice. The resulting draft Universal Declaration on the Rights of Mother Earth takes the existential rights of Nature to the global level and provides an important example of how the diversity of epistemologies and worldviews can shape global policy.

In the evolving public discourse, principles of environmental justice will be increasingly shaped by evolving socio-legal cultures and ideals for socio-environmental protection, and the reworking of 'modern' and 'traditional' views on society, justice and nature. Just as social and cultural change in the West drove twentieth century environmental justice movements, so too will emerging transnational constituencies for change be the source of new principles on the state of nature and the nature of justice. The future we want is not just greener; it is also more equitable, fair and just.

Kishan Khoday has served with UNDP since 1997, as UNDP Governance Advisor and Deputy Coordinator for Environment & Natural Resources in Indonesia (1997–2005), UNDP Assistant Resident Representative and Team Leader for Energy & Environment in China (2005–2009) and UNDP Deputy Resident Representative in Saudi Arabia (since 2009).
Email: kishan.khoday@undp.org

Leisa Perch serves as Policy Specialist/Team Leader for Rural and Sustainable Development with the International Policy Center for Inclusive Growth (IPC-IG) in Brasilia. She has served with UNDP since 2004, previously with UNDP Sub-Regional Office for Barbados and the OECS as Programme Manager for Poverty Reduction, Gender and HIV/AIDS.
Email: leisa.perch@ipc-undp.org

References:

- African Union (1982) *Charter on Human and People's Rights*, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58.
- Balakrishna Rajagopal (2003) *International Law from Below: Development, Social Movements and Third World Social Resistance*, Cambridge University Press.
- George and Catherine Pring (2009), *Greening Justice: Creating Environmental Courts*, WRI, Washington.
- James Speth (2008), *The Bridge at the End of the World: Crossing from Crisis to Sustainability*, Yale Press.
- Lavanya Rajamani (2010). *Rights-Based Perspectives in International Negotiations on Climate Change*. Working Paper 2010/1. Centre for Policy Research Climate Initiative.
- Oriana Bandiera, et al (2005). *Cooperation in Collective Action*, *Economics of Transition* 13 (3) 473–98.
- Ramachandra Guha (2006), *How Much Should a Person Consume?* Permanent Black, Ranikhet, India.
- Rob Nixon (2011), *Slow Violence and Environmentalism of the Poor*, Harvard University Press.
- Tim Bullard (2005), *The Quest for Environmental Justice: Politics of Pollution*, Sierra Club, San Francisco.
- Tim Hayward (2005), *Constitutional Environmental Rights*, Oxford University Press, New York.
- UNHRC (2011), *Study on human rights and the environment*, Report of UN High Commissioner for Human Rights, 19th Session of Human Rights Council, UN Doc. A/HRC/19/34. Geneva.
- Vassos Argyou (2005), *Logic of Environmentalism: Ecology and Post-Coloniality*, Berghahn Books, Oxford.
- W. Neil Adger et al. (eds) (2006). *Fairness in Adaptation to Climate Change*. MIT Press, Cambridge.

The views expressed in this brief are the authors' and not necessarily those of the Government of Brazil or the United Nations Development Programme.



International Policy Centre for Inclusive Growth

Esplanada dos Ministérios, Bloco O, 7º andar
70052-900 Brasília, DF - Brazil
Telephone +55 61 2105 5000

E-mail: ipc@ipc-undp.org ■ URL: www.ipc-undp.org

Policy International
Centre for Inclusive Growth