

Agenda 21 and Human Rights

The Right to Participate

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One of the primary objectives of this compilation of works is to show how human rights and environment relate. When thinking about this relationship, the first question that came to my mind was *if there is any value added of relating them?* To further disassociate this question I thought to approach the issue from both sides, that is, from the environmental side and from the human rights side.

One of the most seductive areas where environmentalists may look to strengthen the relationship with the human rights world is in the existence of international legal fora. That is, the existence of a quasi-judicial or judicial international process to force States to comply with international human rights law. Presently, international environmental law is lacking of this kind of mechanism. Hence, an important value added of linking these two areas of international law may be the use of international human rights mechanisms/systems for environmental claims. Several authors in this publication refer to such possibilities in their respective chapters.

Let's first look at the human rights side. What is the value added for the human rights world to relate to the environmental world? The human rights world already has an international forum to which to take claims for violations of human rights recognized by international instruments, and have been using this forum for the past several decades. The current struggle of human rights actors therefore is not the creation of these mechanisms but their strengthening and development. It is here, then, where the environmental world has a value added. The clever introduction of environmental claims in international human rights fora could lead to the further development of concepts and consequently help broaden the sphere of protection.

The *human right to participate*, in Agenda 21, is an example of this. The *human right to participate* is recognized in international human rights treaties, and is included in international environmental documents, resulting in the broadening of its concept and the development of what the *right to participate* implies.

We will start our discussion with a brief introduction of the existing links between human rights and the environment. Immediately afterwards, we will analyze the way in which

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human rights are dealt with in Agenda 21. Finally, we will refer to the *right to participate*; conditions for the effective exercise of this right, and the advantages and disadvantages that participation implies.

HUMAN RIGHTS AND THE ENVIRONMENT

Few are the issues of major concern in the international agenda as those of Human Rights and the Environment. These two fields are intrinsically connected and constitute a common denominator dealt with in the course of international conferences taking place during the last decade of this century. This gave rise to the United Nations Conference on Environment and Development (Rio de Janeiro 1992), the II Universal Conference on Human Rights (Vienna 1993), the International Conference on Population and Development (Cairo 1994), and the UN Conference on Human Settlements (Habitat II, Istanbul 1996).¹

We arrive at the end of this century with the firm conviction that human life is not conceivable without a perfect functioning and integrity of natural ecosystems, constituting an urgent and unpostponable need for the achievement of sustainable development. In this regard, the non-sustainability of our ecosystem represents a crucial threat to the right to life. Nonetheless, the intrinsic connection between human rights and the environment cannot be reduced to the right to life, since the existence of a healthy environment becomes a condition *sine qua non* for the enjoyment of other basic human rights. In order to illustrate this fact, we will mention some examples of the links between human rights and the environment:

- Right to health; without a clean environment we would hardly enjoy this human right.
- Right to own property; not only individually but collectively violated by environmental abuses. For instance, atmospheric pollution reduces property value, while the intrusion to indigenous territories for the sake of irrational exploitation of natural resources, violates collective rights to property.
- Right to development; is essential to consider within the framework of sustainability.
- Right to equality; violated due to the existence of marked disparities in which certain social sectors face disproportionate environmental abuses and degradation.
- Right to participate; this right is essential in every democratic society in order to ensure the implementation of efficient and sustainable environmental policies.

¹ A.A Cancado Trindade, “ Relations between Sustainable Development and Economic, Social and Cultural Rights: Recent Developments”, Human Rights, Sustainable Development, and the Environment, IIDH-BID, 2nd Ed. (1995), p. 357- 378

For the sake of brevity, we will not extend our discussion to other links that emphasize the inherent interdependence, complementarity and indivisibility of human rights and the environment as we have already mentioned sufficient examples that illustrate the matter.

HUMAN RIGHTS IN AGENDA 21

The main concern of Agenda 21 is to meet the basic needs of human beings, such as nutrition, health preservation, decent housing, education etc.- each of which have a corresponding human right.

To this respect, the Rio Declaration as well as Agenda 21 are significantly involved with elements that rightly belong to the conceptual universe of human rights; in which human beings are the main concern for sustainable development highlighting the right to a healthy and productive life in harmony with nature.

We should also emphasize that the right to development must be achieved so as to equitably meet developmental and environmental needs of present and future generations' right to equality. Moreover, poverty is recognized as a threat to sustainable development and the right to life.²

Along this line of thought, it is suitable to point out the specific reference included in Agenda 21 to two instruments addressing human rights: The Universal Declaration on Human Rights and the International Covenant on Economic, Social, and Cultural Rights, specifically when dealing with the right to decent housing.

Concerning the right to participate, of special importance is the right to appropriate access to information as well as to effective jurisdictional resources.³

At this point, we will analyze the *right to participate*, the central topic of this presentation.

RIGHT TO PARTICIPATE IN AGENDA 21

The Rio Declaration and Agenda 21 as well, have drawn special attention to the right to participate in environment management and development and to the promotion of sustainable development. The above-mentioned declaration explicitly refers to the right to participate (principle 10), highlighting the role of women (principle 20), youth (principle 21), Indigenous people and local communities (principle 22). As regards

² The Rio Declaration also refers to the humanitarian international law applying it to the protection of the environment (principle 24), to the protection of human health (principle 14), and to the interdependence and indivisibility of environmental protection, development and peace (principle 25).

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Agenda 21, the exercise of the right to participate is worthy of a more detailed study, which includes the integration of women in all development activities (chapter 24), children and youth (Chapter 25), indigenous people and their communities (Chapter 26), non-governmental organizations (Chapter 27), workers and trade unions (Chapter 29), business and industry (Chapter 30), Farmers (Chapter 31), and scientific and technological community (Chapter 32).

Finally, in Chapter 23 Agenda 21 emphasizes the fact that the commitment and genuine involvement of “all social groups” for the achievement of a “real social partnership” in support of a common effort for sustainable development will have decisive importance in all program areas of Agenda 21. It also recognizes that the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making.

We may conclude that any attempt to develop a local agenda, in Cordoba city and province, should not disregard a broad and active participation of all social sectors. The opposite would imply not only an inexcusable contradiction with respect to the global agenda, but also a futile effort deviating financial and human resources away from their principle target: sustainable development.

When analyzing a determined issue, it is convenient to define, first, the concepts that will be used; in this specific case, we shall refer to what we understand as *right to participate*. Within the context of this article we define *participation* as *the genuine involvement of all social actors in social and political decision-making processes that potentially affect the communities in which they live and work*. We do not, consider participation merely as an end, but as an effective tool to establish priorities, offer solutions, prepare, execute and apply the most accurate decisions possible. As has been wisely stated by the world community and expressed within the framework of the Rio Declaration, it is essential to invest in the integration of civil society actors, the private sector, educational centers and other key sectors of societies when developing a local agenda.

Local government is the closest public sector institution with respect to the community. The local arena, furthermore, has a particular advantage and capacity to identify and understand local problems, and consequently is the most appropriate level at which to foster democratic mechanisms. Recent promotion of community participation at the local administrative level stems from the fact that the traditional role of the state as supplier of services and the community as passive recipient of the services no longer reflects global circumstances. Participation guarantees a more efficient and more rational functioning of local public activities and use of resources. This is grounded in the fact that no other actor is better poised to identify problems with public services, and develop solutions to address them, than the user of the services. Participation proposes a change in the dynamics between government and the governed, from a system of representative democracy, towards one promoting participatory democracy. The community is hence, transformed into a promoter of ideas and an active actor in the public realm, while government fosters a rapprochement of the community to local government mechanisms.

The government is hence transformed into advisor and technical implementer of publicly agreed-upon works.

We can conclude that when developing a local agenda for the province and the city of Cordoba, it is fundamental to consider the incorporation of the right to participate which aims at achieving effective and sustainable local development, by means of the implementation of democratic procedures and mechanisms for the involvement of the community at all levels in policy-making and the decision-making processes.

Having established the purpose of incorporating the right to participate, we now look at the different participatory modalities that may be used in the participative process.

Participation is not a static homogenous process, but has many different shapes and grades subject to local administration and society and government-specific circumstances. It is important that the promoter of participation (in this case local government) understand the advantages and disadvantages that these modalities may imply, since each of them will generate different expectations by the actors involved.

Participation not only implies negotiation, convergence and cooperation of interests and actors, but also disagreement and confrontation; it does not entail a mere approval of proposals made by a regional administrator, but genuine involvement of all relevant stakeholders in the process. Participation can manifest itself as approval *or* opposition to a particular issue.

We identify four basic modalities of participation:

a) **Informative participation**⁴:

Informative participation implies an exchange of information and knowledge on certain issues of concern to the community. The community provides information to the state and vice versa, enabling each to make proper decisions about how they administer resources, which leads to more optimal resource management.

b) **Consultative participation**:

Consultative participation implies expression of opinions and inquiry into the position of the actors involved in a given situation, but it is not directly binding to the authorities. One of the available legal mechanisms for consultative participation is the public hearing in which the state calls the affected actors to a given site, to hear their ideas on a specific issue; however, the conclusions reached during this type of proceeding are usually not binding for the state.

c) **Participation in decision-making**:

⁴ We make a distinction between informative participation and access to information, as in the former the State becomes an active participant that fosters and provides information, while in the latter the individual (either particular or collective) becomes the active participant while the State is passive with respects to the obligations assumed. That is to say that in the first modality the individual becomes a passive receptor of the information, and in the second, the individual receives the information because he/she has requested it.

Participation in decision-making implies commitment and exercise of power in the decision-making process. An example is participation in budget allocation in which the state calls all social actors affected not only to express their ideas and opinions, but also to decide on what, when, and how investment resources will be allocated. In this modality the decisions that result from the participatory process are binding to the state.

d) Participation in management (co-management or joint management):

Participation in management implies the exercise of power and commitment for the effective implementation of policies, projects, public works, and services. This is the highest stage of participation, in which the state empowers social actors to become the executors or monitors of the public activities (a typical example might be a community-led construction of a housing project).

In each of these instances, participation will have diverse dynamics creating different expectations of the actors who participate. Moreover, the role of the provincial or municipal authorities will vary according to the modality selected.

A FRAMEWORK TO EXERCISE THE RIGHT TO PARTICIPATE

As for most human rights, some basic conditions are needed to ensure the enjoyment of the right to participate. Some of these conditions are:

a) Access to information:

For participation to be effective and fruitful, it should be informed. The design and implementation of a local agenda involves the development of effective mechanisms of access to information. Likewise, information shall be clearly systematized and intelligible as far as possible.

b) Autonomy:

Participation requires autonomy of the actors, that is, the independence or non-subordination of actors with respect to one another.

c) Political willingness:

Participation is not possible if the state authority that promotes it does not have the true intention to open itself to community opinion. The Executive must foster this space. Without true political will to create a participatory space participation will not have fruitful results.

e) Stakeholder Identification:

The exhaustive incorporation of the stakeholders involved is essential for successful and meaningful participation, since without the incorporation of the opinions of all of the interested parties, true representation will not be achieved. This includes stakeholders which may be positively or negatively affected, or indirectly affected by omission.

Considering the importance that stakeholder identification has in the participative process, it is essential to analyze this aspect in detail.

We might first ask, *who assumes the task of identifying the stakeholders?* In the development of a local agenda for the achievement of sustainable development, it is the state, provincial or municipality, who grants the opportunity to participate. Consequently, the state is in charge of identifying *prima facie* the affected actors, or more commonly, “stakeholders”.

There are many ways of identifying stakeholders, which we will not cover in this presentation, however, whatever the methodology selected for the identification of the social actors involved, the following caveats are in order:

- The institutionalization of the state (i.e. its’ formal and informal structures), will likely result in a parallel institutionalization of the possible affected social actors. From the very moment when the identification process takes place, the state will naturally rely on its own categorization and identification system with preconceived social sectors (such as the grass roots sector, industrial sector, trade unions, etc.). Because the formal state institution may not have formal or even informal contact with *all* of the real stakeholders, this categorization could lead to the exclusion of certain those social actors, who although affected, are not viewed or recognized by the state, the so called “invisible sectors”.
- The identification of leaders representing a specific sector does not necessarily imply that the leaders will always respond to the needs or demands of that particular sector. Therefore, the incorporation or consultation of the formal leaders in the participatory process does not necessarily mean that the sector is represented in the process. It is often difficult to determine the degree to which representation is or is not achieved in a given issue. The following example illustrates the point. In a particular municipality the mayor decided to consult with the community on the needs of their neighborhood. Thinking he was giving the community a participatory opportunity to help direct public investment, he approached the elected representatives the neighborhood association to hear requests. These indicated that the community requested the creation of a green open space for the recreation of the children. The mayor’s subsequent move to construct a park in the neighborhood gave rise to mass protest from the community. Follow-up consultation with multiple residents of the community showed that in fact, the desire of the majority was for improvements to the sewage system; few actually wanted a park.

By citing this example, we do not mean to diminish the value of democratic representation through elected officials, but simply we wish to show that different mechanisms of participation may yield divergent results. The promoter of participatory mechanisms needs to be especially attentive to the dynamics of the community, and ensure that he/she is properly identifying stakeholders.

Finally, we will refer to the costs and benefits that participation implies.

BENEFITS OF PARTICIPATION

- It improves the level of transparency favoring communication between the affected social sectors and public authorities.
- It facilitates the access to information, establishing mechanisms and procedures that permit easy access to information.
- It encourages the designing and execution of public policies, better identifying the basic needs of the community and the use of public resources; such information is essential to the implementation and review of environmentally sound and socially responsible sustainable development.
- It promotes a revitalization of the state by fostering planning and decentralization of the governance process. The participatory process requires that the state establish procedures for consultation and conciliation in the decision-making-processes so as to avoid a mere act of receiving and/or providing solutions and remedies to the complaints presented by the community.
- It promotes the commitment and genuine involvement of all social groups in the decision-making process. In this way, the community becomes the agent of its own development.
- Participation promotes a positive change in the relation representative- represented, as a result of improved representation.
- It transforms the nature and perceived value of the public good; addressing the indifference of society towards public matters and developing a sense of belonging and ownership to the community.
- It tends to increase public revenues, proportional to the level of increase in perceived value and ownership of the public good, and the subsequent increase in willingness to pay taxes associated to public investments.
- It increases the legitimacy of the state.
- It permits the identification of priorities and corresponding solutions.

We can also cite a few of the costs of participation:

- Participation creates expectations that, if not fulfilled, can work against the political capital of the governing body.
- It can generate conflicts that, if not solved, may obstruct or cripple the administration.
- It requires ample time dedication of the governing authority.
- It requires the attention and dedication of public human resources.
- As the participative process has an impelling force, it is difficult to control once it has been launched

CONCLUSION

To conclude, it is befitting to stress the extraordinary world-wide changes taking place during the last decade of this century. These changes constitute a landmark of political and social transformations and are characterized by a deep reflection on the foundations of our societies, and of the relationship between the governors and the governed, and between the state and its' citizens. The coming century will see a worldwide reevaluation of matters that affect humankind. One of our biggest challenges will be to ensure sustainable development. One of the ways to achieve it will be through initiatives like local Agenda 21. As wisely recognized by the international community in Agenda 21, the human right to participate and the implementation of a local agenda will be essential to achieve sustainable development. The international community has agreed in Rio on the content of the human right to participate, and is evolving to more sophisticated notions of political participation. The relationship between human rights and environment becomes fundamental in the exercise of our right to participate.