IV CONGRESSO DE ESTUDOS JURÍDICOS INTERNACIONAIS E I SEMINÁRIO INTERNACIONAL DE PESQUISA TRABALHO, TECNOLOGIAS, MULTINACIONAIS E MIGRAÇÕES -TTMMS

DIREITOS HUMANOS E MEIO AMBIENTE: PREVENÇÃO E REPRESSÃO DE CONDUTAS DE VIOLAÇÃO POR EMPRESAS TRANSNACIONAIS, ASPECTOS JURISDICIONAIS E PERFIS DAS RESPONSABILIDADES

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Apresentação

Trabalho, Tecnologias, Multinacionais e Migrações:

por que discutir os constantes desafios dos direitos humanos na ordem democrática global?

Fabrício B.Pasquot Polido

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Debates contemporâneos sobre os desafios dos direitos humanos, suas teorias e agendas de resistência e transformação não poderiam ficar alijados da compreensão analítica em torno da relevância ou pertinência de temas transversais da globalidade e que hoje merecem atenção pela academia brasileira. Os múltiplos movimentos envolvendo pessoas, as forças laborais, o capital, e os produtos do intelecto, em escala global, não apenas ignoram fronteiras, padrões culturais ou referenciais morais e éticos, como sistematicamente a realidade prática e pragmática tem demonstrado. Eles igualmente escancaram o esgotamento das formas e procedimentos ditados pelo direito, suas instituições e narrativas.

Nas entrelinhas e encruzilhadas do repertório de atores, contextos e papéis reduzidos ao imaginário das crises cíclicas, da sucessão das fases do capitalismo (industrial, financeiro, tecnológico e informacional) ao longo dos séculos ou da banal “pós-modernidade”, florescem espaços e pontes de transição, sobretudo construídos a partir do trabalho crítico na academia e projetado para governos, legisladores, tribunais, e para a sociedade como um todo. Essa seria a proposta de repensar a permanência e a estabilidade dos direitos humanos como instrumentos transformadores e de irreversível apelo de tolerância. Entre seus desafios contemporâneos, dentro da própria reconceptualização e afirmação do Estado Democrático

de Direito, certamente encontram-se a necessária integração entre o exercício de prerrogativas da cidadania e o resgate da humanidade que deve subsistir em todas as partes do globo, regiões ou localidades.

Com essa nota introdutória, a presente obra vem coligir os estudos coletivos elaborados para a o IV CONGRESSO INTERNACIONAL DE ESTUDOS JURÍDICOS e o I SEMINÁRIO INTERNACIONAL DE PESQUISA EM DIREITO "Trabalho, Tecnologias, Multinacionais e Migrações –"TTMMs": Desafios contemporâneos dos direitos humanos na ordem democrática global", eventos científicos realizados nos dias 18, 19 e 20 de abril de 2018, na cidade de Belo Horizonte, sob os auspícios do Programa de Pós-Graduação em Direito da Universidade Federal de Minas Gerais. Os agradáveis encontros de abril congregaram parceiros acadêmicos nacionais e internacionais que se engajaram em iniciativa inovadora e inclusiva de reflexão crítica no Direito e suas interfaces transdisciplinares.

As iniciativas aqui relatadas envolveram ações especialmente voltadas para disseminar a produção na área do Direito, evitando-se incorrer em quaisquer arbitrariedades formalistas que poderiam minar a relevância da dogmática como objeto de estudos no Direito ou vulgarizar o caráter laborativo que deve nortear a academia e as universidades brasileiras. Nesse sentido, em linha com os formatos de plenárias e sessões de discussão de trabalhos, os eventos destacaram a proposta de articular as dimensões políticas, regulatórias, sociais e normativas em torno dos movimentos gerados pelo eixo analítico "Trabalho, Tecnologias, Multinacionais e Migrações – TTMMs", absolutamente inédito na América Latina.

A tarefa de coordenação acadêmica, tendo como plataforma inicial o tradicional e prestigiado Programa de Pós-Graduação em Direito da UFMG, com doutorado mais antigo em funcionamento no Brasil (desde 1932), seria a de proporcionar esse espaço de reflexão, agora registrado em obra publicada pelo Conselho Nacional de Pesquisa e Pós-Graduação em Direito (CONPEDI). Da mesma forma, a oportunidade criada pelos idealizadores veio a sediar a quarta edição do Congresso Internacional de Estudos Jurídicos, projeto acadêmico de iniciativa dos estimados colegas e professores Luciana Aboim e Lucas Gonçalves, da Universidade Federal do Sergipe - UFS, em continuidade à terceira edição do evento realizada em setembro de 2017, na cidade de Aracajú, Sergipe.

A centralidade do trabalho torna-se cada vez mais evidente nas sociedades de capitalismo central e periférico, haja vista os novos arquétipos que veem surgindo a partir da divisão internacional do trabalho, propiciado tanto pela intensa utilização das tecnologias digitais, bem como pelas migrações, muitas vezes provocadas pela nefasta prática do dumping social e ambiental.

Com o objetivo de proporcionar às leitoras e leitores o aprofundamento de temas contemporâneos no eixo investigativo “Trabalho, Tecnologias, Multinacionais e Migrações – “TTMMs”, o livro permitirá apresentar os desafios a serem enfrentados na interface com os direitos humanos. Esperamos que os trabalhos aqui selecionados e sistematicamente organizados possam capitanear novas pesquisas temáticas e que respondam a demandas de investigação na academia, dentro da compreensão de dinâmicas e condicionantes que afetam e transformam a sociedade global no século XXI.

Belo Horizonte, outubro de 2018.

THE PROTECTION OF THE ENVIRONMENT AND THE HUMAN RIGHTS

THE PROTECTION OF THE ENVIRONMENT AND THE HUMAN RIGHTS

Laura Campolina Monti
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Resumo

Despite the evident relationship between environmental degradation and human suffering, human rights violations and environmental degradation have been treated by most organizations and governments as unrelated issues. Just as most human rights advocates have tended to place only civil and political rights onto their agendas, most environmentalists have tended to focus primarily on natural resource preservation without addressing human impacts of environmental abuse. This article aims to, adopting a legal-theoretical methodology, based on a deductive and dialectical approach, point out the connection between these spheres in order to help providing a more complete and adequate approach to both themes.

Palavras-chave: Environmental law, Human rights, Human impacts of environmental abuse, Protection of the environment

Abstract/Resumen/Résumé

Despite the evident relationship between environmental degradation and human suffering, human rights violations and environmental degradation have been treated by most organizations and governments as unrelated issues. Just as most human rights advocates have tended to place only civil and political rights onto their agendas, most environmentalists have tended to focus primarily on natural resource preservation without addressing human impacts of environmental abuse. This article aims to, adopting a legal-theoretical methodology, based on a deductive and dialectical approach, point out the connection between these spheres in order to help providing a more complete and adequate approach to both themes.

Keywords/Palabras-claves/Mots-clés: Environmental law, Human rights, Human impacts of environmental abuse, Protection of the environment

1 INTRODUCTION

All over the world, people are experiencing the effects of ecosystem decline, from water shortages to fish kills to landslides on deforested slopes. The victims of environmental degradation tend to belong to more vulnerable sectors of society - racial and ethnic minorities and the poor - who regularly carry a disproportionate burden of such abuse. Increasingly, many basic human rights are being placed at risk, as the right to health affected by contamination of resources, or the right to property and culture compromised by commercial intrusion into indigenous lands.

Despite the evident relationship between environmental degradation and human suffering, human rights violations and environmental degradation have been treated by most organizations and governments as unrelated issues. Just as most human rights advocates have tended to place only civil and political rights onto their agendas, most environmentalists have tended to focus primarily on natural resource preservation without addressing human impacts of environmental abuse. As a result, victims of environmental degradation are unprotected by the laws and mechanisms established to address human rights abuses.

This article aims to point out the connection between these spheres, particularly in the legal arena. Adopting a legal-theoretical methodology, based on a deductive and dialectical approach, it presents a variety of issues and approaches that address human rights and environmental links, demonstrating the growing interrelationship between them.

2 HUMAN RIGHTS AND THE ENVIRONMENT

All human being depend on the environment in which they live. The Earth's ecosystems provide us all the services and raw material we need, such as food, water, disease management, climate regulation, spiritual fulfilment, and aesthetic enjoyment. And, besides that, our economic is well subordinated to the Earth matters to develop their business.

That perception - that issues related to environmental protection are not limited to the pollution from the industries, but encompass a much larger and more complex universe, which involves the entire planet and could endanger global health -, was decisive for the insertion of the environment in the sphere of protection of international human rights law[1].

According to the UN Environment, it is possible to indicate, at least, three main dimensions of the interrelationship between human rights and environmental protection: *a)*

[1] Cf. Cançado Trindade, Antônio Augusto. "The contribution of international human rights law to environmental protection, with special reference to global environmental change", in Environmental change and international law: new challenges and dimensions, Toquio: United Nations University Press, 1992, p. 244-312.

the environment as a pre-requisite for the enjoyment of human rights (implying that human rights obligations of States should include the duty to ensure the level of environmental protection necessary to allow the full exercise of protected rights); *b)* certain human rights, especially access to information, participation in decision-making, and access to justice in environmental matters, as essential to good environmental decision-making (implying that human rights must be implemented in order to ensure environmental protection); and *c)* the right to a safe, healthy and ecologically-balanced environment as a human right in itself (this approach has been debated)[2].

Despite that, the fundamental right to the environment was first recognized, at the international level, only in 1972 with the Declaration on the Human Environment adopted by the United Nations Conference on the Human Environment in Stockholm. The 26 principles listed on that document have the same relevance for States that the Universal Declaration of Human Rights, adopted in Paris on December 10, 1948, has, serving as a paradigm and ethical benchmark for the entire international community. (SOARES, 1999, p.58-59)

The Stockholm Declaration show how the link between human rights and dignity and the environment was very prominent in the early stages of United Nations efforts to address environmental problems.

As José Afonso da Silva taught, the Stockholm Declaration paved the way for the supervenient Constitutions to recognize the ecologically balanced environment as a fundamental human right among human rights. (SILVA, 2000, p.67). The Stockholm Declaration of 1972 opened up space for these topics, which were previously assigned to the exclusive and absolute domain of States, to be treated within a global perspective, notably linked to the international protection of human rights.

As a result of this internationalization process that is still in motion, in March 2012 the United Nations Human Rights Council decided to establish a mandate on human rights and the environment, which will (among other tasks) study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and promote best practices relating to the use of human rights in environmental policymaking.

According to the UN Special Rapporteur on human rights and the environment, John H. Knox[3], the biodiversity supports ecosystem services and the human rights that depend

[2] For more information: http://www.unep.org/divisions/delc/human-rights-and-environment

[3] Mr. John Knox was appointed in August 2012 to a three-year term as the first Independent Expert on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. His mandate was further extended in March 2015 for another three years as a Special Rapporteur.

upon them in many ways, as the productivity and stability of ecosystem processes.[4] Some of those contributions regard the rights to life and health, the right to an adequate standard of living and the right to nondiscrimination in the enjoyment of rights.

This position was preliminarily mentioned by the Declaration of United Nations Conference on Environment and Development at Rio de Janeiro (ECO-92), 1992, in its Principle 1:

> Human beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Most recently, in September 15th of 2016, the Office of the Prosecutor of the International Criminal Court has made public the *Policy paper on case selection and prioritization*, which outlines the priorities for judicial prosecution in the coming years within that institution. Among the criteria for selection of crimes to which the Prosecutor announces will be given priority is the criterion of the impact of criminal conduct on communities or on environmental factors. Item 41 is particularly expressive in stating that:

> The impact of the crimes may be assessed in light of, inter alia, the increased vulnerability of victims, the terror subsequently instilled, or the social, economic and environmental damage inflicted on the affected communities. In this context, the Office will give particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land. (ICC, 2016)

This decision of ICC extending its jurisdiction has sent a clear message that such offences may amount to serious crimes against humanity and can no longer be tolerated, as well as, the environmental issues cannot been seen no longer as a "soft enforcement.", but as a *jus cogens* of Human Rights (TAYLOR, 2016).

The need of a special attention to environmental issues was highlighted by the conviction of war criminal Ahmad al-Faqi al-Mahdi for the destruction of Tombuctu temples in 2010. It was the first conviction under the Statute of the International Criminal Court which did not involve aggression against personal property, being based solely on the defense of timeless cultural values - conviction under Article 8, paragraph 2, e of the Rome Statute.

The greater tangibility of the cultural heritage explains why the criminal protection of this property has gained a foothold over the protection of the environment, but the reference in the mentioned policy paper that priority will be given to cases of destruction of environmental components, illegal exploration of natural resources and displacement of

[4] Connecting Global Priorities, p. 34; Bradley J. Cardinale and others, "Biodiversity loss and its impact on humanity", Nature, vol. 486, (2012), p. 59.

communities with land dispossession suggests that complaints such as the one filed in the Court in 2014, supported by 10 Cambodian citizens against the state's ruling elite by land disposal, massive deforestation and political persecution, could move forward. (GOMES, 2017, p.54)

Future convictions in the International Criminal Court based on the destruction of environmental components are difficult to imagine at present. The norm that offers support to this type of situations demands the cumulative fulfillment of assumptions of arduous proof and is inserted in a specific context, as seen in the article 8 of the Rome Statute of the International Criminal Court.

> Article 8
> War crimes
> 1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
> 2. For the purpose of this Statute, 'war crimes' means:
> [...]
> (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
> [...]
> (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

In addition, it should be a conduct that qualifies as one of the most serious crimes affecting the international community as a whole (Article 5 of the Rome Statute[5]).

Nevertheless, a very common example in the doctrine of a situation that would fit the prediction of this standard is the destruction of oil wells in Kuwait by Iraqi forces during the First Gulf War. These were acts of intentional and massive destruction of natural resources whose effects were extensive, lasting and serious for the environment, both natural and human in the region and which were admittedly excessive in relation to the military objective pursued. This situation was so serious that it originated the famous Resolution 687 of the UN Security Council.

[5] Article 5
Crimes within the jurisdiction of the Court
1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression.
2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Since the right of a health environment is ever more been understood as a basic human right, is relevant that we revisit some of the treaties that protect the human life in order to reinterpret their meaning. For example, The International Covenant on Civil and Political Rights, on its article 6, stablish that every human being has the right to life and "no one shall be arbitrarily deprived of his life." (CCPR, 1966)

Even though this article talks about the crimes against human life - such as genocide and death penalty-, by the general comments of UN Human Rights Committee, it was understood that the right of life could not be strictly interpreted, and all the States should follow positive standards to enlarge life expectancy, "to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics." (CCPR, 1982)

There are, as well, the right to the highest attainable standard of physical and mental health and the right of health assured by the article 12 of the International Committee on Economic, Social and Cultural Rights, which, in its fifth paragraph, "extends to the underlying determinants of health, such as food and nutrition, housing access to safe and potable water and adequate sanitation, safe and healthy working condition, and a healthy environmental". (CESCR, 2000)

A link we can find between biodiversity and health is the derivation of medicinal drugs from natural products and microbial diversity, which that can only be find in a health environmental. And, in the other hand, we also have the fact that infections diseases can be increased by the losses we have in our biodiversity. And, according to UN (2017, p.7), "it is increasingly clear that exposure to nature has beneficial effects on psychological health (…)", improving the heat behavior, blond pressure and increasing the mental faculties.

Simplifying, when the environment is "sick", we are all affected by the symptoms.

Regarding the right to an adequate standard of living, it includes the right of food and housing, the right of clean water and sanitation, which are related to the previously right of health. Biodiversity, helps to support the right of access to clean and safe water, because increasing the forest areas significantly improve water flow regulation by reducing runoff and providing greater water. The animals and plants help to draw the excess of waste from the aquatic ecosystems.

Being more specifically, the environmental damage effects caused by us are transboundary and also timeless. The human influences on the ecosystem has been more and more perceived through the disasters resulted by the climate change, such as the frequency of extremely hot weathers, the heat-waves and heavy precipitations. We also see that the

atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen.

And we can see them, according to the UN High Commissioner for Refugees (2009):

> Over the last two decades the number of recorded natural disasters has doubled from some 200 to over 400 per year. Nine out of every ten natural disasters today are climate-related. The Norwegian Refugee Council recently indicated that as many as 20 million people may have been displaced by climate-induced sudden-onset natural disasters in 2008 alone. (UN, 2009, p.3)

Eight years later, that number has risen as the number of nature disasters increased as well. Disasters and slow onsets, such as droughts in Somalia in 2011 and 2012[6], floods in Pakistan between 2010 and 2012[7], and the earthquake in Nepal in 2015[8], can leave huge numbers of people traumatized without shelter, clean water and basic supplies.

However, in the other hand, it is fundamental to emphasize that our Economic and our social development depend on the use of our natural habitat and the raw material it provides, and the human rights law does not demand that ecosystems remain untouched by our hand. In fact, the main idea is that it is possible to change from a growth-based economic model to a new way that targets sustainable and equitable economies and societies worldwide, and greater public participation in decision-making, in line with Principle 10 of the 1992 Rio Declaration.

The 2030 Agenda, for example, aims to replace unsustainable consumption and production patterns with sustainable lifestyles and livelihoods that benefit all. Central to the agenda is the understanding that a healthy, well-functioning environment is crucial for humankind to prosper.

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[6] Cf BBC News. "Somalia famine 'killed 260,000 people'." "(…) Nearly 260,000 people died during the famine that hit Somalia from 2010 to 2012, a study shows. (…) The crisis was caused by a severe drought, worsened by conflict between rival groups fighting for power. (…) Somalia was worst hit by the extreme drought in 2011 that affected more than 13 million people across the Horn of Africa. Tens of thousands of people fled their homes in search of food (…)". 2 May 2013. Disponível em < http://www.bbc.com/news/world-africa-22380352> . Acesso em: 23 de outubro de 2017.

[7] Cf BBC News. "Pakistan floods: Damage and challenges". "A month of flooding across Pakistan has left millions of people homeless and devastated thousands of square kilometres of land. While the south battles new floods, in the north workers have begun clearing up as waters recede. (…) The loss of cattle may also affect supply and prices of dairy products.Experts estimate that 200,000 cattle have died in the floods, and some 10 million are now at risk due to shortage of water and upkeep. (…) Damage to infrastructure is also going to impact delivery of health services as many people are unlikely to be able to access health facilities due to damaged roads and bridges.(…)". Disponível em: < http://www.bbc.com/news/world-south-asia-11104310>. Acesso em 23 em outubro de 2017.

[8] Cf BBC News. "Nepal earthquakes: Devastation in maps and images". 15 May 2015. Disponível em < http://www.bbc.com/news/world-asia-32479909>. Acesso em 23 de outubro de 2017.

Ending poverty (Goal 1) can be achieved by integrating economic development, social protection and environmental health. Environmental poverty – resulting from lack of access to natural assets, inadequate management of resources and exposure to ecosystem degradation and pollution – leads to greater vulnerability and a loss of resilience in communities. An increasing world population will make it even more challenging to provide basic services to the poor.

In fact, businesses face several risks. Because of the climate change and its impacts, the economics has been having huge impacts. We have as an example the floods in Thailand in 2011[9] that caused backwardness and enormous losses for companies like Toyota, Honda, Sony, Canon, and Toshiba[10]. Notably, we also had the human cost Thailand, once the agriculture and the sectors of water still has not been completely rebuilt.

The main issue is this development can not, in anyway, abuse of natural ecosystems nor overexploit the services on which we depend. Both business and Government must invest in resilience as a strategy that hedges against future cost and ensure long-term continuation of quality of life. Regarding our business model, it has to adequate to the rise of our new realities. We can reignite economic growth by transforming to high resilience and environmentally friendly practices. And by that, invest in new technologies, engineer new skills, new jobs in a high-growth green economy.

3 FINAL CONSIDERATIONS

To conclude, it has been more clear that environmental health is the foundation of ecosystem services to which human well-being is intimately linked, and because of that, in order to ensure that our ecosystems remain healthy (so as us) is necessary to protect and give the real importance to our environment biodiversity. Defending the biodiversity we will be, at the same time, defending our human rights and the services that healthy ecosystems provide.

According to the UN Environment, more than 2 million annual deaths and billions of cases of diseases are attributed to pollution. All over the world, people experience the

[9]Cf BBC News. “Thailand floods: Crisis 'to last four to six weeks’.” “(…) Three months of heavy monsoon rain have left swathes of the country flooded and led to the deaths of some 350 people (…).” Disponível em <http://www.bbc.com/news/world-asia-pacific-15413818> Acesso em 23 de outubro de 2017

[10]Cf BBC News. “Thailand floods disrupt production and supply chains”. “Factories and supply chains are facing disruption as some of the worst flooding in decades starts to affect Thailand's economy. Western Digital, Honda Motor and many other companies have been forced to suspend production in central Thailand because of the floods. (…) Besides Honda, other Japanese carmakers Toyota and Nissan are also experiencing disruption to their production (…)”. Disponível em: <http://www.bbc.com/news/business-15285149>. Acesso em 23 de outubro de 2017.

negative effects of environmental degradation ecosystems decline, including water shortage, fisheries depletion, natural disasters due to deforestation and unsafe management and disposal of toxic and dangerous wastes and products. Indigenous peoples suffer directly from the degradation of the ecosystems that they rely upon for their livelihoods. Climate change is exacerbating many of these negative effects of environmental degradation on human health and wellbeing and is also causing new ones, including an increase in extreme weather events and an increase in spread of malaria and other vector born diseases. These facts clearly show the close linkages between the environment and the enjoyment of human rights, and justify an integrated approach to environment and human rights.

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