




© 2022 Mehdi and Khomami. This article follows the  Open Access policy of CC BY NC under Creative Commons attribution license v 4.0.



Submitted: 26/01/2022 - Accepted: 26/02/2022 - Published: 25/03/2022

## Human Rights and Negative and Affirmative Aspects of Environmental Justice

Abasi Sarmadi Mehdi<sup>1\*</sup>

Reza Asadi Khomami<sup>2</sup>

<sup>1</sup>Department Law and Political Sciences, Kharazmi University, Iran

<sup>2</sup>Department of law, University of Guilan, Iran

\*email: ma.sarmadi@yahoo.com

DOI: 10.26417/ejser.v4i1.p60-66

### Abstract

After Second World War by establishment United Nation, to support of right of life, survives and peace for human, Universal Declaration of Human Rights was issued. In later years, second and third generations of human rights were established which respect for human rights is obligatory for member states. Environmental destruction as outcome of Progression of industry and technology, is another important problem which is outshining human life. In the second half of the twentieth century, several international conventions were formed in order to protecting the environment and preventing its destruction. On the other hand, in the United States, The civil rights movement in the 60s was the source of another movement called environmental justice. At the international level, In the 90s of the twentieth century coincided with the UN plan for sustainable development, the environmental justice movement arose. With the start of the twenty first century, environmental activists and followers of the environmental justice movement found out the common points of environmental justice and issues raised in the generations of human rights and attempts to link these two movements and beginning to find their common points. In the second half of twenty century. With increasing of activity of United Nation many conventions were ratified by countries that guarantee some rights of people but conventions about human rights and environment were separated. This article examines positive and

negative characteristics governing environmental justice in comparison with the international documents.

**Keywords:** Environmental justice; Universal Declaration of Human Rights; Sustainable development; international conventions; United Nation

## Introduction

The civil right movement in the 1960s in the United States of America was the origin of another movement which is known as environmental justice. The impact of the civil rights movement after the approval of the Civil Rights Act of 1964 in the United States has played a more prominent role in shaping the concept of environmental justice. Robert Bullard's work in the 90s; "Dumping in Dixie", act as a call for the environmental justice movement. In this work, the impact of the economic, health and environmental widespread differences between racial and socioeconomic groups which has intensified in the late 20 century is examined by Bullard. By discussing "The process of advent of the environmental justice movement is in search of to expand a common strategy as sponsor of sustainable American-African, colored people communities" Bullard analyses environmental justice. (Bullard, 2000). Expected with the assumption that the life, work and education, worship in a healthy environment are rights for all human, individuals with different race, religion and income enjoy a healthy environment and losses and problems resulting from technological advances equally distributed in human societies and people of color and low-income populations or ethnic minorities have a greater share of the impact of environmental devastating effects of progress and development. Bullard on the basis of social analysis gain access to the issue that most of these materials are stored or buried in the poor communities of color and weak more than the affluent suburban areas. Also in international dimensions has been observed inequality in access to safe and clean sources, Inequality in enjoying of healthy nature may be is the result of historical circumstances, trade and economic relations of the present age, or lack of adequate government regulation in this field even Some believe that environmental justice is not binding for populations in trace or minorities whereas the aim of environmental justice is preventing the damaging effects of harmful materials even on small populations. The significance of topic is that the concept of environmental justice considered as a human rights Category and seeking to demonstrate the fact that environmental justice is not separate from human rights concepts and category. Therefore it is evident that article has doctrinal aspect and is looking for planning circumstances of an independent environmental legal system. The main question is that what is the negative and positive characteristics and effects of environmental justice in the legal system governing the international order? In short, despite the difference in the quantity, these features in terms of quality overlap with each other and the result of this overlap is a legal system based on international environmental justice.

## Affirmative aspects of environmental justice

In view of the fact that environmental justice movement is resulting from civil law movement, takes into consideration some rights for people. In this regards Human populations who are victims of environmental injustice, have considered frame works as guide to action for establishment of laws in all countries. Accordingly, some principles are intended for environmental justice that some of them are as follows: \*

-Environmental justice emphasizes on holiness of motherland, environmental unity and the interdependence of biological species Also demands adopting public policies based on mutual respect and justice for all and devoid of all forms of discrimination and prejudice for people. The preamble of the Universal Declaration of Human Rights, recognition of the inherent prestige and equal and inalienable rights of all members of the human family which forms the foundation of freedom, justice and peace in the world, is part of the obligations of Member States and providing it, is enumerated as the obligation of countries which in Articles I and II of this Declaration, is explicitly emphasized that all member states are obliged to support it.on 15th March 2006, UN General Assembly by approving a resolution and replacing Human Rights Council instead of the Commission on Human Rights ,for help to United Nations Member States for supplying their needs in the field of human rights Through dialogue, capacity building and technical assistance , provide a more focused activities. This affair can help governments and public institutions in each country in order to create public policies to help implement this principle of environmental justice.

- The Principles of Environmental Justice were adopted by The First National People of Color Leadership Summit meeting in Washington D.C, 1991
- The ethical, balanced and responsibly take advantage of the endless resources of earth, in order to provide the interests of a sustainable planet for all humans and other living organisms on the planet

The international community, led by the United Nations has been developed extensive programs to protect the environment in such a manner that the establishment of the first United Nations Conference on Environment in 1972 , have attempted to conclude more than 300 international treaties and agreements related to a variety of endangered flora and fauna, marine pollution, destruction of the ozone layer, hazardous wastes, biological diversity, climate change, desertification, fisheries and fishing, and industrial chemicals and pesticides. In 1992, the United Nations Conference on Environment Development ("Earth Summit") which was formed in Rio de Janeiro, Brazil, designed Agenda 21 to provide a comprehensive global scheme for a development suitable for environment. United Nations consider the circumstance of carrying out the agenda 21 and other agreements of "Earth Summit" by formation of development commission and by compiling of a collection of indexes of permanent development that are accepted by international point of view, examine achieved progresses in connection of execution of Agenda 21 and encourage states to assign targets and subjects for national permanent development. United Nations aid to

countries for improving environment management by execution of environment program and supervise on health of earth by establishment of international reunion.

- Affirmation of the fundamental right to political, economic, cultural and environmental self-determination of all peoples is intended by Environmental justice.

article 21 of Universal Declaration of Human Rights discusses about participation in administration of public affairs which is admitted as a right for individuals and in articles 18 to 20 is emphasized on individual and social rights of people in enjoyment of having belief and freedom to express their opinion which are underlined by environmental justice and this is pointed out that the universal society is serious in creation of the safe world. In this direction, United Nations in addition to promotion of human rights, defends of vulnerable groups by preparing and ratification of more than 80 conventions about political, civil, economical, social and cultural rights. Convention about infants rights 1989, convention about protection of rights of migratory workers and their family 1990 and convention about omission of all kinds of discrimination to women 1979 which has ratified by 170 countries, are samples of United Nations measures.

- The right to participate as equal partners at every level of decision-making including needs assessment, planning, implementation, enforcement and evaluation for all racial, color, low-income groups and minorities is requested by environmental justice.

In addition to abovementioned items in article 18 to 21 of Universal Declaration of Human Rights, in article 27 is emphasized to the right to participation of individuals in cultural life and enjoyment of progresses in science, skills and arts. In 1992, Due to the presence more than one billion people in the world who live in minority groups and to fulfill the legitimate aspirations of national, ethnic, religious and linguistic minorities and to strengthen the protection of fundamental human rights, The General Assembly of the United Nations approved Declaration on the Rights of Persons Belonging to National or Ethnic, religious and linguistic minorities for giving new power to the agenda of the UN Human Rights. In 1995, the Human Rights Commission with the approval of the establishment of the working group on minorities by its Sub-Commission has created a unique institution for the minority communities till through their representatives, can bring ideas and concerns to the attention of the United Nations.

- All workers have the right to a safe and health working environment and there shouldn't be any compulsory among the choice of unemployment or insecure life for them. Also all the people who work in their own homes should be safe from environmental hazards.

Approximately 2 million people lose their lives in accidents or work-related disease. About 160 million people suffer from work-related diseases and annually about 270

million people are facing with fatal and nonfatal accidents caused by working. The Suffering of work related diseases and accidents that take place to workers and their families are incalculable. The principle of protecting workers against diseases and injury job clearly has expressed in Statute of the International Labor Organization. Close to half of ILO documents directly or indirectly, are about the health and safety at work which In this regard; the International Labor Organization has ratified more than 40 standards and 40 regulations about the health and safety at work. ILO standards on safety and health in the workplace are essential tools for governments, employers and workers to provide maximum safety at work. In the ninety-first session of the International Labor Conference in 2003, Occupational Safety and Health Global Strategy was developed that has been involved the beginning of a preventative safety and health culture, the promotion and development of relevant tools, and technical assistance. In Article 8 of Convention No. 155 was adopted in 1981 and entered into force on 11 August 1983, All members for effectiveness of article 4 of the Convention on workplace health and safety, in consultation with the representative organizations of employers and workers, have obligated to compile legislations and regulations Or any other method, which includes the country's national conditions. In Article 9 of the Convention which has been ratified by 63 countries, is emphasized that for obligation to the listed laws and regulations, reasonable mechanisms for inspection and criminals' punishment should be considered. In article 11 is provided mechanisms to give effect to policies referred to in Article 4 of the Convention, which by helps of them the authority or competent authorities must become sure that these tasks are carried out gradually. To update the Convention 155, one protocol was ratified in 2002, which entered into force on February 2005. The protocol with refers to Article 11 of the Convention 155 is relevant to occupational accidents and diseases. And governments have been obligated to pass laws and regulations concerning the registration of work accidents and occupational diseases, as appropriate, dangerous events, discount events and suspected cases of occupational diseases and informing about them. (Protocol to Convention 155, Article 2) Convention No. 161 was adopted in 1985 and entered into force in February 1988 has been ratified by 31 countries. The aim of the Protocol is establishing the organizational services on health and workplace safety which undertake preventive and essential duties and are responsible to preserve a safe and healthy working environment in front of employers and employees and their representatives. With the aim of to put in circulation preventive safety and health culture and achieving to the safe and healthy working environment gradually, convention 187 compiled in 2006 and has ratified in 2009 which 33 states have ratified it till now. The convention is request from all countries in consultation with the representative organizations of employers and workers, to compile national policy, system and programming on the basis of principles inserted in article 4 of convention 155 and coinciding with principles of ILO, for development of safety and health in work places. In appendix of convention mechanisms that are adopted on principles of ILO is listed. National system must make possible necessary substructure for carrying out national policy and programs for safety and health of

workplace like laws and rules, subjects and positions, acceptable mechanisms such as inspection systems and methods for creation of commitment. National systems must consist of timetable for measures to put in circulation safety and health in work place and activating measurement of its progress. It is necessary to point out before this convention, from 1960 to 1990, conventions 162,148,139,115 and 170 have ratified for protection against special dangers in work environments.

- -Receive full reparation and compensation, as well as quality health care, are the rights of victims of environmental injustice

On the Third of April 1991, Nations Security Council in the frame work of Chapter VII of the Charter of the United Nations issued Resolution 687. This resolution, which was issued after the end of the occupation of Kuwait by the Iraqi government, was about the compensation created by the Government of Iraq. In paragraph 16 of the resolution, the Iraqi government under international law for environmental damage directly is recognized responsible and has emphasized that the Iraqi government is obligated to compensate the damage to aggrieved people or governments. Perhaps the only time that the international law has condemned a government to compensate for the damage to the environment and even individuals were subject to compensation. Of course, before that in 1981 the General Assembly of the United Nations issued Declaration of basic principles of justice for victims of crime and abuse of power. The main objective of the Declaration has been compensation and support for victims of criminal offenses and not mentioned to victims of environmental degradation.

- -Education for present and future generations with an emphasis on social and environmental issues, and understanding of diverse cultural perspectives is emphasized by environmental justice

In Article 26 of the Universal Declaration of Human Rights has been emphasized on the right of individuals to benefit from an appropriate education. Environmental justice put under observation education as an essential element for protection of environment, and people's awareness of their environmental rights that create a suitable link between environmental justice and Fundamental human rights.

### **Negative aspects of environmental justice**

Environmental justice in addition to consider rights for people, has defined assignments for governments and requested from the governments that to enact Effective and transparent legislation in internal area, and with mutual cooperation and specified treaties and conventions in international level, be active in direction of removal of environmental injustice. Topics of duties are specified for governments are as follows:\*

- minimized and, if possible, be avoided from the effects of harmful and hazardous to human health as a result of destructive environmental practices as well as its social and economic impact on racial or color minorities and poor people which

in this regard, in order to achieve rural and urban environmental policies for cleaning and restoration the cities and rural areas in equilibrium with nature, respect to cultural entirety of all societies and to provide possibility of righteously access to spread benefits for all, are in direction of environmental targets which all states are obliged to perform it.

Bamako are treaty that has been signed for protect the environment in Africa. The title of treaty is "Bamako Convention on the ban on imports and the control of transboundary movements of hazardous and contaminated materials management in Africa and inside it". Bamako Convention containing defensive measures to prevent the entry of contaminants into Africa. Bamako Convention and the African Charter on Human and Peoples Rights emphasize on the implementation of environmental justice i.e. distributive justice, procedural justice, and social justice in Africa. Another convention in which the right to a healthy environment for the people is emphasized is Protocol of San Salvador. Additional Protocol to the American Convention on Human Rights in connection to Economic, Social and Cultural Rights was adopted in 1988. In Article 11 of the Convention, the right to a healthy environment is pointed. In total, in the various materials of this Protocol are emphasized to the public's right to access to social justice, including the right to health, right to education, the right to social security and the right to a decent job; And the public's right to access to distributive justice including national wealth and to provide the needs above mentioned which These are the elements of environmental justice.

- -Stopping the production of toxic and harmful materials and radioactive materials is another subject emphasized by environmental justice. Also all producers who produced this kind of materials or are producing them must be answerable about detoxification and controlling during the production. This means that the destructive operations of multi-national corporations must be opposed by adopting suitable laws. Also guarantee full and fair participation of all communities which potentially are affected by environmental injustice in the decision-making process regarding the transportation of pollutants and harmful materials.

Former UN Secretary-General Kofi Annan on 31 January 1999 at the World Economic Forum in Davos, Switzerland, asked world business leaders to help further protect human rights, work and environment standards join to international agreements. Also He requested from global business community following items on the environment:

A-Support cautious and preventive viewpoint to environmental problems

B- Promote acceptance of more responsibility towards the environment

C- Encourage the manufacture and use of appropriate technologies for environment

Fundamental Convention of United Nations on Climate Change (UNFCCC) and its Kyoto Protocol at the center of international efforts to address environment

problems. These two treaties represent the international response to the compelling evidence that unfavorable climate change is happening. The activities of the international community are reflected in various conventions that one of them is Basel Convention. The Basel Convention is a treaty that references to environmental justice. The Convention, which was signed on 22 March 1989 in Basel, Switzerland, is about the control on cross-border transportation of Hazardous Wastes and their destruction. The convention is a kind of the United Nations treaties and the Secretary-General is the depositary and immediate ban on cross-border transportation of hazardous wastes to its permanent disposal is requested by supplement of convention. "Total prohibition" has applied as a choice for the transport of hazardous wastes and other wastes from developed countries to developing countries. The arrival of international community to a period that toxic waste could not to transmit from countries' borders under legal condition without performing control and supervision is the greatest achievement of the Basel Convention. Basel Convention is designed to reduce illegal trafficking of

\* The Principles of Environmental Justice were adopted by The First National People of Color Leadership Summit meeting in Washington D.C, 1991 hazardous wastes and has been set to protect the world's poorest countries to become the burial ground of this material. Some of the key elements of the Convention are:

- a ban on the export of hazardous waste to countries that are not Parties to the convention.
- Responsibility for countries that are involved in the transport of hazardous waste.
- The principle of non-discrimination in relation to exports.
- Prior notification and informed consent of the recipient countries and transit countries.
- Taking necessary measures for global protection against nuclear testing and protection against exploitation and production and disposal of toxic substances and waste which Threatening the fundamental human right of access to Healthy land, clean water and healthy food.

International Atomic Energy Agency (IAEA) as one of specialized organization of United Nations protects from peaceful usage of atomic energy and is against of use it as military targets. IAEA monitoring nuclear activities of countries to ensure to adherence of countries to obligations about lack of increasing of nuclear weapons Based on bilateral and international agreements and gain confidence about lack of deviation in utilization of nuclear materials and installations in direction of military targets. Commission for the comprehensive nuclear –Test-Ban Treaty Organization, CTBTO, is another specialized organization of United Nations which established on 19th November of 1996 to build a verification regime "to ensure that it is operational by the time the Treaty enters into force. The verification regime of the CTBT is designed to detect any nuclear explosion conducted on Earth – underground,



underwater or in the atmosphere. The purpose of the verification regime is to monitor countries' compliance with the CTBT which bans all nuclear explosions on the planet." ([www.ctbto.org](http://www.ctbto.org))

- Environmental injustices by states are equal with breach of international law, the Universal Declaration of Human Rights, and UN convention about genocide that environmental justice ask for effectual encounter of international societies against it. Military occupation, repression and exploitation of lands, peoples and cultures, and other life forms are other cases which environmental justice is opposed. United Nations as representative of all states can performance of a rule in these cases.

Genocide is one of horrific shape of crimes against human being .Actus Reus of any crime consist of criminal act and subject of crime. The subject of crime of genocide just as stipulated in Article 6 of the Statute of the International Criminal Court, are "national, ethnical, racial or religious group". Common Characteristic of four groups is spontaneous and unwanted belonging of persons to groups' i.e. These groups are stable and permanent assemblage the individual has No will to belong to them. The criminal act in genocide is destroy in whole or part of a national, ethnic, racial or religious group (article 6 of Statute of the International Criminal Court).destroy can take place by any of following acts:

- Killing members of a group;
- Causing serious bodily or mental harm to members of a group;
- Deliberately inflicting on the group condition of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the groups;
- Forcibly transferring children of the group to another group. (Article 6 of Statute of the International Criminal Court)

Studies that have been done show that there are income inequality and racial discrimination not only in locating of foundations of Hazardous waste but also in execution of the rules of regulatory standards for air and water and waste.(Luke Cole & Sheila Foster,2001,54-58)

In The pattern of racial discrimination, ecological groups or small countries are deliberately targeted by environmental injustice. (R Bullard, 2nd Ed, 2001, 187-195)

The UN Environment Programmed estimates that about 440 million tons of annual production of toxic substances in the world, and about ten percent of the amount has been issued of international borders. (Hilary French, 2000, p.74)

A prominent environmental expert from a developing country has argued that developing countries, disproportionate shares of the environmental consequences of globalization are tolerated, and it is defined as environmental racism. (Vandana Shiva, Afsar H. Jafri, & Gitanjali Bedi, 1997)

Opinions of The expert have been supported by studies that recommended by the United Nations Development Programmer.(See Human Development Report 1998)

Illegal trade of pollutants is not the only subject that endangers the health of people in developing countries but also the expanding of legal trade of recyclable materials are Considerable factors.(J.R Kitt,1995,pp.485-488) Export detrimental materials to recover constitutes approximately 90% of total exports harmful material from developed countries(J.R. kitt,1995,pp.485-488) it seems to us knowingly export or import and burring the waste material to poor countries can defined as " Deliberately inflicting on the group condition of life calculated to bring about its physical destruction in whole or in part;" (Article 6 of Statute of the International Criminal Court) and it is breach of human rights and UN convention about genocide.

- Confirmation of authority and self determination for minorities, color people and low-income societies through legitimate relationship between people and governments in the form of agreements, treaties and promise, are emphasized by environmental justice.

In article 1 of International Covenant on Civil and Political Rights Adopted by the General Assembly of the United Nations December 16, 1966 emphasizes on the right to self-determination for all people. Determination their political status; safeguarding of socio-economic development of nations and their culture freely, are obtained by this right. in article 2 all states are bound to guarantee the rights recognized in the present Covenant without any distinction as to race, color, sex, language, religion and belief political or other opinion, origin of national or social , wealth, birth or other status. Also in article 27 emphases on rights of persons belonging to minorities, ethnic, religious or linguistic in any countries which include enjoying their own culture and professing to their own religion and to practice in accordance with it or speak in their own language in community with other members of their group.

## **Conclusion**

The lack of a legal framework governing environmental justice in the international system is visible. Environmental justice at the international level is associated closely with human rights and refers to the right to life, health and cultural integrity, the right to a healthy environment, the right to self-determination and the right to freedom from racial discrimination (Carmen G. Gonzalez2007, pp.583-626) therefore settlement of The people of the same race or ethnic group in places with higher pollution or storing toxic materials close to cities Or environments in which people of a particular race lives, are examples of racial discrimination. Environmental justice has a close relationship with human rights and international environmental law. Universal Declaration of Human Rights has been developed with emphasis on non-discrimination between the public and the right to food for all people. Therefore must attend to environmental justice as a Human Rights need. With attention to above subjects that however lack of independent legal system for environmental justice was concluded, but there are its elements in Human Rights international documents in

various forms. It can be concluded that necessity of an independent legal system for environmental justice is undeniable, especially this legal system has root in Human Rights concepts and category.

## References

- [1] Abasi Sarmadi, Mehdi. Asadi khomami, Reza. Hajgozari, Mahnaz. (2013, 9, 29).International law and environmental justice. Academic Journal of interdisciplinary studies.2 (9), 504.
- [2] Bullard, R. (1994a). Dumping in Dixie: Race, Class, and Environmental quality
- [3] Bullard, R (1994b). Overcoming in environmental decision-making. West view Press
- [4] Clayton, S (2000). Models of justice in the environmental debate. Journal of Social Issues, 56.459-474.
- [5] Cole, Luke. Foster, Shila. (2001).From the ground up: Environmental racism and the rise of the environmental justice movement.54-85
- [6] French, Hilary. (2000).Vanishing borders profecting the planet in the age of globalization.
- [7] Gonzales, Carmen. (2007).Genetically modified organisms and justice: The international environmental justice implication of biotechnology.Geo.Int'l Env'tl.L.rev.19, 583-626
- [8] Kitt, J.R (1995).Waste export to developing world: A global response.7Geo.Int, Lenvil, L, Rev, 485-488.
- [9] Vandana, shiva.Afsar, H.jafri& GitanJali Bedi. (1997).cast of economic globalization: The Indian experience 5.prepared for UN General Assembly special session on Rio+5
- [10] Bamako Convention on the ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa. (1998)
- [11] Basel Convention on Transboundary Movement of Hazardous Wastes: Total Ban Amendment, (1989).
- [12] ECONOMIST, Feb. 8, 1992, p. 66 (For the text of the memorandum, see "Let Them Eat Pollution)
- [13] The American Environmental Justice Movement .from <http://www.iep.utm.edu/enviro-j/>
- [14] C155 - Occupational Safety and Health Convention, 1981 (No. 155)
- [15] C161 - Occupational Health Services Convention, 1985 (No. 161)
- [16] C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
- [17] European Convention on the Compensation of Victims of Violent Crimes Strasbourg, 24.XI.1983

[18] P155 - Protocol of 2002 to the Occupational Safety and Health Convention, 1981

[19] Statute of the International Criminal Court

[20] United Nation Human Development Report. (1998). Overview, United Nation development program from

[21] <http://www.undp.org/hydro/98.htm>

[22] United Nations, (2008).United Nations Today.DPI/2480.

[23] Universal Declaration of Human Rights

[24] [www.unic-ir.org](http://www.unic-ir.org)

[25] <http://www.ilo.org>