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International Law and the environmental challenge in Bangladesh: the role of the law schools

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ABSTRACT

The integration of environmental issues in Bangladesh into the wider framework of human rights can provide results, if these rights are taught in a practical way. The creation of legal clinics in Bangladesh, and environmental legal clinical programs in law schools will, based on the example of other Asian countries, provide judicial remedies to a population that is suffering from international environmental law violations. However, because of the situation of legal education in Bangladesh, and the limited involvement of the country in international law instruments, the creation of remedies through clinical programs has a long way go. The potential for environmental progress in legal education remains huge.

INTRODUCTION

The environmental situation in Bangladesh has been widely documented as one of the most preoccupying in the world. In this paper I will try to present one of the approaches to environmental law that has been neglected so far in Bangladesh: the use of law school clinical programs.

Not only the degradation of the environment resources is widespread and accelerating, but the consequences for the population are among the world-most dramatic. The reliance of the majority of the population on natural resources, either water or forests, creates a development trap for which a multidisciplinary approach, and combined efforts, are necessary.

The fight for the environment can often be summarized by a fight for the preservation of resources. Financial and human resources are necessary at all steps of environmental advocacy: whether judicial or political remedies are sought, they imply costs and no guarantee of benefits, making environmental advocacy and trans-disciplinary networking, risky choices.

Clinical programs can provide elements of answer to the resource scarcity and environmental degradation that is affecting Bangladesh. Clinical programs are legal offices set up and run by law schools, aiming at offering to the local population legal advice and representation that they cannot afford, whilst providing first-hand professional experience to law students. Typically, large and interesting cases are selected by law professors, who then divide the class into groups who will focus on different aspect of the same case. Through this extensive access to human resources, law school all over the world achieved considerable success in the field of environment. Because complex cases require teams of lawyers focusing on different areas, they often imply legal fees that victims and litigants cannot afford, or that would add to the cost of environmental degradation a heavy financial burden. The use of legal clinics, in the particular context of Bangladesh environmental protection, presents challenges and opportunities. The opportunities are to be assessed in a comparative perspective, not only with neighboring countries and countries with similar environmental issues, but in a wider perspective that will include elements of environmental law enforcement in developed countries. Indeed, environmental issues are affecting mainly poor populations, regardless of the level of the development of the larger community or the country.

ROLE OF LEGAL CLINICS IN HUMAN RIGHTS, ENVIRONMENT, AND THE RULE OF LAW

Law students have skills and knowledge, and with the coordinating capacity of the classroom setting, can deliver powerful judicial remedies and advice to victims and to the community. From the 70s, clinical programs in the United States and elsewhere expanded their scope of action to include

international law. Research on state compliance to international law suggest a strong link between transnational legal advocacy and compliance [1]. The same claim is made about the positive link between environmental protection and legal clinics [2]. The development of legal clinics produced quantity of research on the subject, in an attempt to evaluate the origin of the movement, to determine the relations with other forms of advocacy, and to highlight good practices and possible areas of improvement [3].

In Asia like everywhere else, law students have taken up human rights, immigration, environment and other public-interest related issues. Legal education in Asia is booming, and evidence of the impact of a combination of human rights approaches to environment with clinical legal education makes a strong case for the development of such programs. The implementation of such programs present two challenges: the funding, and the integration of clinical environmental programs with a theoretical background, corresponding to the teaching of environmental law. The recourse to international funds, such as the Asian Development Bank and the World Bank, are made possible by the important potential for development aid and the emergency of the environmental situation in Bangladesh. The teaching of environmental law can be achieved by integrating advocacy networks and the development of joint programs and partnerships with foreign law schools, in Asia and elsewhere, in a context of internationalization of legal education and higher education in general.

BANGLADESH AND INTERNATIONAL LAW

One of the limits of legal advocacy is the enforceability of existing legal rules. If lawyers, professors and students can pressure on the courts and specific cases, they are toothless if they cannot find the necessary tools for the protection of victims.

Bangladesh is fairly engaged in international law. It has ratified some of the major international law and international human rights instruments, but lacks for instance a commitment to the protection of refugees, which is becoming an increasing issue in relation to the environment [4]. Bangladesh is however very little committed to International Environmental Law: it did not sign or ratify the Aarhus Convention, nor the Espoo Convention, both widely considered being the basis of International Environmental Law. On specific issues, it ratified in 2001 the Montego Bay Convention on the Law of the Sea but, like most South East Asian countries, did not sign the 1972 London Convention on the Prevention of Marine Pollution. Air pollution is not better covered by the country's international engagement [5]. However, the existing instruments, overall consistent in terms of ratification in a regional perspective, do provide with legal tools that need to be applied to specific situations. International Environmental



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