

The Role of International Judiciary in Protecting the Environmental Rights of Future Generations

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Abstract

The article analyses the role of the international judiciary in protecting the environmental rights of future generations to achieve the sustainable development goals pursued by different countries. The problem of the study was the extent to which international jurisdiction contributed to protecting the rights of future generations. The study aimed to demonstrate and determine the content of the intergenerational theory of environmental justice and the extent to which constitution's guarantee future generations' right to a healthy environment. The research discovered various results and recommendations, but the most significant was that constitutions, international agreements, and international acts should ensure a healthy and sound environment for future generations. International justice confirms environmental justice, contributing to the protection of future generations' environmental rights by appointing a National Council, General Representative, or Environmental Secretary of any designation to represent future generations before the judiciary and alert governments and citizens to environmental issues.

Keywords: Environment, Sustainable Development, Environmental Rights, Future Generations, International Justice, National Constitutions

Introduction

There is no dispute that a healthy and sound environment is essential for the survival of present and future generations, which is not specific to a particular country, but to the global community. These rights have been recognized to be

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inherent in international law through various environmental conventions, customary legal norms, jurisprudence, and general principles of law (Banerjee, 2013).

Due to global awareness of these rights and their frequent misuse, the international judiciary has adopted various judicial concepts. The judiciary's claim that the human right to the environment is essential to "the survival of the human race" applies to our age and future generations (Berger & Sineiro, 2012).

Thus, the Oman Vision 2040 stressed that economic growth and social well-being are linked to keeping pace with national, economic, and judicial legislation for growth, preparing it to meet current needs and rapid changes, empowering qualified national competencies to boost confidence in the legislative system, and balancing legislation (Bertenthal, 2018).

Indeed, these trends are directly linked to sustainable development Goal 16, which refers to supporting peaceful and inclusive societies for sustainable development, universal access to justice and the building of effective, accountable and inclusive institutions at all levels (Egan, 2010).

In keeping with what has been said, the second half of the 20th century saw significant scientific advancement, giving mankind unparalleled knowledge and technology. However, this massive capability has not been harnessed to benefit humanity. Many countries have depleted the resources future generations will need to survive and thrive. Environmental pollution has increased due to population growth, poverty, inequality, and excessive consumerism (Hamlin, 2008).

In addition, a new weapons race can harm humanity at a time when a healthy environment is important for man and his descendants. Thus, the environment is the shared inheritance of humanity, not the property of any generation to enjoy freely (Jampel, 2018).

Research Questions

This study is thus grounded in a significant issue: to what extent has international justice played a role in safeguarding the rights of future generations? Undoubtedly, the primary issue of the investigation encompasses other inquiries: What does the philosophy of environmental justice encompass in terms of intergenerational content? The intergenerational philosophy of environmental justice was developed by a group of pioneers. Did the constitution ensure the entitlement of future generations to a wholesome environment? Who assumes the responsibility of environmental preservation?

The objectives of this study are to inform the concept of intergenerational environmental justice and to demonstrate the role of the judiciary in achieving environmental justice for future generations.

This subject is significant in philosophy and legislation because it gives the problem its due since chronic environmental deterioration affects current and future generations. Global challenges like environmental protection and future generations require social and economic study. Our daily conditions must not be lowered for future generations. Legally, this study will teach politicians and scholars on the judiciary's environmental role.

Thus, the best way to achieve the study's goals is to describe and analyses all international conventions, environmental protection laws, country practices, and international and national jurisprudence that have addressed future generations' rights. The essay describes how the judiciary promoted environmental justice for future generations.

Conceptual Framework for Intergenerational Environmental Justice

Initial discussion focused on the theoretical foundation of intergenerational environmental justice: the human right to the environment. Reflecting the interests of future generations as each generation uses and preserves natural and cultural resources. This generation must pass on this inheritance in the same condition as when it was received (Lawson, 2008; Al-Billeh & Abu Issa, 2022).

To demonstrate environmental justice, national constitutions, international treaties, and legal actions will represent the intergenerational idea of justice, its pioneers, and its substance (Marshall, 2010; AL-Hammouri et al., 2023a; Al-Billeh, 2023a).

Content of the Intergenerational Theory of Environmental Justice

We are trustees of the Earth for future generations as members of the present generation. The current generation's preference over future generations in using the planet's resources is unwarranted because all human generations share the Earth's common heritag (Moran, 2010; Al-Hammouri & Al-Billeh, 2023; Al-Billeh, 2024a; Nussbaum, 2012; Al-Billeh & Abu Issa, 2023a).

Each generation should offer its members with just rights to the heritage inherited from past generations, and some feel we confront the dual problem of attaining justice among the current generation while considering mankind's future (Morrell, 2018; Al-Billeh & Al-Hammouri, 2023; Al-Billeh, 2024b; AL-KHALAILEH et al., 2023).

A Commission for the Future of the Planet might analyze how today's efforts would affect future generations. Scholar Weiss suggested opening credit for future generations and implementing scientific and technological programmed to reduce long-term environmental problems and improve technology (Ravi Rajan, 2014; Al-Billeh, 2022a; AL-Hammouri et al., 2023b; Al-Khawajah et al., 2023).

Intergenerational justice demands every generation to protect the variety of the natural resource foundation to avoid limiting future generations' options to solve their issues and meet their needs. They must have more diversity than previous generations and demand every generation to preserve the planet's quality to avoid inheriting it worse. And that future generations deserve a world with fair diversity to compare to earlier generations (Rubin & Turner, 2015; Al-Billeh, 2022b; AL-Hammouri et al., 2023c; Al-Billeh, 2023b).

Pioneers of Intergenerational Environmental Justice Theory

Intergenerational justice was not new, but Professor E.B. Weiss modernised the theory. Scholar Weiss believes that we, the offspring of mankind, own the natural environment of our planet along with all our species, past, present, and future (Sellers, 2008; Al-Billeh, 2022c; Khashashneh et al., 2023; Al-Billeh & Abu Issa, 2023b).

Indeed, this criticism is genuine. When one generation starts and the next ends analyzing the environment and if they will steward it wisely is unclear. Before responding to this criticism, we wish to emphasize that future generations are people and must have their rights safeguarded. Science can now readily analyze the status of the environment and if human actions are damaging by drawing up a chart demonstrating whether the ecosystem and its many aspects are degrading or improving, according to scientific standards. Environmental agreements stipulate allowed amounts of hazardous materials (Ulloa, 2017; Al-Billeh, 2022d).

In response to this critique, professor Weiss says these rights are generational rights, recognized in the time framework of generations, and generations possess them as groups in connection to past, present, and future generations. Different considerations apply to these rights than to the unborn kid (Whyte, 2011; Al-Billeh, 2022e).

Intergenerational Environmental Justice in Constitutions, International Treaties and Legal Work

The topic of future generations, as well as the concept of conservation of the Earth's resources for future generations, are not new ideas. Many international environmental agreements have been developed for many years, in addition to the

rules of law, have spoken of protection and conservation of resources for future generations (Benvenisti, 2008; Alkhseilat et al., 2022).

The articles on intergenerational justice contained in certain national constitutions and in the provisions of international conventions, as well as in international work in this regard, will be presented in detail as follows:

National Constitutions that Include the Rights of Future Generations

Today's constitutional environmental rights receive considerable attention with more than 60 national constitutions providing for the protection of the environment in one form or another (Boyd, 2012; AL-KHAWAJAH et al., 2022).

But a wide range of national constitutions have made a point of explicitly referring to the rights of future generations. These include:

The 1980 Iranian Constitution, chapter IV, article 50, states: "In the Islamic Republic of Iran, environmental protection, which must be the framework of the present and subsequent generations, is a general duty. Thus, economic and other activities that entail pollution of the environment or irreparable damage are prohibited".

The preamble to chapter IV of the 1984 Constitution of Papua New Guinea further states: "We declare that our fourth objective is to preserve Papua New Guinea's environment, utilize its natural resources for the benefit of all and restructure these resources for the benefit of future generations. Hence, we ask:

1. Our natural resources and our land, marine and air environment should be used in a prudent manner for the benefit of our development and future generations.
2. 3. All necessary measures shall be taken to protect our birds, fish, insects and other animals and our precious plants and trees".

Constitutions that have demonstrated the idea of generational rights to the environment and its resources, and the temporal nature of future generations' rights, include: The Constitution of Brazil of 1988, Title VIII, Chapter VI, article 225, which states: "All persons have the right to an ecologically balanced environment, and the authorities and society have the duty to defend and protect the environment for present and subsequent generations".

Article 24 of the South African Charter of Rights of 1996 (2) recognizes the interests of future generations: "1. Everyone has the right to an environment that is not harmful to his or her health or well-being. Everyone has the right to a protected environment for the survival of present and future generations".

The 2014 Egyptian Constitution, modified in 2019, recognizes future generations' environmental rights. Article 32 states: The country's natural resources belong to the people and must be preserved, used well, not depleted, and considered for future generations." Article 46 of the Constitution guarantees future

generations' rights to certain natural resources: "A healthy environment is a national obligation. The government will protect them, not destroy them, and rationalize natural resource usage to promote sustainable development and future generations' rights.

Note through this text that the Egyptian Constitution imposes an obligation on the country to take the necessary measures to preserve the environment and not to harm it in order to guarantee successive generations' rights.

Article 15 of the Basic Law of Oman states: The country shall protect the environment and its natural balance; in order to achieve inclusive and sustainable development for all generations, citizens and residents must maintain and do no harm.

For future generations' rights, the constitution may require constraints. Future-thinking groups must report environmental abuse to authorities. It also allows people, groups, and non-governmental organizations concerned with the environment and future generations' rights to obtain public authority environmental information and participate in environmental decisions that may impact them (Koskenniemi & Leino, 2002; Al-Billeh, 2022b; ALMANASRA et al., 2022).

International Conventions that Incorporate the Interests of Future Generations in their Texts

Preference for future generations is a relatively new worldwide notion. Countries have demonstrated interest in future generations' welfare and pleasure via multilateral institutions since WWII. The 1945 UN Charter began: We, the peoples of the globe, have come to safeguard successive generations from the scourge of war... Developments in international human rights legislation make generational rights natural and desirable (Rosenbloom, 2007; Al-Billeh & Al-Qheiw, 2023; Alshible et al., 2023; Al-Billeh et al., 2023a).

The 1976 Barcelona Convention for the Protection of the Mediterranean's preamble stated: The Contracting Parties are fully aware of their responsibilities to preserve this common heritage in the interests of present and subsequent generations.

The preamble to the Canada-United States Convention on Air Quality of 17 March 1991 states: "States Parties are convinced that a healthy environment is essential for the well-being of present and future generations in the United States and Canada".

The United Nations Framework Convention on Climate Change, New York, 9 May 1992, also stated in its preamble: "The Parties to this Convention are

determined to protect the climate system for the benefit of present and future generations." Article III states: "Parties shall protect the climate system for the benefit of present and future generations of mankind".

The United Nations Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, states in its preamble: "The Contracting Parties, determined to maintain and use biodiversity in a sustainable manner for the benefit of present and subsequent generations".

Article II, "Use of terms", states that sustainable use means the use of biological elements in a manner and rate that, in the long term, does not diminish this diversity, thereby safeguarding its ability to meet the needs and aspirations of subsequent generations.

International Actions that Referred to the Idea of Future Generations' Environmental Rights

The 1972 Stockholm Declaration on the Human Environment is crucial to future generations. The idea has since gained popularity. The Stockholm Declaration on the Human Environment states that humanity's fundamental goal is to protect and improve the human environment for future generations in harmony with peace and economic and social development.

Principle II, XVIII clearly protects present and future generations: Principle II: Air, water, soil, animals, and plants must be maintained for future generations.

Science and technology must be applied to identify, avoid, and control environmental hazards, solve environmental problems, and serve the common interest of mankind as part of social and economic development, according to Principle XVIII.

From 10 to 18 May 1982, the worldwide community endorsed the Nairobi Declaration to honor the tenth anniversary of the Stockholm UN Conference on the Human Environment. It addressed the rights and preservation of present and future generations to the environment and its resources. Renewed its Stockholm Declaration and Plan of Action commitment (Item X). All governments and peoples of the world are asked to undertake their historic responsibility, collectively or individually, to secure the handover of our little planet to future generations to guarantee all life in dignity.

To maintain nature and not disrupt its essential processes, manage resources to optimize output and survival for non-human species, and sustain optimum ecological patterns, the 1982 World Charter for Nature advised countries. Governments must promote sustainable coexistence and prevent untreatable environmental acts to regenerate natural resources.

Countries will use and preserve the environment and natural resources for present and future generations, the Declaration on the Right to the Conservation of Nature, Environmental Protection, and Sustainable Development (Intergenerational Justice)'s second general principle.

It is hardly unexpected that the UN Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, would include future generations. Principle III addressed future generations' rights to development: The right to development must be realized to fulfil present and future generations' development needs and environments fairly.

According to the Declaration of the World Summit for Social Development, Heads of State and Government are committed to a vision for social development based on human dignity, rights, respect, equality, peace, democracy, solidarity, and responsibility.²⁶ To achieve our responsibilities to current and future generations by guaranteeing justice and maintaining the integrity and sustainable use of our environment, we shall build a framework for action.

Beijing hosted the Fourth World Conference on Women from September 4–15, 1995. Conference Plan of Action, chapter IV (Strategic Objectives and Actions). 11. Women and nature Women support their families and communities by managing and exploiting natural resources. As consumers, producers, and family carers, women promote sustainable development by caring for present and future generations' quality of life.

Principle VI of the 1994 International Conference on Population and Development states: Sustainable development as a means of ensuring human fulfilment, shared by all present and future people, requires full recognition and sound management of the interrelationships between population, environmental resources, and development, and a harmonious and dynamic balance between them. Countries must eliminate unsustainable production and consumption patterns and promote policies to meet present generations' needs without compromising future generations' ability to meet their needs to achieve sound development and improve the quality of life of all people.

Final UNGA resolution 76/205 on climate preservation for future generations. The 17 December 2021 resolution urges the UN to safeguard the global climate for future generations.

A secure and healthy environment is crucial for the well-being of present and future generations, which are worldwide and affect our everyday life. International agreements, constitutions, and acts ensure this right.

The Role of the Judiciary in Achieving Environmental Justice for Future Generations

It was formerly assumed that future generations will live on a world similar to the current one, maybe with improved technologies to make life safer, healthier, and easier. This is no longer supported. This generation is the first to be able to drastically change Earth's ecosystems and inherit a world with a different atmosphere, soil, life systems, plants, and animals than its forebears.

Climate change is undoubtedly a complex phenomenon; Because humanity faces challenges that have never been faced before, and on a scale beyond imagination, where climate change threatens all aspects of our lives. It affects the planet's ecosystems, which provide our daily needs.

Minors Oposa's Case

The Philippines is a 30-million-hectare archipelago with unique animal and plant species and 53% forest. The Government had commercially invested this natural wealth by granting permits for logging, and the unjust clearance of those forests, which reached 2,000 hectares per year in 1987, had taken a dangerous turn, leaving only 1.5 million hectares out of 16 million. Forty-four children, their parents, and the Philippine Environmental Network petitioned the Court to revoke all Philippine deforestation authorizations and stop giving new ones to stop the bleeding.

The court rejected the complaint on the basis of the Government's response on the grounds that the plaintiffs failed to state the reason for their claim, in addition to the fact that the case raised a political issue.

Urgenda's Case

The Urgenda Foundation v. Netherlands ruling by the Hague District Court in spring 2015 ordered the Dutch government to reduce greenhouse gas emissions (GHGs) by 25% before 2020 compared to 1990, despite the government's policy of 17%.

Urgenda emphasized that "sustainable society" was human-centric. It acknowledges that humankind and human societies depend on the planet's natural resources and ecosystems for their survival and concludes that these resources and ecosystems must be used and managed in a way that puts humankind's and human societies' survival at risk. Economic activity that promotes "dangerous" climate change that affects ecosystems and human communities worldwide is "unsustainable". Urgenda's statements fit its legislative goal of a "sustainable society".

According to the plaintiffs, the Government of the Kingdom of the Netherlands acted illegally towards Urgenda by failing to commit to reducing emissions by at least 25% compared to the 1990 base year by 2020.

The Hague Court of Appeal resubmitted the dispute again. It upheld the district court's ruling, declaring its ruling provisionally enforceable, but decided that a reduction of more than 25% could not be granted by 2020.

The Court concluded that global warming was the result of many actors, and could only be resolved through a joint effort. It would be entirely unsatisfactory for this claim (the Netherlands' contribution to global greenhouse gas emissions of no more than a "drop in the ocean, i.e. no more than 0.35% of global emissions) to exempt the State from its share of global GHG emissions, however small. This applies to every country in the world, including the major Powers. Ultimately, each contributor will be exempt, and no one will be responsible for the dangerous temperature rise of 2 degrees Celsius or more that may result.

The Urgenda case is a unique precedent; because the Court granted legal protection to citizens against the Government, which violated their right to protection against dangerous warming. The Court placed itself in a position to review the Government's greenhouse gas emission policy. The Court was clearly aware of its role in the law's development process. This provision is merely a mechanism of deterrence, or risk management.

Finally, the Court has taken a position on the dangers of climate change as one of today's major challenges to society. Once again, this goes well beyond the usual aim of private law litigation and can only be legitimized in a framework that takes seriously the public role of civil justice.

Individual actions in different countries alone will not be enough to protect future generations' rights, so a National Council, General Representative, or Environmental Secretary must be appointed to represent them in court (Pellegrini et al., 2020; Isa et al., 2022; Al-Billeh et al., 2023b).

Conclusion

According to environmental justice theory, every generation must protect the diversity of natural resources and preserve the planet's quality to avoid inheriting a worse world. And that future generations deserve a world with appropriate diversity.

Today's generation is part of the environment, influences and is influenced by it, and must preserve and recognize its components. For current and future generations, a safe and healthy environment is crucial. It applies to the global society and our daily life. International constitutions, conventions, and actions safeguard this right for future generations. The appointment of a National Council, General Representative, or Environmental Secretary to represent future

generations before the judiciary and alert Governments and citizens to environmental threats ensures their environmental rights.

Finally, comparative research and studies, systematic assessment of educational institutions' environmental activities to protect future generations' rights, national and regional conferences on future generational environmental rights, and further research on future generational environmental rights jurisprudence must strengthen intergenerational responsibility and environmental justice. Promote future generational environmental rights education, training, and awareness among NGOs and others.

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