

Environmental law and its linkage with alternative justice as a mechanism for collaborative advocacy in conflicts

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Abstract

In a constantly growing and complex dynamic society, it involves considering human security under a sustainable and comprehensive scheme in order to maintain survival and decent quality of life. In this regard, the human right to a healthy and ecologically balanced environment represents a challenge for humans since natural resources may be in a state of risk or vulnerability, due to the interests (economic, social, cultural) of various groups (civil society, public/private sector, government), inciting situations of conflict in a latent, emerging and/or manifest manner. In this wording, alternative justice plays an important role because, under its scheme of principles, techniques and tools, it can be a collaborative, participatory, and inclusive means of action among the various actors immersed in the conflict and thus reach consensus agreements.

Keywords: human rights, environmental justice, alternative mechanisms, citizen participation.

Introduction

The environment is concerned with a complex system of reality according to the context and natural resources of space-territory, this assumption is based on the behavior and decisions of the human being with its habitat.

The human-environment relationship establishes elements gradually and substantively of the interpretation and scope of what is constituted as an environment; the increasingly complex global landscape of environmental conflict has an impact on the integration of a sustainable culture and therefore on the address and treatment of environmental conflicts.

Derived from the above, the recognition of the environment as a human right improves the safety and safeguarding of every person through a sustainable process, that is, to ensure the use and use of the natural resources of present and future generations.

The human right to the environment is an interdependent and indivisible right to other human rights such as health, housing, education, work, food, among others. This leads us to consider that the

manifestation of an affectation or damage to the environment directly and indirectly impacts other rights.

In the Mexican state, human rights are elevated to constitutional status in 2011. This implies that, when judging on environmental matters, those international instruments to which Mexico is a party should be considered in addition to the domestic standard. Mexico in 2013, approves the Federal Law on Environmental Responsibility, which provides for alternative justice through alternative dispute resolution mechanisms. This type of justice represents an effective and efficient means of citizen action and participation in decision-making of socio-environmental conflicts.

This article describes aspects of environmental rights through alternative justice using techniques and tools from alternative mechanisms that manage and resolve socio-environmental conflicts in a self-compositive way, without having to exhaust judicial bodies in the relevant cases.

Environmental rights

Environmental law/ecological or nature law comes from social and public law, which studies any relationship between human beings and their own nature or environment, with the desire to legislate and create any standard for the benefit of the care, preservation and protection of any activity caused by man and instituted through industry.

The environment has natural processes in its dynamics and transformation, however, the action of the human being has caused a deterioration to the ecosystem and, therefore, harmful and catastrophic to the human species.

The link between society and nature is established through two main types of factors: "all human actions that affect the natural ecological system and the set of ecological effects generated in nature and that affect the social system." (Gallopín, 1986, p. 161).

The first and second generation rights (Herrera, 2001) that characterized modernity and the search for social justice as the supreme good of the individual and the citizen, adding to the value of postmodern societies the right to the environment.

In the field of the environment, human rights exist in the third generation (violations of collective rights) which frame the violation of the right to development; to enjoy a healthy and ecologically balanced environment; ecological damage; right to enjoy the common heritage of humanity; to peace and to be different; considered collective and diffuse, it must be restructured or create alternative ways of resolving all those conflicts that have traditionally been brought to justice in order to transcend alternatives with equivalence criteria.

The criteria and rights integrated into the third generation of human rights derive from a number of social, economic, cultural and political factors for the development and growth of new societies; emphasizing from international events that gave the tone to identify that what happened in a particular socio-environmental context, occurred in a different context, being that the same causes of alteration were aroused by the same factor.

At the end of the twentieth century and development of the 21st century, the advancement of technology and innovation has permeated in the various societies, the global economic system, makes

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natural resources seen as the raw material of their products marketed. In this sense, citizen consciousness, based on catastrophic environmental experiences, reconsiders addressing environmental problems (Valencia et al., 2015) as an aspect that transgresses the development of a decent life as a citizen and collective in a local, regional, national and global way in the sense of interconnection of ecosystems.

The Rio Declaration on Environment and Development, in principle ten states:

"The best way to deal with environmental issues is with the participation of all interested citizens, at the appropriate level. At the national level, everyone should have adequate access to environmental information available to public authorities, including information on materials and activities that are at risk in their communities, as well as the opportunity to participate in decision-making processes. States should facilitate and promote awareness and participation of the population by making information available to all. Effective access to judicial and administrative procedures, including damages and relevant remedies, should be provided" (United Nations, 1992).

This implicitly carries environmental rights of access to justice (self-competitive and heterocompositive), access to information (transparency, accountability and inclusion) and access to public participation (based on the needs of the particular context) in order to achieve a substantive and robust state of environmental governance.

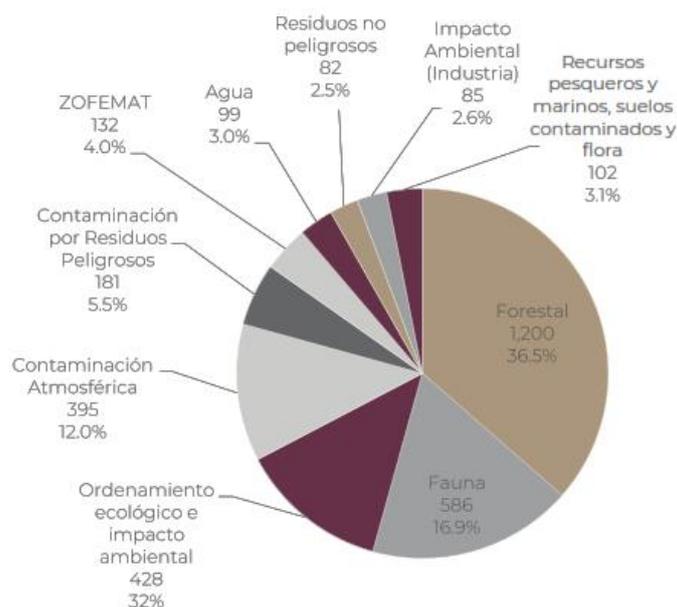
Environmental rights are aligned with environmental justice processes as described by Towers (2000) and Wenz (1988) from the human-scale framework related to distributive justice; reflecting equity for people, as well as a common benefit from social participation and decision-making. It is based on a unique and plural process of equity and sustainability that must be supported by public policies involving sustainability considering the social, economic, political and cultural aspects.

Alternative justice in socio-environmental conflicts

Environment and Natural Resources Secretary-SEMARNAT Victor M. Toledo reported that Mexico by 2019 "had 560 socio-environmental conflicts recorded, of which 173 are with the mining industry, 86 water, followed by the expansion of the energy industry and energy extraction, among others" (Vergara, 2019). This implies a collapsing state on the part of the justice system, since the citizen demands access to justice and guarantee of the human right to the healthy and ecologically balanced environment.

In SEMARNAT's second report 2019-2020 on access to environmental justice and protection of environmental and territory defenders in Mexico, from September 2019 to June 2020, they had a total of 3,290 popular complaint files, 1,030 files were admitted but channelled to relevant authorities. This implies that natural resources, exploitation and overexploitation of natural resources has equated them with dynamics of conflict by air, soil, land and water. The graph below represents the percentage of environmental complaints by subject matter.

Graph 1. Environmental complaints by subject matter 2019-2020. (number of complaints addressed)



Source: SEMARNAT/Federal Office for Environmental Protection.

In Mexico, forestry and fauna account for the largest number of complaints, followed by the increasing territorial order each year. Air pollution, solid waste, water, non-hazardous waste, environmental impact by industry and fishery, marine, soil, contaminated and flora resources by less than 12%. It is worrying to go more and more specific each year and expand the materials in environmental damage.

In this sense, "when an environmental problem arises, actions are lacking on the part of those affected, transforming from problem to conflict when those affected initiate actions to try to avoid environmental damage or motivate its repair" (Latin American Observatory on Environmental Conflicts, 1998).

In a socio-environmental conflict, conceived from the social and environmental dimension with a totalizing vision, produced by the action of man with or in his environment (Martínez et al., 2020) and conflicts that occur by the action between men around the things of the environment. Therefore, more than economic growth opportunities, the fate of the local environment, the quality of life of the population and the continuity of territorial economies and traditional systems of life are at stake.

Thus, alternative justice poses a challenge in the case of the Mexican State, although article 17 Constitutional provides for access to justice through alternative mechanisms; in environmental matters, the Federal Environmental Responsibility Act regulates environmental liability for environmental damage, repair and compensation for damages. The second paragraph of Article 1 states that "this order is regulatory in Article 4 Constitutional, public policy and social interest and aims at the protection, preservation and restoration of the environment and ecological balance, to ensure human rights to an environment healthy for the development and well-being of every person, and to the responsibility generated by environmental damage and deterioration" (LFRA, 2013).

Article 2(XII) of LFRA law provides for mediation, conciliation and other mechanisms that prevent or resolve disputes without having to resort to judicial review, except for the legality and effectiveness

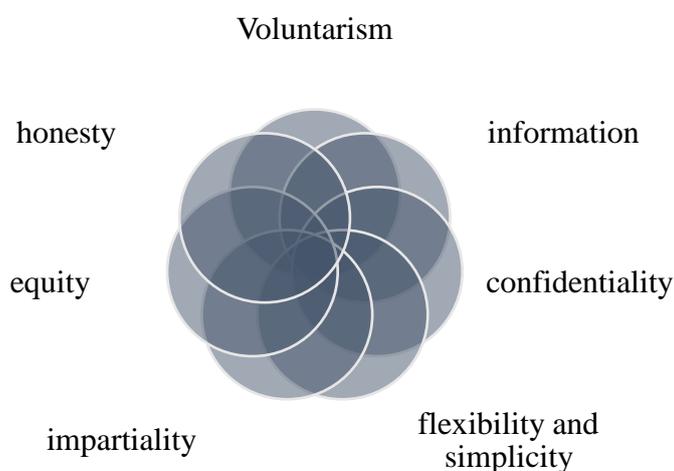
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of the agreement reached. This is a great advantage in the sense that it is not limiting in alternative justice because the ultimate goal of using mechanisms is to achieve a restorative justice process with the active participation of actors recognized as victim-offended and imputed, in which they seek options for a solution arising from crime.

In correlation between environmental rights of access to justice, access to information and access to public participation, they must be formulated with the principles of alternative mechanisms because they enable citizens to be empowered and legitimized and incentivizing decision-making for an individual and collective good, but in an informed manner. Since, access to justice allows to enforce the right of the citizen and community in a responsible and legitimate way. In addition to being able to request information or exercise your right to a procedure of care, review and resolution before a court of justice or other independent and impartial body of an act or omission.

It is therefore important to highlight the principles of alternative dispute resolution mechanisms that enable such interaction with environmental rights to achieve democratic processes, equitable from a horizontal justice process and on the same level of equality. In the same sense, environmental problems must no later be seen sectorally and vertically, but in a general and horizontal way from shared responsibility (subsidiarity).

Graph 2. Principles of alternative mechanisms.



Source: Developed by the author on the basis of the National Law on Alternative Mechanisms for The Settlement of Disputes in Criminal Matters (2014).

As noted above, the combination of the generalities of environmental rights and principles of alternative justice managed by the parties involved and guided by a professional facilitator allow to execute techniques and tools (Fisher & Ury, 1991) such as active listening, messages me, paraphrase, framing, identifying interests and needs of the interveners, to proceed with the creation of the agenda through a brainstorming and make agreements and solutions emerge by the participants themselves. It is important to consider that when carrying out a process of negotiation, mediation, conciliation or restorative board, a diagnosis should have been made that allows to identify the actors, know the

problem from each of those involved and thus be able to arrive with a question framework to the process.

The action of addressing, managing and solving socio-environmental problems allows sustainable progress in the common good, adopting policies that strengthen processes of implementation and guarantee of the environmental standard. In this regard, it is worth mentioning Luhmann (2004) who mentions that society is complex, which allows to obtain a series of analyses and processes of understanding communication through the language of given and concrete realities by observing from social relations giving guideline to dissolve the complex in a non-mechanical but a direct and transformative way, visualizing the causes that gave rise to the systems.

This concept proactively analyzes conflict (Burton, 2000), institutes it as a process that flourishes and remains; but instead of conceiving it in a negative way it uses it to dissolve those causes that motivated its origin, analyzing its components, elements and forms of manifestation (Lederach, 1998); having to be addressed in a direct and transformative way, departing entirely from a mechanical or traditional view of the conflict itself, it is there that alternative mechanisms can address those disputes entered individually and collectively in society.

Conclusión

In environmental matters, it regularly advocates not only the recognition and demand of environmental rights that are vet through the environment through a harmonious, balanced, clean and healthy environmental system, in a particular way but also collectively, since the damage has impacted or harmed a collective in violation of its human rights. The susceptibility and risk suffered by the group makes two possible scenarios, the first that from the problem the group or collective is divided by various interests, or, on the contrary, strengthens the unity and links of the members of the community to face the defense and demand of their environmental rights, seeking to claim beyond the economic question, the ecological regeneration of a region, which is a kind of equivalent to 'environmental emergency'.

Alternative justice represents a way to promote and strengthen citizen participation (Chiapponi, 1993) in environmental decision-making, guaranteeing the right of access to information freely, pre-informed and actively in environmental policy decision-making that ensures and guarantees environmental rights.

Socio-environmental conflicts must be seen from a multidisciplinary and interdisciplinary approach with a cross-cutting and holistic scope that allows them to be understood from various edges, so that solutions with a sustainable approach that contribute in a short, medium or long term according to context and conflict can be integrated.

In addition, the justice system must have a specialization in environmental matters on the part of the public servants and personnel of the justice system, so that they apply the normative and technical based on knowledge of the norm and pre-eminent interest to vulnerable groups.

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