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The Right to a Healthy Environment Is Litigable From a Global Perspective Pathway Study

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Abstract

The right to a healthy environment has long been the application of human rights in the field of environmental rights. Despite the fact that countries around the world have explicitly recognized and adopted this right, judicial remedies still face severe tests. Justicization is one of the core ways to achieve judicial remedies for the right to a healthy environment. Starting from the framework of international law and combining with regional judicial practice, this article will analyze the theoretical basis, practical obstacles and breakthrough directions for the litigability of the right to a healthy environment, and promote the transformation of the right to a healthy environment from an abstract right to a litigable right.

Keywords

The right to a healthy environment, litigable, collaborative governance

1. The International Law Basis for the Litigation of the Right to a Healthy Environment

The international law basis for the litigability of the right to a healthy environment lies in the intersection of international human rights law and international environmental law, specifically in the normative promotion of some treaty obligations, customary law principles, etc. Under the promotion of this basis, the realization space of the litigability of the right to a healthy environment is not just empty talk on paper, but also provides a blueprint for the future litigability of the right to a healthy environment.

1.1 The Extension of Rights within the Framework of International Human Rights Law

In October 2021, the UN Human Rights Council adopted resolution 48/13, officially for the first time declaring the right to a clean, healthy and sustainable environment as a fundamental human right and calling on UN Member States to cooperate in implementing this right. This marks a shift in the right to a healthy environment from a moral claim to a legal right. Although the resolution is not binding, it has

reached an international consensus, providing a new authoritative basis for the legislative and judicial practices of various countries.

On July 29, 2022, the United Nations General Assembly adopted a historic resolution on environmental health with 161 votes in favor and 8 abstentions, declaring the enjoyment of a clean, healthy and sustainable environment as a universal human right. The resolution highlights the immediate threat of environmental destruction to human rights and calls on countries to accelerate the fulfillment of their environmental and human rights obligations. This historic resolution establishes the legal status of the right to a healthy environment at the global level for the first time, providing a practical legal basis for subsequent climate change lawsuits and domestic legislation.

In addition, Article 24 of the Convention on the Environmental Rights of the Child requires States parties to safeguard the child's right to health. In August 2023, the United Nations Committee on the Rights of the Child issued General Comment No. 26, clarifying children's right to a clean environment, demanding that countries be held accountable for environmental damage both within and outside their countries, phasing out fossil fuels and ensuring children's participation in environmental decision-making.

1.2 Obligations and principles in International Environmental Law

1.2.1 The Principle of Common but Differentiated Responsibilities

Article 3 of the United Nations Framework Convention on Climate Change clearly states: "Each Party shall, on a fair basis and in accordance with their common but differentiated responsibilities and their respective capabilities, protect the climate system for the benefit of the present and future generations of humanity. Therefore, developed contracting parties should take the lead in addressing climate change and its adverse effects". Since then, the same rule has been made in international documents such as the Kyoto Protocol and the Montreal Protocol. The principle requires developed countries to take on more obligations in responding to climate change, while developing countries enjoy policy flexibility. Although Article 8 of the Paris Convention does not explicitly define the litigability of the right to a healthy environment, its recognition of the connection between climate and human rights provides indirect support for judicial practice.

1.2.2 The Precautionary Principle

The precautionary principle was first introduced in the Vienna Convention for the Protection of the Ozone Layer in 1985, requiring states to take forward-looking measures to avoid environmental damage. The principle mainly prevents countries from harming their foreign environment when they develop their sovereign rights. Based on this principle, the EU's 2024 Prohibition Investigation Directive on Corporate Sustainability also requires companies to assess environmental risks in their supply chains and strengthen transnational responsibilities.

1.2.3 The Principle of Not Harming the Foreign Environment

Article 21 of the Stockholm Declaration of 1972 and Article 2 of the Rio Declaration of 1992 establish the obligation of states not to harm other countries or the global public environment through their own

activities. For example, the Inter-American Court of Human Rights made it clear in its 2017 advisory opinion that states must ensure citizens' rights to clean air, water and a habitable climate, a principle that was cited as the legal basis for holding the Peruvian government accountable in the 2024 La Oroya case.

1.3 The Promotion of Judicial Precedents and Legal Interpretations

International and domestic judicial precedents have expanded the litigability of the right to a healthy environment through legal interpretation.

In 2023, a Montana court ruled in *Youth v. State government* that the government needs to review the climate impact of fossil fuel projects based on the state Constitution's "right to a healthy environment" clause, marking the first climate victory in the United States. While the case relied on state law, its logic can be extended to international law, demonstrating a direct link between climate change damage and the right to health. In the 1993 *Minors Oposa* case, the Supreme Court of the Philippines interpreted the "right to healthy ecology" in the Constitution as a negotiable right, demanding that the government revoke logging permits for deforestation. The case established the principle of "intergenerational justice" and laid the legal basis for the protection of environmental rights across time and space. While playing the advisory role of the International Court of Justice, the International Tribunal for the Law of the Sea (ITLOS) plans to issue an advisory opinion on state obligations on climate change, which may clarify the judicial review criteria for state emission reduction responsibilities and further enhance the enforceability of the right to a healthy environment.

2. Real Obstacles to the Litigability of the Right to a Healthy Environment

2.1 Fragmentation of the International Law Framework and Ambiguity of Norms

The treaty rules and provisions of international law in the field of the right to a healthy environment are characterized by high fragmentation. There are currently over 1,100 international environmental agreements around the world, but there is a lack of a unified enforcement mechanism, resulting in overlapping or conflicting obligations under different treaties. For example, the Paris Agreement emphasizes the connection between climate action and human rights protection, but does not clarify the grounds for the right to a healthy environment. Although the United Nations Convention on the Law of the Sea (UNCLOS) regards greenhouse gas emissions as Marine pollution, its liability provisions need to be interpreted in conjunction with documents such as the Stockholm Declaration, adding to the complexity of judicial application.

In addition, there is no consensus on the legal nature of the right to a healthy environment. Although UN Human Rights Council resolution 48/13 affirms its human rights status, it has not translated into a binding treaty obligation, and there are differences among countries regarding the specific standards for a "clean, healthy and sustainable environment". For example, in La Oroya, the Inter-American Court of Human Rights regarded the right to a healthy environment as a combination of the right to life and the right to health, while the European Court of Human Rights protected environmental rights more

indirectly through the right to private life (such as Article 8 of the European Convention on Human Rights). The ambiguity of such norms makes it difficult to unify the standards of judgment in judicial practice.

2.2 Conflict between the Principle of Sovereignty and State Jurisdiction

International law is based on sovereign equality of states, but the transboundary nature of the right to a healthy environment challenges this principle. According to the draft articles on Liability of States for international wrongful acts, states are only liable for acts within their territory or effectively controlled areas, while global issues such as climate change and cross-border pollution are often held accountable beyond traditional sovereignty. For example, when small island states resort to the International Tribunal for the Law of the Sea due to rising sea levels, it is difficult both scientifically and legally to prove that there is a direct causal relationship between the emissions of a particular country and the loss of its territory.

Furthermore, the regulatory dilemma of the activities of transnational corporations highlights the conflict between sovereignty and extraterritorial obligations. Although the United Nations Guiding Principles on Business and Human Rights encourage home countries to restrain the overseas activities of enterprises, there is a lack of mandatory rules. In Peru's La Oroya case, the US Renco Group, as the parent company of polluting enterprises, evaded accountability because Peruvian courts had no extraterritorial jurisdiction, and ultimately only the Peruvian government was held liable for compensation. Such cases show institutional deficiencies in international law in balancing sovereignty with the responsibility of multinational corporations.

2.3 Deficiencies in Causality Proof and Accountability Mechanisms

The cumulative and lagging nature of environmental damage makes it difficult to clarify the chain of causality. In the case of climate change, the link between greenhouse gas emissions and specific health damages, such as respiratory diseases, relies on long-term scientific data, and the International Court of Justice lacks uniform standards for assessing environmental damage. While the 2024 advisory opinion of the International Tribunal for the Law of the Sea acknowledges that emissions constitute Marine pollution, it does not specify the proportion of responsibility allocated among countries and merely calls for "necessary measures".

2.4 Weak Enforcement Mechanisms and Limited Relief Effects

The lack of enforceability in international law is a fundamental obstacle to the litigability of the right to a healthy environment. The resolutions of the United Nations General Assembly and the judgments of regional human rights courts, such as La Oroya, are symbolic but rely on voluntary fulfillment by states. For example, although the Peruvian government was ordered by the Inter-American Court of Human Rights to compensate the victims and restore the environment, its implementation progress was constrained by domestic political unrest and a shortage of funds, and the actual restoration results were far from what was expected.

In addition, the jurisdiction of international judicial institutions is limited. The International Court of Justice (ICJ) only accepts disputes between states, and individuals or communities cannot directly prosecute; The rulings of regional human rights courts, such as the Inter-American Court of Human Rights, require pressure from the Organization of American States and lack direct sanctions. Even if the Beijing Fourth Intermediate People's Court promotes environmental restoration through the "three-in-one" trial mechanism, its experience is still limited to domestic judicial collaboration and has difficulty dealing with transnational environmental disputes.

2.5 The Imbalance of Interests between Developing Countries and Developed Countries

The right to a healthy environment is facing structural contradictions between the North and the South. Developed countries advocate "universal obligations", demanding that all countries assume equal responsibility for emissions reduction; while developing countries emphasize "common but differentiated responsibilities" and assert that historical emitters should undertake more obligations. This divergence is particularly evident in climate change lawsuits: small island states demand compensation for climate losses from wealthy countries, but the latter defend themselves on the grounds of "sovereign immunity" and "policy discretion", leading to a deadlock in the lawsuit.

At the same time, the technical funding gap has exacerbated enforcement difficulties. The lack of environmental monitoring and remediation technology in developing countries and the failure of developed countries to fulfill the \$100 billion annual climate funding promised under the Paris Agreement have reduced judicial remedies for the right to a healthy environment to "paper rights". African countries, for example, have incorporated environmental rights provisions in their constitutions, but due to insufficient financial capacity, they are unable to establish effective public interest litigation systems.

3. Paths to the Realization of the Right to a Healthy Environment Being Litigable

3.1 Innovation and Strengthening of International Justice Mechanisms

3.1.1 Expansion of the Advisory Function of the International Court

Justice International judicial institutions provide authoritative interpretations of the right to a healthy environment through the accumulation of advisory opinions and precedents. For example, the International Tribunal for the Law of the Sea (ITLOS) plans to issue an advisory opinion on state obligations regarding climate change, making it clear that greenhouse gas emissions constitute Marine pollution and requiring countries to take emission reduction measures in accordance with the United Nations Convention on the Law of the Sea. Such opinions, though not binding, provide a legal basis for global climate change litigation and promote the formation of a uniform standard of responsibility by the international community.

3.1.2 The Establishment of Specialized International Environmental Tribunals

Drawing on the model of the International Criminal Court, a judicial institution dedicated to handling cross-border environmental disputes will be established to address the fragmentation of existing

international law. For example, in the La Oroya case in Peru, the Inter-American Court of Human Rights provided a judicial precedent for transnational pollution cases by demanding that the government compensate the victims and restore the environment through enforcement. Such special tribunals can focus on cases such as climate change and cross-border pollution, and define judicial review standards for state and corporate responsibilities.

3.1.3 Legislation on the Enforcement of Corporate Supply Chain Liability

The EU's Due Diligence Directive on Corporate Sustainability (2024) requires large enterprises to assess the environmental and human rights impact of global supply chains and drive industry transformation through market pressure. For the first time, the directive incorporates enterprises' overseas environmental responsibilities into the legal framework, strengthening the extraterritorial applicability of the right to a healthy environment. Similar legislation can fill regulatory vacuums for multinational corporations, such as in Peru's La Oroya case where the US Renco group evaded direct accountability but its home country's legislation could restrain its actions.

3.1.4 Technology Empowerment for International Criminal Justice Assistance

Enhance the efficiency of cross-border evidence acquisition and enforcement through digital tools. For example, Chinese procuratorial organs have enabled rapid tracking of pollution sources through data sharing platforms, and blockchain technology has been used to make carbon emissions data transparent and enhance the credibility of international compliance. The revision of the supporting rules of the International Criminal Judicial Assistance Law could also clarify the review standards for foreign evidence and reduce the cyclical uncertainty of judicial assistance.

3.2 *Regional Collaboration and Transnational Judicial Linkage*

3.2.1 The Exemplary Role of Regional Human Rights Courts

In the La Oroya case, the Inter-American Court of Human Rights established standards for state compensation and ecological restoration, promoting procedural protection of the right to a healthy environment. Latin America's Escassu Agreement (2021) requires contracting states to guarantee the right to public participation in cross-border projects and to resolve environmental disputes through judicial relief mechanisms, providing a model for regional collaboration.

3.2.2 Construction of Cross-Regional Judicial Cooperation Mechanisms

Take China, a developing country, as an example to implement coordinated governance in the Beijing-Tianjin-Hebei region. The Fourth Intermediate People's Court of Beijing signed the "Memorandum of Cooperation on Judicial Protection of the Ecological Environment in the Beijing-Tianjin-Hebei Region" with courts in Tianjin and Hebei, promoting the unification of cross-regional case filing, joint enforcement and restoration standards, and solving the problem of pollution in the river basin. At the same time, international coordination was achieved. The Nanjing Environment and Resources Court promoted the establishment of the country's first judicial protection facility for biodiversity, and its "9+1" trial mechanism was recommended by the United Nations Environment Programme to provide a Chinese solution for global ecological restoration.

4. Conclusion

The litigability of the right to a healthy environment needs to be advanced through multiple paths such as international judicial innovation, regional collaboration and technological empowerment. The core lies in bridging the gap between law and enforcement, strengthening international responsibility, and ultimately achieving the leap from “textual rights” to “substantive relief”. China’s localization practices as a developing country, as well as the regional mechanisms of the EU and the Americas, provide replicable governance paradigms for the world.

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