

# **Environmental Governance and the Right to Environment: Introductory Remarks on the International and Chinese Legal Frames**

Abstract: As long-term accumulated environmental problems such as marine pollution and greenhouse gas emissions are far from being solved, new ones are emerging steadily. The hypothesis considered in this paper assumes that it is urgent to build a comprehensive and effective environmental governance in order to tackle such global and regional problems. The considered literature supports this stance, and describes a trajectory focused on the two concepts of environmental governance and environmental rights. In general terms, governance denotes a process where societal actors can wield power and authority, influence each other and enact policies and decisions concerning public affairs. In the field of environmental protection, a participatory, effective and interactive mechanism is expected to underpin environmental governance. Institutional, legislative and regulative efforts should sustain a dynamic environmental governance mechanism. A human rights-based approach may provide a suitable frame for environmental governance. A right to environment has been recognized in many national constitutions and in a few international instruments, while human rights underpin environmental governance policies in fundamental areas such as citizens' participation, transparent decision-making, access to relevant information, etc. Even though the right to environment has not been recognised in China, the government has realized the urgency of environmental protection. Also in China, environmental governance should be addressed holistically, going beyond the various single-ended measures to protect specific environmental factors.

*Keywords: good governance, environmental governance, a human rights-based approach, the right to environment.*

## Introduction

Environmental protection has been occupying the foreground of many local, national, regional and international conferences since the 1970s. Conferences have produced a series of normative and policy-oriented documents, such as the Declaration of the United Nations (UN) Conference on the Human Environment held in Stockholm in 1972, the Rio Declaration on Environment and Development in 1992, the ASEAN (Association of Southeast Asian Nations) Agreement on Transboundary Haze Pollution in 2002. A similar process has unfolded at the domestic level. China, for example, has convened seven Environmental Protection Conferences since 1973 (Ministry of Ecology and Environment of China, 2012) to strengthen ‘the overall coordination of ecological and environmental protection’ (Ministry of Ecology and Environment of China, 2019). In order to tackle increasingly serious environmental problems, the international community, governments, and organizations in many fields and from different levels have been seeking effective environmental governance models. For example, a climate-neutral Europe by 2050 (European Commission, 2018) is a net-zero carbon emissions target set by the European Union (EU), which foresees a rapid path to full decarbonization for the continent. In China, the topic of environmental governance should undoubtedly be paid more attention, since environmental issues have been dramatically emerging in the last 20 years, accompanying its rapid economic growth (Wang and Qi 2015, 108-113). During the past decades, the economic development in China has been following the motto: ‘pollution first, treatment later’. Nowadays however, the increasing awareness of environmental protection is influencing the societal, economic and political developments in the country. The Chinese economic growth model is shifting from merely focusing on growth to relying on both environmental quality and efficiency (Economy and Finance, 2014). This transformation will make a major contribution to averting the negative impact of carbon emissions not only in China but worldwide.

These policies and practices are assumed to implement a theoretical frame that can be referred to as ‘environmental governance’. Theory and practices in this area are interdependent and mutually premised. It is important to have a better and deeper understanding of the theory of environmental governance generally, and then incorporate it into practices. In addressing the case of China, some adaptations are necessary, to fit China’s particular political/legal conditions and societal needs.

The literature review presented in this paper is about the concept of ‘good governance’ ‘environmental governance’ and ‘the right to environment’. It is a part of an overall research project about environmental governance and the practical paradigms in China. The elaboration of the right to environment will be illustrated as a practical path to improve environmental governance in the overall research project. In this regard, it has to be pointed out that most existing literature is about environmental factors such as air, sea and soil, while little has been written on ‘environmental governance’ from a comprehensive and holistic perspective. The

missing part in the present literature so far is to put forward a set of theoretical principles that can lead a guiding role in the process of implementing environmental protection measures.

This literature review includes both scholarly materials and official documents issued by the UN and states. This article, by combining different domains of literature ('good governance', 'environmental governance' and 'the right to environment'), tries to show a trajectory leading to shape a concept of environmental governance. A special focus will be dedicated to China.

## **1. Defining Environmental Governance**

### **1.1 What is (Good) Governance?**

The role of good governance in the promotion of human rights has been discussed in myriads of UN resolutions, and a multitude of elements were proposed to define good governance (Commission on Human Rights 2013, 3). Generally speaking, we need to acknowledge the 'importance of a conducive environment, at both national and international levels, for the full enjoyment of all human rights and of the mutually reinforcing relationship between good governance and human rights' (Commission on Human Rights 2005, 2).

Definitions of 'good governance' have evolved noticeably (Commission on Human Rights 2013, 3), hindering the formulation of an accurate definition. Governance is theoretically global, but local in practice. Theoretically speaking, every human possesses equal rights, not only in terms of quantity but also in terms of quality, which means that good governance should point at homogeneous international standards (Asaduzzaman and Virtanen 2016, 22-30, Weiss 2000, 799 & Aguilera and Cazurra 2009, 377).

Practically speaking, the process of governance is influenced by context-related determinants, and can vary based on particular conditions within each region and state (Graham et al.2003, 2). The political system, among all these factors, is the most obvious one, because of the ubiquity of state intervention in all kinds of affairs (Weiss 2000, 804-805). Unfortunately, the regulatory institutions that assess growth *vs* environmental sustainability are politically weak (Huo, 2017). It is imperative to realize that advocating for good governance is a way to mitigate the emergent effects of a veritable climate catastrophe.

Governance is a broad concept covering all social dimensions and connects dynamically any individuals with each other (Asaduzzaman and Virtanen 2016, 37-49). It indicates the process whereby social actors wield power and authority, influence and enact policies and decisions concerning public life and economic, social and cultural development (Bannister and Connolly 2012, 3-25). Bannister and Connolly realized that good governance cannot be separated from sound policies, effective partnerships and systematic inclusion of all walks of life, namely vulnerable and marginalized people.

The crucial characteristic of governance, in a people- and citizens-oriented version, is inclusion, that is internal and external solidarity as well as proximity of the institutional fabric to citizens (Godzimirski 2016, 2). A human rights-oriented articulation of the concept maintains that ‘transparent, responsible, accountable and participatory government, responsive to the needs and aspirations of people is the foundation on which good governance rests and that such a foundation is a sine qua non condition for the full realization of human rights’ (Commission on Human Rights 2005, 2). An accountable government is accompanied by other principles, including the promotion of rule of law; the delivery of professional public services contributing to the realization of human rights, democratic institutions and participation; combating corruption in public and private sectors, including the judiciary; and international cooperation, bilateral and multilateral, in support of national good governance practices (Commission on Human Rights 2004, 2). UN documents set benchmarks for good governance that can be applied to all areas.

The World Bank has also set out its definition of governance, as the manner in which power is exercised in the management of a country’s economic and social resources for development (IFAD 1999,1). More specifically, it identified three distinct aspects of governance:

- (a) the form of the political regime; (b) the process by which authority is exercised in the management of a country’s economic and social resources for development; and (c) the capacity of governments to design, formulate and implement policies and discharge functions.

As the World Bank’s mission is to promote sustainable development, it works on good governance mainly from the standpoint of poverty reduction. Accordingly, it offers a fruitful point of view on how to build good governance based on a specific purpose. Especially, the political players should be paid more attention in the integration of social resources in this perspective (Winter 2006, 1-4).

Governance identifies the process of interaction and decision-making among the actors involved in a collective problem, leading to the creation and reinforcement of social norms and institutions (Bannister and Connolly 2012, 8-17). To stress the dynamic relationship in the process, Jessop (2002, 1) also delivers a more accurate definition of governance:

The reflexive self-organization of independent actors involved in complex relations of reciprocal interdependence, with such self-organization being based on continuing dialogue and resource-sharing to develop mutually beneficial joint projects and to manage the contradictions and dilemmas inevitably involved in such situations.

According to Jessop, the value of partnerships among relevant actors must be acknowledged. Such partnerships are strengthened by communication and negotiation, like global cooperation on environmental governance. In order to mediate the conflicts among different actors while they exploit natural resources, each part should have the chance to make their voices heard (Stoett 2018, 24). Only

by incorporating independent actors, favorable approaches can be found out to solve environmental issues (Talbot 2002, 9-10).

It can be concluded that governance refers to different social roles wielding power and influence in political and other matters. The governance actors (who wields power) is a various and heterogeneous body, including political parties, the government, enterprises, citizens and media. The governance object (what power is exercised on) covers politics, economics, culture, ecology..., that is to say, all the public areas and affairs. Governance capacity (how to exercise power) identifies adaptability to change: ability to reform the institutional mechanisms and construct new regulations to make all aspects of the system more efficient and effective. Finally, governance actors, objects and capacity are closely linked and coordinated dimensions. The governance mechanism includes not only the various components but also the dynamic relationships between these elements.

As it was pointed out before, good governance is here intended as people-centred, and it cannot be achieved without an efficient, accountable and transparent political system. In the process of good governance-building, it is important to improve the interactive system and keep all relevant actors involved. Environmental governance shall extract some environment-related factors to build its own narrative. To make it simple, this article presumes that environmental governance only exists in the category of good governance.

## **1.2 What is Environmental Governance?**

Good governance is a general conceptualisation, covering all kinds of different areas. What is then good governance in the field of environmental protection?

Environment is a quite complicated and broad topic. Since human beings have stepped into almost every corner of the globe, and even into the infinite universe, virtually every inch of the Earth has been marked and transformed by humans. The 'environment' is therefore a natural and social concept: the environment we are now living in is designed by nature with the intervention of human beings<sup>1</sup>. Environmental governance is a theory interweaving 'physical' and 'social' dimensions and dynamics in the global ecosystem, and understanding environmental governance is also vital to ensure the protection of human rights.

As Fagan and Sircar (2015, 4) observed, the codes of environmental governance have become mainstream political priorities and a fundamental building block of societal transition. Environmental governance integrates critical environmental

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<sup>1</sup> Declaration of the United Nations Conference on the Human Environment (1972) proclaims that 'Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself.'

needs with the elements of general governance, thus creating a theoretical foundation for the implementation of environmental protection policies.

As mentioned, many scholars talk about environmental governance from some single perspectives, such as water pollution, solid waste, global warming and so on (Ronzoni 2019, 1-18; Hoornweg and Bhada-Tata 2012, 1-8; Li 2019, 1-6; Andersen et al. 2016, 51-68). They describe features of environmental governance in a specific context, but most of the time are not interested in elaborating principles suitable for other environmental fields. Thus, a systematic theoretical framework of environmental governance is still needed, including its definition, principles and paradigms. Like a scholar in Environmental Studies and Politics observed:

[w]e need a substantial rethinking and reordering of systems of governance that increase public engagement and create the capacities for the foresight to avoid future crises and rapid response [...] In the duress ahead, accountability, coordination, fairness and transparency will be more important than ever (Orr 2009, 40).

To make an example of the current attitude, let's take a look at environmental governance in the field of extractive industries. Taillant and colleagues (2015, 64-96) wrote a very informative paper on the business of hydraulic fracking<sup>2</sup>. The paper introduces the status, working process, and the potential damage hydraulic fracking brings to the environment and basic human conditions. They also propose how to forge a more sustainable way using this technology through human rights lens. Furthermore, they explore the state duty, corporate responsibility and remedy options according to the UN Guiding Principles on Business and Human Rights. There is no lack of researchers who shed light on central themes in extractive governance, such as institution-building, socio-environmental conflicts and development outcomes from the perspective of national elites (Karl 1997,142-166) and local communities (Conde and Le Billon 2017,681-687). Scholars point out some environmental governance-related problems in extractive industries. Indeed, high-value non-renewable resources, such as minerals and metal ores, almost always remain under tightly centralized authority (Larson and de Soto 2008, 213–239). However, usually subnational institutions have to directly deal with environmental issues (Commission on Human Rights 2018, 4). The sub-national level of governance is crucial also in this context (Conde and Le Billon 2017,690-697). While regional authorities often have strong incentives to use existing institutions to influence mining expansion, they often lack capacity, accountable representation, and support from central government as a whole or from one or more key ministries (Gustafsson and Scurrah 2019, 134).

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<sup>2</sup> Hydraulic fracturing, much applied practically to extract natural gas and petroleum, is highly controversial in many countries now. It increases the risks of water contamination, noise and air pollution, triggers earthquakes and brings hazards to public health and the environment, although accompanied by economic benefits, as well as replacing coal with natural gas.

This example shows that in many states environmental governance is operationalised according to traditional governing modes that do not keep into consideration the challenge of governance. Top-down models is predominant in China (Chen 2013, 111-118). In administrative management, local governments are in charge of environmental protection. The economic interests of local governments and enterprises are closely interconnected under Chinese special financial system (Wang and Qi 2015, 108-113). Therefore, for the sake of their own interests, local governments easily become the spokespersons of local enterprises, including polluters, while there is little incentive for them to represent the victims of environmental pollution. Yu (2019, 5) points out that environmental governance should be incorporated into the category of performance appraisal of local government. It is commonly agreed that to improve environmental governance, non-profit actors, local residents and other social parts should be involved in pursuing environmental protection tasks and relevant economic activities (Weston and Bollier 2011, 7).

Scholars have realised that local environmental protection departments are overwhelmed by environmental issues, and are unable to coordinate with other departments (Gustafsson and Scurrah 2019, 134; Eaton and Kostka 2013, 83). Speth expresses his concern about the current environmental protection system and advocates a more participatory environmental governance:

The main body of environmental action is carried out within the system as currently designed, but working within the system puts off-limits major efforts to correct many underlying drivers of deterioration, including most of the avenues of change...Working only within the system will, in the end, not succeed when what is needed is a transformative change in the system itself...What in need is a revitalization of politics through direct citizen participation in governance, through decentralization of decision making, and through a powerful sense of global citizenship, interdependence and shared responsibility (Speth 2008, 225).

When it comes to environmental issues, a sense of global citizenship (here conceived as simply referred to the realisation that one's responsibilities and rights are not constrained by geographical or political borders) is supposed to be shared worldwide. This encourages to undertake global actions to address environmental problems, despite the fact that they are invariably local and country-specific (Ronzoni 2019, 16). This kind of 'solidarity' (treating all the people around the world as a whole) enables us to tackle local cases as manifestations of global injustice and steps towards the achievement of global sustainable development targets (Ronzoni 2019, 14). They are also struggling for both the present and future generations' benefit (Kirton and Kokotsis, 277-278). It brings the current generation to undertake a change for the sake of the future ones – like consent to cuts in manpower in order to reduce carbon emissions that may negatively affect the future inhabitants of the planet – is not an easy task, but can be facilitated in a good governance framework.

In a nutshell, most of the literature narrowly focusses on some specific environmental problems and fails to address today's complex and wide-ranging challenges; it targets the symptoms rather than the systemic root causes (Vergragt et al 2008, 38). Needless to say, we need to solve the problems of air pollution, global warming and any other environmental issues. However, the measures that scholars propose are single-ended, whereas we look for a comprehensive strategy (or a combination of strategies) to tackle the global environmental issues as a comprehensive governance challenge. In the next section the article will attempt to analyse how some policy-oriented responses to today's pressing environmental problems have been framed.

## **2. Paradigms of Environmental Governance: the Right to Environment Approach**

As it is illustrated in the former part, transparency in decision-making procedures, the participation of all actors, efficient management of resources, respect for human rights, etc. are some of the hallmarks of good governance (Jessop 2002, 1, Speth 2008, 225, IFAD 1999,1 & Commission on Human Rights 2005, 2). The hallmarks of environmental governance will be sought for in vain, as long as the obstacles will not be removed that prevent the unfolding of the 'right to environment'.

The right to environment has been catching the attention of the human rights community since the 1970s (Lv 1995, 60). Numerous human rights scholars and advocates have been making considerable efforts to call on the UN to recognize the right to environment, by demonstrating its importance as a third-generation rights and describing the significant steps states have already taken for its affirmation. A human rights-based approach requires that non-discrimination, justice and rule of law, and human dignity are central in all aspects of environmental or ecological governance (Weston and Bollier 2011, 72). A right to environment should as a minimum capacity upon all this.

Sax (1969, 474) formulated a far-reaching legal doctrine that recognized the air, seas and other natural resources as a 'public trust' which must be protected from private encroachment. The public trust doctrine, a tool of general application for citizens when faced with environmental problems, should meet three criteria: 'It must contain some concept of a legal right in general public; it must be enforceable against the government; and it must be capable of an interpretation consistent with contemporary concerns for environmental quality'.

The first criterion requires that the air, seas and other natural resources can be objects of a specific right. This can be the right to environment. Accordingly, everyone is entitled to enjoy the right to environment and in return, is legally obligated to protect it. When Sax posited the doctrine of public trust, he ushered the academia in a new path, which is to create a new type of right that can flexibly respond to global environmental change. The right to environment embodies this idea and the following paragraphs try to elucidate the concept.



## 2.1 Defining the Right to Environment

There is no globally recognised official definition of the right to environment. To outline the right's content, we need to delve into some legal and political documents that have addressed some single aspects of it.

Cabre (2014, 122) stresses that Aarhus Convention (1998, Art. 1) was the first to recognise a right to environment at international scale. The Convention clearly enunciates the right of the present and future generations to live in an environment characterized by health and well-being; provides citizens with the right to obtain environmental information, to participate in environmental decision-making processes and to seek legal relief and redress when the right to environment is violated<sup>3</sup>.

The Convention however mainly focuses on interactions between citizens and public authorities. It sets procedures rather than establishing specific substantial entitlements constituting a right to environment. The Aarhus Convention focuses on procedural environmental rights which can be applied in pursuit of any substantive rights. It is therefore an instrument to the realization of a right whose component are not fully defined (Zhou and Luo 2017, 93).

The Aarhus convention elaborates on the right to access to information, the principle of due process and the right to appeal. These are first generation (civil and political) human rights, whose enjoyment is therefore prerequisite for the realization of the right to environment, but do not correspond to the substantial content of the right to environment (Huang 2013).

Other internationally recognised fundamental rights that complement a right to environment can be identified (Toepfer 2001). In particular, economic, social and cultural rights can be associated to the right to environment, as well as the peoples' right to self-determination.

Article 22 of the Universal Declaration on Human Rights, on second generation rights, states that:

Everyone, as a member of society, has the right to social security and is entitled to realization, through *national effort and international co-operation* and in accordance with the organization and resources of each state, of the economic, social and cultural rights *indispensable for his dignity and the free development of his personality*. (Emphasis added).

Article 1 of the international Covenant on Civil and Political Rights (ICCPR - 1966) enshrines the peoples' right to self-determination and control over natural resources:

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<sup>3</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (also Aarhus Convention), come into force in 2001. Article 1 reads: 'Objective. In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.'

All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and *freely pursue their economic, social and cultural development* [...] In no case may a people be deprived of its own means of subsistence. (Emphasis added)

The above provisions display some environmental dimensions (Threadgill 2019, 808) and show that peoples could wisely utilize natural resources to pursue the realization of their own social and cultural development.

States should not only emphasize economic growth, but also do their utmost to improve the rights of citizens. The international community and states should therefore cooperate (Threadgill 2019, 813) to guarantee citizens' rights, their dignity and also make efforts to maintain a social and natural environment in which everyone can freely breathe fresh air, be free from haze and dust; leisurely stroll by a clear river without covering their noses; can enjoy a coffee and read books in their room without being disturbed by outside noise...

Provisions on physical and mental health in the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966, Art. 11 & 12) also make reference to environmental issues.

Article 11.1: The States Parties to the present Covenant recognize the right of everyone to *an adequate standard of living* for himself and his family [...] and to *the continuous improvement of living conditions*.

Article 12.1: The States Parties to the present Covenant recognize *the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*. (Emphasis added)

Environment is mentioned as a determinant of human health in ICESCR and other environmental agreements (Shelton 2002, 7). Those stipulations declare that everyone shall be entitled to achieve the maximum quality of physical and mental health, and this is a key component of the right to environment. Ensuring healthy lives and promoting the well-being for all is one of the Sustainable Development Goals (SDGs) and a good environment is the premise of a healthy life (United Nations Development Programme, 2015).

Human beings have not only the right to survive, but the right to improve their life conditions (Cançado Trindade 1993, 17). As the World Business Council (1997) once stated, sustainable development involves the simultaneous pursuit of economic prosperity, environmental quality and social equity. Human and social values change with time and the task of carving an environment suitable for human physical and mental health should be taken seriously. The recognition of a right to environment could contribute to create the conditions for a healthy and dignified life (Shelton 2002, 1-3).

As a response to this international trend, many states have begun to incorporate the right to environment into their legal systems and to explore ways to implement effective environmental protection measures.

African states have been struggling to eliminate all forms of discrimination and promote African peoples' dignity and genuine independence in order to achieve the total liberation of Africa (African Charter on Human and Peoples' Rights 1981, Preamble). The African Charter on Human and Peoples' Rights is the first regional international human rights instrument legally adopted by developing countries, come into effect in 1986. Significantly, the Charter, clearly states in Article 24 that all peoples shall have the right to a general satisfactory environment favourable to their development. This commitment did bring some positive results, but still need long-run efforts to be implemented.

Rich countries have been taking advantage of the loose regulations in developing countries and, for example, have for long time been shipped their polluting waste to poor countries to be treated, or just abandoned. In Africa, hazardous substances have been found in air, water and even on fruits and vegetables (Gwaambuka, 2017). Leung (2019) reported that African countries are rising against the global trash trade. It can be expected that the human rights-based approach can be a feasible way to improve environmental governance, but this cannot be pursued in a single area or by single states. Only a concerted international effort can yield some results.

Europe is currently at the world forefront of regional human rights protection and possesses the most effective regional human rights mechanisms. However, the European Convention on Human Rights and its Protocols do not include any direct reference to the right to environment. Neither does the American Convention on Human Rights, which is drafted largely based on the European one. Article 11 of the San Salvador Protocol (1988, Art. 11), come into force in November 1999, recognizes that everyone shall have the right to live in a healthy environment and the states parties shall promote the protection, preservation, and improvement of the environment<sup>4</sup>. The Protocol shows that also countries that do not share a recent past of colonisation do realize the great importance of recognizing the right to environment.

At present, many countries have already enshrined a right to environment in their legal systems. As of 2012, 177 nations out of the 193 UN members recognised this right, either in their constitutions, environmental legislation and consolidated jurisprudence, or by ratification of an international agreement (Boyd 2013, 9-13). In 2017, 88 countries had the right to a healthy environment in their national constitutions and 63 more countries had constitutional provisions on environmental protection (UN Environment Programme 2019, 158). More or less, almost every country is seeking a legal path to some forms of environmental governance.

A few examples of constitutional provisions may help to identify the common features of the right to environment. The Spanish Constitution (1978, Section 45) reads:

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<sup>4</sup> Article 11 of the San Salvador Protocol states that: '1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation, and improvement of the environment.'

(1) Everyone has the right to enjoy an environment *suitable for the development of the person*, as well as the duty to preserve it.

(2) The public authorities shall watch over a rational use of all natural resources with *a view to protecting and improving the quality of life* and preserving and restoring the environment, by relying on an indispensable collective solidarity. (Emphasis added)

The Constitution of Portugal states in Chapter II-Social security and solidarity, section on ‘Environment and Quality of Life’, that ‘everyone has the right to a *healthy and ecologically balanced* human environment and the duty to defend it’ (1976, Art. 66) (emphasis added). The Charter for the Environment, forming part of the French Constitution, affirms that the French people possesses ‘the right to live in a *balanced* environment which shows due respect for health’ (2004, Art. 1). These stipulations maintain both the national and individual duty to protect the environment while acknowledging the individuals’ right to environment.

Most formulations of the right to environment qualify the latter by words such as ‘healthy’, ‘suitable’ or ‘ecologically balanced’, making a link between environmental protection and human beings’ physical and mental health (Shelton 2002, 2). Some countries like Spain pay more attention to human-centered development, thus they pursue a healthy environment ‘suitable for the development of the person’. Some others, like Portugal, value the co-existence of human and non-human entities, calling for an ‘ecologically balanced’ environment. All these display the general goals of the right to environment, taking into account the special needs and priorities of different states (Skelton 2013, 142).

The wording of the Constitution of South Africa (1996) deserves special mention. Section 24 provides that:

Everyone has the right —

- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
  - (i) prevent pollution and ecological degradation;
  - (ii) promote conservation; and
  - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

The cautious expression ‘not harmful’ is in line with the socioeconomic conditions of South Africa and reflects the principle that law is the minimum of morality. In the constitutional context, ‘not harmful’ is a practical standard (du Plessis 2009, 345). Effective measures, complying with that standard, can be taken, towards the progressive fulfilment of the right to environment (du Plessis 2010, 268). Taking ‘health’ and ‘well-being’ as measures of a harmless environment, the provision shows its deference to the individual’s subjective feelings as the main yardstick. The denotations of ‘health’ and ‘well-being’ have strong connections with dignity on the whole (Kotzé 2007, 300). There is no doubt that a healthy environment

is the premise of an enjoyable and decent life. Meanwhile, the constitution provides citizens with the right to ask the State to take proper steps to protect the environment (Kotzé 2007, 301). These constitutional provisions envisage a harmonisation between civil rights and state power, inducing the state to abide by the obligations to protect human rights (Liu 2010, 22). The article aims at securing an ecologically sustainable development, while promoting economic and social rights. It shows that the realization of the right to environment requires diverse and competing actors to work together.

A human rights-based approach, as adopted in the aforementioned states, is important to build environmental governance. Some provisions in human rights instruments share similar goals—the mental and physical health of human beings and their pursuit of a dignified life. But an explicit recognition of the right to environment may make the difference in some circumstances.

## **2.2 The Right to Environment in China**

Environmental law scholars in China have been divided into two camps — those who support and those who oppose the recognition of the right to environment.

The former believe that the right to environment is the basis of any environmental litigation (Cai 1982, 36-38; Cai 1999, 84-96). Lv (1995, 63) maintains that the right to environment refers to the right of individuals to live in an appropriate environment and use environmental resources wisely. Most scholars hold the view that the right to environment should be recognized as a third-generation human right (Chen 1997, 101-102; Wu 2017, 173-181; Wang 2012, 135-138).

Other scholars stress some difficulties of the right to environment approach. They argue that it is difficult to conceive of an individual's duty to respect the environment, as the duty bearers are human beings both of the present and of the future generations (Xu 2004, 109). Others opine that the so-called right to environment overlapped other existing rights. There is no need to set a new right since the same goals can be achieved by using the right to health and others (Zhu 2007, 140).

The academic debate has largely replicated and influenced similar trends in law-and policy-making.

The Chinese Constitution has not recognized the right to environment so far. Nevertheless, it affirms, as one of the basic national policies, that it is the obligation of the state to protect the environment. The provision goes: 'The State protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public hazards' (1982, Art. 26). The obligation of citizens to protect environment is affirmed by the General Rules of the Civil Law (2017). The principle of ecological environmental protection is enshrined in chapter I - General provisions. Art. 9 of Chapter I says that 'Any civil activity conducted by civil subjects shall be conducive to saving resources and protecting the ecological environment'.

Both stipulations attach high priority to environmental protection from the perspectives of both the State (government) and civil society, even though a recognition of the right to environment is still missing.

There is also no specific provision about the right to environment within the parameters of non-binding human rights national standards. The National Human Rights Action Plan (2016-2020) (2016, I) puts the environmental rights alongside the right to education and the right to health within the framework of economic, social and cultural rights. It introduces and clarifies some specific goals in the field of environmental pollution (air, water, soil and hazardous waste). The inclusion of these matters in the Human Rights Action Plan implies that the Chinese government has acknowledged the links between environmental factors and human rights. However, it does not show a clear attitude towards the recognition of a right to environment.

The Chinese Environmental Protection Law (EPL) (2014) complies with many stipulations in Aarhus Convention, such as the right to access to information, the principle of due process and the right to appeal. Also here, the provisions on substantive environmental rights are rare. In addition to the EPL, there are a number of other legal instruments protecting specific environmental factors, such as the sea, water, air, and the soil, and combating pollution including noise pollution<sup>5</sup>.

However, it is difficult to achieve a wholly comprehensive environmental protection by enumerating specific factors. Feng (2019, 3) stated that the joint action mechanism for environmental protection is inefficient, the coordination between different environmental protection departments and enterprises is not sound, and weak links exist in the operations of regional joint mechanisms. Due to its large population, China's demand for food far exceeds that of any other country; thus, agriculture management is of great importance. The fast development of urbanization has caused a highly visible loss of agricultural land in former rural areas. In pursuit of high agricultural production, the use of fertilizers and pesticides has grown hugely, bringing about a serious problem of agricultural pollution. China's environmental protection system is based on local agencies; however, most towns and villages lack a proper protection mechanism (Li 2019, 3-4). In the whole country, the environmental protection work is been implemented by different authorities. To overcome the fragmentation of policies and inconsistency among various departments, a holistic approach to regulate and guide the environmental protection work is required.

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<sup>5</sup> Laws of the People's Republic of China concerning the environment protection include: Marine Environment Protection Law; Law on Prevention and Control of Water Pollution; Law on the Prevention and Control of Atmospheric Pollution; Law on Prevention and Control of Environmental Pollution by Solid Waste; Law on Prevention and Control of Radioactive Pollution; Law on Evaluation of Environmental Effects; Law on Prevention and Control of Desertification; Law on Prevention and Control of Environmental Noise Pollution; etc.

## Conclusion

This survey has shown that there is a lack of a comprehensive and systemic understanding of environmental governance.

Some elements have been identified as components of a sound system of environmental governance at the international level, such as transparency in decision-making procedures, the participation of all actors, efficient management of resources, and so on. All these elements, taken together, are congruent and convergent, all serving as complementary building blocks for a paradigm of principled and effective environmental governance. Indeed, environmental governance can outline a way to bring ecological sustainability, economic well-being, and social involvement into a well-functioning mechanism. However, we are calling for a clear comprehensive definition of environmental governance that could shed light on as many policies as possible.

The concept of a right to environment seems to be consistent with the values of environmental governance. It expresses the principles that life must be preserved and honoured now and in the future (Weston and Bollier 2011, 8). A human rights-based approach can be a reasonable ground for policies aimed at better protecting people's rights and interests related to the environment. In the light of international, regional and national legal provisions concerning the human right to environment in context, we can conclude that, along with countries that explicitly protect the environment through constitutional and sub-constitutional legislations, there are still a number of states that hesitate to recognize a right to environment. An official recognition of this right, we argue, may promote environmental governance, since it grants the right to environment a status comparable to that of the right to life and other human rights, and provides a practical way to address environmental issues in legal perspective. Establishing a long-term reasonable institutional mechanism and sound laws and regulations to protect the natural environment, should assure good governance in times more and more characterized by natural environmental fragility.

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