



International Environmental
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IELRC – NORTH-SOUTH CONTEXT

FOSTERING ACADEMIC RESEARCH

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North-South Context – Fostering Academic Research –

by Philippe Cullet*

The International Environmental Law Research Centre (IELRC) is an independent research organisation established in 1995, constituted as an association under Swiss law and based in Geneva, with its main substantive expertise lying in East Africa and India. As a unique platform for collaboration between researchers in the North and the South aimed at publishing high-quality academic outputs,¹ the Centre has a strong network of competence spanning cities and countries on three continents and is positioned to provide policy-relevant research at the international level.²

With a diversified approach to its work, IELRC has been working on the law and policy aspects of international environmental issues, such as biodiversity, climate change, desertification and water, particularly with regard to their North-South dimension and more specifically in terms of their national dimension (in Kenya and India). IELRC thus combines expertise that is intrinsically grounded in specific countries of the South with cutting-edge international law and governance expertise.

Taking an inter-sectoral view of environmental law, IELRC includes various areas in its work that are not strictly part of environmental law and policy in a bid to draw connections and provide much better informed analytical and policy outputs. Some of the main areas of law addressed from an environmental perspective are

intellectual property rights and human rights, both of which were traditionally conceived entirely separately from environmental concerns. While progress has been made on linking these issues over the past two decades, IELRC's work has shown that this often remains superficial and needs more in-depth engagement. Key recent achievements include the Director, Philippe Cullet's appointment to lead the drafting of an innovative bill for groundwater management for the Planning Commission of India; the establishment of IELRC's website as a key academic resource for policy makers, researchers, and students around the world; and the publication of *Law, Environment and Development Journal (LEAD Journal)*,³ as the only environmental law journal covering the topic from a South-North perspective.

Research

Over the past 15 years, IELRC has developed its portfolio of research in a number of different areas, including:

Water: The work pursued in the field of water exemplifies IELRC's approach to research including work on international law and policy, the forms of implementation of existing international legal instruments, comprehensive analysis of water law and policy in India at the national and state level and field visits at the local level in rural and urban areas. Furthermore, IELRC has worked in particular on on-going law and policy reforms in the water sector that have been taking place in parallel at the international and national levels, such

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as the various aspects of the water sector, ranging from drinking water, irrigation, infrastructure (dams) and sanitation.

Access to justice, equity and human rights: Throughout its existence, IELRC has emphasised the need for introducing rights perspectives to the environment sector and has done so at various levels starting with work on the structure of international environmental law, and in particular its underlying equity dimension. The Centre has also focused on the development of substantive human rights linked to the environment, from a generic right to a clean environment to the rights to water and sanitation, as well as women's rights in environmental management. IELRC has further addressed procedural rights both at the international level and national level, ranging from issues concerning environmental and strategic impact assessment to public interest litigation at the national level. Expertise has also been contributed to different issues of concern where an environmental and human rights dimension had to be addressed together in a legal context. This has included, in particular, longstanding work on the follow-up to the 1984 Bhopal disaster and the on-going struggles concerning the Sardar Sarovar Dam and other dam projects on the Narmada River in the State of Madhya Pradesh (India).

Intellectual property: The field of intellectual property was still in near complete isolation from other areas of policy making at the time IELRC started its work in this area and resulting research has made significant academic and policy contributions to various areas of contact that intellectual property has with other fields. Among these issues, IELRC has examined questions surrounding Article 27(3)b of the Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS Agreement) which have been at the centre of significant developing-country policy focus since the late 1990s, and have been addressed in terms of using the policy space provided by the TRIPS Agreement. It has also examined matters related to the protection of knowledge that are not addressed directly in the TRIPS Agreement, in particular, with regard to knowledge related to plant genetic resources with research focused on these links in the context of debates on the possible protection of traditional knowledge through legal instruments. In addition, the relationship between intellectual property and the environment (which also links up with issues concerning related human rights) has also been of interest, in particular the rights to food and health. In view of these new areas of discord, the past decade has seen significant debate around the links between intellectual property and human rights to which IELRC has contributed in the context of the development of General Comments on Article 15(1) of the International Covenant on Economic, Social and Cultural Rights 1966.



Sardar Sarovar Dam

Courtesy: Wikipedia

Biodiversity: This work has been multi-faceted including property rights related to environmental resources and issues related to land tenure, common property rights and the public trust doctrine, all of which are key elements of national and international legal regimes for the conservation and use of biological resources. IELRC has also addressed specific legal regimes, such as the United Nations Convention to Combat Desertification (UNCCD), the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). As in other areas, IELRC's contributions span the local to the international level, for example, bringing its expertise to bear on international policy making while making significant contributions to Kenyan wildlife and land tenure law and policy making.

Biosafety: The development of new technologies, and in particular genetically modified seeds that have environmental and agricultural side-effects, has been closely analysed by IELRC. In its research, the Centre has addressed underlying principles governing the introduction of genetically modified organisms, in particular the precautionary principle, and focused significant attention on the development of liability rules to ensure the existence of a balanced regulatory regime at the international and national levels.

Climate change: Since its inception, IELRC has been involved in climate change research. This has focused on the climate change regime as well as addressing climate change through other areas of IELRC's core competence such as biodiversity or water. With regard to the climate change regime, the development of market mechanisms in the context of the United Nations Framework Convention on Climate Change (UNFCCC) and subsequently the Kyoto Protocol has attracted most of IELRC's attention. The Clean Development Mechanism that conjoins countries in the North and the South has naturally been

at the centre of attention with particular focus on forest-related projects that highlight specific environment and livelihood concerns in the countries where they are implemented.

Outputs

Considering that IELRC was partly set up to foster the dissemination of its academic research beyond the confines of academic establishments, it started investing its resources in the late 1990s to develop its internet presence based on the understanding that one of the priorities was to foster better access to academic research for researchers and policy makers in countries of the South where library resources were mostly insufficient. IELRC has thus focused its efforts on making its research freely available through its website. This resource not only includes dozens of publications but also databases of legal documents on topics that have been the subject of IELRC research. This includes, for instance, a database of water law instruments⁴ (legislation, policy documents, case law) from India and other regions of the world, and a database of judicial decisions concerning dams on the Narmada River.⁵

Policy Engagement

Researchers associated with IELRC have been increasingly involved in law and policy development at the national and international level. Some of their main policy interventions have included the following:

- Convening the sub-group on legal issues related to groundwater management and regulation and drafting a model bill for the conservation, protection and regulation of groundwater, Planning Commission of India, 2011.
- Participation in the sub-group drafting a national water framework law, Planning Commission of India, 2011.
- Development of a draft traditional knowledge policy framework for the Ghana Ministry of Lands, Forestry and Mines, 2006.
- Drafting of a background paper guiding the establishment of an African working group on intellectual property for the New Partnership for Africa's Development (NEPAD), 2005.
- Participation in the Centre-Commissioned External Review of the International Plant Genetic Resources Institute's work on policy and legal aspects of genetic resources, 2004.

Future Prospects

In the next few years, IELRC intends to keep addressing conceptual dimensions of environmental law at the international and national levels, as well as to engage in research responding to specific on-going policy developments. In keeping

with these objectives, IELRC's current plans for the future include research on the impacts of climate change on the water sector, and in particular on the development of regulatory instruments concerning groundwater use and conservation; field research on the implementation of groundwater common law rules with a view to contributing to the development of more equitable and environmentally sustainable regulatory frameworks; research on the content of the right to sanitation, with a view to understanding it not only in its human rights dimension but also to ensure a comprehensive perspective on sanitation from its social to its environmental dimensions, both in theory and in practice; setting up a resource centre on water and sanitation to foster closer links between law research and people seeking to use the products of this research in their legal or policy work; and finding avenues for introducing a print version of *LEAD Journal* while ensuring that it remains freely available around the world in its online version.

Notes

1 A complete list of IELRC's contributions to academic journals and books is available at www.ielrc.org/publications_academic.php. Policy recommendations of the research conducted have often been picked up by the mainstream media. This has been the case in particular in India where opinion columns have been frequently published in leading newspapers and magazines, such as *Frontline*, *The Hindu*, *The Indian Express* and *The Times of India*.

2 IELRC has formal links with a number of international organisations, including consultative status with the United Nations Economic and Social Council; accreditation with the Governing Council of the United Nations Environment Programme; observer to the Conference of the Parties of the United Nations Framework Convention on Climate Change; observer with the United Nations Conference on Trade and Development; observer with the World Intellectual Property Organization and accredited with its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore; and accreditation with the Global Environment Facility.

3 This peer-reviewed academic publication is jointly managed with the School of Law of the School of Oriental and African Studies (SOAS) – University of London. *LEAD Journal* is published biannually at www.lead-journal.org. In addition, special issues are published on particular themes.

4 Available at www.ielrc.org/water/docs.htm.

5 See www.ielrc.org/india/narmada.php.



Narmada river bank near Jabalpur

Courtesy: Wikipedia