

IS 'HUMAN RIGHTS' THE END OR THE MEANS OF SUSTAINABLE URBANIZATION?

Buddini Chatumaduri Dharmawardhana
Attorney-at-Law, Sri Lanka

Mahesh Devinda Abeynayake* and Nazeer Fathima Sabrina Aashik
Department of Building Economics, University of Moratuwa, Sri Lanka

ABSTRACT

Urbanization is one of the inevitable phenomena in the 21st century. People migrate to urban areas due to social, cultural, environmental, political and economic reasons. Rapid and unplanned urbanization lead to huge social, economic, cultural and environmental challenges. Therefore, sustainable development, more particularly sustainable urbanization is required in order to prevent adverse effects of rapid and unplanned urbanization. In other words development that meets the needs of the present generation without compromising future generations to meet their own needs as emphasized by the Brundtland Commission should be an essential feature in the urbanization process. It is apparent that urbanization causes serious violation of human rights including social, economic, cultural, civil and political rights which are indivisible and interdependent. These violations of human rights can be prevented through sustainable urbanization. In other words, achievement of sustainable development and sustainable urbanisation guarantees the human rights of people. Also on the other hand it is argued that rights-based approach is the best method to achieve sustainability. The objective of this paper is to evaluate as to whether the 'Human Rights' is the end result of sustainability or whether 'rights-based' approach is the way to achieve sustainability. In concluding the paper it is noted that 'human being' should be the paramount consideration and central concern of development and 'Human Rights' is the "END" as well as the "MEANS" of sustainable urbanization.

Keywords: Human Rights; Sustainable Urbanisation.

1. INTRODUCTION

In the 21st Century 'the change in the dominant habitat of world population makes the process of urbanization' (UN Habitat, 2012) is one of the remarkable trends occurred at global level. Cities and urban areas are no more perceived as a space for settlement, housing or occupying. At present urban areas are viewed as places which have a significant impact on development of a country. In other words even though there is a close relationship between the growth of population and urbanization, urbanization is not merely a demographic phenomenon. It greatly shapes social, political, economic, cultural and environmental conditions of a country.

The aim of this paper is to examine as to whether sustainable urbanization is a way to protect or guarantee human rights or whether 'human rights' is used as a tool to achieve sustainable urbanization. In order to achieve this aim the following issues are evaluated and analyzed;

- a) What is urbanization, reasons for it and adverse effects of urbanization?
- b) What are sustainable development, sustainable urbanization and three pillars of the same?
- c) What are Human Rights? and
- d) Ascertain as to whether human rights is the end or means of sustainable urbanization.

* Corresponding Author: E-mail – abey92@hotmail.com

2. LITERATURE REVIEW

2.1. URBANISATION

Urbanisation refers to the process by which rural areas become urbanized as a result of economic development and industrialisation. Demographically, the term urbanisation denotes the redistribution of populations from rural to urban settlements over time (Peng, Chen and Cheng, 2012). The expansion of urban boundaries and the formation of new urban centres also contribute to urbanisation (McGranahan and Satterthwaite, 2014). However, urbanization cannot be deemed as a stand-alone process and it is intrinsically intertwined with social, economic, cultural and political system of a country. There are various reasons for people to migrate to urban areas. Lack of access to resources and opportunities such as education, training and employment, armed conflicts, eviction from their land consequent to a development project, climate change and adverse impact on some of the extreme environmental conditions such as landslides, Tsunami and floods can be some of the possible reasons which lead to urbanization (Soja and Kanai, 2007). In addition to the reasons aforementioned tendency of migrating to urban areas have increased mainly due to globalization and liberalization of economy. Though people migrate to urban areas for different reasons, they commonly seek one thing, namely the improvement of their living standards. They leave their native places along with their cultures and compromise everything to have a better lifestyle (Cohen, 2006). It is apparent that after migrating to the urban areas people do not act in accordance with the nature. They are compelled to adapt to the new different environment which causes tension and confusion.

Not only in Asia but also in Europe and Austria, growth of urban population is increasing rapidly. It is estimated by the UN HABITAT Program that density of urban areas will increase by 10% by 2020 (United Nations Population Division, 2014). It is also estimated that nearly a billion people live in slums across the globe. Furthermore, one third of urban population in China and India are living in slums. Increasing number of urban population is a common sight in rich Gulf countries like United Arab Emirates as well as in small islands such as Bahrain and Qatar (Mihir, 2009, p.11). Also it is estimated that 80% of population in the world will live in urban areas by 2030 (Mihir, 2009, p.12). At present 56% of urban population in Mumbai, India live in insecure and informal settlements without having access to basic needs including the access to pure water and sanitation (Levy, 2009, p.1).

Also the people live in megacities such as Mexico and Lagos encounter much hardship in relation to the right to shelter, access to health and education. There are many adverse effects arisen from urbanization. For instance in African cities environmental pollution, inadequate and poor housing schemes, increasing poverty, traffic congestion and lack of health and education facilities are common sights (Cohen, 2006). Also it has been predicted that population in Lagos will be nearly 24.3 million by 2015 and it will become the third largest urban area in the world. Lagos in sub-Sahara faces many challenges such as floods during rainy seasons, poor sewage systems, traffic congestions, insufficient bridges and arteries and problems of waste and garbage disposal, increasing demand for health, education and housing. In addition to these problems, it is evident that Nigeria as a nation is facing environmental issues such as loss of bio-diversity, devastation of agricultural land, water and air pollution and desertification as well as socio-economic issues such as insanitation, slums, violence and crimes.

In this backdrop, it is worthwhile to discuss the concept of sustainable development and sustainable urbanization in order to prevent adverse effects of unplanned urbanization.

2.2. SUSTAINABLE DEVELOPMENT AND SUSTAINABLE URBANIZATION

Although the concept of sustainability has been there even before the 20 century, this concept came in to existence formally consequent to the publication of Brundtland Commission Report of the World Commission on Environment and Development (Jiboye, 2011). Sustainable development has been defined by the Brundtland Commission as “development that meets the needs of the present generation without compromising future generations to meet their own needs” (WCED, 1987; Jiboye, 2011). Even though different scholars, organisations and reports define and explain the concept of sustainable

development it connotes the same meaning. It means that better quality or standard of life should be ensured for everyone including future generations (Jiboye, 2011) when the development is achieved.

Sustainable development can be subdivided into three categories namely; social sustainability, economic sustainability and environmental sustainability (William, 2002). Mary Robinson, the United Nations High Commissioner for Human Rights states that people are the paramount consideration of sustainable development (UNAC Insight series, p.1). Social sustainability means that upgrading and maintaining a sound quality of life of public. This includes physical and psychological health of people, considering all humans fairly in providing essential and basic facilities such as housing and education. Economic or financial sustainability does not mean merely to increase in production, but it means to upgrade various indicators like poverty rate, life expectancy rate and literacy rate. Environmental sustainability indicates that keeping the environment in an unpolluted, original and in a natural condition.

The high pace of social and economic development in Asia results in lack of infrastructure, congested traffic, environmental degradation and a housing shortage (The Asia-Pacific Forum for Environment and Development (APFED), 2001 cited Ichimura, 2003). A statement made by the Chinese government in the Annual General Meeting emphasised the issues caused due to urbanisation (China Council for International Corporation for Environment and Development (CCICED), 2006);

Urbanization has increased the living standard of urban as well as rural residents. However, serious problems resulting from rapid urbanization have emerged. Natural resources are increasingly in short supply. Problems such as pollution, excessive use of groundwater and waste have worsened the environmental situation and led to shortage of water resources. [...] Authorities have not done enough to raise efficiency standards. [...] Rapid growth in private vehicles will further exacerbate this situation. Air and water quality in cities is a major problem, with many negative regional effects. Industrial resource efficiency is still very low by comparison to international standards.

This statement reflects that urbanization is a significant challenge to the living standard of human and sustainable urbanisation is vital.

a. What are Human Rights?

Human rights are inherent rights of all human beings irrespective of their colour, nationality, sex, language or any other status (OHCHR, 2015). In other words every human being is entitled to enjoy human rights without any discrimination. Human rights can be broadly categorized into two main categories namely, civil and political rights and economic, social and cultural rights (Sen, 2005). These rights are enshrined in two main international instruments. According to (United Nations, 1976), Civil and Political rights are included in International Covenant on Civil and Political Rights (ICCPR) whereas economic, social and cultural rights are included in International Covenant on Economic, Social and Cultural rights (United Nations Human Rights, 2015). All these rights are universal, interrelated, indivisible and interdependent. Sri Lanka has ratified both convention and even enabling legislation has been enacted namely, the International Covenant on Civil and Political Rights Act No.56 of 2007 to give effect to ICCPR.

b. Whether human rights is the end or means of sustainable urbanization?

As far as economic, social and cultural rights are concerned all people 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 (United Nations Human Rights, 2015, Art 1(1)). Also the right of everyone to education (United Nations Human Rights, 2015, Art 13) and the right of everyone to take part in cultural life, to enjoy the benefits of scientific progress and its applications are recognized (United Nations Human Rights, 2015, Art 15) under this category of rights. Also everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions (United Nations Human Rights, 2015, Art 11 (1)). Furthermore, all human beings are able to enjoy these rights without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (United Nations Human Rights, 2015, Art 2(2)). This category of rights recognizes, on the one hand

the right to development including social, economic and cultural upgrading. Therefore, it is evident that people can pursue development and they can migrate from rural areas seeking development as of their right. Also it can be argued that on the other hand, if the three pillars of sustainability, namely, social, economic and environmental sustainability are achieved in development process all these economic, social and cultural rights can be enjoyed.

Moreover, the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (United Nations Human Rights, 2015, Art 12(1)) and the improvement of all aspects of environmental and industrial hygiene (United Nations Human Rights, 2015, Art 12(2)(b)) are recognized as human rights. Hence, it can also be argued that although people have the right to development it should not undermine the right to have an unpolluted environment and the right to health.

In addition to these aforementioned economic, social and cultural rights, sustainable development focuses on civil and political rights too. Every human being has the inherent right to life (United Nations, 1976, Art 6). If a decent environment suitable for human living is ensured, it is deemed as protection of right to life. Also if the right to life or right to health or right to an unpolluted environment is challenged people should have the ability to seek remedy without any discrimination as all persons shall be equal before the courts and tribunals (United Nations, 1976, Art 14).

Furthermore, everyone shall have the right to hold opinions without interference and everyone shall have the right to freedom of expression which shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice (United Nations, 1976, Art 19). If the authorities enable public to get to know information with regard to development projects which will affect the environment it can be perceived as protection of aforementioned rights. Article 21 of the ICCPR recognizes the right of peaceful assembly and Article 22 recognizes the right to freedom of association. It is apparent that three pillars of sustainable development are indivisible and it is wise to discuss them by way of holistic approach.

As far as environmental sustainability or in simple terms protection of environment is concerned it is worth noting to analyse further whether human rights can be protected through environmental sustainability or protection of environment. Some scholars perceive that environmental protection is pre requisite for fulfilment of human rights whereas some state that it is an integral part of human rights (Dias, 2000). However, it should be noted that both arguments lead to one single norm that there is a relationship between environmental protection and human rights. In other words it can be argued that issues with respect to environment and human rights are interdependent. Also it is evident that some international instrument even way back in the 19th century has recognized the interconnection between environment and human rights. For instance Stockholm Declaration on Human Environment, (1972) states that ‘man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being’, identifying the relationship between human rights and environmental protection.

In addition to international conventions and covenants many constitutions all over the world explicitly recognizes the right to environment. The right to environment is enshrined in many national constitutions. The Argentina Constitution provides "all residents enjoy the right to a healthy, balanced environment" (Human rights constitutional documents, 1994, Art 31). The constitution of the Congo states that "each citizen shall have the right to healthy, satisfactory and enduring environment" (The constitution of the Congo, Art. 46). The Article 35 of the Korean Constitution states "all citizens shall have the right to a healthy and pleasant environment". Even though Sri Lankan Constitution, 1978 does not recognize the right to environment, Article 27(14) mentions that "the State shall protect, preserve and improve the environment for the benefit of the community" and Article 28(f) mentions that "the exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly it is the duty of every person in Sri Lanka to protect nature and conserve riches." Therefore it is clear that the 1978 Sri Lankan Constitution includes principle of sustainable development under its Directive Principles of State Policy and Fundamental Duties.

Three approaches are suggested to achieve environmental sustainability through which human rights can be ensured. Firstly deploying existing right to achieve environmental goals, secondly, reinterpreting existing rights in order to include environmental issues and thirdly creating new rights which explicitly

address right to environment. When the existing human rights including right to environment or right to health that are enshrined in international and national laws are preserved and mobilized sustainable urbanization can be achieved.

It is apparent that at the time of some of the national and international laws were drafted current environmental concerns did not exist. Thus, it is wise to reinterpret those laws to include environmental concerns which are important today. For instance Indian judiciary reinterpreted right to life so as to include right to an unpolluted and a decent environment, *Vellore Citizens Welfare Forum Vs Union of India* (AIR (1996) SC 2715) Petitioners filed a petition under Article 32, right to life of the Indian Constitution. This petition was filed against the pollution occurred due to enormous discharge of sewage from industries in Tamil Nadu. There the Court interpreted right to life widely so as to include right to healthy environment, pollution free environment and ecological balance. It is evident that there, court held in favour of the petitioners interpreting the right to life broadly.

Furthermore, it is evident that many domestic and international laws are emerging in addressing environmental issues from human rights perspective. African Charter on Human and People' Right is the first human right treaty which explicitly identifies the 'right to a satisfactory environment favourable to human development'. Also Organisation of Economic and Development (OECD) has recognized decent environment as one of the basic human rights. Moreover, Charter on Environmental Rights and Obligations drafted by the United Nations Economic Commission for Europe (UNECE) highlights that every human being has the right to an unpolluted environment which ensures general health and well-being.

Mary Robinson-United Nations High Commissioner for Human Rights states that "Poverty eradication without empowerment is unsustainable. Social integration without minority rights is unimaginable. Gender equality without women's rights is illusory. Full employment without worker's rights may be no more than a promise of sweatshops, exploitation and slavery. The logic of human rights in development is inescapable" (UNAC Insight Series). Therefore it is stated that though the development should be pursued protection of social, economic, cultural, civil and political rights of human should not be undermined. In other words 'preservation of human rights' should be the end of sustainability.

On the other hand to achieve sustainability, human rights concerns are the best approach. In other words Human Rights activists and organisations across the world argue that right-based approach should be followed to achieve sustainability. Proponents of this argument further state that there should be three main fields that should be focused in order to achieve right-based approach to sustainable development. They are, right to clean and unpolluted environment, right to access information and right to active and meaningful participation of public in decision making processes and right to preserve and defend environmental protection and human rights.

Right to healthy environment cannot be achieved only having national and international substantial laws mentioned above. It can only be achieved by linking substantive rights with procedural rights. Procedural rights include right to information, right to participation and right to obtain suitable remedies. Right to information means that national states should provide information in relation to activities carried out by them in development projects including potential environment impacts. Also governments should give notice to public who are likely to be affected by the development projects.

Public who will be affected by any project should have to have the right to participate in decision making processes. Some international as well as national laws have already recognized this as an important right. For instance The Espoo Convention on Environmental Impact Assessment (EIA) in a Trans boundary Context states that public will be notified and they should be provided with an opportunity to participate in environmental impact assessment procedures. Also National Environment Act of Sri Lanka as amended, recognizes public participation in EIA process.

There are plenty of examples to state that if the right-based approach is not followed then it will create unsustainable development and unplanned urbanization. Colombo Port City Project initiated by China Communications Construction Company Limited can be taken as an example. This is intended to cover 5.2 million square meters and it will have a capacity to hold 160,000 people (Wijenayake, 2015). However, there are lots of oppositions raised with regard to the project questioning the validity of the Environmental Impact Assessment (EIA) obtained in relation to the project. EIA Process is laid down in

the National Environment Act No.56 of 1998 as amended in 2000 by the Act No.53. This EIA procedure is also mentioned in the Gazette No.772/22 dated 24th June 1993 (Wijenayake, 2015). EIA process includes several steps such as submitting preliminary information to the Central Environment Authority (CEA) by the project proponent and 30 days for public consultations. It is questioned by many environmental activists and organisations whether the steps to be followed are properly adhered to with respect to Port City Project (Wijenayake, 2015).

Also it is argued that the project will adversely affect the western coastal line and as it has been planned to filling the sea it would cause coastal erosion and will vary the marine bio diversity. Also sand and other debris disposed to the sea will have adverse impact on corals, grass habitats, weeds in the seabed and mangrove in the coast. Furthermore, it is argued that the air in Colombo City will be polluted by the project and natural water resources will be under threat as great quantity of water is needed for the construction (Wijenayake, 2015). Here it can be seen that right to participation and right to information which are the key factors in right-based approach is violated and thus, sustainable urbanization is at stake.

Furthermore, Gampaha - Rathupaswala incident is another good example. There is a rapid urbanization of the Gampaha District and people live in Gampaha District welcome good outcome of the urbanization and protest against the adverse effect of the same. In August 2013, a very large crowd gathered and protested against water pollution caused by Venigros (Pvt) Ltd, a latex glove manufacturing factory. Three civilians were killed and many were injured in this protest. (Rajasingham, 2014) This incident can be viewed as one of the major human rights violations occurred in the recent past. Chemical effluents dumped from the factory contaminated the water and it directly violated the right to have healthy life (United Nations Human Rights, 2015, Art 12(2) (b)), right to water and right to an adequate standard of living. On the other hand using excessive power to control the protest by killing people is a gross violation of right to life (United Nations, 1976, Art 6), right to assembly (United Nations, 1976, Art 21), freedom of association (United Nations, 1976, Art 22) and right to freedom of expression (United Nations, 1976, Art 19).

If the right based approach to development is adhered this type of situation can be prevented. Right-based approach to development requires the State to act in a way so as to obtain active, free, meaningful participation of all stakeholders (Rajasingham, 2014) involved in the development projects. Here it is evident that public in Rathupaswala was not consulted properly before setting up the factory and that created a huge social unrest.

3. CONCLUSIONS

The Preamble to the Draft Declaration of Principles on Human Rights and the Environment stresses the connection between human rights and environment “human rights violations lead to environmental degradation and environmental degradation leads to human right violations” (Dias, 2000). In the same vein, it can be concluded that sustainable urbanization leads to preserve human rights and when the right-based approach is followed to achieve development it will pave the way towards sustainable development and sustainable urbanization. Therefore it can be concluded that “Human Rights are the end as well as the mean so of achieving sustainable urbanization.”

4. REFERENCES

- China Council for International Corporation for Environment and Development (CCICED), 2006. *Work Report of CCICED* [online]. Available from: http://www.cciced.net/encciced/event/AGM_1/Pub06AGM/meetingdoc06/201205/t20120515_229003.html [Accessed 3 March 2015].
- Cohen, B., 2006. Urbanization in Developing Countries: Current Trends, Future Projections and Key Challenges for Sustainability. *Technology in Society*, 28, 63–80.
- Dias, A., 2000. *Human Rights, Environments and Development: with special emphasis on Corporate Accountability* [online]. Human Development Report, Background Paper. Available from: <http://hdr.undp.org/sites/default/files/ayesha-dias.pdf> [Accessed 21 March 2015].

- Ichimura, M., 2003. *Urbanization, Urban Environment and Land Use: Challenges and Opportunities*. In: *Asia-Pacific Forum for Environment and Development Expert Meeting*, Guilin: People's Republic of China.
- Initiative of the United Nations Association in Canada with the Support of IDRC, Insight Series 2, 2013. *The Human Rights Approach to Sustainable Development: Environmental Rights, Public Participation and Human Security* [online]. Available from: <http://unac.org/wp-content/uploads/2013/07/HRandSD-EN-PDF.pdf> [Accessed 11 March 2015]
- Jiboye, A. D., 2011. Sustainable Urbanization: Issues and Challenges for Effective Urban Governance in Nigeria. *Journal of Sustainable Development*, 4, 56-63.
- Human Rights Constitutional Documents, 1994. *Constitution of the Argentine Nation* [online]. Available from: http://www.hrcr.org/docs/Argentine_Const/First_Part.html [Accessed 3 March 2015].
- Levy, C., 2009. Urbanization without Social Justice is not Sustainable. *Journal of Sustainable Cities*, 12, 45-56.
- McGranahan, G. and Satterthwaite, D., 2014. *Urbanisation Concepts and Trends* [online]. IIED Working Paper. IIED, London. Available from: <http://pubs.iied.org/pdfs/10709IIED.pdf> [Accessed 5 March 2015].
- Mihr, A., 2009. *Urbanization and Human Rights*. In: Amsterdam Conference on the Human Dimensions of Global Environmental Change, Volendam: Netherlands.
- Peng, X., Chen, X. and Cheng, Y., 2012. *Urbanization and Its Consequences* [online]. Available from: https://www.google.lk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CBwQFjAAahUKEwicpa2RjbFAhWCwBQKHblVANK&url=http%3A%2F%2Fpeople.duke.edu%2F~zengyi%2Funesco-eolss%2520demography-%2520revised-final-manuscripts%2FCh%252018-Urbanization%2FCh%252018-Xizhe%2520Peng%25202009-06.doc&ei=kOtnVZydFYKBU7mrgcgN&usq=AFQjCNHU6lWbPUHjhIRI8mCwafMKO3sqYA&sig2=mJfyzD3kdQaBvj_sBnN3SQ&bvm=bv.94455598,d.d24 [Accessed 3 March 2015].
- Rajasingham, D. S., 2014. *Human Right, Development and Rathupaswala, Faculty of Law: Sri Lanka* [online]. Available from: <http://www.lawandsocietytrust.org/PDF/resource/Winning%20Submission%20Call%20for%20Papers%20-%20Ratupaswala.pdf> [Accessed 23rd March 2015]
- Sen, A., 2005. Human Rights and Capabilities, *Journal of Human Development*, 6(2), 151-166.
- Soja, E. and Kanai, M., 2007. The Urbanization of the World, In: R. Burdett and D. Sudjic, ed. *The Endless City*, Phaidon: London.
- Stockholm Declaration on Human Environment, 1972. *Declaration of the United Nations Conference on the Human Environment, United Nations Environment Programme* [online]. Available from: <http://www.unep.org/Documents.Multilingual/Default.Print.asp?documentid=97&articleid=1503> [Accessed 23 March 2015].
- The Constitution of the Democratic Republic of the Congo, 2005. *The Constitution of the Democratic Republic of the Congo* [online]. Available from: <http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf> [Accessed 3 March 2015].
- UN HABITAT, 2012. *UN System Task Team on the Post-2015 UN Development Agenda: Sustainable Urbanization Thematic Think Piece* [online]. Available from: http://www.un.org/millenniumgoals/pdf/Think%20Pieces/18_urbanization.pdf [Accessed 5 March 2015].
- United Nations, 1976. *International Covenant on Civil and Political Rights (ICCPR)* [online]. Available from: <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf> [Accessed 3 March 2015].
- United Nations Human Rights, 2015. *International Covenant on Economic, Social and Cultural rights (ICESCR)* [online]. Available from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> [Accessed 3 March 2015].
- Vellore Citizens Welfare Forum Union of India AIR, 1996. *SC 2715* [online]. Available from: <http://indiankanoon.org/doc/1934103/> [Accessed 3 March 2015].
- WCED, 1987. *Our Common Future. World Commission on Environment and Development*. Oxford: University Press.
- Wijenayake, V., 2015. *Colombo Port City Project: A Threat to Sustainable Development?*. Daily Mirror: Sri Lanka [online]. Available from: <http://www.dailymirror.lk/65601/colombo-port-city-project-a-threat-to-sustainable-development#sthash.IAIX8uEv.dpuf> [Accessed 3 March 2015]