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MIKE LIVERMORE: Hi, this is Mike Livermore and with me today is Camilo Sanchez who's the Director of the International Human Rights Clinic here at UVA Law. Today, we're going to discuss some of his work, protecting human rights, and how that relates to sustainable development and environmental issues more generally. Hi, Camilo. Thanks for joining me today.

CAMILO SANCHEZ: Hi, Mike. Thanks for having me.

MIKE LIVERMORE: So maybe one place we could get started is just I'd be curious to hear more about what drew you to the area of human rights law, how you got your start in the area and yeah, what brought you to that to this area of work?

CAMILO SANCHEZ: Sure. Sure. I am originally from Colombia, and I've witnessed both the toll of the human rights violations happened during the conflict, but also the stark economic inequalities in the country. So when I finished high school and I started my degree, I started my career in law, I was drawn to social change. I wanted to do something about that and to confront what was happening in the country, and then I had a class on Constitutional law that was tremendously important in my life, because then I saw that rights could play a very important role in what was happening.

This idea of entitlements that you can request from the state that you could go to court and claim that certain things should happen because of them or that the state should refrain from doing certain things was very powerful. So that's how I got into rights in general.

And then as many of the local [? channels ?] to claim for those rights were either ineffective or closed in the country, I got interested in international law and how to claim for these rights internationally and how to play with those international courts and try to bring all of those standards and to promote change within the system, the domestic system. So that's how I got interested in this.

MIKE LIVERMORE: Yeah, that's great. And there's so much interesting stuff there. I mean, one question that just immediately comes to mind is the relationship between international courts and domestic courts and domestic politics in a country like Colombia, where there are serious human rights challenges, and obviously, Colombia and similar places are in a different position vis a vis international, law international courts than folks in the United States.

So folks are, I think, are-- more some folks, anyway. I'm more familiar with the US context, where international law, in as much as it relates to domestic law or domestic politics, it's a very light relationship.

And I think part of what makes international law more compelling is as a practice area or as a tool, as a lever for change is that there is a different relationship between international law and international courts and domestic law and politics in a place like Colombia. So I was just curious what your thoughts were as someone who's been in the trenches at that intersection of domestic politics and international law. How does international law and what happens in international courts ultimately filter into real domestic change?

**CAMILO
SANCHEZ:**

Sure. Yes, I understand the question, and I'll say that Latin America has had a long tradition of research into international law. And I think it's historically a step that some of the elite in these countries took at the beginning, because I think after they just repealed Spain and they became this independent state, they were broke. They were weak, so they were afraid that any other country would take over.

So they collectively resorted to international law as a way to protect themselves from more colonial powers. And I think that grew in their legal systems, and I think those are the origins of why we pay so much attention to international law, I think, as a region. We hear that Brazil, Argentina, Costa Rica, Ecuador, all of those countries and their constitutions a great international law a lot, and I think it comes from those times.

And with that, what I think has happened and that I'm a witness to this is that in the mid '80s, early '90s, there was a constitutional shift in the region. Many old constitutions were either replaced or they were amended in order to be more open to international law, more open to international institutions. This was a time in which globalization was starting its way in the world in which you had to be open to the international, both in terms of the markets, the institutions, and in terms of the legal market as well.

So with that, what the legal world in which I grew up in was completely connected, interconnected between international institutions and domestic institutions. And I think that's something that some of these countries have tried to manage and understand and integrate with different ways to do that. But the very idea is that you are connected to a system, and if you are playing the rules of that system, you have to pay attention to those who have the power to interpret law.

And if you have, for example, the Inter-American Court on Human Rights, which is ultimately that institution that is going to interpret the American Convention on Human Rights or the rules that you have. Then you have to follow what they say, even if you don't like it domestically. So for example, there are instances in which domestic courts have different interpretations of the same statute, in this case, the international norm and the idea is that the word of the International Court would prevail because that's the unifying institution apex court that will have the last word.

So in terms of legal interpretation, that makes a lot of sense.

**MIKE
LIVERMORE:**

Yeah.

**CAMILO
SANCHEZ:**

But then what you have is you need both interpretation and a ruling, but also you need implementation of that ruling, right? You need to have a court that is powerful enough, either because of legitimacy of other powers that will make those rulings a reality, and that's when it becomes more difficult to analyze how the system works, because there is a huge implementation gap. But you have, for example, in this case of the Inter-American Court on Human Rights, it's a very ill staffed court in Costa Rica that depends a lot on domestic powers to implement the rulings, right?

So you would need states to play as they are members and understand their commitments. But if they do not pay attention to what you say, you have very little powers, and you have very little teeth to do that. So it is more like you need to engage with them, you need to persuade them to create a legal community, a community of practice that understands the importance of this, and there are playing in both fields, playing in the international field but also in the domestic field and try to integrate all of those decisions into what is the daily lives of discourse and of people.

So I would say that's one of the challenges of how to look at one system that it's great at integrating legal standards but also very weak in terms of implementation of those standards.

MIKE LIVERMORE: Yeah, that's really interesting, and that historical perspective, I think, really helps inform at least how I'm thinking about this that it's a deal, in a way, a long-term deal that elites in some of these countries have had, where on the one hand, they use international law and they rely on norms in the international community and have relied on these norms to protect their power and their sovereignty and their status.

And with that comes some reciprocal duties and obligations to the international system, which are sometimes respected more than others, but there's a general background norm that these are real obligations that are generated at the international level and that countries at least ought to follow them and then we can fight about what these norms actually mean.

And rulings may or may not be implemented in particular cases, but there's a general sense and general level of agreement that these are legitimately binding norms that are being generated by these institutions.

CAMILO SANCHEZ:

That's correct. Yes.

MIKE LIVERMORE: Yeah, so maybe just to make this a little bit more concrete, so we could talk a bit about some of the work of the clinic right now that is at the intersection of human rights and environmental issues.

My understanding is that one of the major important uses of human rights for environmental purposes is simply in protecting the individuals who engage in environmental advocacy and activism in jurisdictions, where they can be threatened, they can be jailed, they can be-- all kinds of terrible things sometimes happens to these environmental advocates, and so you're working on right now, I think, but I take to be a pretty major case in this area in Honduras dealing with a group of eight individuals who have been stuck in pretrial detention maybe even for a couple of years due to their activism in that country.

So maybe you could tell us a little bit about that situation, and we can explore this question of domestic versus international law in that context.

CAMILO SANCHEZ: Oh, sure, yes, I'm happy to talk about that case. So one of the projects and cases that I really like to work with my students here at the clinic is, as you said, protecting those who protect others. Those who protect the environment, those who protect human rights, because in the end, someone has to protect those people, right? The first line of defense but they're very vulnerable.

So we've joined a group of organizations, international organizations that, for the past two years and a half, have been working on this case supporting this group of environmental defenders that they were not activists before this happened. They were just a community. They lived in a rural area in Honduras near a national natural park, and that one day they just saw that the rivers that were their source of water were polluted. Two rivers.

And so they try to find the source of that, and what they learned at the time was that there was a company that was exploring or doing some work in order to start a mining exploration, and that was news to them. They knew nothing about that, they had not been notified. So they just saw when they started seeing the trucks of the company and they starting to affect the area, that's when they learned that something was happening.

They assumed that something was approved, but sometimes in these countries, operations start without any sort of official approval. So there were a concern with that. So what they decided was to block the road that was built by the company, and they install a camp and they said, we're not going to let any truck or any of this machinery to enter the park, because it's a National Park, unless we have some answers. First, that someone comes and see what is happening to the water, and secondly, we want to just to know what's going to happen and how this is going to affect us.

They stayed there for a couple of weeks, actually months, and at some point the company hires some private security guards but also some members of the police in the country came and tried to evict these people. And when that violence happened, a member of the community was shot dead, and when that happened, the community members detained-- they did a citizen's arrest of the person in charge of this. And some of the company's dumpsters were caught fire and then more police came.

They handed down this person to the police and they said, we want this person to be investigated for what happened. And in response to that, there was no investigation launched in order to find out what happened with the person that was dead, but 30 members of the community were under investigation for a number of crimes. One of them was illegal detention because of the citizen's arrest. The second was arson.

The third was damage to property, something-- that is a damage to property, trespassing, and conspiracy. And this charge of conspiracy was one of the most concerning uses of the criminal system in order to harass human rights defenders, and it's been documented in Honduras in other cases, because by charging them with this crime, they sent the case, not to the regular judge that would hear these sort of cases, but to a specialized jurisdiction. That was put in place and that is meant to investigate and go after organized crime.

This is a jurisdiction that is meant to deal with drug dealers with all of these mafias, and the rules are more stringent. So that happened two and a half years ago and that's how the case started. When a group of these members of the community learned about this, they went to the courthouse and they say, we hear that we are wanted, and we just want to set the record straight. We want to be heard.

And when they show up for that, sorry, they were detained, and they've been detained ever since. And in all of these years, the ministerio publico, which is the prosecutor's office in Honduras has presented zero evidence on why they consider, for example, that they were the ones that committed those crimes that they have been now charged and they're facing trial in two weeks for those crimes.

So we've been helping with how to make this international standards find a way to be arguments in this domestic case. So that's what we've been trying to do.

So with that, for example, what we have managed to do is that they drop the charge, this conspiracy charge was dropped. The trespassing charge was dropped as well, and using international standards, which showed that this was not the case that there were. Even if they had any legitimate case against them, these were not the crimes that they should be looking at. So that has been part of what we've been doing.

So what we do is we play on both fields, the international and the domestic field. We follow what is happening in the domestic system. We file amicus briefs, in which we try to bring all of these arguments and the jurisprudence of international courts in order to help them better understand their legal obligations that they have, but also we have taken some of these arguments to international instances in order for them to consider also the case and to provide specific recommendations to the Honduran state.

So for example, at the beginning of this year, 2021, the United Nations working group on arbitrary detentions ruled that, according to their knowledge and the rules that they apply, this was an arbitrary detention. That this qualifies as an amount to arbitrary detention, which means that that's a recognition of the work that the clinic and other organizations have been doing during the past two years, because they said if you look at your commitment, your international commitments, what you see here is that you have no case.

So what is happening-- and they've been in prison for over 26 months now. That is just arbitrary. You have no legitimate reason to have these people-- you had no legitimate reason to put them in jail in the first place, and there is no reason to keep them there. So they requested Honduras for their immediate release and that was in February this year.

Sadly, Honduras has not complied with this recommendation and have made no effort to implement the recommendations, so that's why we're going to trial.

**MIKE
LIVERMORE:**

This is the tricky thing. So just to unpack, this is incredibly-- obviously it's an important case for the individuals involved and more generally for the cause of just protecting the ability of people to engage in activism about issues important to them in Honduras and elsewhere. So you have the domestic trial that's proceeding after a two year long detention, which is an incredibly long period of time, of course.

And then you have in your clinic and other human rights lawyers who are involved in this case, part of what they're doing is making arguments to the court in Honduras, so just the local jurisdiction, the domestic court there, but there are international norms that Honduras has as a country either that are incorporated directly into its Constitution or via treaty that Honduras has signed on to.

And you're making arguments to the court saying look, this is the right way to understand your own Constitution, which incorporates international law. This is the best way to interpret your treaty, and under these interpretations, essentially, you should let these people go. They're not legitimately held.

And so that's what's going on at the domestic level, and then internationally, we have this UN process that's operating in parallel that also reviews the facts of this case. Now, did Honduras defend itself before this UN entity or how did that work? Because it sounds like that wasn't a trial or an appeal in a formal sense. It sounded somewhat more of a soft, norms body.

**CAMILO
SANCHEZ:**

It is. So how these proceedings work is someone complains, so they complain and send all the documents to Geneva for the working group to assess the situation. So they would send the legal proceedings that they have been undertaking.

They would send a copy of the file. All the context information that they would have, they send it to the committee, and the committee would study that, and then would submit all the information available to the state for the state to have a word.

For the state to say this is happening, this is not happening, I denied the facts, or whatever it is that their position is. And they would grant them some time for that, and after that, the committee will make an independent decision on this. Just looking at-- they have different criteria, and they say, look, under international law, we will consider this detentions to be arbitrary or illegitimate.

So one, if you have no due process at all. Second, it is clearly you are persecuting someone because of their belief, because of their activities, so for example, in this case, because of their human rights or environmental rights activities. So we'll consider that. We'll consider an arbitrary detention if you, for example, if that person is a migrant and you don't have the proper proceedings in place in order for your government to assess that situation and to consider if that person is rightfully an asylum seeker or not.

So there are certain criteria. So what you have to send the committee is that information and to say, I do believe that this is an arbitrary detention, and that's what's happened. They sent this case to Honduras, and Honduras replied, but they didn't reply within the term limit they had. But still, even though they did it after the deadline, the committee considered took into consideration their response and included that in their final decision.

But ultimately, what they decided is that they have five different criteria, and they found that four of those criteria had been violated in this case. The only one that was not violated here that's not really to them either because it relates to immigrants and people trying to--

MIKE Asylum seekers.

LIVERMORE:

CAMILO SANCHEZ: Exactly. So just to show that it was a very clear violation. If you look at the argument, you see that there is a lot here that is not happening in the way that domestic legal proceedings should be happening. So that's what the committee said.

MIKE LIVERMORE: And when this committee-- when it issues its findings, I don't know the legal status of those findings, but it sounds like what happened is that Honduras essentially ignored them. Now, does that create a domestic political problem for Honduras when you have an international body like this finding that they're acting in an arbitrary and unlawful manner?

Does that create international problems for them? Are there other actors in the world who can take a report like this and use it to-- that care, essentially, about this, the contents of these reports in an act in some way on the basis of them?

CAMILO SANCHEZ: Yeah, so what we're claiming is that the first concern party here is Honduras itself. So let's say that the executive power does not agree with the decision or is not happy with it and doesn't want to comply with the recommendations or we call them implement the recommendations. So what we're claiming is that courts, domestic courts, should step in and say, this is against our Constitution, because we commit it as a country to comply with these standards, and if we have an authority that is not doing so, we need to provide some relief here.

We need to redress this situation. So what we're trying to work with is to convince, to persuade the Supreme Court that it is not only the right thing to do, but also in the best interest of the state as a whole for the court to use these international standards and to signal the executive this is the way to go. This is what we have to do, and we have a domestic remedy here to do so.

If that doesn't happen, yes, the international community should be worried about this. Should be concerned about this. Honduras is one of the is being named one of the most dangerous places to defend the environment and human rights. During the past five years, dozens of human rights defenders have been either killed or receive death threats or have been judicially harassed by different actors, including official forces and law enforcement forces in the country, so this is just part of a bigger context, and that's our claim.

Sadly, for example, some years ago the case of Berta Caceres made the international news this very prominent environmental defender that was killed not far from where this community is. So it is a concern about Honduras. The UN Special Rapporteur on Human, both the UN Special Rapporteur on Human Rights Defenders and the UN Special Rapporteur on Environment and the Right to Environment have expressed their concern and their preoccupation for what is happening in Honduras.

So this is something that the international community as a whole should tackle, and if they would decide to act, these recommendations can play a very important role for them to understand what could be done in cases like this one.

**MIKE
LIVERMORE:**

Yeah, it's such an important area, and I think it's easy in the US and in Europe and other places to take for granted the ability to engage in civic life and activism of different kinds and not face severe harassment and up to the point of death. And so it's just a baseline of having a functioning civil society, obviously, is the ability to engage in these kinds of activities.

So this is-- as you were mentioning, one way that human rights relate to environmental protection and environmental policy is just ensuring the baseline of providing some backstop or check on the ability of the state to harass people who are engaged in environmental activism.

So that's one important intersection. Others have argued for a kind of an even more robust relationship between rights generally and human rights specifically in the environment. So obviously, there are folks who-- many constitutions around the world include provisions stipulating that there are environmental rights, rights to a clean environment and the like.

And generally, I think there's some push or some discourse to understand the concept of human rights, as including things like a right to access to clean water or a right to a healthy environment or a right to a stable climate.

There have even been-- there's been litigation in the US, which has argued that the US Constitution silently but nonetheless significantly provides some kind of right to a stable climate. So what are your thoughts on these efforts to include environmental-- a right to the environment within the broad umbrella of human rights? I assume, I think at first glance, many people might be attracted to the idea. There might be some pros and cons as well.

So I'd be curious, what are some of the positions out there and the arguments that are made about including or understanding the human rights to include the right to a clean environment in general or in certain particulars.

**CAMILO
SANCHEZ:**

Sure. Sure. What I found in my practice is that there are at least three different levels at which these issues or this relationship is being discussed and that produces a lot of questions and arguments, and I would say interesting debates. The first is the more philosophical, the second is the legal, and the third is a more practical.

So when it comes to the philosophical question, should be this threats to humanity. So for example, environmental degradation, climate crisis, dealt with a human rights based approach or not? Is human rights the right tool to do this, because human rights refers to humans and this is beyond humans, larger than humans, part of it, related, sometimes not related, and so on and so forth. So the outside, that's the first.

And there are interesting positions there. So for example, some people that consider that they are two different fields are not related and even human rights are philosophically detrimental to environmental protection.

Because human rights are based on the idea of individual entitlements, and that idea of individual entitlements will not get us far in the protection of something that is collective in nature. That's something that is not-- it's hard to assess if we are just thinking of, what is my right?

Do I have an individual right to the environment or maybe I shouldn't be talking about entitlement. Maybe what I have is obligations, and it is not my right, it is my obligation because I'm more of a consumer than actually the one that will benefit from this. So there are these positions. So for example, that say that these individual entitlements have promoted a culture of consumerism and a capitalistic view of society and of my place and the equal place of humans saying that I have a right to do whatever I want.

And with that, we have seen an era of tremendous environmental degradation. So what they say is just there are no only two different things but looking at the world with this idea of individual entitlements is just bad for nature. And there are some others that say that, no, on the contrary. They relate very well, because the idea that you need-- when you talk about nature and environment, environment is just not only nature but how different species and how different, both human beings and other parts of nature can't and should be together and be interrelated.

And for that, the most humane way to deal with this is with principles that try to protect what is very basic to society, which is this idea of dignity, and with dignity, we're going to find out most of, for example, the environmental degradation or other problems associated with the environment are usually the part of them are by vulnerable segments in society. And with that, we're going to open up ideas on how to deal with this problem. So that's, I would say, one level of the discussion.

The second is legal. It's legal and strategic, I would say, because it's the idea of we lawyers like to compartmentalize, and so we have international environmental law and we have international human rights law. It's a good thing to have two different fields or should we work towards one more integrated field? Do we, for example, advocate for new treaties that take international human rights law into the environment or the environment into international human rights law?

Should we have-- and it is more effective or conducive to better protection to have a right? So for example, the UN have been advocated. They have been advocating for a right to clean environment for a decade now, and they just managed to pass a resolution that they call historic resolution a couple of months ago declaring this.

And some others say that there are just two different things, and that maybe it's best to have them in different camps. And that they are not necessarily addressing the same issues, and so for that, different regulations must be considered. That sometimes they might be in tension, and so it is just not the same thing. And so we need to understand how we can use one or the other and maybe read both of them at the same time by just keeping them apart, and some others are more internationalist.

And I would say that's a second type of discussion, and the third is more practical discussion on-- let's say that we take either road, but how are you going to craft a specific remedies, good remedies that we can assess compliance with. That remedies that we can monitor. Remedies that we can make things happen with them, so I would say that-- so for example, some people, they would say, great. So your idea of the rights of nature is great.

It's philosophically OK. It is legally outstanding, but then in practical terms, will this theory get me something specifically in real terms? Will be my [INAUDIBLE], will be my communities or the communities that live in these certain areas be more protected? Can I-- I don't know-- go to my authorities and I will have better protection for these rights or not?

That's what, in the end, I'm interested in. And what is more conducive to that? So I would say those are the three different levels of arguments that I've heard and I've come across during these past years, and I think they all have very interesting arguments and very challenging proposals. And I don't think we have one definite answer on what is best.

**MIKE
LIVERMORE:**

It's really interesting. Yeah, the three levels, they overlap with each other, but they're very distinct and just thinking about from the practical side, as you say, just imagine that we can make sense of this philosophically and legally, it fits as a appropriate extension of human rights law and practice over the years. Just thinking about the practicalities, so as you know, lawyers think a lot about remedies, right?

It's not really all that useful to have a right unless you can go to court and see that right vindicated in some meaningful way. And just to contrast it with the case of the environmental defenders in Honduras, we know exactly-- everyone knows what the remedy is in that case. If the human right is going to be vindicated, if human rights regime is going to be vindicated, then people are let go, then they won't be detained anymore.

That's the remedy that's called for, and that's obviously-- it's very straightforward and much less complicated than a question like, an example that I sometimes use is the question of whether to-- well, even to take Honduras and the specific instance there, where you have a mine that is being contemplated. Now, from a human rights perspective, putting aside the question of harassment of the individuals who are involved.

So setting that aside and assume that you have a jurisdiction that's protecting basic civil rights and basic political rights. So people can protest, they can make arguments, they can do that kind of thing. But substantively, there's the question of whether the mine should go for it or not right, and we don't know what the domestic legal regime looks like here. In the United States, we let mines move forward all the time, and there is a law that governs when a mine can open under what circumstances after a particular kind of review and analysis, et cetera, et cetera.

But imagine there's a right to clean water and the folks who oppose the mine raise that claim. On the other side, the mining company or the government says, look, this mine is going to produce, it's going to produce jobs, it's going to produce economic wealth, and so that's going to vindicate people's human rights to their economic rights or we're going to use some of this money to build schools and people have a right to an education.

And we're going to put in a water filtration system. So people will still have clean water, they won't be able to get it out of the river, and we have rights as property holders to not have our land expropriated or whatever else.

And so you can imagine lots of different potential claims being brought. And again, assume that this isn't a philosophical problem, but just as a practical problem, how is a court supposed to navigate such a complex landscape to craft a remedy that would actually vindicate these rights in a meaningful way?

**CAMILO
SANCHEZ:**

Yeah, that's a very important point, because litigation of these cases, it's very difficult, because there are so many interrelated things here. And a lot of tensions. The tension that you mentioned, for example, in terms of their economic development and the use of natural resources, the issue of who owns what and how that could affect others, I think, those are very important questions that judges need to take seriously.

So that's why, I think the more effective human rights litigation or rights based litigation when it comes to environment are that one that protects people to know what is going on, for example.

So litigation regarding access to information, and I've worked on cases in the past and right now specific treaties on that are, let's say, environmental treaties but has a lot of that have a lot of human rights language. They [INAUDIBLE] convention in Europe or the [INAUDIBLE] convention in Latin America, for example, that is all about, we need to know more. We need to know what are the risks here, we need to know what we are going to do, we need to know what the protection factors affecting this or that [INAUDIBLE], so access to information.

That's critical. Critical for judges to make decisions, critical for governments to license projects or critical for them to understand what their policies are going to be. Critical for communities and for societies to understand what their position should be and what the impacts are the possible impacts of certain things are going to be. So that's one thing that I favor very much, and I think that's something in which we can have a remedy.

That access to information, provide information, and that's one thing. The second is how to protect spaces for public discussion and for public participation. So a lot of this, what you have is contested interests. And you have people that want to use these resources in one way, and another people that want to use it in a different way. But they need to have a space in order to voice those concerns, to ask those questions to participate, and I think human rights litigation have provided a good platform for doing that.

With at least two kind of mechanisms. One if does the consultations for Indigenous peoples. They're right, what we today consider as the right to prior and informed consultation for Indigenous peoples. And that is in the ILO convention and in other pieces of international treaties. I think that's a very important protective measure, in which, again, you can have a remedy there, because it's the idea that you are not veto.

It is not that you cannot intervene in certain areas. It's not that you cannot have development projects or it is that you have to consult first. That you have to let know the community and to make sure that they understand what is happening. And the same with popular consultations. In Latin America, there have been very popular in the past years.

In Peru, Colombia, and other places, they have communities saying that we want to have a say. We understand that it will be critical for economic development for countrywide, but still, the burden of this is going to be-- this is going to be in our backyard, right?

So we just want to be part of the discussions, we want to be part of these decisions, and so you have to let us participate here and how to promote those spaces in which democracy can take place in a very way so that these projects-- and I think it's in the best interests of the project, because if there are actually to benefit of the community or the country, then they will have more backing, they're going to have support, and the communities are going to be a force behind those projects instead of a force against them.

So that litigation, I think, it's something that human rights defenders have promoted, and in a good way I think they have opened up spaces for addressing more critically these issues, but also for allowing participation and a final way in which I would say rights-based litigation have being very important is in promoting compliance with legislation or with political commitment, previous political commitments. That litigation that is not set to say you should have this or that policy. That litigation that says, you committed to this specific policy, so we just want you to apply that, right?

So for example, litigation in which you said you have environmental regulations already, and they say that you cannot surpass this threshold or that you are required to do this and you are doing nothing or you are not doing enough, right?

Or you made this commitment on reductions or whatever it is and you are not doing-- you are not honoring that commitment, so that's what we want you to do. And again, it is not that the necessary remedy is just to say that this is the number or this is the threshold or whatever, but to promote using the court and the process of compliance with this as an opportunity to have this discussion and what the policy should be.

**MIKE
LIVERMORE:**

And I think-- so there's a couple of things there. So one is the last category of cases. Human rights itself as a concept or as a legal construct isn't the driving force. There, you have a, say, legislation right or some other act, some other legal act that creates its own binding obligation to do whatever, right? To maintain some level of air quality or to not allow development in some area or something like that, and it's just a matter of using the courts to ensure the government's compliance with its own with its own law.

And human rights there, again, you tell me, but it sounds like the important part of the concept there is mostly just that the right to have access to the courts and to have recourse to the courts to be able to make these legal arguments. What we might call in the US like standing so that you can get into court and have effective access to justice.

**CAMILO
SANCHEZ:**

That's correct. Yes. That's what we would call, from a human rights international perspective, access to remedy or access to courts.

MIKE LIVERMORE: Right, right, and so that's the important thing there. Along these similar lines, I mean one of the ways that I've interpreted or the push to extend the concept of human rights to include things like right to clean water or to a clean environment is actually exactly this, is to try to get decisions out of context, like the legislature or the executive, where maybe there's a fear that those institutions are ineffective or that they've been captured by powerful special interests or they're not representing the true population interests, and instead, to move decision making to courts, which are kind of understood to be more independent of powerful interests or more effective or something else.

And so I was curious, given that you've spent your career before courts in lots of different countries but primarily in Latin America, just as a strategic matter, do you think that there's some value in trying to move the decisions away from institutions like legislatures or the executive and into courts, or do you think that strategy in general has limitations that should be recognized.

CAMILO SANCHEZ: I would say I understand why it's so persuasive and it's an interesting concept, especially when you come from countries in which you have complete inaction or not even inaction in which you have legislative and an executive powers that are just operating against these rights. Against the will of people, against communities. So I understand why courts can be a very attractive resource for communities. But what I would say is that, in order to have the correct implementation of a right, you need the interplay or all of those branches of the state.

You need to have a powerful judiciary that is willing to set processes in motion. That is willing to say, here's a violation. That is willing to say, this is what I know, this is as far as I would go, this is what I don't know, and this is what I cannot do.

So for that, what I need is to let the executive do or you know what I mean? So you need a court to understand what is the best role that it can play in making these rights real? You need legislative power that is going to support this. You need a democratic process, in which people would find that this is the right way to go in wish that they would say we need certain regulations, in which they need-- we are going to raise our voices and we're going to try to set this as part of our political process.

And you also need executive. The executive is very important. So I would say that courts should be looked at as a force that can help and block spaces that have been clogged by inaction or these practices, but they're not the game changer. They're just a tool that would help you to awake these other powers.

But in a way, if you use the court to just shortcut the other powers, you are fooling yourself, because what you can have is a very beautiful decision. A ruling that says, this is what environmental policy should like this. But a beautifully written decision that is not going to be implemented, so it is just-- all of them are pieces, and you need all of that. All of them working together in order to make some change.

MIKE LIVERMORE: Yeah, so maybe as an example of this, we could return briefly to the consultation process that you've described a little bit.

So again, what I am most familiar with is US Environmental Law, and we have-- very roughly speaking-- the National Environmental Policy Act that requires major projects of the federal government or major projects that are require approvals by the federal government to go through a process of collecting information and publicizing that information, create opportunities for the public to offer its views on the project, and the like.

And that's been around for many decades at this point and other countries have adopted versions of these types of processes.

One critique that's leveled against NEPA, as it's called in the US, is that it doesn't have any substantive requirements to it. There's just the requirement to collect information, publish it, offer opportunities for public comment, that kind of thing. It's purely procedural, so when I teach environmental law, my students sometimes get frustrated that NEPA lacks any kind of substantive component to it.

But it sounds as though you're of the view that these types of processes-- or at least the versions that you're familiar with that you described in that involve Indigenous communities and these rights to consultation-- can be meaningful. And I'm curious if it's meaningful in the sense of creating a more inclusive environment or helping to create a more democratic conversation that is useful in its own right, but then there's also the question of, does it ultimately affect outcomes and lead to different kinds of projects being undertaken or that kind of thing?

So yeah, so how do you see these types of consultative processes and these information processes, which can be protected-- as you know-- in an effective manner by courts, how do you see those ultimately affecting environmental outcomes?

**CAMILO
SANCHEZ:**

In my experience, every time that these processes happened, they really change the way in which certain topic or project was treated, both publicly and by the community, by the press, by population at large in the country. So I think they can be very consequential.

Even if you don't have a specific substantive classes that would alter the substance of it, I think participation will find a way to bring to the table certain concerns that, if you have people that you know how to mobilize the community, to have access to international resources that know these kind of standards can later level these kind of arguments and make the process more substantive than the opposite or the alternative that would be just to have a rubber stamp decisions.

So I would say that I have some faith in democracy, or I would say a lot of faith in democracy, because I've seen that this can be very, very effective in order to change the conversation. Of course, there is a lot of cases in which nothing happened in the end. You can have the best arguments, cases in which you can have the law on your side and the driving forces of these are very powerful and they wouldn't move an inch, and that happens a lot you. And I can see the frustration of many people saying that this is just not enough.

But I would say that if we invest in more democracy and more local discussion of this would be moving in the right direction. We don't even have that, right? So if we have more of a culture of discussing these issues or paying attention to different arguments or opening ways for people to participate, I would say that, for me, that would change a lot in the way that we handle these conflicts, [? definitely. ?]

**MIKE
LIVERMORE:**

Maybe just to, again, return a little bit to the conversation that we're having about Honduras and the environmental defenders there and almost engage in a little re-imagining of what actually happened, right? Mining company goes in, essentially, secretly or without public notice starts to engage in these preliminary mining activities.

You have a community this water is threatened that doesn't feel like they have a lot of recourse other than to essentially take matters into their own hands and engage in direct action. That leads to a violent confrontation, where someone's killed, and then the authorities are involved and now people are detained and have been detained for two years.

I mean, this clearly is a completely dysfunctional process for trying to figure out how to manage environmental conflict. So what would a process-- that you think makes sense in a place like Honduras look like? I think some people might just say, of course the mine shouldn't exist, but assuming that there's going to be a conversation, where you have a consultation process and people's human rights are vindicated, what would that alternative reality have looked like in a place like Honduras in the conflict that we're talking about?

**CAMILO
SANCHEZ:**

Yeah, that's a good question. I would say an alternative reality should play on a nationwide level and a more local specific case level. So nationally, I would say Honduras should have this conversation of why is development to us and what [INAUDIBLE] we want to take out of our natural resources and in which way, and who should we ask about what are the best ways for us to use those resources. And to engage in a national nationwide conversation with different stakeholders and just try to figure that out.

I would say that is definitely needed. Not to place all of the burden of the discussion to the penal community, right? So it's not they taking these decisions for Honduras. It is the Honduras society. Just try to say that we are a country with these challenges, economic challenges and we have these resources. How are we going to use them and for what reason and how?

And how those priorities that we have aligned or not with our international commitments. What are those stakeholders and the idea that we need to consult if we want to do something different or not? I think that's very important, because what we usually see is that those conversations are missing at this level. So when these very vulnerable community needs to stand up to this project is that oh, right, you are not including the views and the needs of those in Tegucigalpa, which is the capital, or those across the country that would benefit from this if we have this mine and it operates and it produces revenue and all that stuff.

You know what I mean? So that's shifting the conversation to these communities, that they shouldn't have to be the openers of this discussions in the first place. So I think that's one point. And the second is that it should be a process of consultation. A process of before they start an exploration or before they start the planning of this.

They should just go and consult the community, explain what is happening, why this is happening, how they are envisioning this projects, what are going to be the risks and the impacts of this. How this are more likely to affect them and what alternatives there are. And they start with that are a more local level.

And I think that's how they could-- as a community-- try to respond to this. And at least in my experience, what I've seen is that most of these communities are very receptive. Receptive to and open to possibilities and to understand how this could be something that benefits them instead of damaging.

But you need to start with that. And there might be some projects that we should just say no. At the local, national, or global level. I don't know. Let's say that what we understand is that it makes sense for us, for example, to have this-- I don't know-- projects. That may be put in a lot of stress in the environment, but we need them.

I don't know, like farming. Extensive farming. Of course, there put some stress in the Earth, but we need them because we need to feed people, but there might be others in which you just say, I don't need to wear gold, right? So maybe gold is not something that we-- mining for gold maybe we should forbid.

And that makes sense, because we get to that understanding. But I don't think just to say no to mining all across the board is going to get us somewhere.

**MIKE
LIVERMORE:** Right, right, great. Well, yeah, I mean, that is a very attractive alternative reality, and I think that we're all grateful for the work that you do to try to bring that about step by step. And thanks again for chatting today. This has been a really, really interesting conversation, Camilo.

**CAMILO
SANCHEZ:** No, my pleasure. And thank you very much for having me and for these very challenging questions, and yeah, and for providing an opportunity for us to challenge our own self-proclaimed truths. I think there is a lot in the human rights field that we believe that we are the owners of the ultimate only truth. So I really welcome all divisions that are trying to challenge us to think differently and to just to see if we are onto something good or not.

[MUSIC PLAYING]