

HUMAN RIGHTS AND THE ENVIRONMENT

Paper by the Commonwealth Secretariat

1. In today's world, society has become more and more conscious of the tremendous environmental damage being caused to our planet. News abounds of rainforest depletion, trees dying because of acid rain, toxins present in our lakes and water supplies, and the continuous endangering and in some cases extermination of our wild life. Disasters, such as the explosion at Union Carbide's chemical complex in Bhopal, India, which cost over 2,500 lives, in addition to those who suffered injuries and displacement, the Exxon Valdez disaster, the Chernobyl nuclear plant disaster in the former Soviet Union, have caused serious damage to our environment. All these incidences have cost a lot of lives, resulted in chronic diseases, created atmospheric and water pollution, soil degradation, dying forests, and caused displacement of whole communities creating environmental refugees.¹

2. There are debates going on in the international community, as to how best to resolve these environmental problems. The view has been expressed that the international financial institutions which provide the financial means for development projects should attach conditionalities to their credits to ensure that humanitarian aspects, including environmental issues, are not neglected. The attachment of conditions to financial support apart, more and more national legislation is appearing in the field of environmental law. But there are many examples that provide evidence that the legal framework is inadequate to deal with ecological disasters and other environmental problems. Many environmentalists are therefore arguing that legislation is not enough, that true guarantees of environmental protection will only come

¹ Awuku, E. O., 1994, The Right to Clean Environment: Lessons from India and Tanzania, *Verfassung und Recht in Ubersee*, 27, 516-532.

when society extends the concept of "rights" to the environment.² Only when the personal entitlement to a clean environment is successfully placed in the category of "rights" can it be preserved from the day-to-day political process. In that way, domestic political decisions will be significantly limited, which is very important "particularly given the high short-term costs involved in many environmental protection measures and the resulting political favour".³

3. Various views and alternatives have been proposed.⁴ Firstly, environmental problems may be combated through the assertion of existing human rights such as the right to life, personal security, health, and food. In this regard, a safe and healthy environment may be viewed as a precondition to the existing rights. A second, intermediate position proposes a set of environmental rights based upon existing rights to information. However, it has been argued that environmental rights can be derived from other existing rights such as life, property, or health but only to a limited extent.⁵ The third proposition is that a specific right to a clean

² Giagnocavo, C., & Goldstein, H., 1990, Law Reform or World Reform: The Problem of Environmental Rights, *McGill Law Journal*, 35, p. 345.

³ Shelton, D., 1991, Human Rights, Environmental Rights, and the Right to Environment, *Stanford Journal of International Law*, 28, p. 107.

⁴ Ibid.

⁵ Boyle, A., 1993, *Human Rights and the Protection of the Environment: An Overview*, Conference paper delivered at the Commonwealth Institute/SOAS conference on Human Rights Approaches to Environmental Protection in the Commonwealth and Beyond, London, 27-28 May 1993.

environment could be formulated and added to the current catalogue of human rights. One way would be to treat a clean environment as a collective economic and social right comparable to those rights loosely protected by the 1966 United Nations Covenant on Economic, Social and Cultural Rights. It is argued that this approach would give environmental quality comparable status to other collective rights.⁶ These positions suggest that environmental issues belong within the category of human rights. However, some argue that human beings are only one element of the ecosystem, and that it is necessary to protect nature as a whole, including animals and plants. So, clearly, human rights and environmental protection are different, but overlapping societal values⁷.

4. There have been many efforts in the last few decades by the international community and non-governmental organisations (NGOs) to address environmental problems. The United Nations Conference on the Human Environment was the first occasion when political, social and economic problems of the global environment were discussed at an intergovernmental level. The Conference took place in Stockholm, Sweden, from 5 to 16 June 1972, and was attended by the representatives of 113 governmental organisations. The aim of the Conference was to create a basis within the United Nations on which problems of the human environment could be comprehensively considered, and to draw the attention of governments and public opinion to the importance of the problem.⁸

5. The Conference produced a Declaration, a list of principles and an action plan. The Declaration was intended to outline broad goals and objectives without making legally binding provisions. It proclaimed that man is both creature and moulder of his

environment, and that a stage had been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and man-made, are essential to his well-being and to the enjoyment of basic human rights. The 26 principles were concerned with the following five broad issues.

- Natural resources should be safeguarded and conserved, the earth's capacity to produce renewable resources should be maintained, and non-renewable resources should be shared.
- Development and environmental concerns should go together, and less developed countries should be given every assistance and incentive to promote rational environmental management.
- Each country should establish its own standards of environmental management and exploit resources as they wish, but should not endanger other states; there should be international co-operation aimed at improving the environment.
- Pollution should not exceed the capacity of the environment to clean itself, and oceanic pollution should be prevented.
- Science, technology, education, and research should all be used to promote environmental protection.

6. The Action Plan provided recommendations for internationally co-ordinated activities aimed at increasing knowledge about environmental issues, and protecting and improving the quality of the environment. A major result of the Conference was that it forced a compromise between the developed countries and developing countries, in that the need to find a balance between

⁶ Ibid.

⁷ supra note 3, pp. 104 -105.

⁸ Declaration of the United Nations Conference on Human Environment, Principle 2, U.N. Doc. A/Conf.48/14rev.1.

environmental management priorities and aims of economic development was recognised. A direct result of the conference was also the creation of the United Nations Environment Programme (UNEP) which was to ensure that the principles were turned into policies and active programmes.⁹

7. The Stockholm Conference and Declaration were followed by a number of other international proclamations regarding environmental protection. The 1989 Hague Declaration on the Environment, for instance, provides the right to live in dignity in a viable global environment. It also called for the preservation of the world economy, and proposed a more powerful authority under the United Nations' system to protect the earth's atmosphere. The Declaration accepted the principle of economic sanction, with control exercised by the International Court of Justice, and the principle of fair compensation.¹⁰

8. Another milestone was the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992. Agenda 21, the plan of action that emerged from the Conference, emphasised the need for enhanced accessibility of integrated environment and development information, and enhanced national capacity to deal with such information in decision making and policy setting. The UNEP has consequently revised its Environment Assessment Programme with a shift of emphasis towards:

- providing an information base for policy formulation, in addition to raising awareness;
- supporting the production of integrated environmental information for sustainable development, in addition to sectoral information;

⁹ McCormick, J., 1989, *The Global Environmental Movement*, London, p. 150.

¹⁰ Declaration of the Hague on Environment, 1989, *International Legal Materials*, 28, pp. 1308-1309.

- providing products for a wide range of users, in addition to scientific assessments;
- focusing on emerging issues and early warning, in addition to describing the current situation; and
- working towards an integrated UNEP information delivery system rather than a set of disparate systems.¹¹

9. The state of the environment is clearly linked to economic as well as social rights, such as access to food, shelter, health care and education. Economic rights recognise that all economic activities have a common and indivisible resources' base on the environment, air, water, soil, vegetation and seas. All these resources can be sustained when they are well managed, and they must be sustained for they are essential for human life and development on the planet.¹² So if states are claiming the right to development, then there is the need for them to safeguard the environment, conserve the natural resources and plan their utilisation according to their availability, both nationally and internationally.

10. The human right to clean environment has also found recognition in various international and regional instruments. The United Nations have in their Charter affirmed their faith in fundamental human rights, in the dignity and worth of the human person and in equal rights of men and women, and expressed their determination to promote social progress and better standards of life in larger freedom. Article 12 of the International Covenant on Economic, Social and Cultural Rights of 1966 recognises "the right of everyone to the enjoyment of the attainable standard of physical and mental health". It imposes on states correlative duties including the

¹¹ Environmental Assessment Programme, TIEMPO, Issue 15, March 1995, p.11.

¹² Rights and Humanity, *Celebrating the Universal Declaration of Human Rights and the Achievements of the United Nations*, London 1989, p.28.

obligation to take the necessary steps for the improvement of all aspects of environmental hygiene. Recognising the growing political and legal importance of environmental issues, the International Court of Justice has established a Chamber on Environmental Matters.

11. In Africa, the environment is a central issue, because most African states are not industrially developed and depend to a large extent on the exploitation of natural resources. The African Charter on Human and Peoples Rights, which was ratified in 1986 by the majority of states from the Organisation of African Unity and certain NGOs, therefore called for the right to a clean environment. Article 24 of the Charter states that "all people shall have the right to a general satisfactory environment favourable to their development".¹³ Similarly, Article 11 of the Additional Protocol to the American Convention on Human Rights in the Areas of Economic, Social and Cultural Rights of 1988 states that "everyone shall have the right to live in a healthy environment". It imposes correlative duties on states, and calls upon state parties to promote the protection, preservation, and improvement of the environment¹⁴. The Association of South East Asian Nations (ASEAN) states have also recognised environmental rights. In the ASEAN Agreement on the Conservation of Nature and Natural Resources, Article 16, contracting parties are required to circulate, as widely as possible, information on conservation measures and their relationship with sustainable development objectives. The parties also have a duty to organise the participation of the public in the planning and implementation of conservation measures, which are considered fundamental to environmental protection.

¹³ Human Rights: The African Charter on Human and Peoples Rights, Article 24, New York: The United Nations, p.11.

¹⁴ Additional Protocol to the American Convention on Human Rights in the Areas of Economic, Social and Cultural Rights, *International Legal Materials*, 28, 1998, p.165.

12. At the Commonwealth Heads of Government Meeting at Kuala Lumpur in 1989, participants recognised the threats to the planetary environment, and issued the Langkawi Declaration on the Environment. This Declaration expressed in simple and direct language a profound concern about the serious deterioration of the environment and the threat that this poses to the well-being of the present and the future generations. Heads of Government identified the main environmental problems facing the world today as the greenhouse effect, which can lead to severe climatic changes that could induce floods, droughts and rising sea levels, the depletion of the ozone layer, acid rain, marine pollution, land degradation and the extinction of numerous animal and plant species. Commonwealth Heads of Government realised that the success of global and national environmental programmes requires mutually reinforcing strategies and the participation and commitment of all levels of society - governments, individuals and organisations, industry and the scientific community. They resolved to act collectively and individually, and committed themselves to the following programme of action:

- to advance policies and programmes which help achieve sustainable development, including the development of new and better techniques in integrating the environmental dimension in economic decision making;
- to strengthen and support development of international funding mechanisms and appropriate decision making procedures to respond to environmental protection needs which will include assisting developing countries to obtain access to and transfer of needed environmental technologies and which should take account of proposals for an international environmental fund/Planet Protection Fund;

- to support the work of the UNEP/WMO Intergovernmental Panel on Climatic Change (IPCC);
- to call for the early conclusion of an international convention to protect and conserve the global climate and, in the context, applaud the efforts of the member governments to advance the negotiation of a framework convention under the auspices of the United Nations;
- to promote the reduction and eventual phase-out of substances depleting the ozone layer;
- to promote afforestation and agricultural practices in developed and developing countries to arrest the increase in atmospheric carbon dioxide and halt the deterioration of land and water resources; and
- to strengthen national, regional and international institutions responsible for environmental protection as well as the promotion of active programmes on environmental education to heighten public awareness and support.

Commonwealth Heads of Government reaffirmed in the 1991 Harare Declaration their commitment to protect and promote fundamental political values, i.e. democracy, democratic processes and institutions which reflect national circumstances, the rule of law and independence of the judiciary, just and honest government and also to protect the environment through respect for sustainable development which was enunciated at Langkawi.¹⁵

13. Since the 1972 Stockholm Conference on Human Environment, the pace of international environmental legal regulation has accelerated considerably. International and

¹⁵ Commonwealth Declarations and Statements issued by Commonwealth Heads of Government 1971-1991, Commonwealth Secretariat, 1993.

multilateral agreements concerning the environment include, for example, the Plant Protection Agreement for the South-East Asia and Pacific Region (1956), the European Convention on the Conservation of Nature and Natural Resource (1968), the Convention to Regulate International Trade in Endangered Species (1973), the Montreal Protocol on Substances that Deplete the Ozone Layer (1987), the Basle Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989), the United Nations Framework on Climate Change (1992), the Convention on Biological Diversity (1992) and the Oslo Protocol to the Convention on Long-Range Transboundary Air Pollution on Further Reductions of Sulphur Emissions (1994).

14. International law determines the validity of treaties in the international legal system. It provides guidance on the process of becoming party to treaties and when treaties become binding upon states. It also determines the remedies available on the international plane for any breach. However, it is the national legislation which determines the status or force of law which will be given to a treaty within a legal system. For example, when a particular human right becomes part of the domestic law, national judges and administrators apply them, and individuals in the ratifying state may receive rights as a result of the treaty provisions. In other words, the international legal system does not reach directly into the national system to enforce its norms; it attempts to do so indirectly. States are required under international law to bring their domestic laws into conformity with the validly contracted international commitments. International human rights norms appearing in international treaties are not, as such, part of domestic law, unless they are specifically incorporated by national legislation. International law leaves it to states to adopt such legislative and other measures, consistent with their own constitutional processes, to give effect to the obligations which they undertake to implement, and more importantly, to ensure that any person whose rights or freedoms are violated has an effective

remedy justiciable before independent and impartial tribunals.¹⁶

15. Environmental rights fall into the category of third generation rights, and many states, such as Namibia, Tanzania, Ghana, and India, have included environmental rights in their constitutions under State Directive principles. The Indian Government, for example, honouring its international obligations on environmental issues, amended its Constitution in 1986. The Amendment Act called for the obligatory duty of the state and every citizen to protect and improve the environment. The most important parts of the Constitution which are relevant here are Part III and Part IV. Part III of the Constitution enumerates a Bill of Rights. Article 13 of Part III provides that any laws which are inconsistent with the Constitution are void. Article 14 states that everybody is equal before the law and has equal protection by the law. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedures established by the law. Part IV of the Constitution specifies the Directive Principles of State Policy of India. Article 48A provides that "the state shall endeavour to protect and improve the environment and safeguard the forest and wildlife of the country". Article 51A (g) deals with the fundamental rights and duties of the Indian people with regard to the environment. The Article provides that it "shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures".¹⁷ Although Article 37 explicitly states that the principles of Part IV are not enforceable in court, it affirms that they are nonetheless fundamental to the governance of the country, and imposes an obligation of the states to comply with the

¹⁶ Justice R. Lallah, 1989, *International Human Rights Norms*, In: *Developing Human Rights Jurisprudence Vol. 2*, Judicial Colloquium in Harare, 1989, p.47, Commonwealth Secretariat.

¹⁷ F. Zohra Krentin, 1992, *Economic and Social Council: Commission on Human Rights, Progress Report on Human Rights and Environment*, p.25.

principles when making laws. Also, the court will have to take cognisance of the interests protected by Part IV when deciding the scope, value and meaning of the rights contained within Part III.

16. Another important aspect concerns the facilitation of public participation, which rests on the view that environmental protection cannot be left to governments alone but requires and benefits from the involvement of individuals, NGOs and public interest groups. This approach uses human rights law to confer procedural rights on individuals within their national legal systems, and involves access to legal remedies for pollution and environmental damage, access to information concerning environmental practices and policies, and access to national decision-making processes and procedures. This approach is endorsed in Principle 10 of the 1992 Rio Declaration on Environment and Development, and is already employed by many national legal systems and constitutions, including the European Union and India¹⁸. In India, for instance, the emergence of public interest litigation relaxed the rules of standing to allow concerned individuals or groups sufficient grounds to address the court. Since 1985 when for the first time the right to a clean environment found its expression in the Indian justice system through public interest litigation, there have been many public interest cases that sought the courts' help in remedying pollution and environmental damage.¹⁹

17. An alternative to courts are national human rights institutions such as offices of the Ombudsman and human rights commissions. They can make an important contribution towards the protection and promotion of environmental rights at the national level. The main function of an Ombudsman is generally to investigate complaints by individuals concerning grievances against government agencies. The function of human rights commissions, on the other hand, is more specifically focused to receive and investigate

¹⁸ *Supra* note 5.

¹⁹ See for further details on public interest litigation in India: Awuku, E.O., *supra* note 1.

complaints from individuals alleging human rights abuses in violation of existing national laws. They also have an important educational and promotional function as regards human rights. Although only a few national institutions in the Commonwealth have a specific mandate (e.g. the Namibia Ombudsman office), many can investigate environmental issues. This jurisdiction though seems little known by most people. In addition, national human rights institutions can play an important part in helping raise public awareness and tackle environmental problems through education and training.²⁰

where their legitimate interests are affected.

18. In conclusion this paper calls on the Law Ministers to consider the following recommendations.

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1. Reaffirmation by governments of their commitment to the programme of action adopted in Langkawi in 1989 by the Commonwealth Heads of Government Meeting.
2. Ratification by those Commonwealth countries which have not yet done so of international and regional human rights instruments and other multilateral environmental agreements.
3. Incorporation by those Commonwealth countries which have not yet done so of environmental rights in their national legislation.
4. Strengthening of the complaints and investigation facilities of national human rights institutions with regard to environmental measures as well as their protection and promotional functions, and access for individuals and public interest groups to the courts

²⁰ Hatchard, J., 1993, The Role of National Institutions in the Protection and Promotion of Environment Rights, Conference paper delivered at the Commonwealth Institute/SOAS conference on Human Rights Approaches to Environmental Protection in the Commonwealth and Beyond, London, 27-28 May 1993.