

Human rights and the environment: Overview of the legal framework

Dr. Suzanne Kingston BL
November 20, 2010

Overview

- A relatively new area, with an increasing volume of case law from multiple jurisdictions
- Tensions between approaches to environmental human rights
 - An aspect of existing civil and political rights? (ECHR, ICCPR)
 - An aspect of economic or social rights? (ICESCR, EU Charter)
 - Collective rights for a community? (African Charter, indigenous rights)
 - Self-standing procedural rights? (Aarhus, EU, national)
 - Self-standing constitutional rights to a 'decent' or 'healthy' environment? (some national constitutions)

International environmental human rights

- As a soft law principle at UN level
 - 1972 Stockholm Declaration on the Human Environment, Principle 1
 - 1992 Rio Declaration on Environment and Development, Principle 1
- As a part of existing civil and political rights
 - ICCPR (1966)
 - Art. 1(2) - 'in no case may a people be deprived of its own means of subsistence'
 - Art. 6(1) - right to life
 - Climate change: UN Human Rights Council Resolution 10/4 (March 2009); OHCHR Report (January 2009)



International environmental human rights

- As a part of existing economic or social rights
 - ICESCR (1966)
 - Art. 11 – right to be free from hunger; right to adequate standard of living, food, clothing and housing
 - Art. 12 – right to highest attainable standard of health
- A self-standing international right to a decent environment?
 - 1994 UN Sub-Commission proposal; 2009 UN High level experts meeting

Regional environmental human rights

- European Court of Human Rights
 - Art. 2 ECHR right to life
 - *Budayeva v Russia*, 2008 (failure to take action to prevent mudslide); *Oneryildiz v Turkey*, 2004 (failure to inform of risks from methane at waste plant)
 - Art. 6 ECHR right to a fair hearing
 - Art. 8 ECHR right to respect for private, family life
 - *Guerra v Italy*, 1998 (failure to inform of risks from chemical plant); *Fadeyeva v Russia*, 2005 (steel mill meant risk of injury to health); *Hatton v UK*, 2003 (Heathrow night flights); *Taskin v Turkey*, 2004 (cyanide-emitting gold mine licensed without fair procedure); *Tatar v Romania*, 2009 (similar)
 - But: *Kyrtatos v Greece*, 2003 (no *actio popularis* to protect environment as such)
 - Protocol 1, No. 1 right to peaceful enjoyment of possessions and property
 - *Fägerskiöld v Sweden*, 2008 (admissibility – wind turbines)
- Council of Europe
 - Manual on Human Rights and Environment (2005)
 - Steering Committee on Human Rights rejects Protocol in February 2010



Regional environmental human rights

- Aarhus Convention (UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998))
- EU
 - Charter of Fundamental Rights, Article 37 – a 'high level of protection of the environment' must be integrated into all policy areas and ensured
 - Implementation of Aarhus: Directive 2003/4; Directive 2003/85; Regulation 1367/2006
- Cross-fertilization? *Pulp Mills* judgment, ICJ, April 2010 (Argentina v Uruguay)
- Contrast:
 - African Charter on Human and Peoples' Rights, Art. 24 (right to a 'satisfactory environment')
 - *Ogoniland* (oil extraction) – African Commission, 2001
 - Far-reaching remedial measures required
 - *Mayagna Sumo Awas Tigni Community v Nicaragua*, Inter-American Court, 2001
 - Violation of property rights from award of logging concessions

National environmental human rights

- >100 constitutions guarantee some form of environmental right (e.g. French, Spanish, Greek...)
- Ireland
 - Constitutional right to property (Art. 40.3.1; Art. 43)
 - Implementing measures for EU Aarhus laws
- Access to Information on the Environment Regulations (S.I. No. 133 of 2007) – Commissioner for Environmental Information
- Planning and Development Acts 2000-2010
- Access to justice issues
 - *Locus standi*: substantial interest; substantial grounds
 - *Harding v Cork CC* (Supreme Court, 2008) – interest which is peculiar or personal to the applicant
 - NGOs: Case C-262/08 *Swedish Underground Cables* (judgment October 2009)
 - Case C-240/09 *Lesoochrannárske zoskupenie* (Opinion AG Sharpston, July 2010)
 - Costs
 - Case C-427/07 *Commission v Ireland* (July 2009)
 - s. 50B(2) and (3), Planning and Development (Amendment) Act 2010

Environmental human rights: a polarising concept

- Arguments for a human rights-based approach
 - Added constitutional and moral weight of rights
 - Stronger enforcement mechanisms
 - Environmental law not just about states, but also individuals
- Difficulties
 - Anthropocentrism
 - Non-state respondents problematic for international law
 - Evidence and causation problems with substantive rights
 - Intergenerational enforcement
 - Procedural rights do not ensure environmental outcomes
- Subject to these limitations: an important role going forward