

Do human rights mechanisms have the capacity to provide environmental protection ...

[Sociology](#), [Human Rights](#)



\n[[toc title="Table of Contents"](#)]\n

\n \t

1. [Overview of Human Rights](#) \n \t
2. [Relationship between Environmental Protection and Human Rights](#) \n \t
3. [Environmental Human Rights Cases](#) \n \t
4. [Critical Analysis of Environmental Human Rights](#) \n \t
5. [References](#) \n

\n[/toc]\n \n

Abstract

The interrelationship between the environment and human rights has led many to question whether current human rights mechanisms have the capacity to provide environmental protection outcomes. Hence, because the environment is a pre-requisite for the enjoyment of human rights (UNEP, 2011, p. 1), it is important that all States ensure that the environment is being adequately protected. This is very difficult to achieve under the current regime, however, and so it seems as though further changes are needed to ensure that environmental human rights are being provided for.

Introduction

Many concerns have been raised in recent years as to whether the environment is being adequately protected. Yet because of the effects harm to the environment can have on the individual, it is vital that appropriate mechanisms are in place that help to deal with any environmental issues that may arise. It is contestable whether existing human rights mechanisms

<https://assignbuster.com/do-human-rights-mechanisms-have-the-capacity-to-provide-environmental-protection-outcomes/>

have the capacity to provide environmental protection, nonetheless, since the relationship between human rights and environmental protection is complex. Thus, it seems as though the law within this area needs to be codified so that separate human rights are created that deal primarily with environmental human rights. This would certainly remove many of the inconsistencies that currently arise, yet the terms would have to be on a global level to ensure the rights of those in underdeveloped countries are also being preserved. The current human rights mechanisms dealing with environmental protections will be explored in this assignment in order to consider whether they are effective or not. Once this has been done, a review of what changes need to be made will then be determined. This will be done by gaining access to relevant texts, journal articles, governmental reports and case law decisions. Once all of the applicable information has been gathered an appropriate conclusion will then be drawn summarising all of the main findings.

Literature Review

Overview of Human Rights

The Charter of the United Nations (UN) was introduced in 1945 and was considered to be the first global expression that provided for individual human rights. The Charter is thus made up of 30 different Articles, which all aim to provide adequate protection to all individuals on a global level. The Charter's main objective is therefore to achieve international co-operation so that every individual can be afforded the same protections. This is currently being attained under Article 1 of the Charter which states that international

co-operation must always be upheld by “ promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.” This was deemed a major development for individual citizens since they were being given, for the first time, individual recognition on a global basis. This ensured that equality for all was maintained by prompting States to implement various legal rules and principles providing for the protection of human rights. The European Convention on Human Rights and Fundamental Freedoms 1951 was established within the European Union (EU) in order to provide sufficient human rights protection to individuals. This was later incorporated into the UK through the Human Rights Act 1998 which states that the rights enshrined under the provisions of the Convention must not be violated. Whether the current human rights mechanisms have the capacity to provide environmental protection outcomes is, however, a debatable subject. This is because; the relationship between human rights and environmental protection is blurred and although there have been great attempts to clarify the law in this area, much confusion still exists.

Relationship between Environmental Protection and Human Rights

Regardless, environmental protection is a human rights issue because of the impact the environment can have on a human's life, health and property. As such, it is imperative that there is sufficient protection in place dealing with any issues that may arise. Some of the main environmental problems that exist are pollution, overuse or misuse of resources, right to water, biodiversity reduction and habitat destruction. In order to overcome these

<https://assignbuster.com/do-human-rights-mechanisms-have-the-capacity-to-provide-environmental-protection-outcomes/>

problems, however, it has been suggested by Hancock (2003, p. 1) that the following universal human rights should be respected; 1) the right to an environment free from toxic pollution and 2) the right to ownership rights of natural resources, such as water. Despite this, however, environmental protection is rarely discussed in the context of human rights and it seems as though debate surrounding the underlying issues is lacking. This is clear from the academic writings of Alston et al; (2010) because although they refer to some of the human rights precedents relevant to this area, there is no discussion of the precedents from an environmental protection perspective. Therefore, greater emphasis needs to be placed upon the relationship between environmental protection and human rights in order for the current issues to be tackled effectively. At present, the problems surrounding this area are merely being dealt with by generalist international lawyers or environmentalists (Anton and Shelton, 2011, p. 3). This is insufficient given that there are a growing number of cases dealing with environmental issues under existing human rights law and it remains arguable whether there is a need for new rights to be added to existing human rights treaties.

This is because, at present environmental human rights problems are being dealt with by the ECHR, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), the American Convention on Human Rights (AmCHR) and the African Convention on Human and People's Rights (AfCHPR).

Consequently, it has been said that the body of environmental protection case law has "greened" existing human rights law (Sanghamitra, 2008, p.

3), though it has been said that “ the need to bring the environmental and human rights movements together has been rendered both urgent and vital by the impending climate change catastrophe” (Gearty, 2010, p. 21). Essentially, given the recent concerns surrounding global warming and environmental pollution it seems as though more stringent human rights protections ought to be created to prevent toxic chemicals and global markets from affecting the lives of individuals. This can be done by “ focusing on equality and respect for individual dignity, an insistence on attention to human rights has the effect of forcing all decision-makers to look outside their own circle, to see the human as well as global consequences of their actions” (Gearty, 2010, p. 21). This would be the most sensible and ethical approach to take in response to climate change and the links between the protection of the environment and human rights would be realized more effectively (OHCHR, 2002, p. 1). It has already been made clear by Judge Higgins (2006, p. 798), nonetheless, that human rights courts do make great attempts to co-ordinate their approaches and so it seems as though co-operation will subsist if new human rights protections are created that deal primarily with environmental protection.

Environmental Human Rights Cases

Regardless of the fact that new human rights dealing explicitly with environmental factors would be more helpful than revised environmental laws, human rights mechanisms do still have the capacity to provide environmental protection outcomes. This has been identified the Lopez Ostra v. Spain (1994) 20 EHRR 277 case where it became apparent that noise,

smells and polluting fumes were capable of being treated as a human rights issue. Here, it was held that freedom from environmental pollution could be included in Article 8 of the ECHR because of the fact that there were documental health effects. In addition, it has also been recognised that noise can also be deemed a form of torture under Article 8 on the grounds that it interferes with the right to a private and family life as shown in *Hatton v United Kingdom* (2002) 34 EHRR. Here, it was stated by the court that “ anyone who has suffered for a long period from noise disturbance is well aware that the effects of this on the nerves and on one’s physical and mental well-being are extremely unpleasant and even harmful.” Because of this, it was felt that noise should be considered a form of torture and thereby protected under human rights legislation. Damages were awarded in this case for sleep disturbance due to night flights taking place at Heathrow airport. Had the defendants in the case been able to establish that the night flights were a necessity and of economic advantage, damages would not, however, have been awarded. Therefore, although protections will be available in cases such as this, defendants may be able to justify their actions in certain instances. Accordingly, it will therefore be up to the courts to decide whether environmental considerations should prevail over commercial interests.

In *Borysiewicz v Poland* (2008) (No 71146/01) a claim in respect of Article 8 actually failed on the basis that it had not been established that “ the noise levels complained of were so serious as to reach the high threshold established in cases dealing with environmental issues.” Therefore, the

courts did not feel as though environmental considerations ought to prevail in this instance and instead believed that commercial interests overrode such protections. Essentially, it seems as though current human rights legislation is not always effective in preserving environmental protections, yet it is arguable whether this is a necessary requisite given that Article 8 is not an absolute guarantee. Thus, state interference is permitted if the interference is in “accordance with the law and is necessary.” In accordance with this, it could be said that justifications are appropriate in some cases when damage to the environment has been caused as shown in *Powell and Rayner v United Kingdom* (1990) 12 EHRR 355. Nevertheless, as stressed by Hancock (2003, p. 2); “in the case of toxic pollutants, environmental laws currently permit emissions at levels that can physically harm individuals.” Whether this is acceptable is doubtful and it seems as though changes to the existing human rights regime need to be made so that environmental considerations are being effectuated. Hence, environmental activists are frequently claiming that toxic pollution violates human rights (Cassel, 2007, p. 104), yet nothing is being done about this. Whilst it may seem obvious that environmental damage can result in individuals’ health being harmed, it is only recently that international human rights law has begun to link the two together.

Critical Analysis of Environmental Human Rights

Because of this, environmental human rights remain undefined and are only being protected by pre-existing human rights legislation that is not necessarily equipped to deal with environmental cases (Apple, 2004, p. 34).

As such, new laws need to be created in order to prevent any injustice from occurring because at present there is no “stand-alone right not to be exposed to too much noise” (Stewart, 2010, p. 1). And, although this right may be derived from other established rights such as; freedom from torture, the right to respect for private life and home and freedom from discrimination, this will not suffice. Even though human rights courts are not generally concerned with protecting the environment per se, they are concerned with preventing serious harms that are likely to interfere with individual human rights and autonomy. As such, any harm to the environment that will have an impact upon individuals’ human rights and fundamental freedoms should be strictly prohibited and protected by human rights legislations. Arguably, because environmental human rights protections are ill-defined, new human rights dealing specifically with these issues ought to be created so that individual’s rights are being fully respected. Some advancements have been made to this area in recent years, nonetheless, as the United Nations General Assembly (UNGA) recognised the human right to water and sanitation through Resolution 64/292. Accordingly, it was acknowledged by UNGA that “clean drinking water and sanitation are essential to the realization of all human rights” (UNGA, 2010, p 10). In the resolution, it was also made clear that all States and international organizations should provide resources to help all countries, especially developing ones, to provide safe, clean, accessible and affordable drinking water and sanitation to all.

Resolution 64/292 thus appeared to have stemmed from the General Comment that was adopted by the Committee on Economic, Social and Cultural Rights in 2002, which stated that “ the human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights” and is an essential human right that should be provided to all individuals. Still, it is arguable whether the Resolution goes far enough since it is believed that water and sanitation should be an essential public service and that universal access should be achieved (Right2Water, 2011, p. 1). Although great attempts to ensure that this happens have been made, it seems as though many individuals are still lacking access to safe drinking water. This is so, despite the fact that the United Nations Human Rights Council have adopted a binding resolution that recognizes the human right to water and sanitation as being part of the right to have an adequate standard of living (UNHR, 2010, p. 1). Hence, it has been put forward by Deen (2012, p. 1) that little progress has been made by States to fully implement the human right to water as provided for in the resolution: “ governments aggressively pursue false solutions to the environmental and economic crises, the situation will only deepen the water injustices that our organisations and communities have been fighting for decades.” Therefore, although it seems as though environmental human rights protections are improving, on closer inspection there are still many underlying issues that exist. Unless these problems are dealt with appropriately, individuals will continue to be subjected to human rights violations. This is unjustifiable; yet 2. 8 million people continue to die each

year as a result of poor water supplies, sanitation and hygiene (Zetland, 2010, p. 1).

In light of this, it could be said that human rights protections have failed to address the issues surrounding access to water and although progress appears to have been made, this has proven rather futile. Consequently, it has thereby been said that it would be more productive to “ give people a property right in water” (Zetland, 2010, p. 1). Because property rights are alienable, whereas human rights are not, some portion of an individual’s rights will be capable of being exchanged for access to clean water. This view does remain contestable but given that individuals are still not receiving their right to water even after the Resolution was implemented, it is evident that something more needs to be done. It remains to be seen whether this is the answer but as further noted by Zetland (2010, p. 1); “ A property rights allocation increases both equity and efficiency, the former by the allocation of rights — and their value — to every person, the latter by trading water from owners to users.” Even if this would solve the problems relating to water access, however, other environmental human rights problems would still remain and so it seems as though greater human rights recognition is needed. Accordingly, exposure to dangerous substances at the workplace has generally been disregarded as a human rights issue and has instead been passed off as strictly controlled workers rights. This appears unacceptable and is unlikely to provide individuals with the protection in which they require. Hence, toxic pollution is classified as a ‘ public nuisance’ and ‘ risk’ as opposed to being ‘ harmful’ which is said to have been

constructed “ to accommodate the systematic degradation of the environment that is required to achieve sustained economic growth and conditions of allocative efficiency” (Hancock, 2003, p. 108). If toxic pollution was classified as ‘ harm’, then criminal sanctions would follow since all types of harm are prohibited by law.

This may be one of the reasons as to why environmental human rights remain undefined since many organisations would be found criminally liable for harming individual’s and violating their human rights. Nevertheless, if this would protect the environment and individual human rights further, then this may be what is needed. Still, it is already an offence under Regulation 12 of The Environmental Permitting Regulations 2010 (as previously provided for by section 85 of The Water Resources Act 1991) to “ cause or knowingly permit a water discharge activity unless you are complying with an environmental permit or exemption.” It could be said that this is sufficient in helping to preserve human rights since “ harm to ecological and/or biological systems for business or personal advantage” (Bell and McGillivray, 2008; p. 277) will be avoided at all costs. Furthermore, in the case of *Rylands v Fletcher* [1968] UKHL 1 it was held that a person who brings on to land anything that would be likely to cause mischief should it escape will be strictly liable for a criminal offence. Nevertheless, it was stated in the case that the defendant must have “ brought something onto his land, made a non natural use of his land, the thing must have been something likely to do mischief if it escaped and that the thing did actually escape and cause damage.” This case was considered a landmark decision in helping to protect

the environment from pollution and could assist in the protection of human rights. Thus, as argued by Wolf and Stanley (2003; 442); “ the Rylands v Fletcher principle imposes strict, but not absolute, liability for damage caused by the escape of dangerous things, including things such as; water, fire, gases and fumes, electricity, oil, chemicals, colliery waste, poisonous vegetation.” Arguably, because of the devastating effects pollution can have on the environment, it is important that strict liability offences remain intact. Yet, it remains to be seen whether new human rights laws will be created to protect these rights even further as required in Tatar v. Romania [2009] ECtHR.

Conclusion

Given the importance of human rights, it is vital that they are being adequately protected by the law so that all individuals are not being subjected to harm. Whether this is sufficient when it comes to environmental protections is doubtful since it appears as though individual’s human rights are being undermined by the actions of those damaging the environment. Hence, the impact the environment can have on a human’s life, health and property is significant, yet the relationship between human rights and environmental protection is in a state of confusion despite the attempts that have been made to clarify the law in this area. Consequently, it would thus be more appropriate for new human rights to be created that deal explicitly with environmental factors as opposed to merely revising environmental laws as this will prevent ambiguity. Injustice will also be removed since environmental human rights will be fully defined and stand-alone human

rights protections that relate to the environment will be established. It remains to be seen whether changes such as this will take effect, but given the lack of clarity that exists with the current human rights mechanism, it is integral that something is done.

References

Alston, P. Steiner, H. and Goodman, R. (2008) *International Human Rights in Context*, 3rd Edition, OUP Oxford.

Anton, D. and Shelton, D. (2011) *Environmental Protection and Human Rights*, Cambridge University Press.

Apple, B. (2004) *Commentary*, *Human Rights Dialogue*, Spring.

Bell, S. and McGillivray, D. (2008). *Environmental Law*. 7th edition, Oxford University Press.

Boyle, A. (2012) *Human Rights and the Environment: Where Next*, *The European Journal of International Law*, Volume 23, No 3.

Cassel, J. (2007) *Enforcing Environmental Human Rights: Selected Strategies of US NGOs*, *Northwestern University of Journal of International Human Rights*, Volume 6, Issue 1.

Deen, T. (2012) *Human Right to Water and Sanitation Remains a Political Mirage*, *Inter Press Service*, [Accessed 14 April, 2013].

Gearty, C. (2010) Do Human Rights Help or Hinder Environmental Protection]Journal of Human Rights and the Environment, Vol 1, No 1, Edward Elgar Publishing Ltd.

Hancock, J. (2003) Environmental Human Rights: Power, Ethics and Law, Ashgate Publishing Ltd.

OHCHR. (2002) Human Rights and the Environment, Office of the United Nations High Commissioner for Human Rights, [Accessed 12 April, 2013].

Right2Water. (2011) Water and Sanitation are a Human Right, Water is a Human Right, [Accessed 14 April, 2013].

Sanghamitra, P. (2008) Greening Law: A Socio-Legal Analysis of Environmental Human Rights, Faculty of the Graduate School University of Southern California, < <http://digitallibrary.usc.edu/cdm/compoundobject/collection/p15799coll127/id/49274/rec/1>> [Accessed 11 April, 2013].

Stewart, F. (2010) A Right to SilenceThe Journal of the Law Society of Scotland, [Accessed 12 April, 2013].

UNEP. (2011) High Level Expert Meeting on the New Future of Human Rights and Environment: Moving the Global Agenda Forward. United Nations Environment for Development, [Accessed 16 April, 2013].

UNGA. (2010) The Human Right to Water and Sanitation, United Nations Department of Economic and Social Affairs (UNDESA), < <http://www.un>.

<https://assignbuster.com/do-human-rights-mechanisms-have-the-capacity-to-provide-environmental-protection-outcomes/>

org/waterforlifedecade/human_right_to_water.shtml> [Accessed 13 April, 2013].

UNHR. (2010) UN united to make the right to water and sanitation legally binding, United Nations Human Rights, < [http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID= 10403&LangID= E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10403&LangID=E)> [Accessed 14 April, 2013].

Wolf, S., and Stanley, N., (2003). Wolf and Stanley on Environmental Law. Routledge Cavendish.

Zetland, D. (2010) Water Rights and Human Rights: The Poor Will Not Need Our Charity if We Need Their Water, Johns Hopkins University, < http://globalwater.jhu.edu/magazine/article/water_rights_and_human_rights_the_poor_will_not_need_our_charity_if_we_need/> [Accessed 14 April, 2013].