V. Relation between Environmental Protection and Human Rights

Although environmental protection and human rights are often treated as separate legal topics, there are many situations where the two fields intersect, for example, with respect to the rights of indigenous people. First, many governments and international bodies have recognized the right of citizens to live in a clean and healthful environment. Second, environmental and natural resources policies may disproportionately affect poor and minority communities. For instance, in the United States the placing of local government landfills in primarily Latino and African-American neighborhoods may constitute a violation of the Equal Protection Clause (under the 14th Amendment to the U.S. Constitution).

Indigenous People

The rights of indigenous people may be seen in two basic lights: (1) the right to protect and manage natural resources located on traditional indigenous lands; (2) the right of citizens to live in a healthful environment. Many environmentally destructive development practices severely impact the traditional lands and cultures of indigenous communities. Therefore, their rights often provide another tool in the fight against such practices.

With respect to the protection of indigenous people as a means of conserving biodiversity, international environmental law can play an important role. Many native and indigenous people have opposed government policies that permit resource exploitation on traditional lands. Because this exploitation threatens to undermine the economic and spiritual fabric of their cultures, and often results in forced migration and resettlement, the struggle to protect the environment is often a part of the struggle to protect the cultures of indigenous people.

The Rio Declaration on Environment and Development

One of the main products of the Earth Summit in 1992 was the Rio Declaration on Environment and Development. Principle 22 of this declaration stated that “Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture, and interests and enable their effective participation in the achievement of sustainable development.”

The same principle is echoed in the 1992 Biodiversity Convention in Article 8(j). However, as discussed in Chapter VIII, both the Rio Declaration and the convention lack substantive obligations and enforcement mechanisms. Truly binding rights and responsibilities can only be built through further agreements.

The combination of human rights and environmental obligations can provide a powerful tool to protect the land and ecosystems within which indigenous people reside. This protection is evidenced by the reservation of lands for indigenous peoples, such as the Yanomamo in Brazil, that incidentally also contain some of the world’s precious rainforests. As the conservation
expertise of indigenous peoples becomes more widely acknowledged, indigenous rights will likely play an increased role in national and international environmental protection efforts.

**Constitutional rights and protections**

Various countries have recognized the constitutional right to a clean and healthful environment. Constitutional provisions ensuring environmental quality have been adopted in over a dozen countries, including India, Spain, the Netherlands, Chile, and Brazil. They have also been adopted by several state governments in the United States, such as Hawaii, Massachusetts, Pennsylvania, and Wisconsin.

International experience with constitutional environmental rights has revealed that such protections offer several advantages over statutory environmental law. First, constitutional implementation gives environmental protection the highest rank among legal norms, placing it above every statute, administrative rule, or court decision. Second, in securing constitutional status, environmental protections emerge as something more than a mere law. Like free speech or the right to equal protection in the United States, they serve as a standard for all citizens to emulate.

**Environmental Poverty Law**

There is a growing awareness of the close relationship between poverty and environmental pollution. It is broadly recognized that poorer citizens are more likely to suffer the consequences of environmental pollution than other citizens. This situation is true on both the international and national levels. It has also given rise to environmental poverty law, or environmental justice, which seeks legal remedies for the disproportionate environmental abuse suffered by poorer citizens.

Internationally, poorer nations tend to have more severe environmental problems than wealthier nations. Examples of these problems are easy to identify. Air pollution in Mexico and China is generally more severe than in France or Australia. Hazardous waste is treated less safely in Eastern Europe and Africa than in Canada and the Netherlands. The reasons for this situation are frustrating but not difficult to understand. Less affluent nations lack the financial resources to purchase modern pollution-control or energy efficient technologies, or to implement environmental protection policies, whereas more affluent nations possess the financial resources to purchase modern industrial equipment and to implement comprehensive environmental protection policies.

At the 1992 Earth Summit in Rio, developing countries asked for increased technology transfers. They pointed out that if the developed world is truly concerned with stemming the environmental deterioration in developing countries, new technologies for environmental protection need to be made available at little or no cost to the developing world.

The European Union recently adopted a directive that prohibits the export of hazardous wastes outside the union. This directive was intended to stop the shipment of hazardous wastes to the developing world, particularly Africa. These efforts are helping to develop awareness of the relation between environmental degradation and poverty.

On the national level, there have also been important developments. In India, for example, judicial decisions have held that the urban poor must be treated fairly and that government policies must respect their human rights. The United States has also begun to address environmental poverty issues. In 1994, President Clinton issued an executive order calling on federal agencies to make certain that environmentally undesirable activities do not disproportionately burden low-income or minority communities.

**Environmental Racism**

Aspects of environmental racism can be found at the international level. Many transnational corporations headquartered in the developed world have chosen to move environmentally dangerous industrial activities to the developing world. Most developing countries are located in Asia, Africa, and Latin America, and are ethnically distinct from most of the developed world.

Why do transnational corporations relocate to these poorer nations? First, labor costs are much
cheaper. Second, taxes are substantially lower. Finally, environmental standards in the developing world are generally lower (and therefore less expensive) than in the developed world. This means, of course, that workers are often exposed to hazardous materials or unsafe conditions.

The export of environmental harm to the world’s poorer nations, and to non-European populations, has resulted in severe health and environmental problems. Two widely publicized examples were the lethal 1984 Union Carbide gas leak in Bhopal, India, and the continuing logging of tropical rainforests by First World timber companies.

Closer to home, many U.S. companies have set up factories in the Maquiladora zone of northern Mexico near the U.S. border. Here, they take advantage of Mexico’s lax environmental standards, as well as its cheap labor and favorable tax conditions. This has resulted in the rapid environmental deterioration of the border region, including reports of increased disease and death from toxic industrial waste.