DONALD K. ANTON & DINAH SHELTON,
ENVIRONMENTAL PROTECTION AND HUMAN RIGHTS
(Cambridge Univ. Press, 2011)

ONLINE CASE STUDIES

Case Study V
A Universal Declaration on Human Rights and the Environment?

In 1994, Fatma Zohra Ksentini, Special Rapporteur of the former Sub-Commission on the Prevention of Discrimination and Protection of Minorities (later called the Sub-Commission for the Promotion and Protection of Human Rights), released a Final Report ("Ksentini Report") examining the relationship between human rights and the environment, excerpted below. One of the most striking conclusions of the Ksentini Report is that there has been a "shift from environmental law to the right to a healthy environment" and that this right is part of existing international law and capable of immediate implementation by existing human rights bodies. The Report elaborates that the right is comprised of a number of elements including the right to life, health, development, public participation, and access to information and judicial remedies. The report contains an Appendix setting out a Draft Declaration of Principles on Human Rights and Environment intended to explicitly elaborate the right to environment and its substantive and procedural components. Consider whether the Draft Declaration is akin to the Universal Declaration. Does it possess the potential for pushing human rights and the environment forward?

DRAFT DECLARATION OF PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT

Fatma Zohra Ksentini, Special Rapporteur
U.N. Doc. E/CN.4/Sub.2/1994/9 (1994), Annex

. . . *Reaffirming* the universality, indivisibility and interdependence of all human rights,

Recognizing that sustainable development links the right to development and the right to a secure, healthy and ecologically sound environment,

Recalling the right of peoples to self-determination by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development,

Deeply concerned by the severe human rights consequences of environmental harm caused by poverty, structural adjustment and debt programmes and by international trade and intellectual property regimes,

Convinced that the potential irreversibility of environmental harm gives rise to special responsibility to prevent such harm,

Concerned that human rights violations lead to environmental degradation and that environmental degradation leads to human rights violations,

The following Principles are declared:

Part I

1. Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible.

2. All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.

3. All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment.

4. All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.

Part II

5. All persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries.

6. All persons have the right to protection and preservation of the air, soil, water, sea-ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems.

7. All persons have the right to the highest attainable standard of health free from environmental

8. All persons have the right to safe and healthy food and water adequate to their well-being.

9. All persons have the right to a safe and healthy working environment.

10. All persons have the right to adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment.

11 . All persons have the right not to be evicted from their homes or land for the purpose of, or as a consequence of, decisions or actions affecting the environment, except in emergencies or due to a compelling purpose benefiting society as a whole and not attainable by other means. All persons have the right to participate effectively in decisions and to negotiate concerning their eviction and the right, if evicted, to timely and adequate restitution, compensation and/or appropriate and sufficient accommodation or land.

12. All persons have the right to timely assistance in the event of natural or technological or other human-caused catastrophes.

13. Everyone has the right to benefit equitably from the conservation and sustainable use of nature and natural resources for cultural, ecological, educational, health, livelihood, recreational, spiritual or other purposes. This Includes ecologically sound access to nature. Everyone has the right to preservation of unique sites, consistent with the fundamental rights of persons or groups living in the area.

14. Indigenous peoples have the right to control their lands, territories and natural resources and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence. Indigenous peoples have the right to protection

against any action or course of conduct that may result in the destruction or degradation of their territories, including land, air, water, sea-ice, wildlife or other resources.

Part III

15. All persons have the right to information concerning the environment. This includes information, howsoever compiled, on actions and courses of conduct that may affect the environment and information necessary to enable effective public participation in environmental decision-making. The information shall be timely, clear, understandable and available without undue financial burden to the applicant.

16. All persons have the right to hold and express opinions and to disseminate ideas and information regarding the environment.

17. All persons have the right to environmental and human rights education.

18. All persons have the right to active, free, and meaningful participation in planning and decision-making activities and processes that may have an impact on the environment and development. This includes the right to a prior assessment of the environmental, developmental and human rights consequences of proposed actions.

19. All persons have the right to associate freely and peacefully with others for purposes of protecting the environment or the rights of persons affected by environmental harm.

20. All persons have the right to effective remedies and redress in administrative or judicial proceedings for environmental harm or the threat of such harm.

Part IV

21. All persons, individually and in association with others, have a duty to protect and preserve the environment.

22. All States shall respect and ensure the right to a secure, healthy and ecologically sound environment. Accordingly, they shall adopt the administrative, legislative and other measures necessary to effectively implement the rights in this Declaration. These measures shall aim at the prevention of environmental harm, at the provision of adequate remedies, and at the sustainable use of natural resources and shall include, *inter alia*,

* collection and dissemination of information concerning the environment
* prior assessment and control, licensing, regulation or prohibition of activities and substances potentially harmful to the environment;
* public participation in environmental decision-making;
* effective administrative and judicial remedies and redress for environmental harm and the threat of such harm;
* monitoring, management and equitable sharing of natural resources;
* measures to reduce wasteful processes of production and patterns of consumption;
* measures aimed at ensuring that transnational corporations, wherever they operate, carry out their duties of environmental protection, sustainable development and respect for human rights; and
* measures aimed at ensuring that the international organizations and agencies to which they belong observe the rights and duties in this Declaration.

23. States and all other parties shall avoid using the environment as a means of war or inflicting significant, long-term or widespread harm on the environment, and shall respect international law providing protection for the environment in times of armed conflict and cooperate in its further development.

24. All international organizations and agencies shall observe the rights and duties in this Declaration.

Part V

25. In implementing the rights and duties in this Declaration, special attention shall be given to vulnerable persons and groups.

26. The rights in this Declaration may be subject only to restrictions provided by law and which are necessary to protect public order, health and the fundamental rights and freedoms of others.

27. All persons are entitled to a social and international order in which the rights in this Declaration can be fully realized.

Questions and Discussion

Benefits of the Declaration of Principles. Given that the Draft Declaration of Principles has not been codified into a binding treaty (and is not likely to be so in the foreseeable future), are there any benefits to the Declaration? Neil Popović, then a lawyer with Sierra Club Legal Defense Fund (now Earthrights), took part in an experts meeting immediately prior to the completion of the Ksentini report. The meeting drafted a document that became the Draft Declaration of Principles above. Popović comments:

> . . . The Draft Declaration reflects a progression from earlier discussions of a "right to environment" to consideration of the manner in which recognized human rights apply to environmental issues. The Draft Declaration is neither the last word nor necessarily the best word on any particular aspect of environmental human rights, but it is the most prominent international instrument in the standard-setting process for environmental human rights. . . .
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> Neither environmental human rights in general nor the Draft Declaration in particular will save the world. Indeed, recognition of the environmental dimension of human rights does not create new obligations for states or for others. It does call for reassessment of existing obligations, however. Environmental human rights and the Draft Declaration provide a framework for addressing domestic and international environmental problems. They both have the potential to advance protection of human rights and the environment. . . .
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> The value of environmental human rights and the Draft Declaration does not, however, rest exclusively on their legal foundation. Human rights affect official and private conduct in part because of the substantial moral weight they carry. Recognition of social values as "human rights," at least where the recognition reflects genuine and well-considered judgment in a democratic society, erects a moral barrier to the contravention of those values. Even in non-democratic countries . . . governments claim to respect human rights.
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> The Draft Declaration . . . should provide support for advocates of human rights and environmental protection in legal and other forums. Exposition of the legal underpinnings of the principles in the Draft Declaration should bolster their acceptance and their incorporation into legal regimes. The Draft Declaration can serve

> as a reference point for national and international systems and as a vehicle for development of a formal, binding international legal instrument that protects environmental human rights.
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> The Draft Declaration can also serve as a focal point for discussion of environmental human rights and for the development of institutions and procedures to enhance protection of these rights. As consideration of environmental human rights principles progresses and as the principles mature, they should provide an increasing sense of empowerment for the victims of environmental human rights abuses and a corresponding sense of restraint for offending governments, individuals, international organizations, and commercial enterprises.

Neil Popović, *In Pursuit of Environmental Human Rights: Commentary on the Draft Declaration of Principles on Human Rights and Environment*, 27 Colum. Human Rts L. Rev. 487, 493-97 (1996).