

ISSUE PAPER

HUMAN RIGHTS AND THE ENVIRONMENT

**Comments on issues raised in the final report submitted to the Sub-Commission on
Prevention of Discrimination and Protection of Minorities by its Special
Rapporteur on human rights and the environment, Ms. Fatma Zohra Ksentini,
(E/CN.4/Sub.2/1994/9)**

**PRESENTED TO THE CENTRE FOR HUMAN RIGHTS,
UNITED NATIONS OFFICE IN GENEVA
JANUARY 1997**

EARTHRIGHTS INTERNATIONAL

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EarthRights International (ERI) is a nongovernmental, nonprofit organization working to help ethnic minorities and indigenous peoples on the Thai/Burmese border nonviolently defend their human rights and environment from violations committed by the Burmese military regime, the State Law and Order Restoration Council (SLORC), and transnational corporations.

INTRODUCTION

EarthRights International submits this issue paper in response to the Assistant Secretary-General for Human Rights' note verbale, dated 26 June 1996,¹ inviting nongovernmental organizations to comment on the issues raised in the final report submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities by its Special 2 Rapporteur on human rights and the environment, Ms. Fatma Zohra Ksentini. EarthRights International welcomes the opportunity to comment on the crucial issues detailed in the Ksentini Report ³and to offer its support for the Report's conclusions, recommendations and attached Draft Declaration of Principles on Human Rights and the Environment.

Environmental degradation has a devastating effect on people's lives. Without a habitable environment, all other human rights become either unattainable or meaningless. In recent decades, the world has witnessed an explosive growth in both the rate and scope of such degradation. Increasing levels of technology, population and industrial activity ensure that without immediate action, the situation will inevitably, drastically deteriorate. Repressive regimes, such as that in Burma (Myanmar), exacerbate these problems, thereby demonstrating that a habitable environment cannot be maintained without respect for other human rights. Our global predicament necessitates that the international community explicitly recognize the fundamental interdependence between human rights and environmental protection in international human rights law, and that it set universal standards and develop procedures to ensure that the environmental component of human rights is respected. The Human Rights Commission is the international body with the mandate and the capabilities most suited to assuming the leadership role on this issue. Therefore, EarthRights International urges the Human Rights Commission to promptly endorse and implement the Ksentini Report and its recommendations. In particular, the Commission should: appoint a Commission level special rapporteur on human rights and the environment with a mandate to monitor and investigate appropriate situations and to make recommendations concerning them; push for the adoption of a General Assembly resolution or other international instrument embodying the principles contained in the Draft Declaration; work to create a framework for the effective implementation and enforcement of environmental human rights norms; explicitly request other human rights bodies to, within the context of their given mandates, incorporate concern for the right to a satisfactory environment; and expeditiously adopt the Draft Declaration on the Rights of Indigenous Peoples.

ANALYSIS

The Need to Recognize the Right to a Satisfactory Environment

The Ksentini Report and the Draft Declaration clearly demonstrate that international law already supports and should explicitly recognize the human right to a satisfactory environment. This support is based on the fundamental interdependence between human rights and environmental protection. Humanity's absolute reliance on a healthy and healthful environment makes a right to such an environment a prerequisite to the enjoyment of other basic human rights. These include, inter alia, the rights to life, health, a satisfactory standard of living, culture, sufficient food and security of the person and family. Similarly, without respect for human rights such as political participation, access to information, free expression and self-determination, environmental protection becomes impossible. Not surprisingly then, violations of environmental rights and violations of other human rights frequently accompany and exacerbate each other. The actions of the government of Bunna, which are of special concern to EarthRights International, (and which are detailed in the other issue paper submitted under this cover), are a tragic example. There, a military dictatorship uses torture, extra-judicial killing and forced labor to effectuate environmentally destructive projects on indigenous peoples' lands without any local participation in decision making, and uses the proceeds of such projects to strengthen its illegitimate control⁵ through means involving additional human rights abuses.

Establishing that a healthy environment is both a human right in and of itself and an indispensable precondition for the enjoyment of other fundamental rights will serve the invaluable educative function of informing international and national institutions and the public at large that human rights and environmental protection must be considered together, and that those who violate environmental human rights deserve moral condemnation and legal sanction. It will help to dispel the false claim often asserted by violators of environmental human rights that environmental degradation is actually "progress" towards economic growth or a policy that "favors people over trees." Governments, multinational corporations and other despoilers of the environment will be forced to consider the people harmed by their acts and to recognize that these human rights frequently constitute violations of fundamental rights. Moreover, recognition of the right to a healthy environment will place it on an equal footing with other rights which sometimes serve to promote environmental degradation, such as property rights. This would not only promote respect for the environmental component of human rights, but also, in those relatively rare instances in which environmental and other human rights

claims conflict, demonstrate the need to balance the competing claims instead of simply ignoring environmental human rights concerns.

As one commentator has noted, recognition of the right to a healthy environment entails "the bridging of the values promoted by Western countries--respect for life and individual liberties, responsibility for one's actions and conservation--and those associated with the East and South--the importance of harmony and the community, duty, and improved standards of living. This culmination, to which we must aspire, would represent the ultimate victory of international law.

Temporal and Geographic Concerns

Explicit recognition of the interrelationship between environmental protection and human rights also addresses two types of deficiencies inherent in current international law. First, current human rights documents do not adequately protect the rights of future generations, by virtue of the very fact that they do not yet exist. We know, however, that environmental destruction today will inevitably violate the human rights to, inter alia life, health, a satisfactory standard of living, culture, sufficient food and security of the person and family of people who will live in the future. Principle 4 of the Draft Declaration reflects this concern. Second, such recognition will extend the geographical applicability of international law. International environmental law typically only applies to instances in which environmental degradation has cross-border effects. Conversely, human rights law typically applies within a given states territory. Recognition of the environmental component of human rights, however, will ensure that cross-border environmental destruction will properly be seen as a human rights violation, thereby extending the reach of human rights law, while also ensuring international condemnation of solely intrastate environmental degradation, thereby extending the reach of environmental law. Thus, Principle 5 of the Draft Declaration expressly recognizes that environmental human rights violations originate within, across and outside national boundaries.

Indigenous Peoples

While environmental degradation impacts upon the human rights of all people, the interconnectedness of environmental protection and human rights is especially apparent in regard to indigenous peoples. Such peoples typically depend on their relationship with a sound environment on their traditional lands not only for subsistence but also for their religion and culture. All too frequently, therefore, resource extraction and other environmental infringements on their lands spiritually, culturally and materially impoverish indigenous peoples. Moreover, discrimination, oppression and political disenfranchisement often ensure that indigenous peoples are unable to defend their lands against environmental encroachments. This observation is particularly relevant to Bunna, where indigenous peoples bear the brunt of the government's environmental human rights violations. Because of "indigenous peoples' special ties with the land and the environment, and their particular vulnerability to ecological hazards,"⁷ both the Report and the Draft Declaration correctly reflect the fact that any attempt to protect environmental human rights would be incomplete if it did not take special notice of the plight of indigenous peoples.

Civil and Political Rights

The Ksentini Report and the Draft Declaration also correctly note the particular importance of respect for basic civil and political rights in ensuring protection of environmental human rights. Frequently, the people whose life, health, livelihood or culture are most intimately and immediately dependent on a sound environment have the least input into decisions affecting that environment. The free exercise of rights including, *inter alia*, the rights to timely and complete information, political participation, education, free association and expression, self-determination, and access to administrative and judicial remedies permits people to meaningfully participate in decisions that will affect them in a fundamental way. These rights are most important for those whose interests governing elites may not represent, such as poor people and ethnic, (particularly indigenous), minorities. The protection of such rights would, in many instances, allow potential victims to prevent or mitigate environmental human rights abuses before they occur. This is critical since environmental degradation is frequently irreversible.

Parallel Efforts to Develop International Environmental Standards

Recognition of the right to a healthy environment should in no way detract from efforts to further develop international environmental law, since there are any number of environmental problems and issues that human rights law cannot or should not address. For example, some of the most serious environmental degradation (e.g., much of the degradation resulting from pollution) is the product of a multitude of disparate activities from seemingly remote sources. Preventing it, therefore, frequently requires technical standards and very specific actions from a variety of different entities. International environmental law is probably a more effective and appropriate means for detailing these types of specific duties than is human rights law. Moreover, international environmental law has the ability to enshrine emerging environmental protection norms that are not based solely on utilitarian concerns for human welfare. Respect for the integrity of nature as a whole based on its own intrinsic value and respect for the moral consideration owed to individual components of the natural world also constitute persuasive reasons for protecting the environment. Indeed, such conceptions of nature have been central to the worldview of many peoples for thousands of years. While protection of every person's right to the environment clearly requires protection of the environment itself, these non-anthropocentric concerns by definition cannot be fully accounted for in a human rights document. Yet, they should not be ignored.

THE ROLE OF THE HUMAN RIGHTS COMMISSION

The Human Rights Commission in particular must not ignore the relationship between human rights and the environment. The Commission is the global institution with comprehensive responsibility for promoting and protecting all human rights. As such, it has the obligation to act with respect to what threatens to be the single most important human rights issue of the next millennium. Moreover, the Commission is uniquely suited to the task. It is the body with primary authority to prepare standard-setting instruments of general applicability and to conduct studies and fact finding related to important human rights concerns. In so doing, the Commission advances international human rights law, encourages the creation of national and local human rights norms and institutions and fosters greater awareness of human rights requirements and of specific violations.

Some have argued that the U.N. Commission on Sustainable Development ("CSD") is a more appropriate body to address environmental human rights issues than the Human Rights Commission. EarthRights International strongly disagrees. The CSD's focus is sustainable development, not human rights. While these issues are certainly interrelated,

sustainable development is just one of a variety of environmental human rights concerns. Thus, the CSD can only consider a fraction of the issues addressed by the Ksentini Report and the Draft Declaration. , In addition to its narrow mandate, the CSD simply does not have the experience, procedures, precedents or staff to deal with these human rights issues in the comprehensive way in which they need to be addressed. Therefore, although the CSD should certainly consider the relationship between environmental human rights and sustainable development, primary responsibility for promoting environmental human rights belongs with the body with both the mandate and the ability to address all of the relevant issues: the Human Rights Commission.

Failure by the Commission to endorse the Draft Declaration and the Ksentini Report and to implement the Report's recommendations would constitute a missed opportunity to advance the cause of human rights in a desperately needed way. , Indeed, even tacit disapproval through inaction, tepid "endorsement", or transfer to an inappropriate body will immeasurably damage that cause by sending the message that the world's preeminent human rights body does not consider the problem urgent enough to address.

RECOMMENDATIONS

In light of the demonstrated need to protect environmental human rights and the Human Rights Commission's unique ability to promote respect for these rights, EarthRights International recommends that the Commission take the following measures:

1. Appoint a Commission-level special rapporteur on human rights and the environment with a mandate to monitor, investigate and make recommendations concerning appropriate situations.

This appointment would promote the protection of environmental human rights in a number of important ways. First, it would initiate the process of establishing enforcement mechanisms by creating a forum for victims of environmental human rights violations that is specifically tailored to address their type of grievances. Such a forum would allow victims to express the full extent of those grievances by permitting them to assert

environmental human rights claims in environmental human rights terms. Moreover, the special rapporteur could investigate such claims and shine the harsh glare of public scrutiny on the abuses of those governments and corporations who fail to meet environmental human rights norms. Conversely, the special rapporteur could assist governments and corporations which seek assistance in conforming to those norms. The special rapporteur would also prove instrumental in the further development of environmental human rights standards, and in promoting respect for and the adoption of those standards by international bodies, state and local governments, and corporations. Currently, none of the functions described above are fulfilled by any other United Nations environmental or human rights body. Therefore, EarthRights International urges the Human Rights Commission to heed the call of both the Sub-Commission's Special Rapporteurs and the Sub-Commission itself⁹ and appoint a Commission-level special rapporteur on human rights and the environment.

2. Push for the adoption of a General Assembly resolution or other international instrument embodying the standards contained in the Draft Declaration of Principles on Human Rights and the Environment.

Adoption of the principles contained in the Draft Declaration will strengthen the emerging international consensus on the fundamental interdependence between human rights and the environment and will encourage the formal development of binding national and international law. Moreover, such an instrument would fully capture the true breadth of the grievances contained in an environmental human rights claim in one unified international document. This would allow victims to express environmental human rights claims in environmental human rights terms even when they are outside of a forum specifically established for that purpose, like that provided by a Commission-level special rapporteur on human rights and the environment. Adopting one comprehensive document is thus both simpler and more powerful than resorting to disparate parts of a host of different documents. EarthRights International therefore urges the Commission to push for the adoption of a General Assembly resolution or other international instrument embodying the principles contained in the Draft Declaration.

3. Work to create a framework for the effective implementation and enforcement of environmental human rights norms.

Adoption of the principles contained in the Draft Declaration and the appointment of a thematic rapporteur are necessary steps in the process of protecting environmental human rights. Ultimately, however, enforcement mechanisms are needed to ensure that such rights are respected. For example, in the context of atmospheric pollution, the Hague Declaration on the Environment recognized the need for institutional authority to draft and enforce agreements with which the International Court of Justice would have the authority to mandate compliance. Similar institutional authority is vital if environmental human rights are to be enforced in practice rather than merely existing on paper.

4. Explicitly request other human rights bodies to incorporate concern for the right to a satisfactory environment, into their existing efforts.

As the Ksentini Report points out, a variety of different human rights bodies influence the practice and development of human rights law. All of these should address how environmental human rights concerns affect their particular field of concentration. The application of each body's specific expertise would serve to increase awareness of the myriad ways in which human rights and environmental protection are interrelated. Moreover, these bodies would help create methods and procedures for implementing and protecting environmental human rights. Therefore, EarthRights International calls on these other bodies to address the issues raised in Ksentini Report and urges the Human Rights Commission to explicitly request them to do so.

5. Expediently adopt the Draft Declaration on the Rights of Indigenous Peoples.

The situation of indigenous peoples throughout the world is indeed at a "critical point." Principle 14 of the Draft Declaration of Principles on Human Rights and the Environment expressly reflects the need to protect indigenous land rights and self-determination in order to ensure an environment capable of sustaining the traditional ways of life of indigenous peoples. However, additional efforts to strengthen the rights of indigenous peoples in international law are desperately needed. Therefore, EarthRights International fully supports the Ksentini Report's call for "the rapid adoption" of the Working Group on Indigenous Populations' Draft Declaration on the Rights of Indigenous Peoples 12 and urges the Human Rights Commission to diligently work toward this end.

CONCLUSION

The Ksentini Report impressively confirms both the legal foundation and the need for the explicit recognition of the interdependence between human rights and environmental protection. The next step is up to the Human Rights Commission. It should take this opportunity to advance the cause of human rights by acting to implement the Report's recommendations as soon as possible.

'Ref. No. G/SO 214 (12-5-1). 2U.N. Doc. E/CN.4/Sub.2/1994/9. (Hereinafter "Ksentini Report"). 3Although the note verbale requested that comments be forwarded by 30 September 1996, EarthRights International did not learn of the note until well after that date, and even then only did so through notification by another nongovernmental organization, not the United Nations. We therefore request that the Centre for Human Rights accept our comments despite the late date' 4U.N. Doc. E/CN.4/Sub.2/1994/9/(Annex 1). 5In 1990, the State Law and Order Restoration Council (SLORC) held free elections in Burma in which the opposition won 82% of the parliamentary seats. SLORC ignored the results and has held no free elections since. 6Gray, Mark Allan, "The International Crime of Ecocide", 26 Cal.W.Int'l.L.J. 215, 271 (1996). 7Ksentini Report at Par. 250. ' Id. at Par. 260. 9 Sub-Commission Resolution 1994/27, U.N. Doc. E/CN.4/Sub.2/1994/56, p. 13 10 Ksentini Report at Par. 258-59. "Id. at Par. 93. "Id. At Par.250.

INTRODUCTION

EarthRights International submits this issue paper in response to the Assistant Secretary-General for Human Rights' note verbale, dated 26 June 1996,¹ inviting nongovernmental organizations to comment on the issues raised in the final report submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities by its Special Rapporteur on human rights and the environment, Ms. Fatma Zohra Ksentini. EarthRights International welcomes the opportunity to comment on the crucial issues

detailed in the Ksentini Report 3 and to offer its support for the Report's conclusions, recommendations and attached Draft Declaration of Principles on Human Rights and the Environment.

Burma (Myanmar), the country of special concern to EarthRights International, is perhaps the world's starkest example of a nation in which, as the Preamble to the Draft Declaration states, "human rights violations lead to environmental degradation" and "environmental degradation leads to human rights violations." Review of the situation in Burma therefore compellingly demonstrates the need to explicitly recognize the fundamental interrelationship between environmental protection and human rights in international law and to establish a procedure to address environmental human rights claims. Now is a critical time for environmental human rights in Burma. Construction of a destructive natural gas pipeline has just begun, and massive hydroelectric projects are in the planning stages. Immediate and concerted international action can still prevent extensive environmental human rights abuses associated with these ventures. In promoting the protection of environmental human rights, the Human Rights Commission can play an integral part in such efforts. Therefore, EarthRights International urges the Human Rights Commission to promptly endorse and implement the Ksentini Report's conclusions and recommendations, with special emphasis on their application to Burma. In particular, the Commission should: appoint a Commission level special rapporteur on human rights and the environment with a mandate to monitor, investigate and make recommendations concerning appropriate situations; explicitly request the Commission's Special Rapporteur on the situation of human rights in Myanmar to address environmental human rights violations; push for the adoption of a General Assembly resolution or other international instrument embodying the standards contained in the Draft Declaration of Principles on Human Rights and the Environment; work to create a framework for the effective implementation and enforcement of environmental human rights norms; and expeditiously adopt the Draft Declaration on the Rights of Indigenous Peoples.

THE SITUATION IN BURMA

Burma is, beyond question, one of the world's worst, violators of human rights. The country has been ruled by a brutal military dictatorship since 1962. In 1988, the military killed thousands of nonviolent pro-democracy protesters and imprisoned and tortured many others. The regime then reorganized into the State Law and Order Restoration Council (SLORC) and imposed martial law. In 1990, SLORC held free elections in which the opposition won 82% of the parliamentary seats. SLORC ignored the results. The regime allows no popular political participation and ruthlessly suppresses all forms

of free speech and expression. Its actions and projects are shrouded in secrecy. Thus, the Burmese people receive little information concerning development and have absolutely no input into decisions affecting their lives, including those regarding environmentally destructive projects. SLORC also is engaging in the brutal suppression of indigenous peoples. Moreover, the regime has forced at least two million people to work on infrastructure projects since 1992,⁵ and hundreds of thousands of others, primarily members of indigenous minority groups, to porter military equipment for the army in civil war zones. ⁶ The Human Rights Commission has found human rights abuses to be so pervasive and severe as to warrant the appointment of a special rapporteur on Myanmar, whose reports have documented these abuses.

Many of Burma's abuses are related to or result from SLORC's degradation of the environment. Most of SLORC's foreign exchange comes from the sale of natural resources, ⁷ and much of the money goes to the regime's military,⁸ which is used almost exclusively against Burma's own peoples and which is the primary violator of the Burmese peoples' human rights. Moreover, the extraction of these natural resources frequently involves and causes massive human rights abuses. Thus in Burma, there exists a vicious cycle: SLORC perpetrates human rights abuses to exploit and degrade the Burmese peoples' environment without their consent in order to acquire the foreign exchange to fund further repression.

Indeed, SLORC's very existence is due in large part to the regime's exploitation of the environment. In late 1988, the SLORC regime was virtually bankrupt. In order to acquire the foreign currency needed to maintain its illegitimate hold on power, SLORC sold huge logging, fishing and gem concessions to Thailand.⁹ Since then, Thai boats have depleted large fisheries in the Andaman Sea, and SLORC's efforts to forcibly expand the gem trade have taken a heavy toll in terms of lives and environmental degradations. The logging concessions, however, were perhaps the most destructive. Concessions were sold along the Thai border on the traditional lands on which the indigenous Mon, Karen and Karenni peoples depend for subsistence. SLORC specifically directed military activity against civilians in areas containing teak and other valuable hardwoods in order to exploit these peoples' forest resources. Villagers were expelled from their homes to make way for the loggers, and many were either killed or forced to work as porters. ¹¹ One commentator noted in 1994 that "the methods of felling and treatment of local villagers over the last five years break every international protocol on environmental practice, freedom of expression and political participation and indigenous land rights."¹² In addition to hard foreign currency, SLORC also received another "benefit" in exchange for the resource concessions: Thai cooperation in countering indigenous peoples' active resistance. This included the use of Thai territory to stage attacks on areas controlled by indigenous peoples. ¹³ Moreover, the timber sales themselves had a military dimension. The Thai logging companies had to cut roads through what had previously been impenetrable forest that shielded both indigenous people and dissidents who had fled the

main cities after the massacres of 1988. SLORC used these roads to capture resistance strongholds, and the fighting and related SLORC abuses in the region forced thousands of people to flee to Thailand.

Perhaps the largest threat to human rights and the environment in Burma today is the construction of a natural gas pipeline to Thailand by a consortium including the state petroleum companies of Burma and Thailand and two transnational oil companies, Unocal and Total. The Burmese portion of the pipeline will extend 220 miles across the Andaman Sea and then continue another 39 miles across the Tenasserim region to the Thai border on lands largely inhabited by indigenous peoples. In conjunction with the pipeline, SLORC is also building infrastructure and security related projects. 15 Once operational, the pipeline will provide SLORC with up to US\$400 million per year for 30 years, its largest source of liquid funds. 16 The pipeline is vociferously opposed by the legitimately elected representatives of the people of Burma and by the indigenous peoples on whose lands the pipeline and related projects will be built. In building the pipeline, SLORC is committing a variety of severe and pervasive human rights abuses, primarily against indigenous people. SLORC has drastically increased its military presence and has conducted offensives against indigenous resistance groups in order to secure the pipeline region. The army has arbitrarily detained, tortured, raped, intimidated, summarily executed and stolen from villagers. 17 The army has also forcibly relocated numerous villages near the pipeline and has confiscated farms along the railroad route without compensation. 18 Moreover, the government has been forcing tens of thousands of villagers to work as military porters and as forced laborers on the pipeline route and other roads, buildings and military camps related to the pipeline. 19 Children, pregnant women, the aged, the infirm and peasants who need to work on their farms all are forced to work on these projects. Workers are routinely beaten and even killed, and many others die as a result of 20 Not surprisingly, thousands of villagers have fled their exhaustion, disease or accidents. homes to avoid pipeline-related abuses and many of these have crossed over into Thailand .

The building of the pipeline and its attendant infrastructure presents significant threats to the local environment. The exact extent of these effects., however, is impossible to know because of SLORC's secrecy concerning the projects. No independent environmental impact assessments ("EIAs") have been done, and the oil companies refuse to release their own F.I.As. Off-shore drilling for natural gas, however, typically results in the pollution of the surrounding waters and the release of harmful emissions into the atmosphere. In addition, in Thailand, the pipeline route crosses rare, pristine forests which harbor a variety of endangered 22 species. There is reason to believe similar types of lands will be affected in Burma. Moreover, the only law in Burma is the martial law imposed by SLORC. Therefore, there are no environmental laws or judicial or administrative bodies to constrain the actions of the consortium members and there is no input into decisions about the pipeline from those people who are most directly affected.

Thus, there is no reason to expect that the pipeline will be constructed or operated in an environmentally sensitive manner. This is particularly true in light of SLORC and Unocal's past history of environmental degradation.

SLORC is also planning future projects which will likely entail environmental human rights abuses on an enormous scale. In particular, SLORC plans to develop huge hydroelectric projects in the east and southeastern parts of the country, despite the vehement opposition of the local indigenous peoples who will be affected. These projects would displace thousands of villagers and threaten the fisheries, watersheds and ecosystems many others depend on. They are also likely to be built with forced labor. Burma has two rationales for the projects: to provide power to some of the 500,000 people SLORC has forcibly relocated from their homes to new towns since 1988 and to sell power and water to neighboring countries for foreign exchange. Thus, Burma plans to perpetrate massive environmental human rights abuses as the direct result of past human rights abuses and to strengthen the regime's brutal hold on power. 24

All of the projects noted above clearly illustrate the interrelationship between human rights abuses and environmental destruction described in the Ksentini Report. SLORC's perpetration of massive human rights violations to engage in these environmentally damaging activities is driven by the fact that it needs foreign currency to sustain its illegitimate regime. Moreover, SLORC victimizes the local indigenous peoples both through the torture, forced labor, intimidation and political exclusion utilized in degrading the environment, and through the effects such degradation has upon these _peoples' ability to exercise their rights to life, culture and a satisfactory standard of living. These violations are exacerbated by the fact that SLORC's forced relocations and the flight of many villagers from SLORC abuses compel the victims to clear additional land in order to survive, further damaging the environment on which they depend.⁷⁵ Such environmental degradation born of the misery and desperation caused by human rights abuses provides perhaps the starkest and most tragic example of the fundamental link between human rights and environmental protection.

ABUSES IN THAILAND

Thailand's financial interests in resource extraction in Burma has led it to commit human rights violations against Burmese refugees. For example, in 1991, in retaliation for Mon efforts to prevent a Thai company from logging inside Mon forest reserves, Thai authorities cut off supplies of food and medicine to Mon refugees, relocated a refugee

camp and arrested three Mon leaders until they granted the Thais logging concessions. 26 Thailand also cracked down on Mon refugees as a result of the pipeline deal. From 1992-1994 Thailand closed a number of refugee camps and eventually forced refugees to move to a camp in Burma near a Burmese army outpost. In July of 1994, SLORC destroyed part of that camp and kidnapped residents. Thousands of refugees fled back into Thailand, but Thailand forced them to again return to Burma. 27 These refugees were expelled in order to relocate them from areas near the 28 Thailand's planned route of the pipeline to a camp under the control of the Burmese army. commission of human rights abuses in order to protect its interests in destructive resource extraction in Burma again underscores the link between human rights and the environment and emphasizes the fact that environmental human rights abuses are frequently not circumscribed by national borders.

THE NEED FOR ACTION BY THE HUMAN RIGHTS COMMISSION

The situation in Burma demonstrates that the interrelationship between environmental degradation and human rights is a critical human rights issue and must be recognized as such. While SLORC's dismal human rights record is well-documented, the full extent of the harm done cannot be appreciated or addressed without recognition of the environmental dimension involved. EarthRights International therefore calls upon the Human Rights Commission to explicitly recognize the interdependence between human rights and environmental protection and to establish a mechanism to safeguard environmental human rights.

The Commission is the only global institution with the authority and obligation to promote and protect all human rights. Some have argued that the U.N. Commission on Sustainable Development, it ("CSD") is a more appropriate body to address environmental human rights issues. The situation in Burma, however, clearly demonstrates the fallacy of such arguments. While SLORC certainly engages in unsustainable development practices, the larger problem is that SLORC is stealing resources from and destroying the lands of indigenous peoples through state-sponsored murder, intimidation and forced labor, without any input from those affected, in order to provide money to continue the repression. These are fundamentally human rights issues. Only the Human Rights Commission has the mandate, expertise and ability to deal with them. Therefore, although the CSD definitely should consider the relationship between environmental human rights and sustainable development, primary responsibility for promoting environmental human rights belongs with the Commission. The environmental human rights situation in Burma is atrocious, yet it threatens to become much worse. In acting strongly to promote environmental human rights worldwide, the Commission will send an unequivocal message to the Burmese regime and others like it, (and to those transnational corporations who do business with such regimes), that the world will not tolerate violations of environmental human rights. This type of international pressure is

absolutely essential for ending tyranny in a nation like Burma, whose abuses are inextricably linked to its efforts to acquire international currency. In addition, such action will assure victims of environmental human rights violations that the world community hears and appreciates the full scope of their claims. Conversely, failure to act could only serve to inform such regimes and corporations as well as their victims that the world's preeminent human rights body does not consider the problem urgent enough to address.

RECOMMENDATIONS

1. Appoint a Commission-level special rapporteur on human rights and the environment with a mandate to monitor, investigate and make recommendations concerning appropriate situations.

Appointing a thematic rapporteur would initiate the process of establishing enforcement mechanisms by creating a forum for victims of environmental human rights violations that is specifically tailored to address their type of grievances. Moreover, the special rapporteur could investigate such claims and bring the abuses of those governments and corporations who fail to meet environmental human rights norms to the world's attention. Although the Special Rapporteur on the situation of human rights in Myanmar could and should fulfill these functions by specifically addressing environmental human rights abuses, there is no similar forum for victims of such abuses in other countries. One is desperately needed. A thematic rapporteur would also prove instrumental in the further development of environmental human rights standards and in promoting respect for and the adoption of those standards worldwide. In so doing, and in providing other examples of violations and possible solutions, a thematic rapporteur would complement the work of the Special Rapporteur for Myanmar by establishing the context required to appreciate the full scope of Burma's abuses and a greater expertise in how to end these abuses. Therefore, EarthRights International urges the Human Rights Commission to heed the call of both the Sub-Commission's Special Rapporteur²⁹ and the Sub-Commission itself: to appoint a Commission-level special rapporteur on human rights and the environment.

2. Explicitly request the Commission's Special Rapporteur on the situation of human rights in Myanmar to address environmental human rights violations.

With a specific mandate to investigate environmental human rights abuses, the special rapporteur can more accurately detail the true situation in Burma by calling attention to the full scope of human rights abuses that regularly occur there. This would increase international pressure on the Burmese regime. Moreover, it would complement the work of a thematic special rapporteur by providing specific information on what is clearly one of the world's worst violators of environmental human rights. EarthRights International therefore calls on the Commission to explicitly request the Special Rapporteur on Myanmar to investigate environmental human rights abuses.

3. Push for the adoption of a General Assembly resolution or other international instrument embodying the standards contained in the Draft Declaration of Principles on Human Rights and the Environment.

Adoption of the principles contained in the Draft Declaration will strengthen the emerging international consensus on the fundamental interdependence between human rights and the environment and will encourage the formal development of binding national and international law. Moreover, it will provide a unified framework that victims and governments can use to call attention to the specific ways countries and transnational corporations fail to live up to environmental human rights norms. This would be particularly useful to the opponents of Burma's abuses, since Burma violates virtually, (if not literally), every provision of the Draft Declaration. EarthRights International therefore urges the Commission to push for the adoption of a General Assembly resolution or other international instrument embodying the principles contained in the Draft Declaration.

4. Work to create a framework for the effective implementation and enforcement of environmental human rights norms.

Adoption of the principles contained in the Draft Declaration and the appointment of a thematic rapporteur are necessary steps-in the process of protecting environmental human rights. Ultimately, however, enforcement mechanisms are needed to ensure that such rights are respected. For example, in the context of atmospheric pollution, the Hague Declaration on the Environment recognized the need for institutional authority to draft

and enforce agreements with which the International Court of Justice would have the authority to mandate compliance. Similar institutional authority is vital if environmental human rights are to be enforced in practice rather than merely existing on paper.

5. Expeditiously adopt the Draft Declaration on the Rights of Indigenous Peoples.

As the Ksentini Report points out, indigenous peoples the world over are both especially dependent on a healthy environment for their subsistence and cultural survival and sufficiently marginalized to ensure that they cannot defend their traditional lands from environmentally destructive encroachments. The need to protect indigenous land rights and self-determination and to prevent discrimination is particularly acute in Burma, where SLORC's environmental human rights abuses are overwhelmingly directed at indigenous peoples. Because the Draft Declaration on the Rights of Indigenous Peoples is a crucial step toward achieving the protection of indigenous peoples' rights, EarthRights International fully supports the Ksentini Report's call for "the rapid adoption" of the Working Group on Indigenous Populations' Draft Declaration on the Rights of Indigenous Peoples³¹ and urges the Human Rights Commission to diligently work toward this end.

CONCLUSION

The situation in Burma demonstrates both the accuracy of the Ksentini Report's observations concerning environmental human rights and the compelling need to establish mechanisms to promote and enforce those rights. The Human Rights Commission has the obligation to act immediately to protect those threatened by environmental human rights abuses in Burma and throughout the world.

' Ref. No. Ci/SO 214 (12-5- 1). 2U.N. Doe. E/CN.4/Sub.2/1994/9. (Hereinafter "Ksentini Report"). 3Although the note verbale requested that comments be forwarded by 30 September 1996, EarthRights International did not learn of the note until well after that date, and even then only did so through notification by another nongovernmental organization, not the United Nations. We therefore request that the Centre for Human Rights accept our comments despite the late date. 4U.N. Doc. E/CN.4/Sub.2/1994/9/(Annex 1) 5Human Rights Watch/Asia, Burma: Entrenchment or Reform? July 1995 at 14. 6EarthRights International, Southeast Asian Information Network, Total Denial, July 1996 at 37; Amnesty International, Myanmar: No Place to Hide, June 1995 at 23-24. 7Pilger, John, "The Burmese Gulag", Covert Action Quarterly, Fall 1996 at 10; Article 19, Paradise Lost?, September 1994 at 13. 8 Total Denial at 5-6; Paradise Lost?, at 5-6. 9 1 - 9 McDonald, Hamish, "The generals buy time", Far Eastern Economic Review, February 22, 1990 at 16-17. 10 Paradise Lost?, at I 1. I I Id. at 14. 12 Id., at 13. 13 McDonald, Harnish, "Selling out old friends", Far Eastern Economic Review February 22, 1990 at 21-22. 14 Paradise Lost?, at 6, 13-14. 1 5 "The Burmese Gulag", at IO; Paradise Lost?, at 19. 1 6 "The Burmese Gulag", at IO; Total Denial, at 2. 1 7Total Denial at 22-29. 9 18 Id., at 41-43; Paradise Lost?, at 19. 19 Total Denial, at 33-38; Human Rights Watch/Asia, The Mon: Persecuted in Burma, Forced Back From Thailand, December 1994 at 9; Paradise Lost?, at 19. 20 "The Burmese Gulag", at 9-10; Total Denial at 23, 26; The Mo , at 8-10; Amnesty International, Myanmar: Human rights still denied, November 1994 at 19; Paradise Lost?, at 19-20. 21 Total Denial, at 15, 26; Amnesty International, Myanmar: Human rights after seven years of militga rule. October 1995 at 25; Burma: Entrenchment-or Reform?, at I 5; Myanmar: Human rights still denied, at 18. 22 Total Denial,, at 54-56. 23 Id., at 59-61. 24 Id., at 59; Paradise Lost?, at 21-23. 25 Paradise Lost?, at 5-6. 26 The Mon. at I 1; Paradise Lost?, at 14. 27 i@h-e M-on- . at I I - 1 3; Myanmar: Human rijzhts still denied, at 20-2 1. 28 ,The Burmese Gulag". at 12; Burma: Entrenchment or Reform?, at 26-27; The Mon, at 13-14. 29 Ksentini Report at Par. 260. 30 Sub-Commission Resolution 1994/27, U.N. Doe. E/CN.4/Sub.2/1994/56, at 13. 31 Ksentini Report at Par. 250.

Preamble

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Vienna Declaration and Programme of Action of the World Conference of Human Rights, and other relevant international human rights instruments,

Guided also by the Stockholm Declaration of the United Nations Conference on the Human Environment, the World Charter for Nature, the Rio Declaration on Environment and Development, Agenda 21: Programme of Action for Sustainable Development, and other relevant instruments of international environmental law,

Guided further by the Declaration on the Right to Development, which recognizes that the right to development is an essential human right and that the human person is the central subject of development, Preamble

Guided by fundamental principles of international humanitarian law,

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 special responsibility to prevent such harm,

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

Declare the following principles

Part 1.

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 2.

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 harm.

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

11. (a) 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.

(b) All persons have the right to participate effectively in decisions and to negotiate concerning their eviction and the right, if evicted, to timely and adequately 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 and 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 3.

15. All persons have the right to information concerning the environment. This includes information, howsoever compiled, on actions or 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 4

21. All persons, individually and in association with others, have the 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 administrative, legislative and other measures necessary to effectively implement the rights in the 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 or 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 the Declaration.

Part 5.

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 the Declaration can be fully realized.