

Submission paper for The Public Petitions Committee

PE No. 1372

The Scottish Human Rights Commission

The Scottish Human Rights Commission was established by The Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is a public body and is entirely independent in the exercise of its functions. The Commission's mandate is to promote and protect human rights for everyone in Scotland. We are one of the 67 National Human Rights Institutions accredited with 'A status' and established according to the United Nations Principles relating to the Status of National Institutions (The Paris Principles).

Introduction

The Scottish Human Rights Commission (the Commission) welcomes the opportunity to submit this brief paper in response to Public Petition No. 1372. In order to assist the Committee in its consideration of this Petition the Commission provides supporting information on the link between the environment and human rights, on the work of the Commission in this area and on the importance of adopting a human rights based approach to environmental policy in order to facilitate greater access to justice in relation to the environment in Scotland.

The Environment and Human Rights

First of all, it is important to note that there is a clear link between the environment and the protection of human rights. While human rights standards have not appeared consistently or clearly in international accords related to the environment, connections have been drawn. For example, the Rio Declaration on Environment and Development links environmental protection with so-called procedural human rights. Thus Principle 10 of the Rio Declaration stresses that "environmental issues are best handled with participation of all concerned citizens". In 2001, the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) significantly develops procedural rights in relation to environmental matters. The United Kingdom has been a party to the Aarhus Convention since 2000.

Environmental protection and the protection of human rights are interconnected in a more fundamental way than simply procedure however. The full spectrum of human rights is impacted upon by environmental degradation and climate change. From

economic, social and cultural rights such as rights to the highest attainable standard of physical and mental health, to adequate housing, to an adequate standard of living, to water and sanitation, to adequate food; to civil and political rights such as rights to life, to participate in public affairs, to freedom of expression and even to refuge are all affected.

The growing effects of climate change are already affecting the most vulnerable in at home and abroad but often these effects are determined by non-climatic factors such as inequality and geographical location.¹ Therefore, those most at risk from climate change are those whose human rights are most widely denied or left unfulfilled whether in the civil and political or the economic, social and cultural spheres. Hence human rights are instrumental in providing a framework that protects the most vulnerable.

Human rights law provides significant mechanisms to ensure effective participation in decision-making (to enable the impacts on everyone to be properly taken into account), and access to justice for all (to support accountability). These are vital elements for fair processes for decision making on environmental matters.

The Aarhus Convention establishes a number of procedural rights in relation to environmental matters. In order to make these rights effective, States Parties to the Convention must take the necessary steps so that public authorities at national, regional or local level are required to respect them. In 2008, the Aarhus Convention Compliance Committee (based on practice in England and Wales) found that:

“134. In the light of the above, the Committee concludes that the [United Kingdom] has not adequately implemented its obligation in article 9, paragraph 4, to ensure that the procedures subject to article 9 are not prohibitively expensive. In addition, the Committee finds that the system as a whole is not such as “to remove or reduce financial [...] barriers to access to justice”, as article 9, paragraph 5, of the Convention requires a Party to the Convention to consider.”²

Therefore, the Aarhus Convention Compliance Committee recommended that the UK:

“143.(a) Review its system for allocating costs in environmental cases within the scope of the Convention and undertake practical and legislative measures to overcome the problems identified in paragraphs 127-134 above to ensure that such procedures:

- (i) are fair and equitable and not prohibitively expensive; and*
- (ii) provide a clear and transparent framework.”³*

Similar barriers to access to (environmental) justice have also been identified in Scotland by the Gill Review.⁴ The Review concludes that the current law on standing

¹ UNDP Human Development Report 2007/8 available at <http://hdr.undp.org/en/reports/global/hdr2007-8/>; See also German Socio-Economic Panel (GSOEP) 1986-2006. Detailed information on the GSOEP is found at <http://www.diw.de/english/sop/>.

² DRAFT FINDINGS ACCC/C/2008/33 with regard to compliance by the United Kingdom with its obligations under the Aarhus Convention

³ Ibid.

⁴ B Gill, *The Report of the Scottish Civil Courts Review* (Scottish Civil Courts Review,

is ‘too restrictive’ and unclear, inhibiting access to the remedy of judicial review. Furthermore, the Review acknowledges that the threat of having to pay the opposing party’s costs can present a major hurdle to litigants in public interest cases, acting as a deterrent to accessing legal remedies to environmental problems.⁵

Getting it right from the start: a Human Rights Based Approach

A human rights based approach sees individuals as rights holders and spells out the elements of process as well as outcomes required to ensure the rights of everyone are properly taken into account and upheld in decision-making and policy or strategy setting. The key elements of a human rights based approach are: participation, accountability, non-discrimination, empowerment and legality (PANEL). The elements can be summarised as such:

- **Participation** in decisions which affect the realisation of human rights: public participation renders decision-making more transparent and public service more effective as it takes into account individual situations.
- **Accountability** of duty-bearers to rights-holders: individuals and groups should have recourse to effective remedies, including reparation.
- **Non-discrimination** and prioritisation of vulnerable groups: this element recognises that people’s vulnerability to the impacts of climate change can be affected by elements of their identity, their status or factors related to their situation. For example children, people living in poverty, older people, people living in areas prone to flooding.
- **Empowerment** of rights holders: everyone has the right to know and be able to claim their rights. In order to make this effective people should have access to human rights education and environmental information, as well as the support and protection they need to defend their rights.
- **Legality** and linkage to rights: policies, processes and mechanisms should be formulated with reference to international human rights instruments and standards (see below).

A human rights based approach ensures that people are able to participate in decisions on climate change and the environment both within and beyond legal processes.

Policies and programmes which are developed taking human rights into account are more likely to provide early warning of problems (e.g. using human rights impact assessments (HRIAs) to evaluate the potential impact of a policy or a project on individuals and the community). In this way, policy-makers are able to consider both environmental impacts -by conducting environmental impact assessments- and human rights impacts by conducting HRIAs before implementation. This need not be seen as an additional step but can be integrated.⁶

September 2009)

⁵ Gill Review, Vol II, at ch. 12, p. 28, para. 19

⁶ In addition an economic or financial impact assessment is also common. The EU Commission has adopted a model of integrated impact assessment (IIA) to assess its policy-making and formulation of legislative proposals. The integrated model includes assessment of economic, environmental and social impacts. See the impact assessment guidance at http://ec.europa.eu/governance/better_regulation/impact_en.htm

Applying a human rights based approach to environmental programme or policy setting means ensuring that human rights principles and standards are consistently upheld throughout the policy or programme cycle. So, human rights standards and principles should guide all processes and outcomes. A HRBA to environmental policy can support identification of rights and responsibilities under each of the following stages of policy setting, implementation and evaluation:

- (a) Policy and strategic decision-making;
- (b) Programme planning and project design;
- (c) Implementation;
- (d) Monitoring and evaluation.

A HRBA to environmental matters can thus increase consideration of the human impacts of environmental protection on a day to day as well as a longer-term, sustainable manner.

The Work of the Commission

The Commission is working to increase awareness, recognition and respect for human rights in Scotland by connecting human rights to everyday issues of which climate change and environmental problems are examples. The Commission focuses on:

- (a) Promoting a human rights based approach to environmental degradation, including climate change.
- (b) Developing tools that facilitate the integration of human rights into environmental policy and practice.

The Commission has encouraged multi-stakeholder dialogue and frequently participates in environmental/climate change discussions and events. For example, the Commission organised a Climate Justice Conference last November⁷ from which a Joint Communiqué between The Scottish Government, the Scottish Human Rights Commission, Scottish Environmental Protection Agency and BTCV Scotland emerged. The communiqué committed the four partners to:

- assess the extent to which Scottish policies and actions are already aligned to a human rights based approach and identify areas where this is scope for improvement;
- explore what a human rights based approach to tackling climate change looks like in a Scottish context;

⁷ We believe that combating climate change on both international and national levels should become a specific objective of both environmental policy and human rights. For more information on the conference see SHRC website at <http://www.scottishhumanrights.com/news/latestnews/article/climateconferencenews>

- ensure public participation and engagement in contributing to the objectives of the Climate Change (Scotland) Act through awareness raising, knowledge transfer, peer mentorship and environmental volunteering;
- identify how an over-arching human rights based approach to climate change can be implemented in practical terms, taking account of the range of existing tools and assessments which are applied at policy level.

Conclusion

Taking into consideration the importance of adopting a human rights based approach to environmental policy in order to facilitate, among other things, greater access to justice in relation to environmental matters, and the realisation of the specific actions agreed in the Joint Communiqué above, the Commission urges the Committee to take forward Public Petition No. 1372. In addition, the Commission recommends that the Committee consider the importance of effective implementation of all human rights standards related to the environment,⁸ including (in addition to the Aarhus Convention), compliance with E.U. environmental legislation⁹ as provided for in Schedule 5 of the Scotland Act 1998.

End

⁸ Human rights related instruments relevant to the environment include: Scotland Act 1998; Human Rights Act 1998 and European Convention on Human Rights (1950); Climate Change Scotland Act 2009; EU Environmental law (i.e. IPPC Directive, EIA Directive, Water Framework Directive, Public Participation Directive); UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998); Universal Declaration of Human Rights (1948); United Nations Framework Convention on Climate Change (1994); Convention on Biological Diversity (1993); Rio Declaration on Environment and Development (1992); The Stockholm Declaration (1972); The European Charter on Environment and Health (1989); International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social and Cultural Rights, and General Comment Nos. 4, 12 & 15 of the Committee on Economic, Social and Cultural rights; Convention on the Right of the Child (1989); The Geneva Conventions and 1977 Additional Protocol I (during armed conflict); Draft Declaration of Principles on Human Rights and the Environment (1994); GA Resolution No. 10967 Recognising Access to Clean Water and Sanitation (2010); Guiding Principles on Internal Displacement (1998).

⁹ For example: a) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community Institutions and Bodies; b) Article 3 (3); 6 and 21(2)(d)&(f) of the E.U. Treaty (consolidated version) and Article 11 and Title XX of the Treaty on the Functioning of the EU.