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PAPER #4:

The Status of Constitutional Protection for the Environment in Other Nations

EXECUTIVE SUMMARY

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The Status of Constitutional Protection for the Environment in Other Nations

When Pierre Trudeau began discussing the repatriation of the Canadian Constitution in 1968, there were no constitutions anywhere that incorporated environmental rights and only a handful of constitutions that imposed modest environmental responsibilities. Almost every year since 1970, at least one nation has written or revised its constitution to include or strengthen provisions related to environmental protection. The first broad provisions focusing on the protection of the environment appear in the constitutions of Switzerland (1971), Greece (1975) and Papua New Guinea (1975). Portugal (1976) and Spain (1978) were the first countries to recognize the right to live in a healthy environment. Between 1970 and 1982, the peak years of constitutional debates in Canada, 28 nations wrote environmental provisions into their constitutions. Between 1983 and 1992, when Canada's constitutional debates continued, 44 more countries enacted constitutional environmental provisions.

Today, more than three quarters of the world's national constitutions (149 out of 193) include explicit references to environmental rights and/or environmental responsibilities. This includes the majority of nations in Africa, Central and South America, Asia-Pacific, Europe, and the Middle East/Central Asia.

Among the 44 UN nations whose constitutions are silent on the matter of environmental protection, there are several political, geographic, and legal patterns. The United Kingdom is one of the 44 nations, as are twenty-seven former British colonies. Twenty-three of the 44 nations without constitutional environmental provisions are small island states. Like Canada, almost all of the English-speaking nations of the Americas (11 out of 13) lack environmental provisions in their constitutions. The constitutions of these nations include few if any references to economic, social or cultural rights. The exceptions are Belize, (constitutional environmental provisions are limited to the preamble) and Jamaica (right to a healthy environment added in 2011). In contrast, all 22 of the non-English speaking nations in the Americas have incorporated environmental protection provisions into their constitutions.

There are five main categories of constitutional provisions, including: government's responsibility to protect the environment; substantive rights to environmental quality; procedural environmental rights; individual responsibility to protect the environment; and a miscellaneous "catch-all" category of diverse provisions.

Government's Environmental Duties

The government duty is the most common form of constitutional provision related to environmental protection, found in 144 constitutions. For example, in Sweden's Constitution the duty is succinctly stated:

Article 2. The public institutions shall promote sustainable development leading to a good environment for present and future generations.

Substantive Environmental Rights

Ninety-eight national constitutions recognize that citizens have a substantive right to live in a healthy environment. For example, Norway's Constitution (1992) states:

Article 110(b) Every person has a right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. Natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations.

Procedural Environmental Rights

Thirty-one national constitutions provide procedural rights specifically related to environmental protection, including the right to information, the right to participate in decision-making and the right of access to the judicial system to challenge government decisions, unconstitutional laws or alleged violations of individual rights. An example is provided by the Czech Republic's Constitution:

Article 35. (2) Everybody is entitled to timely and complete information about the state of the environment and natural resources.

Individual Environmental Duties

Individual responsibility for protecting the environment is provided in 86 constitutions. For example, in France's Charter for the Environment (2005):

Article 2. Every person has the duty to take part in the preservation and the improvement of the environment.

Article 3. Each person shall, in the conditions provided for by law, foresee and avoid the occurrence of any damage which he or she may cause to the environment or, failing that, limit the consequences of such damage.

Other Environmental Protection Provisions

There is a broad variety of other constitutional environmental provisions. Among the most common are authorization of restrictions on the use of private property in order to protect the environment; prohibitions on importing toxic, hazardous or nuclear waste; recognition of the right to clean water; and value statements regarding the importance of protecting the environment. In a handful of constitutions — e.g., Brazil, Ecuador, France, Portugal and Switzerland — environmental provisions are comprehensive. Ecuador and Brazil are pioneers in recognizing the constitutional rights of nature.

Enforceability

In most constitutions, the right to a healthy environment is treated in much the same way as any other fundamental human right, as enforceable but subject to some limitations.

Conclusion

Overall, the constitutional developments that have taken place around the world appear to reflect a rapid evolution of human values to embrace environmental protection. The same evolution in values has occurred in Canada, yet the Canadian Constitution remains silent on the fundamental importance of protecting the environment.

