

Energy and Human Rights

[A nice paper that was very well presented in class, and an important thing to bring up, since it's an issue most people don't think much about. Will the energy-human rights connection result in greater democratization and protection of human rights in the "developing" world – the Middle East and elsewhere – or to more militarization of energy policy in developed countries as they become more desperate for energy?]

With the globalization of industry, the behavior of multinational corporations with regard to human rights has become more heavily scrutinized, and more abuses are being discovered. The abuses of multinational energy companies, however, are less apparent to many than the more often reported abuses of toy or clothing manufacturers. For this reason, fewer people think about where their energy is coming from and what harm its extraction might have done when they fill their gas tank or turn on a light. Still, energy extraction in many countries of the developing world has led to the displacement of indigenous peoples, the degradation of the environment in local communities, and, in the most extreme cases, brutal oppression. Such human rights abuses are committed by governments out of a desperate desire to improve their suffering economies. Public participation may be the best way to protect human rights, but ensuring public participation is often difficult, and countries in the developing world have had varying degrees of success in this regard.

Nigeria represents one of the worst failures of human rights in recent history. The country is one of the world's largest producers of crude oil and has one of the world's

largest reserves of coal as well as vast reserves of natural gas, but its dependence on the petroleum industry has caused both its environment and other sectors of its economy to suffer greatly (Omorogbe 557-558). The primary human rights concern in this country has to do with property rights and the 1978 Land Use Decree. This law, described as “one of the most ambiguous laws ever made,” essentially gives all land to the state governments and grants state governors all control over how land is used (Constitutional Rights Project 1). Oil prospecting in this region had begun long before this law came into existence, when Shell d’Archy, which later became Shell-BP and Royal/Dutch Shell, was granted an exploration license over the whole of what is now Nigeria in 1938 (10). This marked the beginning of what would be a 20-year-long oil monopoly held by Shell in the country. As of 1999, about half of Nigeria’s oil—83 oil fields and 748 oil wells—was still controlled by Royal/Dutch Shell, but the company now shares the country with ten other multinational corporations.

The desire on the part of multinationals to drill in Nigeria, particularly in the oil-rich Niger River Delta, combined with the power of the state to determine how land is used, has frequently been at odds with the wishes of local communities. The clashes that result when local communities run up against the government and multinationals can result in devastating consequences. In 1990, for example, the Umuechen community organized a demonstration to express their anger at the impact of Shell’s oil activities on their land (23). Shell called the police to disperse the protestors. One of the policemen went missing and was presumed dead, and the police decided to respond by raiding the village the following morning. Hundreds were killed, including the traditional chief of the village. This is one of the first and most striking of a series of incidents that have

resulted in the loss of life, and this cycle of violence is far from over. The Constitutional Rights Project's assessment of the situation is that "in the circumstances created by oil operations in Nigeria's Niger Delta it seems human rights can only suffer" (31).

Fortunately, not all countries are like Nigeria, and the trend of late has been towards greater compassion on the part of governments. As public awareness of the issue grows, companies that seek to "develop" an area by extracting its energy resources, will face a greater number of roadblocks along the way. As Donald Zillman notes,

The days when development required no more than a land concession are long gone. Government—national, regional, and local—will almost certainly assert claims on behalf of the public before it agrees to a major development. These claims address such disparate matters as revenue shares to government, protection of worker health and safety, preservation of local and indigenous values, and guardianship of the natural environment. (Zimmerman 1)

Direct public participation may likely be the best means by which public concerns can be addressed. "Though there is no universal definition, public participation is generally understood to consist of three distinct forms, namely access to information; participation in decision-making; and access to justice" (Gao 693). In practice, participation can include town hall meetings, public hearings, protests, free press, and information sharing via the internet (Zimmerman). George Pring and Susan Noé assert that

Public participation promises to define and redefine the major economic development projects of the Twenty-first Century—and few sectors will be more impacted on this than mining, energy and resource-development industries. (Pring 12)

Pring and Noé go on to list seven factors that are responsible for the spread of this principle of public participation in decision-making that was long viewed as central in western democracies to the rest of the world (13). They include democratization trends in the developing world, the adoption of a new legal paradigm of sustainable

development, push by environmentalists, the incorporation of public participation requirements in loans from international financial organizations such as the World Bank, push by human rights groups, increasing recognition of the rights of indigenous peoples, and the internet.

As a counter to the example of Nigeria, Latin America is a developing region where the aforementioned institutional and worldwide cultural changes have led to improved conditions with regard to human rights. The oil industry has still left a painful mark, but improvements are being made. Argentina, for instance, is a country rich with energy resources, particularly natural gas, and has been seeking to expand its energy industry further by deregulation and demonopolization (Barrera-Hernandez 592). Until the 1980's, however, the environment and rights of indigenous peoples were neglected in favor of an emphasis on development (593). That decade brought democratization to the nation and an influx of new ideas, and in 1994 a constitutional amendment was passed guaranteeing indigenous peoples participation in the management of their natural resources.

Columbia provides an even more striking example of positive development in the area of public participation. Oil and coal are two of Columbia's three largest export earners, the other being coffee, and coal alone generated 35 percent of government revenues in 2000 (602). Because of the massive influence the fossil fuel industry has on the economy and government revenues of Columbia, one might expect a situation much like Nigeria, in which corporations are given a free license to conduct their activities at the expense of the citizenry and environment. On the contrary, "Columbia's new Political Constitution has been called the 'ecological Constitution' due to the

unprecedented weight given to environmental matters in its 1991 version” (603). It explicitly grants every person the right to enjoy a healthy environment and guarantees public participation in those decisions that may affect the environment. To protect that right, it also gives broad access to public documents and justice rights and the ability to petition authorities. These rights are not just vested in select representatives or public authorities; “any person is granted standing to intervene in the administrative process from granting, modifying, or canceling permits or licenses, and in the enforcement process” (605).

In Ecuador local communities can also be seen finding innovative means to protect their environment against the abuses of transnational corporations. In 1982, an Ecuadorian community initiated legal action against Texaco for the damage it did during twenty years of oil activities in the country (Gao 680). This damage included dumping 17 million gallons of crude oil into the Amazon river system, discharging 20 billion gallons of toxic chemicals, causing the deforestation of 2.5 million acres of rainforest, and displacing the Quiana, Cofau, and Huaorani Native people. What is noteworthy about this case is that it was filed in a court in the United States, Texaco’s home country, and while the Ecuadorians lost the case, they brought global attention to the company’s abuses and used innovative means to attempt to redress their grievances.

The third large region in what is considered the developing world is Asia and the Pacific, and this area represents a middle ground between the progressive steps taken by countries such as Columbia and the extreme oppression that still persists in Nigeria. The Association of South-East Asian Nations (ASEAN) has outwardly professed a desire to protect its environment, signing international agreements to that effect as early as 1985,

but “the position of public participation in the individual countries in ASEAN varies markedly” (Heng 651-652). Even those countries that do recognize the importance of human rights and environmental stewardship often think of public participation in terms of Non-Governmental Organizations (NGOs) rather than individuals or communities (653).

Indonesia has one of the worst records among the larger nations in ASEAN. Its 1945 constitution “establishes that the state shall control its land, water, and natural resources, which ‘shall be utilized for the greatest welfare of the people’” (670). This rather vague statement comprises the base of Indonesia’s environmental policy, and is worded very similarly to Nigeria’s Land Use Decree, though the Indonesian government has not taken advantage of this wording in quite the same manner. The other ASEAN states, including Brunei, Cambodia, Laos, Myanmar, and Vietnam, do not have any significant public participation in the environment. Many of these countries, however, are small enough that the government cannot easily ignore the concerns of local communities, and many, even though they have not institutionalized environmental stewardship, feel the pressure of NGOs not to do too much harm to local communities’ lands.

Outside of the southeast, the rest of Asia is much the same, with petroleum and mining being among the most important industries in terms of value, volume and strategic importance (Gao 679). While environmental protection has become a more prominent issue in countries such as China, public participation was largely ignored (680-681). One positive example of local groups taking a stand for their rights can be seen in Papua New Guinea (681-685). The people of the Ok Tedi region of the country took the

mining company BHP to court over environmental abuses in the mid-1990s, suing them for a record US\$2.84 billion. As they took them to court in their home county, this case was seen as being in many ways the direct descendant of the Ecuadorians' case against Texaco, and in fact that case was referenced in the Ok Tedi case. The suit was settled out of court and deemed a major victory for environmentalists and local human rights groups, increasing environmental consciousness of local communities worldwide and setting a precedent favoring these communities rather than the large oil, coal and natural gas companies that they stand in opposition to.

As the case of Ecuador and Texaco shows, however, local communities are still frequently unable to gain any compensation for being displaced or suffering from health and environmental problems; and as the case of Nigeria and Shell shows, the actions of energy producers can often have tragic consequences. Much is being done, however, to change this sad reality and foster public participation in those places where it is denied. Activists in the developed world have sought to do their part by organizing boycotts of and letter-writing campaigns to major oil companies such as Shell and Texaco that have either maintained close ties to oppressive communities or refused to compensate for the damage caused by their activities ("Essential," "Frente").

Developing countries face difficult decisions and tradeoffs. In order to better their economy and thus the lives of their people, they must take advantage of their abundant natural resources and allow the influx of foreign money. If they yield too much to the will of major multinational energy companies, however, it can result in the degradation of their environment, the displacement of indigenous peoples and/or the oppression of local communities. The best way to avoid these negative consequences is

through the enfranchisement of all people and the inclusion of every segment of society in the decision-making process. The same forces of globalization that can put more power into the hands of energy companies can also be used to empower communities by pushing towards democratization, offering the resources of NGOs and activist organizations, and giving voice to the voiceless on the internet. Ultimately, the key to ensuring human rights is a global awareness of the issue.

Works Cited

Constitutional Rights Project. Land, Oil, and Human Rights in Nigeria's Delta Region.

Lagos, Nigeria: Constitutional Rights Project, 1999.

Essential Action. Boycott Shell. June 2001. <http://www.essentialaction.org/shell/>.

Frente Para La Defensa De La Amazonía. After the Gold Rush. 10 February 2004.

<http://www.texacorainforest.org/internationalcamp.htm>.

Zimmerman, Donald N., Alastair R. Lucas and George Pring, eds. Human Rights in Natural Resource Development. Oxford: Oxford University Press, 2001.

- Barrera-Hernandez, Lila K. "The Legal Framework for Indigenous Peoples' and other Public's Participation in Latin America: The Cases of Argentina, Columbia and Peru." 589-628.
- Gao, Zhiguo, George Akpan and Jim Vanjik. "Public Participation in Mining and Petroleum in Asia and the Pacific: the Ok Tedi Case and its Implications." 679-694.
- Heng, Lye Lin. "Public Participation in the Environment: A South-East Asian Perspective." 651-678.
- Omorogbe, Yinka. "The Legal Framework for Public Participation in Decision-Making on Mining and Energy Development in Nigeria: Giving Voices to the Voiceless." 549-587.
- Pring, George (Rock) and Susan Y. Noé. "The Emerging International Law of Public Participation Affecting Global Mining, Energy, and Resources Development." 11-78.
- Zimmerman, Donald N. "Introduction to Public Participation in the Twenty-first Century." 1-7.