

**Saint Lucia National Trust**  
**Submission to the Constitutional Reform Commission**

**Right to Life and Environmental protection:**

In its current formulation, Saint Lucia's constitution guarantees a number of rights of the individual, primary among which is the right to life. Whereas the *right to life* provisions are concerned with an individual's rights not to have his life extinguished except by the State, and under specific conditions, there is no recognition of, and therefore no provisions for maintaining conditions conducive to support life. We suggest that in the absence of such provisions, the right to life is eroded. This represents one flaw which this submission seeks to address.

In the context of the right to life, it is now accepted that certain environmental conditions are not conducive to sustaining life, and to the extent that these conditions are created, permitted, encouraged or ignored, to that extent is a person's right to life violated. It follows, therefore that the right to life must extend to include the creation and maintenance of environmental conditions conducive to supporting life as well as the avoidance of environmental conditions that threatens life. Examples include, but are not limited to clean air, clean water, access to environment goods and services necessary to sustain life, safe recreational areas, etc.

**Sustainable Development and the rights of future generations:**

One of the key distinguishing characteristic of homo sapiens is his ability to plan and cater for the future. The current formulation of the constitution speaks only to the rights of the living, and ignores the rights of future generations. In this regard, the rights of future generations to a safe environment capable of supporting life and the pursuit of their aspirations are ignored. This is contrary to the principles of sustainable development which is defined as development that meets the needs of the present, without compromising the ability of future generations to meet their own needs. Sustainable development is underpinned by three concepts: environmental protection, economic growth and social equity, all of which are noble aspirations worthy of constitutional inclusion. It follows that for development to be sustainable, thereby preserving the rights of future generations to pursue their own aspirations, it is necessary for current generations to use resources in ways that do not lead to depletion, that environmental sustainability is factored into development programmes, that economic development is balanced in ways that do not deprive the poor from opportunities for self development and that social equality and justice are made cornerstones of development agendas. These principles should also be enshrined in the reformulated constitution to ensure that the rights of those yet to be born are not compromised now.

### **Property Rights:**

The issues above relate to things done or not done to land which, in turn will impact on the rights of the individual. It follows, therefore that in meeting the proposed obligations to ensure a safe and healthy environment, the State must have the right to impose conditions for the use of property in private ownership. The implication is that property rights should come with obligations which the State must impose and enforce. Private land ownership should therefore not be absolute, but should come with a social responsibility and mortgage. It is therefore proposed that the constitution should superimpose on the right of the individual to own property, the obligations to use the property in ways that will not degrade the environment. Further, the State should be granted the right to determine the use, or class of uses to which lands may be put and should have no right to be compensated if that determination improves the value of the land nor the responsibility to compensate the owner if the provisions diminish the value.

### **Historic Assets:**

Historic assets should be public property. To this end, owners of property which has on or under it items of historic significance may not lay claim of ownership to those assets or do, or cause to be done, anything that may degrade them. In addition, the State or its agents or other duly authorized bodies should have the authority to preserve or retrieve these public assets and hold on behalf of the State.

### **Public lands:**

Certain areas of land such as the sea bed, beaches and the Queen's Chain are part of the patrimony and the State should have the obligation to the citizens to hold and protect these common properties for the collective benefit. Private ownership of these common properties should be forbidden except for special circumstances, which must be brought to the attention of, and be approved by the public

### **Public access to information of the State of the Environment**

As noted above, certain environmental conditions constitute a threat to life. Therefore, to the extent that those conditions exist, the people have a right to know of the conditions, the measures they may take to minimize or eliminate the threat to their life as well as the steps the State should take to preserve their lives against those threats. To this extent, the public's right of access to information about the state of their environment and the related threats and mitigative measures should become constitutional rights as they relate directly to the right to life.

### **Obligations of Citizens:**

The above arguments point to the requirement of the State to ensure an environment capable of sustaining life and life's aspirations. However, the State alone cannot be reasonably expected to achieve these conditions. The rights alluded to above must bear obligations on the individual to ensure that his actions do not degrade the environment to a point where it becomes a threat to the life of another. The constitution should define those obligations to ensure that the rights of all to life are assured.

### **Related trends in Constitutional Reform**

Increasingly countries around the world are bringing on board matters related to environmental protection, heritage conservation and sustainable development in the reformulation of their constitutions and are entering into multilateral agreements with related provisions.

Attention is drawn to the Charter of Civil Society of the Caribbean Community in which a number of fundamental rights are defined. Of particular relevance are:

1. The Pre-ambular text, in which member states determined “promote economic growth and sustainable development through the wise use of the human and natural resources; and
2. Article XXIII: Environmental Rights, which states:
  - a) Every person has a right to an environment which is adequate for his or her health and well-being and a corresponding duty to protect, conserve and improve the environment;
  - b) The State shall take steps to establish environmental standards and monitor compliance with such standards;
  - c) The States, considering the shared universal responsibility for human survival, shall put in place measures to ensure the protection and improvement of the environment and the conservation and management of its natural resources for the benefit of present and future generations.

In addition, the following provisions, drawn from other countries are presented to provide an indication of the direction in which an increasing number of countries are moving with respect to providing constitutional protection for the environment, natural resources and national heritage.

- i. China: Everyone shall have a duty to respect the environment and the State shall assure its protection;
- ii. Costa Rica: The cultural aims of the Republic include: to protect its natural beauty, to preserve and develop the historic and artistic wealth of the nation, .....

- iii. Guyana: (Preamble): Acknowledge the aspirations of our young people who have declared that the future of Guyana belongs to them, who aspire to live in a safe society which .....ensures a healthy environment .....
- iv. Spain: Article 45:
- a) Everyone has the right to enjoy an environment suitable for the development of the person, as well as the duty to preserve it;
  - b) The public authorities shall concern themselves with the rational use of natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment, supporting themselves on an indispensable collective solidarity.
  - c) For those who violate the provisions of the foregoing paragraph, penalty or administrative sanctions, as applicable, shall be established and they shall be obligated to repair the damage.
- v. Spain: Article 46: national heritage:

The public authorities shall guarantee the preservation, and promote the enrichment of the historical, cultural and artistic heritage of the peoples of Spain and the property that makes them up, regardless of their legal status and their ownership. The penal law shall punish any offences against this heritage.

- vi. Republic of Croatia: (Natural Resources) The sea, seashore and islands, waters, air space, mineral wealth and other natural resources such as lands, forests, fauna, flora, other parts of nature, real estate and goods of special cultural, economic or ecological significance which may be specified by law to be of interest to the Republic shall enjoy special protection.
- vii. South Africa: Section 24: Environment:

Everyone has the right:

- a) To an environment that is not harmful to their health or well-being; and
  - b) To have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that
    - Prevent pollution and ecological degradation;
    - Promote conservation; and
    - Secure ecologically sustainable development and the use of natural resources while promoting justifiable economic and social development
- viii. Congo: Article 65 (Environment):
- 1) Every individual shall have the duty to contribute to the improvement of the quality of life and the preservation of his natural milieu as well as to the protection of the environment;
  - 2) Also, he shall have the duty not to negatively effect his environment nor the well-being of his neighbours.

ix. Republic of Seychelles: Article 38: Right to safe environment:

The State recognizes the right of every person to live in and enjoy a clean, healthy and ecologically balanced environment and with a view to ensuring effective realization of this right the State undertakes:

- a) To take measures to promote the protection, preservation and improvement of the environment;
- b) To ensure sustainable socio-economic development of Seychelles by a judicious use and management of the resources of Seychelles.
- c) To promote public awareness of the need to protect, preserve and improve the environment.

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