

## **OMBUDSPERSONS FOR THE FUTURE**

### **Message from Judge C. G. Weeramantry to the Annual General Meeting of the World Future Council, November 5, 2011**

The legal systems we have evolved over the centuries have a vast gap in their structures which has passed virtually unnoticed down the centuries. This vast void is their total failure to provide protection to those they are deeply obliged to protect, merely because this group is unable to give expression to its views. Their voice therefore passes totally unheard. Indeed this omission covers a far greater segment of humanity than those who are covered by the protection of our legal systems.

Can anything be more short sighted in a legal system than to overlook altogether a vast range of those whom it should be its mission to protect. This is precisely what we do in regard to future generations, whom it is a primary duty of legal systems to protect.

One of the prime objectives of any legal system which claims to be a developed legal system is the protection of those who are unable to protect themselves. If there is a group of such people and not merely a few individuals the duty of protection is even greater. If there is not merely a group, but a vast number of such people amounting to an entire population, this duty becomes imperative. If that vast number consists of our own descendants, the neglect of our duty to protect their basic rights would shock the conscience of any observer of that legal system.

If the justification offered is that these people, who will be our own descendants are not yet born, the observer would be surprised to learn that any legal system claiming to be a developed legal system can be so limited in its vision. Furthermore, when the damage which is being consciously caused to them is so blatant as to cause deformities to the human body, contamination of the atmosphere, plunder of earth resources, pollution of the oceans and the poisoning of fauna and flora, an observer of such a legal system would stand aghast at its inattention to one of its primary duties.

Sadly this is a situation in which we find ourselves in this age which claims to be more advanced than any in the 30 centuries of civilization which have preceded it. Legal systems look on inactive while helpless future human beings are deprived of their undeniable birth rights because we the present generation are anxious to increase our wealth and magnify our political power and further the influence of our own limited groups, whatever the cost to future generations and to our own posterity.

Indeed one would begin to wonder whether a legal system containing such a blatant omission can claim to be a civilized legal system.

What I am referring to is the fact that the human community whom the law should protect consists not merely of ourselves who are alive here and now and can therefore assert our rights, but that vast number of our children and our children's children who are yet unborn. They need even more than those who are now living, the protection of a legal system as they are deprived of the opportunity to fight for their undeniable birth rights as human beings merely because they are not yet in existence. One is prompted to ask whether anything can be more backward in a legal system than the failure to provide for this vast

segment of humanity which far outnumbers the selfish few who are now alive and are concerned only to protect their own rights whatever the cost may be to their own children and their children's children.

Contrasting with this short sightedness of modern civilization, native African wisdom tells us that the human community is three fold – past, present and those who are yet to come. Any decision concerning the community needs to take account of all these three sections without which this decision would be truly lopsided. Ancient native American wisdom tell us that no major decision concerning the community should be taken without considering its impact on seven generations to come.

It is worthy of comment that many of these legal systems are supposedly Christian legal systems and that one of the severest condemnations uttered by Jesus was the condemnation of those who impose obstacles in the way of children. These condemnations of those who did so were so strong that he observed that it would be better for them if they had a millstone tied around their necks and they were drowned in the ocean (Matthew 18.6)

Yet legal systems modeled for centuries on the teachings of Christ had paid no heed whatsoever to the rights of our children and their children's children for generations to come.

All religions teach these principles yet all legal systems ignore them. I have dealt with the teachings of five major religions on this topic in *Tread Lightly Upon the Earth: Religion, the Environment and the Human Future*. The materialistic pressures that exercise such a dominant influence on legal systems have no time or space for concepts aimed at protecting those who are not present here and now to protect themselves.

Those in positions of power today are mainly those who wield economic power and political power. Economic power by its very nature is dependent on quick results, for shareholders need to see balance sheets reflecting great profits in the near future. Political power is similarly dependent on short term results. When will this measure benefit the electors so that I can secure their vote at the next election?

Consequently the time frames of those who are in high authority in the world today are extremely short. What will be the result in the next few years? No one pauses to ask what will be the results ten generations from now? Those are questions that daydreamers and utopians ask but not those in real power in this intensely practical world. Sadly lawyers and judges for centuries have followed and endorsed this pattern of thought. They say to themselves "We can only give relief to those who appear before us and state their case".

Legal systems have forgotten that they are the custodians of society and of societal rights on behalf of the human community and not merely those who can stand up in a court of law and assert their rights "If you cannot do so we are very sorry but a practical legal system cannot be expected to take care of you".

I recall in this context an argument addressed in court by a lawyer appearing for one of the anti nuclear powers in the matter in which the General Assembly sought the Opinion of the International Court on the legality of the use or threat of use of nuclear weapons.

This lawyer said that if stone age man had been able, fifty thousand years ago, to damage the environment in the manner in which we have polluted it in our time, we would have condemned them as savages, brutes and barbarians who knew nothing of the impact of their activity on generations to come. I am sorry to have to observe that since the present generation knows full well the impact of their rapacious and neglectful treatment of the environment for generations to come, and still deliberately continues to do so, it must be more savage, barbaric and brutal than those imaginary Stone Age people.

We know the effect of our actions, we know the damage it causes to our children's children, we see the profit to ourselves and we consciously choose the course of profit to ourselves whatever the damage to our posterity. No generation since the human race began has been so regardless of its obligation to its children and its children's children.

A visitor from outer space seeing the way we despoil the planet which is our common home and the way in which we rob our posterity of their birthright even to the extent of polluting it beyond repair would wonder whether we have parted company with our sense of values.

They could of course say that even if the general populace should act in that fashion surely the lawgiver, the lawyers and the judges would fashion the laws of that society in such a manner that this dreadful crime to all future generations is averted. They would then look at our legal system for the ways in which it seeks to protect those whom it is its bounden duty to protect.

Sadly and to their surprise they would find no such protection and they would ask with renewed force the question whether this race of people has lost all compassion, all civilization and all the higher values which should attach to a group that claims to be civilized.

All of this leads to the question what principles and instrumentalities have legal systems put in place for the protection of future generations. Have they provided for spokesmen for these people whose voice passes unheard? Has the legal system provided protection to the environment which must be the common home of humanity for a thousand generations to come? The negative answers to these questions would cause them to ask whether our legal systems are so base and crude that they do not provide for representation of the interests of those future generations through an official authorized to appear before court and empowered to protect their rights. Have they not thought of a spokesman for future generations? have they not thought of imposing sanctions including criminal sanctions on those who steal for their own benefit the purity of the environment of our children and children's children? Have they not seen as criminal these actions which now pass, in most legal systems, as being completely within the law?

Unfortunately the answer is that these legal systems have slept upon their watch. Those who are to appear on planet earth in the future must themselves protect themselves even though they have no voice which is heard in our legal system. The present generation has the right to use the earth and its resources as they please so long as they do not violate the law. There is as yet no law preventing such conduct. So they are good citizens proceeding within the law and we have no right to interfere with them. How quaint this must seem to an external observer of the legal systems which now prevail.

Surely such a view of the matter should put all of us, not merely legislators, judges and lawyers, but every

citizen, under scrutiny for our callousness in disregarding such a basic obligation which every creature on earth has shown to its descendants.

I cite the evidence of some witnesses from the Marshall Islands who came to the International Court and gave evidence given before us of the deformities arising from the nuclear testing in the Pacific:

Marshallese women "give birth, not to children as we like to think of them, but to things we could only describe as 'octopuses', 'apples', 'turtles' and other things in our experience. We do not have Marshallese words for these kinds of babies because they were never born before the radiation came. Women on Rongelap, Likiep, Ailuk and other atolls in the Marshall Islands have given birth to these 'monster babies'. . . . One woman on Likiep gave birth to a child with two heads. . . . There is a young girl on Ailuk today with no knees, three toes on each foot and a missing arm . . . The most common birth defects on Rongelap and nearby islands have been 'jellyfish' babies. These babies are born with no bones in their bodies and with transparent skin. We can see their brains and hearts beating. . . . Many women die from abnormal pregnancies and those who survive give birth to what looks like purple grapes which we quickly hide away and bury. . . . My purpose in travelling such a great distance to appear before the Court today, is to plead with you to do what you can not to allow the suffering that we Marshallese have experienced to be repeated in any other community in the world."

It needs no great expositions of the law to indicate to anyone of common sense that such conduct constitutes a crime against future generations.

No legal system, domestic or international, which claims to be a developed system, can permit such conduct to pass without arrangements for representation of the interests of unborn generations or without criminal sanctions on those who knowingly indulge in the conduct causing such monstrous results. It is time in this century, which is the last century we shall have to put our house, in order to include such principles and arrangements in its legal systems and enable them to handle the unprecedented dangers which we are unleashing on all our descendants for untold generations to come.

The concepts of an ombudsman protecting future generations and of crimes against generations to come are long overdue. It reflects no credit on our generation if we permit this vast hiatus in the statute books of humanity to pass un-remedied.

The time has surely come for the law to be made more responsive to the obvious need for protection of our children's children against the rapaciousness and unconcern which we have so long permitted to continue without adequate preventive measures from our legal systems.

Ombudspersons for the future are surely long overdue.