

Current Criminal Law

SALLY RAMAGE®

www.sallyramage.net

Contents -

VOLUME 6 ISSUE 1, SEPTEMBER 2013

Book review: Appeal Court in Guyana (Cavendish) pgs 1-34

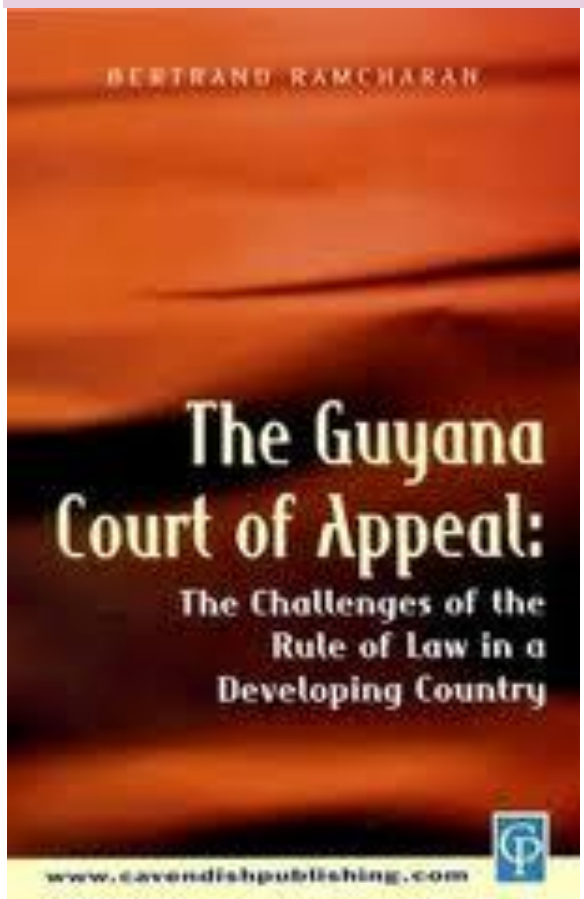
- Chief Editor: Sally Ramage, Member of the Chartered Institute of Journalists; Society of Editors and Society of Legal Scholars, UK.
- Consultant Editors: Anand Doobay, Partner, Peters & Peters Solicitors, London, UK.
Leonard Jason-Lloyd, Visiting Fellow, Midlands Centre for Criminology & Criminal Justice, UK.
Roderick Ramage, Consultant, Mace & Jones Solicitors, Liverpool, UK.
David Selfe, Deputy Director, Law School, Liverpool John Moores University, UK.
Edward S. A. Wheeler, IT Manager, Medway Council, UK.
- Design: David. E. Tonkinson, Designer and Online Editor, Poole, UK.

The Guyana Court of Appeal

The Challenges of the Rule of Law in a Developing Country

Bertrand Ramcharan

Cavendish Publishing Ltd



BOOK REVIEW BY SALLY RAMAGE ®**Introduction**

It is with huge pleasure that I have had the opportunity to review this law book, which, regardless of date of publishing, illustrates, at the coal face, the workings of the Rule of Law in one developing country, Guyana, formerly British Guiana in South America. This is a most important book, full of food for thought, which can be used as a tool of comparison with other developing countries striving for Rule of Law.

The author

The author is a Guyanese, Dr Bertrand Ramcharan, Barrister-at-Law, Commissioner of the International Commission of Jurists, Member of the Permanent Court of Arbitration, and Fellow of the London School of Economics and Political Science.

The Guyana Court of Appeal

The book's ten chapters introduce Guyana's Court of Appeal to a wider public and includes chapters on the role of the Guyana Court of Appeal; the legal profession; the Rule of Law; fundamental rights; sources of law; the criminal law; law of torts; law of contracts; and property law. The Supreme Court of Judicature consists of a Court of Appeal, a High Court and several courts of summary jurisdiction.

In February 2001, the Guyana government signed an agreement, along with nine others, establishing the Caribbean Court of Justice to replace the UK's Privy Council. This is a vastly important step that Guyana has taken since the UK Privy Council is, in theory, the principal council of the British Crown and consists of persons nominated by the Crown to the office. This Court of Justice began to sit in 2003. By disregarding the United Kingdom's Privy

Council, Guyana has placed itself out of reach of English jurisdiction some thirty years after its independence from colonialism. The Privy Council is noted as being ‘*a great council of State held by the sovereign with her councillors, to concert matters for the public service, and for the honour and safety of the realm.*’ⁱ

The number of persons incarcerated in prisons in Guyana amount to less than 2,000.ⁱⁱ

Non-Guyanese have blackened the association with Guyana

Unfortunately when one mentions the country of Guyana, Western peoples still remember Guyana for being connected with the quasi-religious North American cult leader who killed over 900 people with cyanine in Kaituma, a vast part of the South American jungles. This cult leader, Jim Jones was an American from Indianapolis who had attracted many young drug addicts and poverty-stricken United States citizens into his ‘church’, the ‘*People’s Temple*’, then later persuaded over one thousand US Citizens to emigrate with him to settle in Kaituma in the jungles of Guyana.

Like a long-firm fraud

Like a ‘long-firm fraud’, he had built up a good reputation with officials in the United States, which was well documented in the US newspapers and so he was welcomed by the Guyana government, which was soon to receive complaints from relatives in the US who thought their family were being kept by force by Jones. When attorneys from the US flew to Guyana to gather evidence for their clients, Jones panicked and persuaded his who ‘congregation’ to drink lemonade laced with cyanine. That was in 1978 and yet the world associates Guyana with the sordid US quasi-religious cult.

The US should have made an extradition order for his return to face interrogation in the US.

Guyana's Port Kaituma's history

Port Kaituma is a place in the jungles of Guyana, developed after manganese was discovered near there, at Matthew's Ridge. The manganese mining industry there cut a canal from the Kaituma River to transport the mined manganese.

The stain of US citizen Jim Jones on Port Kaituma's reputation

The US citizen, Jim Jones, created a commune at Port Kaituma and decided to take freely, 2000 acres of jungle for himself and his friends without licence from the Guyana government and named it Jonestown. and his 'congregation' committed suicide after US congressman traveled to Guyana with some relatives of the cult members and some newspaper reporters. He was slave driving the cult; he was taking drugs and he had impregnated many of the young women in his commune. In one year there were 30 babies were born. He was importing food because he had no success from crops he made the people cultivate and many in the cult resorted to being fed gravy and rice three times a day.

After this scandal and tragedy quietened down the 900 bodies flown back to the US, manganese mining continued at Port Kaituma but eventually ceased and is replaced today by small gold-mining companies called self-named 'Jonestown' since Jim Jones had not been granted a licence to name any part of the country of Guyana in South America. After the tragedy of 900 US citizens' suicide by cyanide, the Guyana government should have eradicated all signs of so-called 'Jonestown' which had no legal licence to be so named and initiated regulations for foreigners entering Guyana and possessing 2000 acres of land without purchase, legal licence or legal application to emigrate en masse to Guyana.

The Guyana government should have made immediate moves to examine their mutual agreements with countries and their extradition and immigration laws because this has become a tarry stain on the innocent government of Guyana.

From English common law to modernity

The author in his preface explains that for the decades since this country's independence from the United Kingdom in 1966, the courts of Guyana have charted a course for the rule of law, maintaining the core protections of the common law as imprinted by the law of the United Kingdom, modernising this where necessary to meet the conditions of a progressive, developing society, as Guyana's is. Dr Ramcharan uses the Guyana Court of Appeal as a vehicle to examine the rule of law in a developing country and chose the criminal law; law of contracts; law of torts and property law to demonstrate the rule of law in these non-political areas of law, admitting the sometimes absence of the protection of human rights.

Co-operative Republic of Guyana

An introduction to the country of Guyana was a good start. Guyana has a population of less than one million people in total and is the size of four times the size of the United Kingdom ('UK'). Some have said that Guyana is the size of Idaho in the United States. It was first invaded by the Dutch West Indian Company having its own indigenous population.

The territory was 'captured' by Britain to whom it was ceded in 1814 and named British Guiana. African slaves were transported there to work the sugar plantations and in the 18th Century, East Indian and Chinese were transported to British Guiana as 'indentured labourers'. From 1950 politics took over and the People's Progressive Party ('PPP'), led by Dr Cheddi Jagan and by Mr Forbes Burnham.

In 1961, Mr Forbes Burnham formed the People's National Congress ('PNC') when internal autonomy was granted. In 1966 British Guiana became known as Co-operative Republic of Guyana and the country became an independent member of the Commonwealth.

A new Constitution in 1980

Mr Forbes Burnham was voted in as the first Prime Minister and later, the President of Guyana. In October 1980 a new Constitution was agreed and with it, an Executive Presidency and a National Assembly of 53 elected members and 12 members appointed by the Regional Authorities. Elections for five-year terms are held under the single-list system of proportional representation, with the whole of Guyana forming one electoral area and each voter casting a vote for a Party List of candidates.ⁱⁱⁱ Appendix 3 illustrates the history of Guyana.

Social statistics and ethnicity

Forty years later some of Guyana's relevant social statistics^{iv} were as below:

Per 1000 Guyanese

Birth rate	34.7
Infant mortality	56.0
Fertility rate	2.3
Death rate	8.6

The ethnicity of Guyanese is mostly East Indians, followed by Africans, those of mixed race, the original Amerindians and one percent of others. The towns in Guyana are Georgetown, the Capital, and Linden, New Amsterdam, Rose Hall and Corriverton. Of the total population only fifty percent are accounted for in the labour force, of which three-quarters are men.

Climate and rainfall

Today, most people in Guyana live in the rural areas and in fact Guyana has the highest proportion of rural population in the whole of South America. It is not difficult to see why the British so favoured Guyana as it has a tropical climate, conducive to producing sugar, which

created much wealth for the British. Its tropical climate has rainy seasons from April to July and from November to January, with the sea breezes cooling the humid temperatures. Guyana has an annual average rainfall of 87 inches (ie, 2,175 mm).

Mainstay Agriculture

It is not surprising that agriculture^v accounts for 35% of General Domestic Production ('GDP'), the remainder by services and industry^{vi} in almost equal measure with a present annual GDP of just fewer than one billion dollars.

Finance

The Bank of Guyana is Guyana's bank of issue and there are six commercial banks operating in Guyana, only two of which are foreign-owned. Guyana exports sugar, gold, rice^{vii}, bauxite^{viii}, shrimps, timber and rum.

Carbon credit trading scheme unfruitful

Potential financial sources should have come from the Carbon Trading Scheme since Guyana has the second most important expanse of forestation and emits just one-eighth of the emissions of carbon dioxide by Venezuela, but this has not transpired, one factor being disregard for this country's prime location environmentally in this planet, perhaps due to it being a developing country. Another reason is the developed world has set up environmental-saving schemes, taxation of pollution, etc. *ENERGY STAR® Putting: Congregations Guide*

Other countries' governments are advocating the improving of energy efficiency, allegedly, easily and cost-effectively. Reduction in daily energy costs and monthly utility bills can make it well worthwhile to pursue effective-efficiency upgrades, using these methods:

Getting inexpensive energy audits and/or rebates for energy-efficiency upgrades.

The bugbear of the need for capital for an energy-efficiency upgrades require investment, and some countries offer the population a payment on any energy that their system does not use or need - a positive cash flow from energy savings while paying off the investment for new equipment, in effect alleging that strategic energy-efficiency investments are a hedge against the certainty of higher utility bills.

Energy, telecommunications and transport

Most of Guyana's energy must be imported; domestic electricity is produced largely by thermal generation and is available only on the coastal plain and along the lower reaches of the rivers. Hydroelectric potential in Guyana is considerable, especially at Tiger Hill on the Demerara River and Tiboku Falls on the Mazaruni River. Development is hampered, however, by the remoteness of the falls and the large amounts of capital needed for generation and transmission facilities.

Essential industries for the progress of a developing country

There are over 7000 kilometres of roadways in Guyana but passenger cars are few in number, merely 25,000 for a population of over 700,000.

There is a government-owned railway in parts of Guyana, with a commercially-owned railway^{ix} for some other parts. Air travel and transport is at the only airport in Guyana, the Guyana International Airport at Timehri near the capital, Georgetown.

The Guyana Airways Corporation is the national carrier/communications is the inland public telegraph and radio services operated by the Guyana Telephone and Telegraph Company Limited.

There is an appalling dearth of Internet and telephone use by the population with less than 100 post offices in this large and sparsely populated country. There are just two newspapers which are read by just 42,000 of the population.

The Guyana Television Broadcasting Company is state-owned and 12 private stations relay United States satellite services.

The laws of Guyana

Similar to many other ex-colonial countries, for example, Singapore, Guyana's laws are still based on English common law and statute law, especially in the area of property law.

Likewise, the majority of the population retained the Protestant religion.^x

Despite their general and comparative poverty, Guyana's people are fairly well educated, with over 98% of the adult population efficient in literacy. This rate of adult literacy is the highest rate of adult literacy in the whole of South America and Guyana's homicide rate is less than 100 for a total population of nearly one million.^{xi}

Current legal issues

In 1963, Venezuela demanded the return of the Essequibo region and it in March 1983 it was unresolved and decided that the United Nations Secretary General should mediate.^{xii}

Meanwhile the United Kingdom conducted a steady and robust trade with Venezuela regarding both imports and exports. Whether this has made the United Kingdom's interests with Guyana in conflict is to be discussed.^{xiii} Additional Suriname (or Dutch Guiana) made a claim in 1984 that it owned and wanted return of an area between the New River and the Corentyne River. This remained unresolved until June 2000 when offshore oil exploration changed the dispute into an international maritime dispute.^{xiv}

Oil exploration dispute officially resolved in 2007

This maritime boundary dispute was finally legally resolved and since then offshore oil exploration began in the Guyana-Suriname Basin in late 2007. However in October 2013, Venezuela blocked an oil survey which was being carried out in Guyana's waters. The Venezuelan government ordered the seizure of the oil vessel.¹⁵

Conclusion

After the initial laud and glory for the UK's Carbon Credit Scheme, the developed world's countries realized that the issue is not really about the health of the globe but about the possibility, in reality, that forest rich countries like Guyana will become rich (like the Arab Oil Sheiks became very rich) because they hardly use their own quota of carbon credits and are a massive resource for trading with polluters' carbon overuse. This *very poor country might become rich from carbon credits, gold, or oil.*

So the Carbon Credits scheme was effectively put 'on the back-burner' whilst the West looked around for other ways of manufacturing energy- by wind turbines, nuclear- power- plants to run electric vehicles, etc.

The United States Geological Survey of Guyana's waters noted that Guyana's waters have the largest unexplored oil basins on this whole planet, with an estimated recoverable amount of 15.3 Billion barrels. The US survey also estimates that Guyana has 42 Trillion cubic feet of unexploited gas reserves. (It would be flippant to state the possibility of the US taking this enormous amount of natural resources from the poverty-ridden but beautiful country and so saw no reason to sign the energy saving treaty. (See Appendix 2: paper by Sally Ramage,

‘The carbon credit markets: Western financial opportunity born out of potential global crisis due to centuries of Western pollution’, *Mondaq Legal Newsletter*, 7 January 2005 and on website <http://www.criminal-lawyer.org.uk> in 2014.)

Rather, once again the West have won Guyana’s resources practically free of charge, depending on what meager contracts Guyana signed with American and Canada, to whom the cost of the explorations lay for bringing up oil that can last for another century. So, again, the foreign companies which go to Guyana to mine, become rich instead, like the gold mine owners in Guyana. Guyana is a true underdog.

In the year 2000, Venezuela threatened any foreign companies which intended to invest in the development of Guyana’s Essequibo River. Venezuela’s government also opposed the granting by Guyana of licences to United States’ companies with regard to the exploration for petroleum.

In 1978 the President of Venezuela visited Guyana to offer to part-payment for a hydro-electric power station in the Cuyuni-Mazaruni region, having previously vigorously objected to its construction, in exchange for Guyana’s Essequibo coast, rich in oil and as yet unexploited deposits and perhaps even ripe for fracking.

On 15 June 1968, the Venezuelan government announced in the United Kingdom’s *Times* newspaper, *by way of a paid-for advertisement*, that Venezuela OWNED Guyana’s nine-mile seaspace along Guyana’s entire Essequibo coast. Venezuela then signed a Treaty with Trinidad and Tobago without consulting those countries affected by it, namely, Guyana, Barbados and Grenada. This Venezuela did in flagrant breach of maritime law. So it goes on, with the rich getting richer and the poor poorer in such a beautiful country ripe for intensive technological and electronic improvements; heavy industrialization; and growth in population.

Guyana's Court of Appeal is a replica of mostly English common law. It is good that, legally, Guyana has abandoned the English Privy Council and economically, has enjoined itself with other Caribbean countries (CARICOM). The Guyana government, worryingly, has learnt no lessons with regard to borrowing money from the U.S. for building roads and dams, all of which were substandard in build and resulted in Guyana being forced into bankruptcy some years ago. The government should only sign short-term licenses for extremely high fees, so that the country can economically benefit from the Eldorado wealth from oil to come. An economist is at the helm and it is hoped that he consulted clever lawyers before he signed over the family gold and silver in the form of resources.

Endnotes

i John Burke (editor) (1977) *Jowitt's Dictionary of English Law*, London: Sweet & Maxwell, at page 1433 of Volume 2.

ii This represents 200 per 100,000 of the population.

iii In 1992 Dr Cheddi Jagan became President of Guyana. Dr Jagan died in 1997 and his wife, Mrs Janet Jagan, became President in 1997.

iv Barry Turner, (editor) (2010) *The Statesman's Yearbook, Hampshire, UK: Palgrave Macmillan, at pages 775-779.*

v Agricultural production consists of sugarcane, rice, coconuts, cassava, plantains, bananas, pineapples, coffee, cocoa, copra, fruit, vegetables, tobacco, with livestock products of beef, veal, pork, bacon, ham, lamb, mutton, poultry, eggs, and milk and fish.

vi The service industry in Guyana consists mainly of the production of sugar, rice, timber, coconut, gold and diamond mining textiles, pharmaceuticals, rum, beer, non-alcoholic drinks, footwear, margarine and edible oils, refrigerators and paint, electricity, bauxite, copper, tungsten, iron, nickel, quartz and molybdenum.

vii The country's many rice mills, like its rice fields, are generally small-scale and individually owned, although there are several large government mills along the coast.

viii Most bauxite and alumina (aluminum oxide occurring in hydrated form in bauxite) is processed in the city of Linden. The rest of the country's bauxite mining takes place on the Berbice River; a processing plant also operates downriver at Everton..

ix The Guyana Mining Enterprise operates a standard gauge railway of 133 kilometres from Linden on the Demerara River to Ituni and Coomacka.

x The Christian following amounts to almost 60%, whilst 30% of the population kept the Hindu religion and 10% are Muslims.

xi National Statistical Office, Bureau of Statistics, Avenue of the Republic and Brickdam, Georgetown, Guyana.

xii Braveboy-Wagner (1984) *The Venezuela-Guyana Border Dispute: Britain's Colonial Legacy in Latin America*, London.

xiii The UK exports 27% of its exports to Venezuela and imports a similar percentage each year.

xiv Guyana is a member of the United Nations ('UN'); the World Trade Organization ('WTO'); the Commonwealth of Nations (an international organisation of 53 Member States, operating by consensus. It was constituted in 1949. Of the 53 Member States, 16 are ex-colonies to Britain and Her Majesty, Queen of the United Kingdom, is symbolically the monarch of the Commonwealth); Organization of American States ('OAS' is the world's oldest regional organisation. It was formed in 1890. See www.oas.org); the Inter-American Development Bank ('IDB', formed to support efforts by Latin America and the Caribbean countries to reduce poverty and inequality through development); the Association of Caribbean States ('ACS'); the Caribbean Community ('CARICOM'); the Organisation of Islamic Cooperation ('OIC'); and Guyana is also a Member State of the African, Caribbean and Pacific Group of States

('ACP') which has formed a cooperative relationship with the European Union (the ACP-EU development cooperation due to the 1957 Treaty of Rome which granted associated status to 31 overseas territories and through which technical and financial assistance can no longer be had from the European Development Fund ('EDF') funds of 22.7 billion Euros in 1959, now depleted).

15. Editor, 'APNU warns gov't over peril of renewed economic blockade by Caracas', *Stabroek News*, 22, November 2013, at

<http://www.stabroeknews.com/2013/news/stories> accessed on Sunday, 23 November 2013.

This seizure of Guyana's vessel from Guyana's waters is in breach of the Statute of the International Court of Justice ('ICJ') 1945 within the Charter of the United Nations, Chapter VI: Pacific settlement of disputes, Article 33, which states:

'Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems it necessary, call upon the parties to settle their dispute by such means.'

APPENDIX 1: Carbon Credit Market: paper written in 2005

Sally Ramage, 'The Carbon Credit Market – Western financial opportunity born out of potential global crisis due to centuries of Western pollution', *Mondaq Law Newsletter*, 5 January 2005.

Abstract

1. Early studies in the 1980's of the Transboundary or Regional impact of air pollution has given way to the realisation that the threat is now global in scale. Evidence has emerged, linking the release of chlorofluorocarbons, halons and other chlorine based substances with the gradual destruction of the planet Earth's ozone layer. This layer is located in the stratosphere but is still well within the earth's atmosphere, and it is important because it filters sunlight and protects the earth from ultraviolet radiation. Loss of this atmospheric shield would have serious implications for human health, agriculture and fisheries productivity over a long period, and could leave future generations a legacy of irreversible harm.
2. The major risk is from carbon dioxide (CO²) emissions, which emissions are linked with patterns of energy consumption in the developed, industrial world.
3. This Paper describes the route of International Agreements, Regional Regulations and Country Statutes passed (since the discovery of these emissions) to stem the degree of pollution, on pain of penalties.
4. This Paper describes how the same Western industrialised countries which caused the pollution are now set to reap vast financial and economic benefits from their own environmental crimes by creating a market for the pollutants and trading their excess

pollutants for cash-poor and undeveloped countries levels of under - pollution , thus keeping the levels of pollution at the same high levels by continuing to pollute whilst restraining under-developed countries from advancing because they will have sold their right to industrialisation to the already industrialised countries.

5. This Paper concludes by envisaging the environmental, legal and economic scenario in decades to come and questions whether this securitisation of western pollution is fair on the rest of the world.

Introduction

6. The twenty six elements of the United Nations ('UN') environmental programme were established in 1972 at the 'Stockholm Environmental Matters Conference on Human Environment', to promote international co-operation and to recommend policies to co-ordinate environmental programmes alongside other UN Agencies such as the International Marine Organisation ('IMO'); the International Labour Organisation ('ILO'); the International Oceanographic Commission ('IOC'); the International Atomic Energy Agency ('IAEA') and the International Monetary Fund ('IMF').

7. The main effect of the environmental programme is to prevent, reduce and control environmental harm through monitoring of countries' activities so that there is sovereignty over natural resources and non-pollution and protection from hazardous waste of international water courses as this affects air pollution, vegetation and habitation.

The European Union

8. The European Union ('EU') with its twenty five member states has ratified environmental treaties and because it can issue regulations to its Member States, the EU has passed the 1986 Unified European Act and the 1992 European Union Convention to ensure that its member states have defined environmental objectives to preserve, protect and improve the quality of its environment in the form of tax and development measures.

9. In 1993 the EU passed the Regulation EEC/93/1836 which was an environmental management and auditing scheme for European industry, compelling Member States to use the best technology available in order to reduce pollution levels.

The 'polluter pays' system

10. The Council Directive 75/436 Euratom, imposed on the steel industry; the international system of '*polluter pays*'. A Regulator of the environmental finances called Financial Instrument for Environment, ('LIFE'), was formed by European Directive, EEC/92/1973, to control pollution from motor vehicles, lead, industrial plants, waste incinerators, and air quality assessment and management.

11. In 2005, there were over 1000 pieces of legislation in the world and these mention Climate Change as a motivation to enforce environmental laws internationally and domestically.

The 1997 Kyoto Protocol to the Climate Convention

12. The Kyoto Protocol to the Climate Convention was adopted in 1997 and it made binding obligations to reduce emissions of greenhouse gases. Under this Protocol, developed countries agreed to reduce emissions to 5.2% below the 1990 levels in the period from 2008 to 2012.

13. It is to be noted that the Federal United States of America has refused to agree to the ratification of the Kyoto Protocol and deny any problem with the ozone layer (probably aware of the vast untapped quantities of oil and gas in the Guyana waters).

14. Directive 2000/25/EC in 2000 was to prohibit gas and pollution emissions by motor engines, reporting on sulphur content by 2003.

But the 2003 reports were not sent in by France, Belgium, Austria, and Italy in 2003 and the European Commission was forced to issue these member states with written warnings.

15. In 2004, Directive 2004/35/EC laid down environmental liabilities for any pollution caused.

Other countries' CO² emissions

16. In the United States, more than half the power companies expected penalties for mandatory limits on CO² emissions whilst Canada admitted to an increasing proportion of pollution by over 2 percent a year and the Swiss have proposed a tax on CO² emissions in their country.

17. Of the ten new EU member states, Slovenia's government had not issued policies on the environment; neither did Romania, Latvia, Estonia, Bulgaria, Cyprus, Poland or Malta, there being very little regulatory infrastructure in these poorer Member States *despite lavish EU aid of billions of Euros to bring them to an acceptable level in readiness to join the EU.*

The proposed Emissions Trading Plan

18. In 2000 the United Kingdom ('UK') issued a consultation paper to the European Commission's proposal of a swap market for divesting a country of its over-pollution as per its permitted quota by paying an under-developed poor country which does not use

much of its own pollution quota to put on its records the over-polluting country's excess pollution.

19. Such a pollution swap market would allow emitters to trade carbon allowances on the open market, much like a commodity. It was calculated that emission trading will add flexibility in terms of when and where emission reductions are to take place.

20. So emitters face large abatement costs and some countries may prefer to buy additional allowances from the market if prices are lower than the costs of implementing in-house measures. At the same time, countries with industrial plants which have low abatement costs can try to beat their own emission targets and sell off their surplus allowances at a profit.

21. So polluting the under-developed countries will apparently continue by the industrialised countries who buy their additional allowances by securitization.^{xiv}

The atmosphere is not a distinct territory

22. The polluter will therefore continue to pollute and harm the polluted by using a legal financial device because the atmosphere is not a distinct category.

23. Some European countries (including the UK) began to implement emission trading programmes well ahead of other countries.^{xiv} It is therefore imperative that all countries are helped to bring themselves up to readiness so that when trading began, the poor countries with strong trading power in carbon credits would have the financial infrastructure to get their true worth to those polluting industrialised countries which will need to trade.

There are issues with carbon trading that are unresolved

24. The proponents of carbon trading say that such markets will help to monitor emissions and costs and will reduce emissions, whilst opponents say that rich countries that have polluted the planet are purchasing the right to pollute by buying emission allowances.^{xiv}

EU PHARE AID

25. The Eastern European countries which joined the EU in May 2004 were given billions of Euros to refurbish their steel plants by way of the PHARE^{xiv} aid. These Eastern European countries have the same emission limits set in 1990 by the Kyoto Agreements.

26. Their allegedly refurbished steel plants should emit less CO² and so they should be able to trade their surplus. It has been argued that these countries will be the cause of even greater CO² emissions as they offer their excess allowances for sale to such large consumers as the USA.^{xiv}

Unresolved issues remain

27. Unresolved issues regarding a carbon market are as follows

(i) Limits have not been agreed to.

(ii) Sources of emissions traded have not been agreed – for example, should emissions from nuclear energy, hydropower, steel plants, be allowed to be traded?

How will emissions stated by polluting countries be verified?

What standardised model of measurement will be used?

Will there be taxation on each transaction?

Will there be a limit to the size of each transaction?

Who will book-keep the levels of carbon traded to the carbon-credit countries?

Who will certify these amounts? Statistics reveal that even in 1850, 80% of CO₂ emissions resulted from the North yet this continued overuse of the planet is being allowed.

Why has this inequity of the North's overuse of the planet's valued resources been consolidated into legislation?

Why has the Western world agreed to continue the industrialisation of their countries at the expense of the undeveloped countries which will be forced to remain undeveloped?

What aspects of this carbon trading are being addressed by companies' *Corporate Governance Rules*? Corporate responsibility in such carbon trading companies must demonstrate how they are managing risks and maintaining control.

There have been no Corporate Governance Rules agreed for energy trading UK companies, nor is there an open register of such companies.

There is no agreed 'fines and other penalty' system^{xiv} in place for such companies.

There is no environmental certified audit of such companies.

There is no UK legislation relating either to excessive emissions or to limits on trading or to pricing brackets to avoid unfair competition and exploitation.

The UK has not produced a Model for measuring emissions nor any audit system for certifying emission trade transactions, not any Accounting Standards to reveal these transactions.

There have been no regulatory systems set up to monitor uniformly the state of the technology used to in process controls, no government incentive by way of extra tax allowances for capital spending .on computer control systems for metal production processes.

Corporate Governance Stock Index

28. A most necessary Corporate Governance tool in such companies would be a Corporate Governance Stock Index which will aid global confidence. Such an index would help investors by simply indicating how good the Corporate Governance of the company is as a score.

The Greenhouse Gas Emissions Trading Scheme

29. The UK initiated the Greenhouse Gas Emissions Trading Scheme (ETS) in 2000. This scheme allows UK companies that exceed their targets for energy reduction to ‘bank’ credits for the reduction in carbon dioxide emissions that result. These credits having a monetary value BASED ON DEMAND^{xiv} and from which profits can be made when traded. The UK Initiative on carbon trade markets began in the year 2000.^{xiv} The trade of greenhouse emissions in exchange for money has already begun^{xiv} and not only does it trade in power stations emissions, factory emissions, steel manufacturing, aluminium manufacturing, it also deals with aviation emissions.^{xiv}

Information Technology

30. One of the most critical areas in these businesses is that of Information Technology: the measurement and control of IT processes and procedures; and the presentation of timely and accurate reports to supervisory bodies.

The six greenhouse gases

31. The Kyoto Protocol, ratified by the majority of countries except the biggest polluter, the Federal United States of America, lists six greenhouse gases:

1. carbon dioxide;
2. methane;
3. nitrous oxide;

4. perflourocarbons;
5. halocarbons; and
6. sulphur hexafluoride.

The six greenhouse gases each has a CO²-e value

32. Below are the CO₂ values of the 6 greenhouse gases:-

Greenhouse Gases	CO₂ - e value (in tonnes)
Carbon Dioxide	1
Methane	21
Perfluorocarbons	6590-9200 (varies by 39%)
Halocarbons	140-11700 (varies by 8200%)
Sulphur Hexafluoride	23900

Source: Rio de Janeiro earth summit Report (1992)

33. It is obvious that the varying value of perfloucarbons by 39% and of Halocarbons by 82 time the amount that could be stated, calls for an audit of these values and certification every time these values are recorded, if the figures and carbon credits traded are not to be deemed a nonsense.

Aluminium production

34. In aluminium production, two units of alumina plus three units of carbon produce four units of aluminium plus three units of CO² emissions.

Recycled aluminium production

35. Aluminium, used in car production, has a long life in which the reprocessing produces less carbon dioxide and companies that recycle aluminium must calculate the CO² emissions differently.^{xiv}

The global atmosphere

36. The atmosphere consists of fluctuating air-mass and it cannot be equated with airspace which, above land, is simply a spatial dimension subject to the sovereignty of the adjacent country. The overlap with territorial sovereignty means that the atmosphere cannot be treated as an area with common property. It is beyond the jurisdiction of any state. It cannot be compared with the high seas.

1979 Geneva Convention on Long-Range Transboundary Air Pollution

37. The atmosphere is a shared resource. Its control and regulation was stated in the Geneva Convention on Long-Range Transboundary Air Pollution of 1979. It is not clear how exactly the audit of CO² emissions will take place. This is bound to lead to litigation.

Fraud offences

38. In case of fraud by way of false statements about carbon credits or carbon emissions, the dispute would be a criminal matter. Would proceedings be granted in the place where the fraud was discovered^{xiv} or the country which is alleged to have committed fraud? Could such decisions be made beforehand by agreement? Could it be settled by arbitration even though it is essential a criminal offence?

Putting the world at risk

39. False statements about carbon credits would also lead to breach of contract matters.

What would be the penalties? Will penalties, if monetary, be passed back to consumers in increased prices? Would there be an emergency action if a country had grossly exaggerated false statements, to the extent of putting the world at risk? What would be the penalty? What of the human rights of that country's citizens?

Case law on atmospheric pollution: Trial Smelter

40. The only case about atmospheric pollution is the *1939 Trial Smelter arbitration case*^{xiv} in which a Canadian smelter^{xiv} caused damage as far away as seven miles into Washington, United States. The Trial Smelter case is the precedent that States can litigate against each other to prevent damage and environmental injury for which they are responsible. After the Trial Smelter case, there was more diligent regulation of smelters in Canada, ordered by the court and compensation paid also.

Germany's (and France's) excess pollution

41. Proof of unavoidable harm lies with the suffering party. Germany has such an excess of pollution in carbons that to get rid of the excess pollution it has, it would need to sell its greenhouse pollution at a cost to Germany of **\$1.22 Billion United States dollars**, working back to approximately 1,220,000,000 tons of EXCESS carbon dioxide pollution to be gotten rid of before the end of 2005, according to the carbon trading rules. Germany does not have 1.62 Billion Euros spare cash to sell off its present excess pollution, even if there were countries willing to buy its pollution. Germany therefore tried to persuade on a

change of rules in order to carry forward its excess pollution for the year, much like a book-keeping and accountancy does, in fact securitising its pollution.

Like Germany, France has excess carbon pollution.

Carbon Trading on the Chicago Stock Exchange since 2005

42. In the year 2005, Carbon Trading on the Chicago Stock exchange showed a sale price of a ton of carbon dioxide pollution to be Euro 0.94 per ton of pollution to the present Euro 8.7 per ton of pollution, a price increase of 925 percent in ten months. The Federal US treats its excess carbon pollution, ranging into trillion tons of carbon dioxide pollution, as of little consequence and has tried to have the case against it dismissed in court.

Australia's carbon pollution

43. Australia's carbon dioxide excess emissions in the year 2005 were valued at US dollars 1.15 Billion. Australia will need to borrow 1.15 Billion US dollars to pay to get rid of its excess carbon pollution by December 2005. Australia had plans to borrow 1.15 US dollars and make repayment of this large loan by the year 2030. This is the present seriousness of the financial and pollution precariousness in the Western industrialised world.

Terrorism by sabotage and no global jurisdiction

44. With respect to crime, be it financial fraud relating to the planned carbon pollution trading or acts of terrorism^{xiv}, no international conventions on jurisdiction exist.

The Bustament Code

45. There is however, a regional treaty between some Latin American countries, the Bustament Code, attached to the Havana Convention on Private International Law in force since 1935 between Brazil, Bolivia, Costa Rica, Cuba, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru and Venezuela.

1968 Convention on Jurisdiction

46. The EU has the 1968 Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters but no convention on criminal matters, although there is legal assistance in criminal matters.

Extradition laws

47. As far as the United Kingdom is concerned all crime is local as per the common law rule and any extraterritorial crime will rely on extradition laws, UK prosecutors retaining absolute discretion^{xiv} whether to prosecute or not.

Mutual Assistance in Criminal Matters

48. A Commonwealth Scheme for Mutual Assistance in Criminal Matters exists and was ratified in 1986 by 29 Commonwealth countries. However the Commonwealth Scheme has no guaranteed reciprocity.^{xiv}

Regulating for uniformity and equality of pollution

49. Then there is corruption^{xiv}, lack of professionalism and conflict of interest, but the most daunting task is the matter of regulating^{xiv} and auditing the pollution levels of every country to ensure uniformity and equality. For financial investigations, a Memorandum of Authority ('MOA') is often used, and there are set principles which state that the investigated country will give the requesting country assistance even if the MOU violates the requested country's laws; in strictest confidentiality; agreeing between the countries how they would gather the information requested; with the right to refuse to assist a country in the public interest of the requested country; and able to punish persons in their country who refuse to comply with the request.

More problems unfold

50. This is the knob of the problem. Will all countries be treated equal? Will a poor country with high carbon credit^{xiv} be given a fair value for that carbon credit or will that credit be discounted because that country is undeveloped? The legislation on carbon credits must be applied equally. Dworkin argued that the measure of equality is the treatment of all people as free and equal human beings. A further condition of Dworkin's equality would be that attitudes towards risk-taking and preferences for material resources be evenly distributed throughout the world's population.

The injustice

51. It is wrong that an unclothed and hungry, uneducated person should die so that a fat, healthy, educated, materially wealthy person should live, and if one must die so that the other may live, then it is the one with the abundance of experiences, fulfilment and usage of the planet's resources who should expire to allow the other some of what was always his due but denied him.

Rights and Duties of Man

52. The American Declaration of the Rights and Duties of Man, state, at Article 28, that *'the rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy'*.

Theoretically, there is no derogation, restriction or limitation available from the Article 28. A person has the inherent right to enjoy and utilise fully and freely their *national* wealth and resources.

The Ozone Layer is a social good

53. If we consider that health is the factor which is to be protected with the Ozone layer, then all people are important and equal and their carbon credits must be equally valuable. The trading of carbon credits in markets at the price according to demand is the using of

wealth maximisation as a normative ideal in the insurance of a social good, the Ozone layer, unless a country devises a plan for sharing the value of the Ozone layer by proportional representation, perhaps.

Every person's right to adequate environmental protection

54. As far as human rights to the environment goes, there have been cases in 1994^{xiv} and 1998^{xiv} that make it quite clear that Article 8 provides a solid basis for claiming adequate environmental protection. Human rights by way of political rights can be affected.

The Rio de Janeiro Declaration on Environment and Development includes principles, one of which states that *'environmental issues are best handled with the participation of all concerned citizens, at the relevant level.'*

So, right to private life, right to property and right to political participation include areas that affect environmental rights.

Conclusion to the carbon credits paper

55. There is much controversy about greenhouse emissions and the strategies planned to reduce emissions, as outlined above. The market size needs to be determined and the market power also. Governments must be proactive and monitor any mergers in this market of carbon trading. There must be constraints set in law regarding consolidation in the carbon credit market in order to avoid monopolies and anti-competitive activity. There are many unresolved issues which should have been thought through before the Carbon Credit Market was publicly announced. This should have been regulated by statute, at least in the country that invented the scheme, giving the public an opportunity to become

involved in consultations and thorough arguments in Parliament as the statute passed on its way to Royal Assent. But this did not occur.

56. This very important market must start on a level playing field and consideration must be put on aiding poor countries to set up the required regulatory financial systems to facilitate carbon trading; international accounting standards are needed to treat such transactions uniformly in company reports and accounts, corporate governance rules on ethical transactions need to be formulated, capital requirements in place if securitization is to be used in this market, and a global reaching supervisory body set up with monitoring and enforcement personnel, independent from each country's financial supervisory agency, separate to the World Trade Organisation and its non-compulsory and retaliatory sanctions. All this would require enormous resources, which could be met by the polluting countries urgently needing such a market.

Bibliography to Carbon Credits paper

Alston. P, (1999), *The EU and Human Rights*, Oxford, UK: Oxford University Press.

Birnie.P, and Boyle.A.W, (1992), *International law and the environment*, Oxford, UK: Clarendon Press.

Editor, 'A Mexican smelter has the southwest all fired up', *Business Week*, 22 July 1985 at page 28.

Editor, 'Carbon Finance', *Newsletter*, Issue 11, October 2004.

Carter. B.E and Trimble. P.R, (1991), *International Law*, Boston, USA: Little, Brown and Co.

Editor, 'Saving the Kyoto Protocol means ending the market mania', *Corporate Europe Observatory*, July 2001.

Dehner.J. S, 'Vessel-source pollution and Public Vessels: Sovereign Immunity versus Compliance. Implications for International Environmental Law', *Environmental Law Review*, fall 1995.

Delbruck. J, 'Globalisation of law, politics and markets - implications for domestic law: A European perspective', *Indiana Journal of Global Legal Studies*, Volume 1, Issue 1, Fall 1993.

Editor, 'Country Report: Environmental Law', *Corporate Europe Observatory*, 2004.

EU Business, Council - Environment', *EU Business, Council Press Release*, 453, 20/21, December 1998.

Fairlamb.D, 'The smog trade', *Business Week*, 4 July 2003.

Freidman.M. (2002) *Capitalism and Freedom*, Chicago: University of Chicago Press.

Guest. S, (1997), *Ronald Dworkin: Profiles in legal theory*, 2nd ed., Scotland: Edinburgh University Press.

Editor, 'Anti-pollution costs cited in closing of Tacoma smelter', *International Wildlife*, Volume 14, page 29, September/October 1984.

Jamieson. K. M, (1994), *The organisation of corporate crime - dynamics of anti-trust violation*, London: Sage Publications.

Inciardi. J. A and Siegal. H. A., (1977), *Crime: Emerging Issues*, London: Praeger Publishers.

Karayianopoulos. F. A. (2004), *International Environmental Law*, Greece: Community Plant Variety Office.

Karstedt. S, 'Inequality, power and morality', *Conference*, Australia: Australian Institute of Criminology.

Kramer. L. 'Environmental protection and Article 30 EEC', *Common Market Law Review*, Vol 30, 111-143, 1995.

Editor, 'Sequestration', *Newsweek*, 4 September 2004.

Editor, 'Greenhouse gas emissions', *New Zealand Aluminium Smelters Co Ltd*, April 2004.

Purdy.R.and Macrory. R., (2003), 'Geological carbon sequestration: critical legal issues', *Tyndall Centre Working Paper*, No.45 January 2003.

Rakowski. E, (1991), *Equal Justice*, Clarendon Press, Oxford.

Smith. A., (1779), *The theory of Moral Sentiments*, Edinburgh Press.

Editor, 'Air pollution', *Tees Valley Joint Strategy Unit Newsletter*, April/May 2004.

APPENDIX 2- past history of Guyana

1498 - Christopher Columbus sights Guyana^{xiv}.

1580 - Dutch establish trading posts upriver.

1620 - Dutch West India Company establishes a foothold in Guyana, including armed bases, and imports slaves from Africa to work on the sugar plantations.

1780-1813 - Guyana changes hands several times between the Dutch, French and British rule

1814 - Britain occupies Guyana during the Napoleonic Wars.

1831 - Guyana officially declared a British colony.

1834 - Slavery abolished; many slaves leave plantations to set up their own free-holdings.

1879 - Gold is discovered in Guyana and is followed by an economic boom.

1889 - Venezuela lays claim to a large portion of Guyana west of the Essequibo river.

1899 - International arbitration tribunal rules in favour of Guyana (then called British Guiana) in the territorial dispute with Venezuela.

1953 - Britain suspends Guyana's constitution, sends in troops and installs an interim administration.

1957 Britain restores Guyanese constitution.

1961 - Guyana granted full autonomy, with Britain retaining control over internal and defence matters; Jagan of the PPP becomes prime minister.

1962 - Venezuela revives its territorial claims on Guyana; Jagan introduces austerity programme, sparking off violent riots and a general strike; British troops sent in to restore order.

1966 - Guyana becomes independent with Burnham as prime minister.

1970 - Guyana becomes a republic within the British Commonwealth with Raymond Arthur Chung as titular president.

1978 - Nine hundred members of a religious sect commit mass suicide at Jonestown, a community established by sect leader Jim Jones.

1980 - Guyana gets a new constitution and Burnham becomes the country's first executive president.

1985 - Desmond Hoyte (PNC) becomes president following the death of Burnham.

1992 - Cheddi Jagan becomes president.

1997 - Cheddi Jagan dies.

1999 - Bharrat Jagdeo becomes president after Janet Jagan resigned for health reasons.

2000 - Long-running dispute with Surinam over the offshore border comes to a head when Surinam gunboats evict an oil exploration rig from the area. Guyana had approved the exploration.

2004 June - UN sets up tribunal to try to resolve long-running maritime border dispute between Guyana and neighbouring Surinam.

2005 January - Guyana Government declares the capital a disaster zone as severe flooding follows days of continuous rain. More than 30 people are killed. UN estimates loss to the economy to be \$500m.

2005 April - Ronald Gajraj reappointed as interior minister.

2006 April - Agriculture Minister Satyadeow Sawh is shot dead. The murder is part of a string of gun crimes.

2006 August - President Bharrat Jagdeo wins another five-year term in general elections.

2014 - President Donald Rabindranauth Ramotar, economist and former leader of the PPP political party from 1979 to 2006, is the current President of the Republic of Guyana.

DISCLAIMER

The law as stated in this article is the law at the date of writing. This article is for guidance and discussion and is not advice to any person in any particular case. Sally Ramage invites all comments regarding this article to be directed solely to her. Sally Ramage, BA (Hons), MBA, LL.M, MPhil, is Editor of *The Criminal Lawyer*, Bloomsbury Professional.

Printed and published by Sally Ramage@,
Copehale, Coppenhall, Stafford, ST18 9BW, UK. Registered as a Newspaper at the
Post Office. International Copyright Sally Ramage © 2013. All Rights Reserved. No
part of this publication may be reproduced in any material form (including
photocopying or storing it in any medium by electronic means and whether or not
transiently or incidentally to some others use of this publication) without the written
permission of the copyright holder except in accordance with the provisions of the
Copyright, Design and Patents Act 1988 or under the terms of a licence issued by the
Copyright Licensing Agency, Saffron House, 6-10 Kirby Street, London, England
EC1N 8TS. Application for the copyright owner's written permission to reproduce any
part of this publication should be addressed to the publisher. Warning: the doing of an
unauthorised act in relation to a copyright work may result in both a civil claim for
damages and criminal prosecution.
Current Criminal Law ISSN 1758-8405.

