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DRAFT INTERNATIONAL LEGISLATION ON HUMAN RIGHTS AND ENVIRONMENT

DRAFT

Draft International Legislation on Human Rights and Environment

The Center for Human Rights and Environment (CEDHA) and the Center for International Environmental Law (CIEL) have prepared this Draft Legislation on Human Rights and Environment.¹ The draft legislation is inspired from a wide variety of international legal doctrines that include human rights and environment. It is grounded in the belief that the full enjoyment of our human rights are profoundly linked to the state of the environment.

While it was conceived with a view to promoting the adoption of such legislation in the American Hemisphere, it's broader aim is to provide a basis on which to advance discussions on the development of a stronger international legal and institutional framework for the protection of human rights and the environment.

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¹ The Center for Justice and International Law (CEJIL) and the Centro de Estudios Legales y Sociales (CELS) collaborated in the initial stages of the draft design.

Inter-American Legislation on Human Rights and the Environment

Preamble

The American States signatory to the present [Convention, Declaration, Protocol]

Guided by the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, and other relevant human rights instruments,

Guided also by the Stockholm Declaration of the United Nations Conference on Human Environment, the World Charter for Nature, the Rio Declaration on Environment and Development, Agenda 21, the United Nations Conference on Climate Change, the Declaration on the Right to Development, and other relevant instruments of international environmental law,

Considering that the American states have recognized in their domestic law the importance of the preservation and conservation of the environment,

Reaffirming the universality, indivisibility, and interdependence of all human rights,

Deeply concerned by the severe consequences that the environmental degradation has on the full enjoyment of human rights,

Deeply concerned by the alarming speed at which the exploitation of natural resources in the hemisphere advances,

Deeply concerned by the present rate of environmental damage and its impact on the human being, his/her well-being and dignity; i.e., on the effective exercise of his/her human rights,

Convinced that there is an imperative need to recognize the interdependence and indivisibility between human rights and the environment in order to adopt appropriate measures that guarantee the full enjoyment of human rights of present and future generations,

Recognizing the importance of natural resources for the achievement of sustainable development in the American States,

Recognizing that the protection of the environment represents a *sine qua non* condition for the full exercise and enjoyment of human rights,

Convinced that the irreversibility of environmental harm generate responsibility to prevent such harm,

Considering the indefensibility and vulnerability of the American States and their inhabitants in face of environmental abuses,

Reaffirming their aim to consolidate, in this hemisphere, within the framework of democratic institutions, a regime that encompasses the conditions necessary to allow every person to effectively enjoy his/her human rights,

Agree to adopt the following:

Part 1

Definitions

For the purposes of this [Convention, Declaration, Protocol],

1. "Information on the environment" or "environmental information " means any information in written, visual, oral, electronic or any other material form on:

a. The state of elements of the environment such as the air and atmosphere, water, soil, land, landscape, and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

b. factors, such as substances, energy, noise and radiation, and activities or measures, especially administrative measures, environmental agreements, policies, legislation, plans and programs affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, on cost-benefit and other economic analyses and assumptions used in environmental decision-making;

c. The state of human health and safety, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of elements of the environment or, through these elements, by the actors, activities or measures referred to in subparagraph (b) above;

2. "The public" means one or more natural or legal persons, and, in accordance with national legislation, associations, organizations or groups constituted by these persons;

3. "The public concerned" means the public affected or likely to be affected by, or having interest in environmental decision-making; for the purposes of this definition, the ombudsman and non-governmental organizations promoting environmental protection and meeting any requirements stipulated by national law shall be deemed to have an interest.

4. The term person includes natural or legal persons constituted within the framework of national legislation of each State Party.

5 . The term Duty includes positive and negative Duties. (*Inter American jurisprudence, general observations of the UN Committee of Economic, Social and Cultural Rights, principles of Maastricht, principles of Quito*)

6. A State's national jurisdiction refers to all land or air space in which a State exercises, in accordance with international law, administrative and normative competence in relation to the protection of human health or the environment.

7. "Waste" means the substances or objects that are to be eliminated, that are intended to be eliminated, or which shall be eliminated by Duty, as stipulated by national legislation;

8. "Transboundary movement " means all transportation of dangerous waste or other waste originating from an area under the national jurisdiction of another State, or through this area or other area that is not under the jurisdiction of any State, or through this area in all cases where the transport affects at least two States.

Part 1

State Duties and Rights Protected

Chapter 1

Enumeration of Duties

Article 1 - Duty to Respect, Protect and Ensure rights

The State Parties to this [Convention, Declaration, Protocol] undertake to respect and protect the rights and freedoms recognized herein, and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms without any distinction for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any social condition.

Article 2-Obligation to Adopt Internal Legal Measures

Where the exercise of any of the rights or freedoms, referred to in this [Convention, Declaration, Protocol] is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this [Convention, Declaration, Protocol], such legislative measures as may be necessary to give effect to those rights or freedoms.

Article 3 – State (responsibility, accountability) for the action of non-state actors/ State responsibility for the action of international organizations and multilateral institutions to which it is party

3.1 The States Parties have the responsibility to ensure that non state actors, including transnational corporations over which they exercise jurisdiction, respect the rights recognized in this [Convention, Protocol, Declaration]. The States are responsible for the failure to exercise due diligence in controlling the behavior of non-state actors.

3.2 The States Parties to this [Convention, Declaration or Protocol], which are members of International Organizations or Multilateral Institutions, have the obligation to use their influence so that the policy programs of the International Organization will respect individuals' human rights and the environment. The obligations of the State Parties extend to their participation in International Organizations or Multilateral Institutions.

Article 4- Duty to protect and preserve the environment

The States Parties shall protect and preserve the environment, and undertake to adopt such legislative and other measures as may be necessary to effectively achieve this protection.

(These measures shall aim at the prevention of environmental harm, at the provision of adequate remedies, and at the sustainable use of natural resources, and shall

include, inter alia: Collection and dissemination of information concerning the environment; Public participation in environmental decision-making; Effective administrative and judicial remedies; Redress for environmental harm and the threat of such harm; Monitoring, management and equitable sharing of natural resources; measures to reduce wasteful processes of production and patterns of consumption; Measures aimed at ensuring that transnational corporations, wherever they operate, fulfill their duties of environmental protection, sustainable development, and respect for human rights; measures aimed at ensuring that international and multilateral organizations integrated by the States Parties observe their duty to promote the protection and preservation of the environment.)

Article 5- Duty to cooperate

1. The States Parties have the duty to cooperate to preserve, protect, and improve the environment. The transnational character of environmental harm requires the cooperation of the States Parties and the adoption of such measures as may be necessary to achieve effective environmental protection.

2. The States Parties undertake to regularly formulate, implement, and update regional programs for the preservation and protection of the environment.

3. The States Parties undertake to effectively cooperate to prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

4. The States Parties undertake to cooperate in traffic control and illegal disposal of toxic or dangerous substances or waste.

See terminology adopted in the Basel Convention

5. The States parties undertake to promote rational environmental management of dangerous waste and other waste, and to adopt every possible measure to ensure that dangerous waste and other waste is handled in ways to achieve the protection of the environment, human health from harmful effects caused by such waste.

6. The States Parties undertake to promote the development, implementation, and dissemination including transfer of technologies, practices, and control processes that reduce or prevent environmental harm.

7. Each State Party shall promote the observance of the principles embodied in this [Convention, Declaration, Protocol] in international environmental decision-making and/or human rights, as well as in the framework of international organizations concerning the environment and human rights.

Article 6- Duty to implement the precautionary principle

The States Parties undertake to widely apply the precautionary principle. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be

used as a reason for postponing effective measures to prevent environmental degradation.

Article 7- Duty of good neighbor policy / reciprocity

The States Parties undertake to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.

Article 8- Differentiated responsibilities (North-South relationship)

Considering industrialized nations and developing nations have caused different degrees of environmental harm, States have common but differentiated responsibilities. Industrialized countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

Article 9- Duty to implement the principle polluter-pays

1. The States Parties undertake to recognize and implement, within their national law, the principle polluter-pays.
2. The States Parties undertake to promote the internalization of environmental costs and the use of economic instruments taking into account the approach that the polluter should, in principle, bear the cost of pollution.

Article 10- Duty to carry out socio-environmental impact assessments

The States Parties undertake to carry out socio-environmental impact assessments for proposed public activities that are likely to have a significant adverse impact on the environment and human rights. The States parties undertake to adopt such legislative measures as may be necessary to make possible the exigibility of this Duty.

Chapter 2

Environmental Human Rights

Article 11- Right to a healthy environment

1. All persons have the right to live in a healthy environment. This right can be exercised individually as well as collectively, since the interest protected may be placed on a specific subject or may be distribute amongst all the members of a community, or of several communities.

2. In order to ensure the right to a healthy environment the States Parties undertake to recognize a healthy environment as a collective public property and, particularly, to adopt the following measures to ensure the enjoyment of this right:

- a. Environmental safety and hygiene in the workplace;
- b. Monitoring and control of pollution;
- c. Preservation, protection, and improvement of the soil, air, water, flora, and fauna;
- d. Timely and effective assistance to the victims of environmental degradation;
- e. Prohibition of activities that are environmentally harmful to persons;
- f. Strict control in the production and storage of toxic or dangerous substances or waste;
- g. Prevention of unhealthy environmental conditions that are found to represent a threat to human health;
- h. Provide annual public information concerning mortality rates and diseases resulting from environmental pollution;
- i. Facilitate the rehabilitation of victims of environmental degradation;
- j. Recognize ecological crime and implement criminal liability for perpetrators.

Article 12- Right to life

Every person has the right to have his/her life respected. No one shall be deprived of his/her life as a result of environmental degradation. The States Parties undertake to adopt the measures necessary to safeguard the right to life, including the protection and preservation of the environment.

Article 13- Right to personal integrity

Every person has the right to have his/her physical, mental, and moral integrity respected. No one shall be deprived as a result of the environmental degradation of his/her personal integrity. The States Parties undertake to adopt such measures as may be necessary to safeguard this right, including the protection and preservation of the environment.

Article 14- Right to environmental equality

Every person, free from any form of discrimination, has the right to benefit from the preservation, protection, and improvement of the environment. Consequently, the States Parties undertake to adopt such measures as may be necessary to eliminate environmental discrimination. Environmental discrimination occurs when certain

sectors of the population, especially the most vulnerable ones, assume a disproportionate burden of environmental degradation.

Article 15- Right of consumer

Each State Party shall develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices.

Article 16- Right to sustainable development

Every person has the right to sustainable development. This human right to development shall be exercised in a manner, which equitably meets the environmental needs of present and future generations.

Article 17- Right to access to information

1. Every person has the right to receive and have access to information concerning the environment. The States Parties undertake to adopt such measures as may be necessary to ensure the timely provision and access to environmental information. Such information shall be transparent, comprehensible, and its availability shall not be restrictive due to costs.

2. Each State Party shall ensure that, in the framework of national legislation, the public authorities make environmental information available to the public that requests it:

a. Without requiring an expressed interest;

b. In the form requested unless:

- i. it is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or,
- ii. the information is already publicly available in another form.

3. Environmental information shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and complexity of such information justify an extension of this period up to two months. The applicant shall be informed of any extension of time and of the reasons for that action.

4. The States Parties shall ensure that all information held by public authorities that could enable the public to take measures to prevent or mitigate harm from the threat to health or the environment, is disseminated immediately and without delay to members of the public who may be affected.

5. Each State Party shall [request, encourage] operators, whose activities have a significant impact on the environment, to inform the public regularly of the socio-environmental impact of their activities and products, where appropriate, within the framework of voluntary eco-labeling or eco-auditing schemes or by other means.

Article 17 BIS.-Right to Environmental Identity

1. Every person has the right have his or her environmental identity respected and preserved.

No community shall have their right to the preservation of their environmental identity denied, be it due to restrictions, modifications, or environmental degradation, committed by public or private acts.

Article 18 – Right to participate in environmental decision-making

1. Every person has the right to participate in decision-making procedures that concern the environment.

2. The public concerned shall be informed at the onset of an environmental decision-making process, in a timely and effective manner, either by public notice or individually as appropriate, particularly of:

- a. The proposed activity and the application on which a decision will be taken;
- b. The nature of possible decisions or the draft decision to be adopted;
- c. The public authority responsible for making the decision;
- d. The envisaged procedure shall include:
 - i. The commencement date of the procedure;
 - ii. The opportunities for the public to participate;
 - iii. The time and venue of any envisaged public hearing;
 - iv. An indication of the public authority from which relevant information can be obtained for public examination;
 - v. An indication of public authority or any other official body to which comments or questions can be submitted and the time schedule for transmittal of comments or questions;
 - vi. An indication of what environmental information relevant to the proposed activity is available; and
 - vii. Information about the procedure and results of the socio-environmental impact assessment.

3. Public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public and for the public to prepare and participate effectively during the environmental decision-making. The relevant information shall include at least:

- a. A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected wastes and emissions;

- b. A description of the significant effects of the proposed activity on the environment;
 - c. A description of the measures envisaged to prevent and/or reduce the effects;
 - d. A non-technical summary of the above;
 - e. An outline of the main alternatives studied by the applicant
4. Procedures for public participation shall allow the public to submit, in writing or at a public hearing, any comments, information, analyses or opinions that it considers relevant to the proposed activity.
 5. Each State Party shall adopt measures to provide for early public participation, when all options and solutions are still open, and effective public participation can take place.
 6. Each State Party shall ensure that in the decision, due account is taken of the outcome of the public participation procedure.
 7. Each State Party shall ensure that, when the public authority has taken the decision, the public is promptly informed of the decision in accordance with the appropriate procedures. Each State Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.
 8. Each State Party shall encourage prospective operators whose activities have a significant impact on the environment, to identify the public concerned and to provide them information regarding the objectives of their application before applying a permit.

Article 19- Judicial Guarantees

1. Every person, group of persons or community has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the event of environmental threat or harm.
2. Every person that considers that the request for information by virtue of article... has been ignored, arbitrarily refused, totally or partially, or has not sufficiently considered, or has not been addressed in accordance with the provisions of the mentioned article, shall be given the opportunity to file a legal appeal so as to have his/her request reconsidered.

Article 20 – Right to a fair trial in cases of environmental abuse

Every person, group of persons, or community has the right to file a simple and fast appeal or to resource to any other legal proceedings before a competent judge or court to fend off actions that threaten or damage the environment. The States Parties undertake to guarantee individual or collective judicial recourse. The irreversibility of environmental harm generates the State's duty to prevent it.

Article 21- Legal review of administrative decisions

Every person, group of persons, or community has the right to have the Judicial Power review administrative decisions, in a process with the due judicial guarantees mentioned in art. 19 of this [Convention, Declaration or Protocol].

Article 22- Right to environmental and human rights education

1. Every person has the right to receive education on the environment and human rights. The States Parties agree that this education should aim at strengthening and promoting the links between the full enjoyment of human rights and the state of the environment.
2. The States parties recognize that, in order to achieve the full exercise of this right, primary, secondary, and superior education should include the subject human rights and the environment in its curricula.
3. The States Parties shall encourage public ecological education raising awareness as regards environmental problems in order to inform the population on how to access information, participate in decision-making, and obtain legal recourse in environmental matters.

Chapter 3

Article 24 - Suspension of guarantees, Interpretation and Application

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating its Duties under the present [Convention, Declaration, Protocol] to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other Duties under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.
2. The foregoing provision does not authorize any suspension of the following rights cited in the articles: ...right to life, ... right to a healthy environment, ...right to human treatment, or of the judicial guaranties essential for the protection of such rights.
3. Any State availing itself of the right of suspension shall immediately inform the other States Parties of the present [Convention, Declaration, Protocol], through the Secretary General of the Organization of American States, of the provisions of the suspension, the reasons that gave rise to the suspension, and the date set for the termination of such suspensions.

Article 25- Federal Clause

1. Where the State Party is constituted as a federal State, the national government of such State Party shall implement all the provisions of this [Convention, Declaration, Protocol] over whose subject matter it exercises legislative and judicial jurisdiction.

2. With respect to the provisions over whose subject matter the constituent units of the federal State have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this [Convention, Declaration, Protocol].

3. Whenever two or more States Parties agree to form a federation or other type of association, they shall take care that the resulting union contains the provisions necessary for continuing and rendering effective the standards of this [Convention, Declaration, Protocol] in the new state that is organized.

Article 26- Restrictions regarding interpretation

No provision of this [Convention, Declaration, Protocol] shall be interpreted as:

a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this [Convention, Declaration, Protocol] or to restrict them to a greater extent than is provided for herein;

b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another [Convention, Declaration, Protocol] which one of the said States is a party;

c. precluding other rights or guarantees that are inherent to individuals or derived from representative democracy as a form of government; and

d. excluding or limiting the effect that other environmental or human rights international acts may have.

Article 27- Scope of restrictions

The restrictions that, pursuant to this [Convention, Declaration, Protocol], may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

Article 28- Recognition of other rights and widening of the already recognized ones

1. Every State Party and the Inter-American Commission on Human Rights may put under the consideration of the States Parties at the General Assembly, proposals for amendments aimed at including the recognition of other rights and guarantees, or other freedoms aiming to extend or expand those rights and freedoms already recognized in the herein [Convention, Declaration, Protocol].

2. The amendments will enter into force for the ratifying States on the date on which the appropriate ratification instrument has been submitted, as soon as two thirds of the States have deposited their instruments of ratification or adherence to this [Convention, Declaration, Protocol]. As regards the rest of the States Parties, the amendments will enter into force the date on which their respective ratification instruments have been submitted.

Part 3

Means of protection

Chapter 4

Article 29 – Competent Organs

The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this [Convention, Declaration, Protocol]:

- a) The Inter-American Commission on Human Rights, referred to as The Commission, and
- b) The Inter-American Court of Human Rights, referred to as The Court.

Article 30 – Submission of Reports

1. The States Parties to this [Convention, Declaration, Protocol] undertake to submit, by virtue of this article, periodic reports on the provisions they have adopted and which give effect to the rights and guarantees recognized in this [Convention, Declaration, Protocol], and on the progress of actions as regards the enjoyment of such rights and guarantees:

- a. Within the term of one year from the date of entry into force of this [Convention, Declaration, Protocol] with respect to the States Parties;
- b. Henceforth, each time the Inter-American Commission on Human Rights requests it.

2. All the reports shall be deposited with the General Secretary of the Organization of American States, who will transmit them to the Inter-American Commission on Human Rights for examination. The reports shall include the factors and difficulties, when appropriate, which affect the application of the herein [Convention, Declaration, Protocol].

3. The General Secretary of the Organization of American States, after consulting the Inter-American Commission on Human Rights, shall transmit copies thereof to the specialized agencies of the Inter-American system that are member States of the herein [Convention, Declaration, Protocol], provided that those reports are related to matters that suppose the competence of such agencies in accordance with their constitutive elements.

4. The specialized agencies of the Inter-American system can provide the Inter-American Commission on Human Rights with reports in their field of activity concerning the fulfillment of the provisions contained in the herein [Convention, Declaration, Protocol].

5. The annual reports submitted to the Inter-American Commission on Human Rights in the General Assembly shall include a summary of the information provided by the

States Parties to this [Convention, Declaration, Protocol] and by the specialized agencies as regards the adoption of measures aimed at ensuring the observance of the human rights recognized in this [Convention, Declaration, Protocol], and to formulate general recommendations when it considers such action advisable. The Inter-American Commission on Human Rights can, when appropriate, draw up a Special Report setting forth the fulfillment of the herein [Convention, Declaration, Protocol] on the part of one or more States Parties.

Article 31 –Submission/presentation of individual petitions

In the event of any violation of the rights established in this [Convention, Declaration, Protocol] as a result of a directly imputable action to a State Party, such a situation might give rise to, through the participation of the Inter-American Commission on Human Rights and when it proceeds from the Inter-American Court of Human Rights, the application of the system of individual petitions regulated by virtue of articles 44 to 51 and 61 to 69 of the American Convention on Human Rights.

Article 32 - Precautionary Measures

1. In case of seriousness and emergency, and every time it becomes necessary depending on the information available, the Commission can, for personal initiative or to a party's petition, request that the State considers the adoption of precautionary measures aimed at preventing irreparable damage to persons and/or the environment.
2. If the Commission is not assembled, the President, or one of the Vice-Presidents shall consult, through the Executive Secretariat, with the rest of the members concerning the application of the above-mentioned article. If such action were not possible within a reasonable period of time considering the circumstances, the President shall take the decision on behalf of the Commission and he/she will inform its members.
3. The Commission can request information to the interested parties on any matter concerning the adoption and enforcement of precautionary measures.
4. The granting of such measures and their adoption by the State shall not constitute a prejudgment of the matter in question.

Article 33 - Signature, Ratification or Adherence and Entry into Force

1. The herein [Convention, Declaration, Protocol] shall be open for signature and ratification by or adherence of any member State of the Organization of American States.
2. Ratification or adherence to this [Convention, Declaration, Protocol] shall be made by the deposit of an instrument of ratification or adherence with the General Secretary of the Organization of American States.

3. The [Convention, Declaration, Protocol] shall enter into force once the States have made the deposit of their instrument of ratification or adherence, respectively.

4. The Secretary General shall inform all member States of the Organization concerning the entry into force of the [Convention, Declaration, Protocol].

Article 34 - Reservations

The States Parties can make reservations to one or more specific provisions of this [Convention, Declaration, Protocol] at the time they approve, sign, ratify or adhere to it, provided that such reservations are not inconsistent with the object and purpose of the [Convention, Declaration, Protocol].