

Report of the General Secretariat pursuant to AG/RES. 1819 (XXXI-O/01),
HUMAN RIGHTS AND THE ENVIRONMENT

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AG/RES. 1819 (XXXI-O/01), **HUMAN RIGHTS AND THE ENVIRONMENT**, adopted at the third plenary session held on June 5, 2001, requests, at resolves 2, that the General Secretariat of the OAS present, in collaboration with other organs of the inter-American system, a study of the possible interrelationship of environmental protection and the effective enjoyment of human rights.

In fulfilling that mandate, this study seeks to set out both a general explanation of the current state of the issue, as well as providing reference material the member states may wish to draw on as they consider the matter.

Linking Human Rights and the Environment

The Universal Declaration of Human Rights makes no mention of the environment. There is strong reason to believe, however, that it clearly would if it were negotiated today. The interrelationship between human rights and the environment is growing. Although up until recently, the fields have been understood as distinct, practice increasingly links the two. The trend in declaratory statements regarding each sphere grow increasingly broad as well, allowing space for that linkage to develop. Note, for example, the inclusive articulation of environmental protection by our Heads of State and Government at the Quebec Summit, and its interrelationship with political, social and economic rights, as well as “quality of life and health” and realizing human potential.

Principle 1 of the 1972 *Stockholm Declaration* may be the earliest direct statement linking human rights and environmental protection, declaring a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being. The 1972 United Nations Conference on the Human Environment declared that "man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights--even the right to life itself." Since then a considerable number of human rights instruments, regional, global and national, recognize in some manner a right to an environment that is healthful. There is also a growing body of jurisprudence within the human rights context recognizing the scourge of environmental degradation as it affects the enjoyment of established rights. Institutionally, the UN has moved this issue farther than other organizations, when in the mid 1990s, it created the position of Special Rapporteur on Human Rights and Environment, whose work and writings frames the linkage directly.

In its simplest and most practical incarnation, the reason proponents give to mine the intersection of these evolutionarily distinct spheres is that doing so fills important gaps in the scope and reach of each discipline. Some authors argue that human rights norms

complement environmental regulation so well already that creating new environmental regulation is superfluous and possibly counterproductive. Others argue, such as Anderson in *Human Rights Approaches to Environmental Protection: An Overview*, that “although existing human rights, if fully mobilized, may offer a great deal to global and local environmental protection, there are good reasons to suspect that they will fall short of meeting desired ends. Established human rights standards approach environmental questions obliquely, and lacking precision, provide clumsy tools for urgent environmental tasks.” The focus of human rights protection on the individual, as well, provides environmental enforcement with a valuable new conceptual tool. Rights which are understood to inhere in the person are less likely to lose out in a bureaucratic negotiation --- often the forum in which environmental matters are managed.

Still, though it is safe to say there is a convergence of these matters underway, there is little doctrinal order in that intersection. Those who have written on the issue are generally in agreement that environmental harm does affect the human rights of persons. The differences are in the manner of tackling the problem. In this sense it is possible to speak of two schools: one espouses “substantive” solutions, the other “procedural” ones. Substantive solutions would essentially encompass new legislation that self-consciously brings the two matters together in a declaratory fashion. Procedural remedies look to practical dimensions of the problem, such as creating and/or reinforcing rights of access to information and participation, so that marginalized groups (who are often disproportionately affected by environmental harm) can seek redress within existing mechanisms.

Following is a brief survey of the treatments of the issue in various fora, instruments and mechanisms.

Section 1: The Inter-American Human Rights System

Although the UN has moved farther in terms of institutional focus on this matter, our own regional jurisprudence may possess the strongest human rights statement articulated in a purely human rights context. Article 11 of the *Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights* (San Salvador, November 17, 1988), is entitled: “Right to a healthy environment.” It states: 1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation and improvement of the environment.

In the Inter-American context, case law has taken the issue further. Two cases are standouts:

- Resolution No. 12/85, Case No. 7615 (Brazil), March 5, 1985, printed in, Annual Report of the IACHR 1984-85, OEA/Ser.L/V/II.66, doc. 10 rev. 1, Oct. 1, 1985, at 24, 31(YANOMAMI CASE): This case involved the construction of a highway through Yanomami territory, which was found to have brought disease etc, to the Yanomami. The IACHR found violations of the American Declaration of the Rights and Duties of Man with

respect to right to life, liberty and personal security, right of residence and movement, and right to preservation of health and well-being.

- *Awas Tingni Mayagna (Sumo) Indigenous Community v. Nicaragua*. The IACHR brought this case to the Inter-American Court in alleging that the failure to demarcate and recognize the territory, in the face of the prospect of government sanctioned logging of these lands, was a violation of the American Convention. In August, 2001, the Court found that the state violated Art. 21 and 25 of the American Convention on Human Rights, and ordered that the State demarcate the Awas Tingni lands.

By contrast, a fair reading is that the European Court of Human Rights has not gone nearly as far as the inter-American system in recognizing such a linkage. But even that body has found that environmental harm (for example noise pollution) may violate the Art. 1 of Protocol 1 of the European Convention if the harm results in a devaluation of property. Further, it may breach Art. 8(1) if it injures home, private and family life.

Selected additional cites in the Inter-American human rights system at the intersection of human rights and the environment.

- OAS 2000 Report on Guatemala chapters III & XI, OEA/Ser.L/V/II.111doc. 21 rev.6 April 2001 Original: English/Spanish
- OAS 2000 report on Paraguay Chapters V & IX OEA/Ser.L/V/II.110Doc.529 March 2001
OAS 1999 Report on Peru chapter VI OEA/Ser.L/V/II.106 Doc. 59 rev. June 2, 2000
- Chapter V, "Follow-up of the Recommendations formulated by the Inter-American Commission on Human Rights in its Reports on the Situation of Human Rights in Member States," Section I (Ecuador), at paras. 109,118; in 1998 Annual Report of the Inter-American Commission on Human Rights.
- Report on the Situation of Human Rights in Ecuador, Chapter IX Human Rights Issues of Special Relevance to the Indigenous Inhabitants of the Country, OAS Country Report O.A.S. Doc. OEA/Ser.L/V/II.96 (1997).
- Inter-American Commission on Human Rights, Annual Report (1997), OAS/Ser. L/V/II.98, page 46
- Report on the Situation of Human Rights in Brazil," Chapter VI, OAS Country Report (1996).
- OAS 1992 Report on Colombia Chapter XI OEA/Ser.L/V/II.84 Doc. 39 rev.14 October 1993
- Inter-American Commission on Human Rights, Annual Report 1979-1980, O.A.S. Doc. OEA/Ser.L/V/II.50 doc. 13 rev.1 (IACHR 1980)

- Inter-American Commission on Human Rights, Resolution on Indigenous Peoples (1972), at 90-91, O.A.S. Doc. OEA/Ser.P., AG/Doc. 305/73.

Section 3. The Environment as established in Constitutions of the OAS member states

Although there is no explicit linkage spelled out in any of them, many Constitutions of OAS member states contain a reference to the environment and the importance of safeguarding it. A significant number go farther, however, articulating a “right to environment” formulation similar to that contained in the San Salvador Protocol to the American Convention. They are:

- Argentina, Art. 41,
- Brasil, Art. 225,
- Chile de 1980, Art. 19(8),
- Colombia de 1991, Art. 19(8),49, 79,
- Costa Rica, Art. 46 y 50.
- Ecuador de 1983, Art. 23,
- Honduras de 1982, Art. 145,
- Nicaragua de 1987, Art. 60,
- Paraguay, Art. 7,
- Venezuela, Chap IX, Art. 127

Section 4. United Nations

As mentioned above, in the mid 1990s, the UN created the position of Special Rapporteur on Human Rights and Environment. The Rapporteur’s report, known as the Ksentini Report (Fatma Zohra Ksentini, Human Rights and Environment, Special Rapporteur’s Final Report, UN. Doc. E/CN.4/Sub.2/1994/9, July 6, 1994), makes a strong case for linking human rights and the environment directly, but recognizes that international environmental law and human rights law remain isolated from one another – and this needs to change both legally and politically. The report recommends joining work of the High Commission for Human Rights and the United Nations Environmental Program (UNEP), reconciling their agendas and workplans. More recently, the Special Rapporteur on Human Rights and Environment has focused on transboundary transport of toxic waste.

UN Meeting of Experts . Pursuant to a Decision 2001/111 of the UN Commission on Human Rights, supported by the High Commission for Human Rights and the UNEP Director, in view of the coming

Second Earth Summit on Sustainable Development in 2002, work is underway analyzing advances in the promotion and protection of the human rights and the environment in the implementation of Agenda 21. Worldwide experts on human rights and environment proposed concrete recommendations for the states to advance this agenda in January 2002, which included strengthening of constitutions and local and international legislation, extension of Conventions such as the Aarhus European Convention on Participation to other countries and regions, collaboration and programmatic harmonization among environmental and human rights institutions, and exchange and attendance of UN institution staff working on human rights and environment.

Section 5. Other International Citations and References

[This section draws heavily on Prof. Dinah Shelton's Background Paper No. 1 and 2, Environmental Issues and Human Rights in Multilateral Treaties Adopted between 1991 and 2001, Dinah Shelton, University of Notre Dame. Prepared for the Joint UNEP-OHCHR Geneva Expert Seminar on Human Rights and the Environment, January 2002.

- Principle 1 of the *Stockholm Declaration* establishes a foundation for linking human rights and environmental protection, declaring that man has a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being. It also announced the responsibility of each person to protect and improve the environment for present and future generations. See also UN Res. 45/94, which restates that language 20 years later.
- Principle 10, 1992 Conference of Rio de Janeiro on Environment and Development, links the issues in procedural terms, through the right of an individual to information concerning the environment that is held by public authorities.
- The *Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters*, (Aarhus, June 25, 1998), signed by thirty-five States and the European Community, takes a comprehensive approach. The Convention builds on prior texts, especially Principle 1 of the Stockholm Declaration. The Preamble states that "every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations."
- The UN *Convention on the Rights of the Child* (New York, November 20, 1989) refers to aspects of environmental protection in respect to the child's right to health. Article 24 provides that States Parties shall take appropriate measures to combat disease and malnutrition "through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution."
- The *African Charter on Human and Peoples' Rights*, (Banjul June 26, 1991) contains several provisions related to environmental rights. Article 24, states that "All peoples shall have the right to a general satisfactory environment favorable to their development."

- The *Charter of Fundamental Rights of the European Union*. Article 37 of the Charter provides that “A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.”
- The Treaty for the Establishment of the East African Community. Article 111 proclaims that “a clean and healthy environment is a prerequisite for sustainable development.”

From the Quebec City Declaration: “We acknowledge the challenge of environmental management in the Hemisphere. We commit our governments to strengthen environmental protection and sustainable use of natural resources with a view to ensuring a balance among economic development, social development and the protection of the environment, as these are interdependent and mutually reinforcing.”

[Spanish: “Reconocemos el desafío que presenta la gestión ambiental en el Hemisferio. Comprometemos a nuestros gobiernos a fortalecer la protección del medio ambiente y el uso sostenible de los recursos naturales con miras a asegurar un equilibrio entre el desarrollo económico, el desarrollo social y la protección del medio ambiente, en virtud de su interdependencia y refuerzo mutuo”.]

So too, in the Quebec City Plan of Action:

To strengthen democracy, create prosperity and realize human potential, our Governments will: ...

9. ENVIRONMENTAL FOUNDATION FOR SUSTAINABLE DEVELOPMENT

Environment and Natural Resources Management

Recognizing that the protection of the environment and the sustainable use of natural resources are essential to prosperity and to the sustainability of our economies, as well as the quality of life and health for present and future generations; and committed to advancing sustainable development throughout the Hemisphere consistent with our 1994 and 1998 Summit of the Americas Declarations and Plans of Action and the 1996 Santa Cruz de la Sierra Declaration and Plan of Action:

[Spanish: De la misma forma, en el PLAN DE ACCIÓN

Para fortalecer la democracia, crear la prosperidad y desarrollar el potencial humano, nuestros Gobiernos: se dejó establecido que: 9. BASE AMBIENTAL PARA EL DESARROLLO SOSTENIBLE

Medio ambiente y gestión de recursos naturales

Reconocen que la protección del medio ambiente y el uso sostenible de los recursos naturales son esenciales para generar prosperidad y para la sostenibilidad de nuestras economías así como para la calidad de vida y salud de las generaciones presentes y futuras; y están comprometidos a realizar avances en el área de desarrollo sostenible en el Hemisferio consecuente con los principios de las Declaraciones y Planes de Acción de las Cumbres de 1994 y 1998, y la Declaración y el Plan de Acción de Santa Cruz de la Sierra de 1996]

For more discussion on the legal development of this issue, see *generally*, A.A. Cancado Trindade, “The Parallel Evolutions of International Human Rights Protection and of Environmental Protection and the Absence of Restrictions upon the Exercise of Recognized Human Rights”, Revista del Instituto Interamericano de Derechos Humanos, Nro. 13 (1991), at 35-76, and Michael R. Anderson, *Human Rights Approaches to Environmental Protection: An Overview* in Alan E.

Boyle & Michael R. Anderson, Eds., *Human Rights Approaches to Environmental Protection* 3-10 (1996). For general web-based resources, see, for example: <http://www.unhchr.ch/environment/>, www.umn.edu/humanrts/links/environment.html, <http://www.millennialtrust.com/>, <http://www.cedha.org.ar/>, <http://www.earthrights.org/>

For a treatment of this issue in the European context, see p.11-21 in Background Paper No. 2, *Environmental Issues and Human Rights in Multilateral Treaties Adopted between 1991 and 2001*, Dinah Shelton, University of Notre Dame. Prepared for the Joint UNEP-OHCHR Geneva Expert Seminar on Human Rights and the Environment, January 2002.

That same logic applies to The *Framework Convention on Climate Change* (June 4, 1992), *Cartagena Protocol on Biosafety to the Convention on Biological Diversity* (Montreal, January 29, 2000), Art. 23; Article 10(1) of the *Convention on Persistent Organic Pollutants* (Stockholm, May 22, 2001) The *Espoo Convention on Environmental Impact Assessment in a Transboundary Context* adopted February 25, 1991 during preparations for the Rio Conference, *Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment* (Lugano, June 26, 1993). Chapter III, comprising articles 13 to 16. *North-American Agreement on Environmental Co-operation* (Washington, D.C., September 13, 1993) Art. 2(1)(a), 14. Also known as the NAFTA side agreement, the treaty contains institutional arrangements for public participation, and is the first environmental agreement to establish a procedure for individuals and organizations to complain about a state's failure to enforce its environmental law, including those deriving from international obligations.