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## **A New Development Strategy for the Americas** *A human rights and the environment Perspective*

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## OUTLINE

In this document we address the relationship between development, human rights, and the environment to outline the effects of environmental degradation on the development of countries and on the enjoyment of human rights in the American continent. This builds towards implementation of Resolution 1819 on human rights and the environment approved in the Third Plenary Session of the OAS General Assembly held on June 5, 2001 in San Jose de Costa Rica<sup>[1]</sup>. Resolution 1819 emphasizes the importance of studying the linkages between the environment and the human rights, and it mandates a study of the interrelationship between environmental protection and the enjoyment of human rights. The central purpose of this work is to assist the Organization of American States in the implementation of the resolution.

The paper is organized as follows: part I offers a brief account on the state of development of the poorest countries in the Americas and its relationship with the environment and the human rights. Part II analyses the linkages between environmental degradation and hemispheric security. Part III refers to the relationship environment-human rights-economy. Part IV reviews most recent actions taken by various international bodies reflecting world recognition of the links between human rights and environment. Part V presents some aspects of environmental degradation and their impact on the enjoyment and exercise of human rights. Part VI illustrates by examples the social problems posed by environmental degradation which lead to human rights violations. Part VII discusses ways to address the practical aspects of the link human rights-environment from a legal perspective. Finally, part VIII suggests an action plan to implement Resolution 1819 at the core of the OAS; immediately afterwards we present general conclusions.

Note: This document has two annexes attached a) Text Resolution 1819 (XXXI-O/01), and b) memo of the Center for Human Rights and the Environment “Proposal for the adoption of Inter-American legislation on human rights and the environment”.

### I. THE NEED FOR A NEW DEVELOPMENT STRATEGY

The introduction of social and environmental dimensions into development strategies is a must for the Americas. This has been clearly evidenced over the last decades, during which an increasing degradation of habitats, discontent, violence, and social inequality are challenging current models of economic development.

The number of poor people in Latin America increases annually. According to the World Bank estimates, the number of people living with less than a dollar per day was 78,2 million in 1998, and 63,7 million in 1987. This is to say that in one decade the number of poor people increased to fifteen million in Latin America and the Caribbean<sup>[2]</sup>. On the other hand, the region of Latin America is one that presents the world’s highest level of inequality as regards income (IABD, 1998-1999)<sup>[3]</sup>.

Poverty has clear social and legal consequences, since when deprivation is extreme, rights become abstract.<sup>[4]</sup>

On a world scale, in many occasions,<sup>[5]</sup> it has been stated that poverty entails violations of basic human rights and nowadays, the ambitious goal of the United Nations and the World Bank to eradicate poverty has become a priority even in the framework of other bodies that traditionally have not directly addressed this problem, such as the WTO and the IMF.

In the same fashion, the international community has increased its awareness on the existing relationship between environmental degradation and human rights abuses, and its critical attitude has an influence on the well-being and development of the peoples. It is clear that, poverty situations and human rights abuses are worsened by environmental degradation, because environmental degradation:

- **Generates poverty:** The exhaustion of natural resources leads to, unemployment and emigration to cities. In the south of Honduras, for example, habitat degradation caused by land erosion forced residents to migrate northward. Most of these workers were not immune to malaria common to the area, which increased the number of sicknesses in the region from 20,000 in 1987 to 90,000 in 1993.<sup>[6]</sup>
- **Affects the enjoyment and exercise of basic human rights.** Environmental conditions contribute to a large extent, to the spread of infectious diseases, which each year account for 20% and 25% of deaths all over the world. From the 4,400 million of people who live in developing countries, almost 60% lack basic health care services, almost a third of these people have no access to safe water supply.<sup>[7]</sup>
- **Poses new problems** such as environmental refugees: Environmental refugees suffer from significant economic, socio-cultural, and political consequences. Nowadays, developed countries pay 8,000 million dollars annually to house these refugees, which accounts for a seventh of the external assistance provided to developing countries.<sup>[8]</sup>
- **Worsens existing problems suffered by developing and developed countries.** Air pollution, for example, accounts for 2.7 million to 3.0 million of deaths annually and of these, 90% are from developing countries. Atmospheric pollution harms more than 1,100 million persons and accounts for over half a million deaths in cities annually; almost 30% of these deaths occur in developed countries.

The American hemisphere has a vast tradition of human rights defense. However, the development of environmental law on a regional scale already presents a considerable number of weaknesses especially in relation to its enforcement and liability to be demanded.

The Protocol of San Salvador<sup>[9]</sup> consecrates the right to a healthy environment<sup>[10]</sup> and a number of countries in the region introduce prescriptions related to

environmental management into their constitutions<sup>[11]</sup>, recognizing in their domestic law the link between human rights and the environment. However, the facts show that a higher level of regional cooperation is imperative to achieve relevant advances on this direction.

The transboundary nature of environmental degradation makes it absolutely necessary to contest the will of the States. Cooperation among states is the most effective tool to face this problem.

The OAS, the only hemispheric organization with rich and vast experience in the defense of human rights, is the natural forum in which to address this linkage. The consequences of environmental degradation on the human rights, its great impact on the development of the region, and the damaging effects of this degradation particularly suffered by the poor, extends like a shadow over all the underdeveloped states of the American continent. If we are to achieve a more equitable Americas, with more dignity and respect for its natural heritage, a new development strategy in the continent cannot be delayed.

## II. ENVIRONMENTAL DEGRADATION AND HEMISPHERIC SECURITY

Apart from the impacts of environmental degradation on the human rights, it is worth noting that environmental degradation has important political connotations, which will increase in the future. Latin America and the Caribbean is considered as: “The region with the highest level of ecological surplus in the world, with 3.93 surface units per person, due to its high natural biological availability (6.39 units)”<sup>[12]</sup>

The continent’s economic development mainly depends on its natural resources. Their conservation becomes a strategic matter of first order. Just to illustrate we can mention:

### Biodiversity

The majority of the most effective pharmaceutical products in the world, 42% of the most-purchased drugs derive from vegetal or animal compounds that are usually found in tropical climates where biological diversity is higher. The global market of pharmaceutical products is valued as US\$75 to US\$150 billion.<sup>[13]</sup> During the period 1990-1995, 3% of the forest surface was lost. In the period 1988-1997, Brazil lost about 15 million hectares of wooded zones, according to the GEO-2000 report. The loss of forest surface threatens the region’s biological diversity. If the accelerated actual deforestation estimates continue, and if nothing is done to redress them, it is likely that the last primary tropical wood will disappear in the next 50 years.

### Water resources

While during the last 70 years the world population has tripled, the use of water has increased six-fold. Worldwide, 54% of available fresh water is consumed, of which two thirds are destined to agriculture. Towards 2025 this proportion could increase

to 70%, exclusively due to the increase of the population or—if per capita consumption in every country reaches the level reached in most developed countries—, to 90%. The Americas contain some of the major water reserves of the world.

Competition to obtain water supplies that are growingly scarcer increases the probability of international conflicts to blow up (economic as well as military), due to the water quality and the facilities needed to canalize it. There are more than 200 waterway systems that crosscut national borders. There are 13 important rivers and lakes shared by 100 countries.<sup>[14]</sup>

If we take into account elements such as the cost-benefit relationship<sup>[15]</sup> in environmental degradation processes or the possibility to meet the needs of an increasingly populated planet, having its natural resources in a process of genuine and accelerated exhaustion, (human population exceeded the planet's capacity for sustainability in the year 1978, in the year 2000 this capacity was exceeded 1.4 times)<sup>[16]</sup>, we may reach the conclusion that the introduction of environmental and social dimensions into the conception of development and the legal protection of the environment in relation to human rights are not only ethical questions, but they also become basic issues of survival.

### III. ENVIRONMENT, HUMAN RIGHTS, AND ECONOMY

Given the clear evidence that economic growth has not halted poverty in the Third World, nor has it stopped environmental degradation and contamination in the First World, nations are in a process of reconsidering the relationship between economy and ecology.

Thus, to the traditional position of *economic growth at all costs*, it followed a more integral idea of development *that* not only responds to the economic aspect but also considers other elements, such as the human dimension of the economy as well as environmental dimensions. The paradigm of this conception is the idea of sustainable development:

“In this context it is considered that sustainable development pursues the achievement of three objectives: *a purely economic objective*, efficiency in the use of resources, and quantitative growth; *a social and cultural objective*, the restraints of poverty, the conservation of social and cultural systems, and social equity; and *an ecologic objective*, the preservation of physical and biological systems (natural resources *lato sensu*) that support the life of human beings.”<sup>[17]</sup>

However, despite the worldwide tendency to reform the conception of development, a vast majority of nations of the American Hemisphere suffer from the consequences of national and international economic policies that have forced them into conditions of extreme poverty, resulting in severe environmental degradation and human rights abuses.

The irrational exploitation of non-renewable resources, the scarce or lack of control over environmental variables of production and consumption, export of environmental charges from industrialized countries to developing countries, transport of toxic substances, export of chemical products declared as toxic by industrialized countries, reduction of environmental standards by multinational corporations and the imposition of dual standards, are examples of the detriment produced to natural resources and the people of the American States.

The lack of accurate legislation and control, make the American territory a “paradise of contamination”. Companies which comply with strict environmental norms at home, pollute the atmosphere and rivers of host countries without suffering the legal consequences of their actions. What is even more concerning is that in many cases these aggressive acts of contamination result in serious consequences for human populations, who are victims of fatal diseases that are directly linked to the degradation of their environment with extremely high economic costs for the State.

Cost-benefit studies conducted in Asia and Latin America show that the damage caused by contamination is unjustifiably high, given the low cost that would prevent it. Further actions are needed in three fields: regulatory reforms, reform of economic policies, and better environmental management by businesses.<sup>[18]</sup>

National economies that are not able to bear the huge costs of infrastructure that demand the problems of environmental degradation, are cases of aggravating situations of human rights abuses:

## **Cost of Impacts on Health due to Urban Contamination in Latin America**<sup>[19]</sup>

- Annual Cost of Impacts on Health (millions of US\$)

<i>Countries</i>	<i>Area Covered by the Estimate</i>	<i>Water Pollution</i>	<i>Air Pollution</i>
Brazil	National	130-389	---
	Sao Paulo, Rio de Janeiro and Cubatao	---	2.4 - 3.5
Chile	Santiago	96-149	100
Colombia	Bogotá	16.9	4.9 - 15.6
Ecuador	Pichincha, Guayas and El Oro, Quito	133	57
Mexico	National	3,600	---
	Mexico City		1,077
Peru	National	500 – 1,000	---

Given the problems of non-renewable resources extraction, contamination caused by multinational corporations, and the economic and institutional difficulties to bear the costs of environmental degradation, developing countries are the ones who suffer from the effects of unlimited consumption on the part of industrialized nations:

Consumption in industrialized countries has *direct effects on the developing world*. For example, almost 1,000 million residents of 40 developing countries are at the risk of losing their main source of proteins, fish, as the excessive fishing impelled by the demand of fodder and oil in industrialized countries puts even more pressure on the stock of fishes, already curtailed. And the 111 million persons that will be added to the actual population in USA in the next 50 years will increase the demand for energy in higher levels than the actual demand for energy in Africa and Latin America combined. A child that is born today in an industrialized country will add to consumption and contamination during his/her life more than what will 30 to 50 children born in developing countries.<sup>[20]</sup>

States embark alone on a path to development. Regional agreements and cooperation on economic and environmental issues are key elements to achieve short-term outcomes. Nor can we embrace a concept of development which leaves people at the margins. Countries with higher economic stability are the ones that present lower inequality indexes, where democratic participation is allowed and economic benefits reach the whole population.<sup>[21]</sup>

Economic growth with people at the margins is not development. To protect environmental resources and to ensure the full respect for economic, social, and cultural rights does not equate with halting economic or technological growth, but rather extends its



benefits to the whole population in the present and enables the development of future generations.

#### IV. WORLDWIDE CONSENT ON THE LINK BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT: Recent Actions of International Bodies.

Over the last decade, the world community is realizing the importance of the link between human rights and the environment to achieve the full enjoyment of the human rights. Few are the issues of major concern in the international agenda as the ones composed by human rights and the environment. They constitute a common denominator dealt in the course of World Conferences during the last decade of the century; which gave rise to the United Nations Conference on Environment and Development (Rio de Janeiro 1992), the II Universal Conference on Human Rights (Vienna 1993), the International Conference on Population and Development (Cairo 1994), and the UN II Conference on Human Settlements (Habitat II, Istanbul 1996).

This section exemplifies some of the actions taken by international organizations as regards the recognition of this link.

##### **United Nations**

In the mid 1990s, recognizing the urgent need and importance of deepening the link between human rights and the environment, and of exploring ways to achieve a better collaboration, harmony, and complement the agendas of different United Nations institutions working on both subjects, the UN created the position of Special Rapporteur on Human Rights and Environment. The Rapporteur prepared an important report called (The Ksentini Report), which offered a theoretical, thematic, and practical framework to address the linkages between human rights and the environment. <sup>[22]</sup>

In the legal field, United Nations recognized that one of the most remarkable faults is the legal integration of both fields. The international environmental law and the human rights law, which offer basic tools to effectively address the human-environmental problem, remain isolated from one another.

In the programmatic field, the major challenge that emerged from the Ksentini Report is to ensure that the High Commission for Human Rights is able to complement its task to protect and promote the human rights with the work of the United Nations Environmental Program (UNEP). In this sense, it is necessary that both institutions analyze their agendas respectively and seek common points for collaboration.

Finally, in the political field, state support is necessary to create spaces, institutional as well as political, to ensure that these agendas are close. It is clear that this requires economic support and political willingness to develop new agendas that arise from the process.

While exploring this arena in more detail, States found that one of the most urgent needs was to control the transboundary transport of toxic waste, and to this end, a new Special Rapporteur was created to address this problem.

Thus, following a petition of the States, the mission of the Special Rapporteur on Human Rights and Environment turned to focus on illegal transboundary transport of toxic waste. More recently, after the requirement of the UN Commission on Human Rights, supported by the High Commission for Human Rights at its highest level and the UNEP Director, in view of the coming Second Earth Summit on Sustainable Development in 2002, United Nations is analyzing which are the advances achieved in the promotion and protection of the human rights and the environment in the implementation of Agenda 21.

In this new drive, United Nations has asked 25 worldwide experts on human rights and environment<sup>[23]</sup>, to propose concrete recommendations for the states to advance this agenda in the future. The experts meeting took place in January, 2002, and the recommendations include: 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 UN institutions staff working on human rights and environment.

The next step for the High Commission and the UNEP is to achieve the implementation of its institutional collaboration. In this vein, the political support that could arise from the Second Earth Summit on Sustainable Development this year in Johannesburg, as well as the OAS work in this arena will be fundamental.

### **United Nations Development Program (UNDP)**

The UNDP has incorporated an environmental dimension into its activities and it is developing diverse programs in this sense: Through the Global Environmental Fund (GEF) UNDP assists 100 countries to combat climate change, reducing the emission of greenhouse gas, without halting its rhythm of growth. Over the last ten years, the resources assigned to finance FMAM/UNDP programs increased to 1,200 million dollars and attracted 1,700 million dollars from other sources. These projects have become a powerful drive to reform national policies.

Along with the United Nations Office to fight against Desertification and Drought, the UNDP assists countries to combat desertification and plan for future action to prevent drought and hunger. The UNDP supports the application of the Protocol of Montreal which protects the earth ozone layer, sponsoring projects in 64 countries through which 5,667 tones of chemical products that exhaust the ozone layer are eliminated annually<sup>[24]</sup>.

### **World Bank**

The World Bank has recognized the environment as one of the key points of its actions redefining its strategy in this direction. The Bank's concern has evolved from a conception of "not to harm", towards a proactive action in the promotion of environmental sustainability.

The Bank has developed an assistance program for the environment focused on the encouragement of environmental resource management and improvement of environmental conditions in developing countries. Funding of "green" projects was increased while a number of its portfolio projects have been refused due to their detrimental effects on the environment. Recognizing the link between human rights and environment, the 2000-2001 World Bank Report on World Development<sup>[25]</sup> measures poverty by virtue of four aspects: opportunity, potentiality, security and capacities. These aspects have multiple determinants, but there is a common factor for all: the sustainability of the environment<sup>[26]</sup>

"By linking poverty alleviation and sustainable development, the Bank is focusing on finding ways to ensure that economic growth does not come at the expense of the world's physical and ecological systems or the world's poor<sup>[27]</sup>  
World Bank, 2002<sup>[28]</sup>

### **World Health Organization**

The WHO formulated a global strategy for health and the environment that provides a framework for the fulfillment of three objectives:

Achieve a sustainable basis for health for all; to provide an environment that promotes health; and to make all individuals and organizations aware of their responsibility for health and its environmental basis<sup>[29]</sup> (Adriana Fabra, 2002)<sup>[30]</sup>

The World Health Organization, aware of the serious impact of environmental degradation on health, has created jointly with the Pan-American Health Organization, a program focused on children's environmental health<sup>[31]</sup> and a World Conference on Environmental Threats to Children's Health is due to take place this year, organized by the WHO in collaboration with the U.S. National Institute for Environmental Health Sciences and the U.S. Environmental Protection Agency.

### **World Trade Organization (WTO)**

The Marrakech Agreement establishes the World Trade Organization in 1994, it declares, in the first paragraph of its preamble that the state members to the WTO recognize that, "Its relation to the field of commerce and economic growth must be directed in view of improving living standards, [and] ensure full employment... *enabling at the same time the very best use of world resources in accordance with the target of sustainable*

*development, aiming at protecting as well as preserving the environment”*.<sup>1321</sup> (Emphasis added)

It is evident that, towards the mid 1990s, the importance of integrating basic human rights protections and environmental protections in every field of development was understood. Particularly, the area of Foreign Trade has been and continues to be one of the fields that resists considering environmental and human rights issues.

Nevertheless, the negotiations to create the WTO as well as those that are framed in other treaties such as the NAFTA, MERCOSUR, and most recently, the FTAA, address this need in one way or another.

While the real protections achieved in these trade frames are limited. Gradually, there emerge indexes that show that these structures will strengthen their environmental and human rights protection over time. The WTO Annual Ministerial meeting, recently held in Doha shows that, for example, some States are displaying their concern for and recognizing the importance of conducting *sustainability assessment of trade*. These studies not only analyze the economic impact of trade, but also study the effects of trade on human health, the state of workers in export sectors, apart from looking at the impact of trade on the environment.

Likewise, at Doha it was stated that, no country shall be prohibited from taking measures necessary to protect human, animal, or natural health. In practice, this last commitment could be the most progressive move of the institution from an environmental standpoint. Finally, from the institutional perspective, the WTO encourages cooperation with UNEP and other inter-governmental environmental organizations. The Doha Declaration states that the countries are opened to information exchange between the WTO and the Secretariats of other multilateral environmental agreements (MEAs), and to negotiate on the relations between the WTO rules and the trade obligations assumed by the countries in other MEAs. This relationship WTO-MEAs is generating considerable debate in which the importance and primacy of sustainable development in the framework of the WTO is stated once again.

Finally, the Doha Declaration demands the WTO Committee on Trade and Environment to study the effect of environmental policies on the access to the markets, and the environmental labeling of products (eco-labeling). This labeling is of much importance for the protection of human health as it provides the consumer with essential information.

It is worth noting that all the regional trade agreements, such as MERCOSUR, FTAA, NAFTA, and others, take their fundamental basis and alignments from the WTO negotiations, and therefore, the advances being stated in this forum, will undoubtedly influence future trade agreements.

## V. ENVIRONMENTAL DEGRADATION AND HUMAN RIGHTS ABUSES: Basic Rights, Environmental Rights

“The primary human right is the right to have rights”<sup>[33]</sup>.

The human rights system is not a rigid legal structure; its norms are widened as new problems arise which put at risk the attainment of a full and decent life. In our era one of the main problems we face is environmental degradation.

Given the complexity and range of the issue, it is not possible, in the scope of this work, to thoroughly measure out the way in which the link human rights-environment plays out in practice. For this reason, we have chosen some particular cases to reflect on, at least partially, the seriousness and depth of this issue.

### Basic Rights

#### Inter Alia the Right to Life and the Right to Health:

The right to life and the right to health, norms of *jus cogens*, are consecrated universally as fundamental and inalienable rights. They impose on the States duties related to the environment, in the form of omissions, since states shall restrain themselves from taking actions that lead to environmental degradation which puts at risk the life and health of people; as well in the form of action, given that the States shall ensure decent living conditions, implying at least access to clean water, a healthy atmosphere, and adequate food supplies.

The rights to life and health are critically affected by environmental degradation<sup>[34]</sup>.

According to estimates, about 40% of acute infections in the respiratory tract, 90% of cases of diarrhea, 50% of respiratory chronic disorders, and 90% of cases of malaria could be prevented through simple changes in the environment.<sup>[35]</sup>

The so-called traditional dangers, generally related to the lack of clean water,

Contaminated water and the concomitant of deficient sanitation account for more than 12 million deaths each year.<sup>[36]</sup>

Waste, atmospheric contamination in closed places,

Air contamination within homes—the soot produced by combustion of timber, dung, cultivation residues and coal used to cook food and heating—affects more than 2,500 million persons, mainly women and girls and, according to estimates, accounts for more than 2,2 million deaths, over 98% of them from developing countries.<sup>[37]</sup>

propagation of disease vectors,

the felling of tropical woods creates surfaces where rainwater becomes stagnant, leading to the proliferation of mosquitoes. Every year, malaria accounts for more than a million deaths and it produces over 300 million new clinical cases. <sup>[38]</sup>

To these we can add common modern dangers such as urban atmospheric contamination. It is estimated that in San Pablo and Rio de Janeiro, air contamination causes 4,000 premature deaths. The medium ozone concentration in Mexico D.F. in 1995 was about 0.15 parts per million, i.e., 10 times higher than the natural atmospheric concentration. <sup>[39]</sup>

Central America holds the record as the region with the highest pesticide use per year, amounting to 2 kg per person a year. In consequence, the quantity of acute poisoning due to pesticides is also high in the region, often surpassing 6000 cases annually. In Central America, it is estimated that 4 million people involved in agricultural activities are potentially exposed to pesticides. <sup>[40]</sup>

## Vulnerable Groups

### Children *Inter Alia*

Children are particularly vulnerable to environmental problems, largely due to that their nervous, reproductive, and immunologic systems are not fully developed. This, plus the dynamic state of growth in which they live, makes them particularly sensitive to the consequences of environmental degradation.

The contamination of the air, water, food, and soil, and the use of pesticides affect children from industrialized and developing countries more severely.

In some countries, up to 45% of pesticide poisoning cases occur in children. In industrialized regions, major concern exists about chronic pesticide exposure. A large number of children suffer the effects of lead poisoning or play and live near hazardous waste sites. These areas are breeding places of disease vectors add important biological risk factors. <sup>[41]</sup>

Twenty percent of deaths before the age of five are caused by respiratory diseases, (atmospheric contamination in enclosed places and urban contamination). About two million children under two years old die of diarrhea (due to lack of clean water and poor sanitary conditions) <sup>[42]</sup>.

Further, pregnant women, and fetuses are highly vulnerable to contamination.

A study conducted by the University of North Carolina (United States) in February of 2001 showed that the possibility of fetal death nearly duplicated among pregnant women from agrarian communities in California living near zones where pesticides were

used. The deaths were related to pesticide exposure during the first three months of pregnancy. <sup>[43]</sup>

As they are relatively recent, long-term effects which will result from cohabitation with environmental degradation from childhood are unknown.

The Convention on the Rights of the Child, in force since the year 1990, has consecrated the right of children to live in a healthy environment. The State Parties committed themselves—*inter alia*—to: Art.24 “attack diseases and malnutrition in the framework of primary health care through, among other things, the application of available technology and the provision of appropriate food and clean water, taking into account the dangers and risks of the contamination of the environment”; as well as to: Art.29. “Educate children to respect the natural environment.”<sup>[44]</sup>

These are few examples of the existing links between environmental degradation and the enjoyment and exercise of the human rights to life and health. This relationship, environmental degradation-human rights, is present in each and every right recognized by the Inter-American system. The right to equality before the law, for example, is affected by the disproportionate way in which some sectors of the population bear an unequal burden of environmental degradation— what is referred to as “environmental discrimination”, the right to work is affected by the environmental conditions of the workplace, the right to property is affected by environmental degradation, etc. We can see the magnitude that the problem of environmental degradation has on the enjoyment and exercise of human rights. It is necessary to recognize from the legislative perspective the interdependence and indivisibility between human rights and the environment at the regional level in order to take appropriate measures that ensure the enjoyment and exercise of basic human rights.

The impact of the consequences of environmental degradation not only affects the full enjoyment of human rights in a new way, but it also severely magnifies already existing problems that affect the majority of the most vulnerable populations, regions, and countries of the world, imposing a great burden for their development. The environmental dimension of human rights refers not only to the environmental interpretation of rights already recognized but also requires the explicit recognition of specific rights. Regional legislation that recognizes this relationship is an essential tool to promote awareness in this area; it constitutes an essential step to foster concrete actions and will provide legal instruments, at present non-existent, to protect the victims of environmental degradation.

## VI. SOCIAL PROBLEMS POSED BY ENVIRONMENTAL DEGRADATION THAT ENTAIL HUMAN RIGHT ABUSES

Environmental degradation not only affects the enjoyment and exercise of human rights but it also generates social problems that result in abuses to these rights. The following section briefly exemplifies some of these problems.

### Environmental refugees

- In 1985, UNEP presented a report titled “environmental refugees”, defined as: “those individuals who have been temporarily displaced due to natural dangers or industrial accidents, who have been permanently displaced by economic development programs, or who have seen themselves forced to emigrate due to the inappropriate processing and deposit of toxic waste.”<sup>[45]</sup>

Huge infrastructure works, contamination of the water on which the survival of peoples depend, and the processes of soil degradation, are some of the causes that provoke the forced displacement of people

In Haiti, half of the land suitable for cultivation is already lost, generating 1.3 million "environmental refugees " (in Mexico the number is 900,0000 per year).<sup>[46]</sup>

The World Bank estimated that in 1998 there were 25 million persons that had been displaced due to the degradation of their environment, higher than the number of refugees due to wars.

Environmental refugees are legally unprotected, as the 1951 International Convention on Refugees and its 1967 protocol do not provide for the environmental cause as motif for refugee's status.

### Loss of cultural and linguistic identity

- The cultural and linguistic identity of peoples is largely constructed in relation to their surrounding environment. The dramatic alteration of the environment due to degradation processes (desertification, loss of biodiversity, contamination of lake water etc.) or due to huge infrastructure works (mega dams, highways, installation of industrial belts) put indigenous communities, cultural minorities, and societies in general, under critical situations. This deculturalization implies the loss of nutritional sovereignty and genetic heritage, forgotten traditional medicines, lack of use of natural resources for the construction of houses, are all elements that undermine peoples' culture forcing them into dependency and ignorance.

A healthy environment is desirable, but this is not enough, the conception of environmental culture as the heritage of a people or culture must be introduced to promote development and fight against poverty. The recovery, development, and protection of the American peoples' “know how” as regards natural resources (food, medicine, housing) is essential for the full respect of human rights.

Although, for the sake of brevity, it is not possible, in the scope of this work, to study other social problems originated by environmental problems such as environmental discrimination<sup>[47]</sup>, inter-generational equity, and the situation of other vulnerable groups, such as women, indigenous peoples, etc., show the existence of the link in question and the need for its legal concretion.



## VII. RELATING HUMAN RIGHTS AND THE ENVIRONMENT: FROM FACTS TO JURIDICAL MATTERS

It seems clear from the facts that environmental degradation affects the enjoyment and exercise of human rights, aggravating existing situations and generating new problems.

Some questions arise, however: is it possible to legally link human rights law with environmental law? What would be the advantages of this linkage? And finally, which would be the most appropriate legal tools and means of implementation to make them effective?

### Juridical feasibility

Environmental law and human rights law have essential common points that enable the creation of a field of cooperation for both:

- Both disciplines have strong social roots, even though human rights law is more installed in the collective conscience, the accelerated process of environmental detriment has generated a new “environmental awareness”;
- Increasing political support since the Second World War<sup>[48]</sup>. Mainly in the field of human rights a profuse juridical net of universal scope was generated. In relation to environmental law, despite great advances, there still are faults, one of the most remarkable ones, realizing more effective access to justice<sup>[49]</sup>.
- They are legal systems with purpose and objectives, subjected to universal consent and with variable contents, opened to reality and social change. The contents of both disciplines must be adapted to the dynamic process of societies, their normative corpus must meet the needs of each era, in order to achieve their protection ends<sup>[50]</sup>.
- They are developed in the framework of public international law; the international community has assumed the commitment to watch for the fulfillment of human rights and the respect for the environment. Yet, the phenomenon of environmental degradation transcends political boundaries: they are intrinsically universal.
- The influence of these fields over the conservation of world peace and security is critical.

### Advantages of the link

- The need for looking for solutions to human rights abuses caused by environmental degradation is imperative; the way to find these solutions is through the Inter-American Human Rights System. This would enable the introduction of human rights principles into the environmental field, such as anti-discrimination standards, the need for social participation, protection of vulnerable groups. At the same time, the human rights system would be forced

to address environmental issues, which would allow for the extension of human rights protection and would give rise to concrete solutions for cases of abuses.<sup>[51]</sup> Finally, one of the most important consequences would be to grant environmental degradation victims the possibility to more effectively access justice. Environmental law, maybe due to its recent existence, is managed mainly at the interstate level and lacks participation channels for civil society, individuals, and NGOs. Against the present situation of absolute defenselessness of environmental degradation victims, linking human rights and environment places these victims closer to the mechanisms of protection established by human rights law.

## VIII. ACTION PLAN

In this section we present possible actions to address the link between human rights and the environment at the core of the OAS.

The action plan is based on three fundamental pillars:

### 1. Participative democracy

It strives to achieve transformations through full social participation. A change in the relation human being-environment, or human being-nature requires a series of modifications in the behavior of the people. This can only be achieved if the population is informed and invited to participate in the process of change. Information, participation, and education are essential in this proposal.

### 2. Institutional harmony

The actions taken shall not overlap with others already existing, a coordination of the instances that are already functioning in relation to the issue in question at the Inter-American level is fundamental to achieve effectiveness and efficiency. A harmonization in the relationship with other regional systems and the United Nations system will enable the exchange of information and more global actions.

3. The proposed actions will be carried out in the framework of the principles established in the OAS Charter and of Inter-American Agreements on Human Rights. The mechanisms and procedures to be used shall take into account the principles of sovereignty and of legal equality of the States.

### Action Plan

A) Creation of a technical work team of interdisciplinary character that carries out its functions within the framework of the Executive Office of the Organization of American States.

This work team will have the following main objectives:

1. Gathering of information about: a)- the environmental situation in the Americas, in this sense the coordinated work with the OAS Unit for Sustainable Development and Environment is fundamental, as well as with national governments, scientific groups, NGOs, UNEP, and other Institutions; b)-environmental degradation and human rights abuses (existing legislation at the domestic level, national institutions addressing this issue, actions of international bodies, actions of the United Nations, other actions of regional systems, NGOs, good practices, jurisprudence, etc.)
2. Public Debate (in undergraduate and advanced university programs, the press, businesses, workers corporations, Internet, specially through the OAS Inter-American Strategy for Public Participation–ISP)
3. Promoting the adoption of regional agreements on sustainable development, human rights, and the environment, and introduction of the human rights dimension into environmental agreements.
4. Promoting intergovernmental cooperation towards sustainable development (systems of interstate information on environmental risks, joint planning, etc.)
5. Proposal of Inter-American legislation that links human rights and the environment.
6. Proposal of domestic legislation models.

B) Creation of the position of Special Rapporteur on Human Rights and Environment in the Inter- American Commission on Human Rights mandating research on human rights abuses caused by environmental degradation in the continent.

C) Promote from the General Secretariat a clear and concrete strategy for collaboration and joint action between the Unit for Sustainable Development and Environment and the OAS Inter-American Commission on Human Rights.

## IX. CONCLUSIONS

The facts, studies conducted, the present situation of development in most of the States of the hemisphere, the recognition of the international community, the importance of natural resources hemispheric security, all clearly sustain the existence of the link between human rights and environment.

Development will only be achieved and sustained through a restatement of environmental protection policies and of individuals' active participation in this process. It cannot be challenged that the standard, and very existence of human beings depends, to a great extent, on their environment.

It could be argued that the legal structures are already in place to address these problems, and that there is no lack of legal devices. However, the experience in the human rights field shows that there are no obvious rights. Accurate legal solutions, precise institutional responses are the only way possible and desirable.

Finally, it is worth adding that it is fundamental to consider a subjacent ethical element to fully understand the sense of linking human rights and the environment, which

overturns any objection of administrative or bureaucratic order. This ethical sense is given by the bravery and dignity attached to the human being and *lato sensu*, to life.

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[1] OAS/Ser.PAG/RES. 1819 (XXXI-O/01), AG. San José de Costa Rica, June 5, 2001. This document has a copy of the Resolution attached.

[2] World Bank, World Development Report 2000/2001; Attacking Poverty, World Bank, Oxford University Press; p23

[3] Inter-American Bank of Development, Latin America Against Inequality, Economic and Social Progress in Latin America, Report 1998-1999, Washington D.C. p.1

[4] According UNDP, poverty is a brutal deprivation of human rights, and not, as an erroneous interpretation is sometimes made, that social welfare, education, health, and employment are acts of charity from governments and international bodies, on behalf of the poor. Poverty negates liberties, capacities, rights, opportunities for the people to lead a long, creative, and healthy life, to acquire knowledge, attain freedom, dignity, and respect by themselves. UNDP, 2001 ([www.undp.org](http://www.undp.org))

[5] In December 1995, the General Assembly adopted resolution 50/107 proclaiming the First United Nations Decade for the Eradication of Poverty (1997-2006). In December 1996, resolution 51/178 laid down the theme for the Decade as a whole which is "Eradicating poverty is an ethical, social, political and economic imperative of humankind."

At the World Summit for Social Development, held in March 1995 in Copenhagen, Governments reached a new consensus on the need to put people at the core of development.

[6] J. Almenares et al., "Critical Region: A Profile of Honduras" in Health and Climate Change (The Lancet, London 1994)

[7] UNFPA, The State of the World Population, Health, and Environment (WWW.unfpa.org)

[8] UNFPA, The State of the World Population, Health, and Environment (WWW.unfpa.org)

[9] The Protocol of San Salvador was enforced in November 16, 1999

[10] Article 11

1. Every person has the right to live in a healthy environment and to receive basic public services.

2. The State parties shall promote the protection, preservation, and improvement of the environment.

[11] This is reflected in most of the constitutions in the region that recognize the importance of the environment: Constitution of Bolivia, 1967 (article 137), constitution of Brazil, 1988 (article 225), constitution of Chile, 1980 (article 19), constitution of Colombia, 1991 (articles 8,49, 79,80,86 and 88), constitution of Cuba, 1992 (articles 11 and 27), constitution of El Salvador, 1983 (article 69), constitution of Ecuador, 1983 (article 19), constitution of Guatemala, 1985 (article 97), constitution of Guyana, 1980 (articles 25 and 36), constitution of Haiti, 1987 (articles 253 and 258), constitution of Honduras, 1982 (article 145), constitution of Mexico, 1917<sup>[11]</sup> (article 25), constitution of Nicaragua, 1987 (articles 60 and 102), constitution of Panama, 1980 (article 110), constitution of Paraguay, 1967 (article 132), constitution of Peru, 1993 (article 2 inc. 22), constitution of Uruguay, 1997 (article 47), constitution of Costa Rica (articles 46<sup>[11]</sup> and 50<sup>[11]</sup>).

[12] UNFPA, The State of the World Population

[13] World Resources 2000-2001, People and Ecosystems, The Fraying Web of Life, UNDP, UNEP, WB, WRI p 14

[14] FNUPA; The Sate of the World 2001

[15] A good example of this is related to the Eco-Tourism: Eco-tourism where the beauty and unspoiled quality of an ecosystem is marketed directly may be another incentive to conserve. In South Africa a private enterprise called Conservation Corporation negotiated with farmers to return 168 km<sup>2</sup> of their lands to its original habitat and stock it with big game animals...The land is now yielding \$200-\$300 per hectare annually

from visitors fees instead of \$21-\$68 from ranching or farmer, and providing a biologically diverse resource to support the large game (Anderson 1996:207; Honey 1999:374) ...For Costa Rica tourism generated \$654 millions in 1996. World Resources 2000-2001, People and Ecosystems, The Fraying Web of Life, UNDP, UNEP, WB, WRI pgs. 32-35

[16] Edward O. Wilson, The Bottleneck, Scientific American, February 2002.p.74

[17] José Juste Ruiz, Derecho Internacional del Medio Ambiente. Mc Graw Hill, Madrid, 1999, p.33

[18] Greening Industry: New Roles for Communities, Markets, and Governments" World Bank.

[19] World Bank, Instrumentos de Mercado para la Política Ambiental en América Latina y el Caribe; Huber, Ruitenbeeck, Seroa da Motta. World Bank, 1998.

[20] FNUPA, the state of the world 2001, ( www.fnupa.org)

[21] A society submerged into restlessness, despair, and insecurity, is a factor that seriously affects democratic stability. Democracy cannot be guaranteed while vast sectors are excluded from the economy and from society. If democratic institutions do not have social well being as pillars, the conditions to achieve sustainable economic development vanish. Inequality goes against economic growth reducing domestic markets, generates uncertainty and keeps capital and credits away. UNDP, 2001 (www.undp.org).

[22] Fatma Zohra Ksentini, Human Rights and Environment, Special Rapporteur's Final Report, [hereafter, Ksentini Report] UN. Doc. E/CN.4/Sub.2/1994/9, July 6, 1994.

[23] Among them the Center for Human Rights and the Environment (CEDHA)

[24] UNDP, www.undp.org

[25] The World Bank, Partnerships for Development, 2000, pgs.195-201

[26] World Development Report 2000/2001, Attacking Poverty, Published for the World Bank, Oxford University Press.

[27] (WB, 2002)"

[28] www. worldbank.org

[29] WHO

[30] Adriana Fabra, A REVIEW OF INSTITUTIONAL DEVELOPMENTS AT THE INTERNATIONAL LEVEL, BACKGROUND PAPER No. 3, Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment 14-16 January 2002, Geneva.

[31] The CHELAC project is part of the WHO initiative for the protection of children's environmental health. It will benefit from the long lasting cooperation that PAHO has developed with countries of the region and the existing infrastructure: This project will join efforts and be coordinate with existing PAHO undertaking to improve Children's Environmental Health in Latin America and the Caribbean

[32] The references to the documents of the WTO are non-official translations.

[33] Hannah Arendt, cited by Celso Lafer in "La reconstrucción de los derechos humanos" Economic Culture Fund, Mexico, 1988

[34] Ian Johnson and Kseniya Lvovsky: World Bank Special report: Una doble carga

[35] unfpa, The State of the World, 2001...

[36] Idem

[37] Idem

[38] Idem

[39] Idem

[40] WHO, Children's Environmental Health in Latin America and the Caribbean, Pesticides, (www.cepis.ops-who.org)

[41] WHO, Children's Environmental Health in Latin America and the Caribbean, Pesticides, (www.cepis.ops-who.org)

[42] WHO, Children's Environmental Health in Latin America and the Caribbean

[43] unfpa, El State of the World 2001

[44] Convention on the Rights of the Child.

[45] UNEP, ENVIRONMENTAL REFUGEES, at i (1985)

[46] Cícero Bley Jr. Ciencia Hoje vol. 25 n148, 1999

[47] Environmental discrimination occurs when certain sectors of the population, particularly the most vulnerable ones, bear the burden of the environmental degradation effects in a disproportionate way. Working Paper, Environmental Discrimination, Jorge Daniel Taillant, Center for Human Rights and the Environment, November 2000

[48] Michael J. Kane, Promoting Political Rights to protect the Environment, *The Yale Journal of International Law*, Volume 18, Number 1, pgs.389-390

[49] The Env. Law presents “epistemological and legal difficulties that have not been solved” being one of these the existence and entitlement of subjective rights. Juste Ruiz, *op.cit.*, pgs.5-6

[50] Alexandre Kiss, Définition et nature juridique d’un droit de l’homme à l’environnement, en *Environnement et droits de l’homme*, Pascal Kromarek, directrice de publication, 1987

[51] Michael R. Anderson, Human Rights Approaches to Environmental Protection: An Overview in Alan E. Boyle & Michael R. Anderson, Eds., *Human Rights Approaches to*