

Center for Human Rights and Environment

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Proposal for the adoption of Inter American Legislation on Human Rights and the Environment

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Introduction

The central purpose of this document is to explain the existing need for Inter American legislation linking human rights law and the environment. To this end we have identified and analyzed some of the reasons justifying this need.

We understand that the need to legislate certain arenas arises as a consequence of the necessity to find responses to a determined problem. In this case, the necessity to legislate the overlaps between human rights and the environment emerges due to the important impact environmental degradation has on the full enjoyment of human rights.

Despite growing environmental degradation suffered in the American continent and its obvious impact on human rights, no regional legal instruments have appeared to protect individuals or States from the damages caused by environmental degradation. The magnitude, seriousness, and transnational character of the matter generate a great need to fill this legal gap. It is imperative to develop Inter American legislation recognizing the existing links between human rights and the environment and to protect inhabitants of the region from the consequences of environmental degradation.

We have decided to present our views as follows: First, we will analyze the interdependence and indivisibility of the human rights and the environment; Second, we will present some aspects of the environmental situation in the Americas and its subsequent

impact on the enjoyment of human rights; Third, we will analyze the development needs of American States and their relationship with the environment; Fourth, we will address the need for legislation in the areas of human rights and the environment to promote regional security and a peaceful coexistence; Finally, we will examine the importance of such legislation to the development of internal law in American States and its incidence on international law.

Interdependence and indivisibility of human rights and the environment: incidence of environmental degradation and the effective enjoyment of the human rights.

The premise that the human being can only conceive himself and develop in a healthy environment is further asserted day after day. Over the last decade, the world community has begun to recognize the importance of the environment to human life. The 1972 UN Declaration on Human Environment (The Stockholm Declaration); The Hague Declaration of 1989; The United Nations Declaration on the Environment and Development (Rio de Janeiro 1992); The United Nations Special Rapporteur's Report on Human Rights and the Environment (Ksentini Report 1994), are just some examples attesting that the world community has recognized the existing relationship between human rights and the environment. The view of artificially induced environmental degradation has graduated from recognizing the harm done to natural resources, to the recognition that the harmful disturbance of our planet's biodiversity directly and negatively impacts human life. While recent international jurisprudence addressing human rights and that addressing the environment have focused on the protection and promotion of each through separate legal frameworks, the linkages between environmental abuses and human rights abuses are increasingly evident and, as such, require specific legislation.

Latin America and the Caribbean constitute one of the world's greatest ecosystems. However, the irrational use and overexploitation of natural resources increases at an alarming rate, unsustainable "economic development", visible in poor or untreated sewerage, uncontrolled timber extraction, dams constructed for power production, and the growth of air and noise pollution; are taking their toll on the region's habitat, and especially on populations whose lives critically depend on local natural resources.

Wisely, the United Nations Special Reporter in her Final Report on Human Rights and the Environment, Dr. Ksentini recognizes:

Issues such as the preservation of natural balances, the stability of the ecosystem as a whole, the preservation of natural resources **or the very survival of the Earth are urgent because of the scale of environmental damage to the planet and its impact on the individual, on his well-being, and consequently on the enjoyment of fundamental rights, including the right to life.**  [Emphasis added]

In order to illustrate the interdependence and indivisibility of human rights and the environment, we have chosen a specific environmental problem (climate change), and we have analyzed its subsequent impact on the full enjoyment of the human right to life and to health.

Impact of climate change on the human right to life and to health

The 1989 Hague Declaration expressly recognized that "environmental harm threatens the right to live in dignity". The Human Rights Committee states regarding Article 6 of the UN

International Covenant on Civil and Political Rights, that States are required “**to take positive measures to ensure the right to life, including** steps to reduce the infant mortality rate, prevent industrial accidents, and **protect the environment**”.^[2]*[Emphasis added]*s

We recognize, hence, that the right to life is intimately related to the environment. Specifically, we will now analyze the existing relationship between climate change and the enjoyment of the human rights to life and health. Worldwide, over 51 million people die annually. Nearly a third of these deaths are due to parasitic and infectious diseases, which constitute the main cause of world mortality rates. Infectious diseases cause 1% of deaths in developed countries, the rate ascends to **41,5%** in developing countries.^[3]

In its 1997 Report on Global Resources, the World Bank recognizes that **the resurgence of infectious diseases is directly associated with climate changes** caused by agricultural and economic development, or due to changes in the patterns of land use.

Other human activities that disturb natural ecosystems, including road-building, logging, and irrigation projects can also bring humans into new areas while displacing microbes that must then seek our new hosts. Changes in local climate, such as drier, wetter, or warmer periods, can result in an abnormal reproduction of mosquitoes as well as foment other diseases.^[4]

The Intergovernmental Panel on Climate change estimates that global temperature will rise nearly 0.3 °C each decade.^[5] **Global warming will provoke immeasurable consequences in the future patterns of infectious diseases**, since minimal alterations in temperature have significant effects on the vectors that transmit them- *vía* for example, mosquitoes, flies, snails, and rodents. Thus, for example, the *aedes aegypty* mosquito that transmits dengue fever and malaria has significantly expanded its area of action. For the first time, we find this mosquito in mountainous regions of countries like Costa Rica, Colombia, Ecuador, Peru and Bolivia, threatening the population with malaria. In Southern Honduras, habitat degradation caused by land erosion has forced residents to move north. Most of these emigrants were not immune to malaria, and this provoked an increment of malaria cases in northern areas from 20,000 in 1987 to 90,000 in 1993.^[6] Concerning the dengue, despite that in 1960 it was believed to be eradicated from Latin America; at present, various regions of the continent are suffering from dengue epidemics. Brazil has been one of the most affected countries with 88,039 cases in 1995.^[7]

Another example of the impact of climate changes on the enjoyment of the human right to life and to health is the overheating of the oceans and its relation to the increment of cholera epidemics. Researchers have associated cholera epidemics with the growth of coastal plankton. One form of cholera lives in the surface layer of the sea. Under certain conditions, when the water is rich in nitrogen and phosphorous, and its temperature rises, coastal plankton spreads and cholera abandons its passive state to become infectious. This process is one of the causes of cholera epidemics suffered in South America in 1991.^[8]

These are just some examples of the existing links between climate change and the enjoyment of the right to life and to health. This relation environmental degradation-human rights is present in each and every right recognized by the Inter American system. Thus, for example, the right to equality before the law is affected by the disproportionate way in which some sectors of the population bear the environmental burden (this is what is referred to as “environmental discrimination”), the right to work is affected by environmental conditions of the labor atmosphere, the right to property is affected by environmental degradation, and so forth. We acknowledge the incidence of the problem of environmental degradation in the full enjoyment of human rights. It is important to endorse the interdependence and indivisibility existing between human rights and the environment in order to adopt appropriate measures to better guarantee the enjoyment of human rights.

The impact of the consequences of environmental degradation not only affects the effective enjoyment of human rights in a newly understood way, but it also delves deeply into pre-existing problems affecting the most vulnerable populations, regions, and countries of the world imposing a great burden on their development. The environmental dimension of human rights not only requires an environmental interpretation of the rights already recognized but it also demands the explicit acknowledgment of specific rights. A regional legislation that recognizes this relationship represents is essential tool for the promotion of awareness of this area, and constitutes a fundamental step to foster concrete actions and provide the necessary legal instruments, not yet available, to protect the victims of the environmental degradation.

The imperative need for development: What this really means for the poor countries of the region.

- Poverty, environmental degradation, and human rights abuses, is a trilogy that persists in every developing country of the region. The international community has recognized by means of several studies and reports that poverty and underdevelopment produce environmental degradation and hinder the enjoyment of basic human rights. Hence, The World Commission on the Environment and Development, in its 1987 Report states that:

As a consequence of the 'debt crisis' of Latin America, that continent's natural resources are now being used not for development but to meet financial obligations to creditors abroad. This approach to the debt problem is short-sighted from several standpoints: economic, political, and environmental. It requires relatively poor countries simultaneously to accept growing poverty while exporting growing amounts of scarce resources.¹²

While analyzing the combined effect of certain policies of development on the environment, Sahnoun concluded that particular international policies in the areas of investment, commerce, and economic support, can lead to several environmental damages. Thus, for example, the imposition of extensive agriculture to improve the balance of trade

of a country and thus, improve its balance of payments has catastrophic results on the environment.

It is imperative, to revert the tendency of developing countries towards the protection of the environment as an obstacle to reach development levels desired. **The major source of wealth of most poor American States is their natural resources base. Sustainable management is the only way for countries of the region to embark on development.** The lack of clear and effective environmental policies and complaisance towards environmental degradation in exchange for short-term financial resources only generates more poverty and increases human rights violations of its inhabitants.

It is noteworthy that more than the 90% of gas and oil reserves are located in developing nations. Nonetheless, several studies show that countries rich in natural resources have had scarce economic development in comparison to countries poor in natural resources. Some of the reasons argued are that the extraction of natural resources generates only a minimum quantity of employment^[10], and that this generation does not affect other sectors of the economy, only benefiting the exploited sector.

An Inter American legislation linking human rights to the environment not only becomes indispensable for the promotion of sustainable development in the region, but also serves as a guide to other poor developing countries rich in natural resources, to avoid the transfer of resources in exchange for incrementing the levels of poverty. Each country must have access to sufficient resources to ensure sustainable development.

Global consultation on the right to development as a human right identified the transfer of the control of resources from developing countries to developed countries as one of the obstacles to development, intensified since 1980.^[11] It is timely to analyze the present impact of private investment in developing countries on environmental degradation and the enjoyment of human rights.

As regards developing countries, the international consensus on “structural adjustment” reached during the VII United Nations Conference on Business and Development, consisting of privatization, deregulation and deconcentration of the national economy in exchange for payment facilities on external debts, and an imperative need for investments, has resulted in the proliferation of numerous corporations in the area of natural resources exploitation.

This transfer of capital from developed countries to developing countries as private investment, poises several challenges for the region: 1. An increasing loss of control over local natural resources; 2. The transfer of environmentally harmful technology to developing countries; 3. The decay of environmental and labor standards destined to offer a “proper” environment for private investment, and 4. The transfer of the richness generated by the natural resources extraction from developing countries to developed countries.

It is commonly known that many multinational corporations in developing countries pollute rivers, use pesticides that have been banned in industrialized countries, use obsolete technology in the manufacturing of their products that is environmentally harmful, etc.

However, industrialized countries restrain themselves from undertaking those practices. The main reason for the differences in management between developing and industrialized countries lies in the impunity of their actions. Such impunity, which is promoted and strengthened by the theory of *Forum non Conveniens* is usually used by foreign corporations to take refuge for their illegal and abusive acts in the arena of human rights and the environment.

Developing nations, in the name of development, go from being natural paradises to becoming polluted one, which poses serious obstacles for the full enjoyment of their population's human rights. Even though private investments rose in the 90's from US\$44 billion to US\$244 billion, there is no Inter-American legislation at the regional level that addresses the impacts of rampant and uncontrolled development, protecting the inhabitants of the region from environmental damages generated by this investment. The adoption of Inter-American legislation linking human rights and the environment will help not only States but will also help ensure that private sector investments will be environmentally sustainable.

Regional Peace and Security

In most countries of the American continent there is a relationship between natural resources base-exploitation and poverty that cannot be ignored.

The dizzying and irrational extraction of natural resources from the region is closely related to regional peace and security. The deprivation of natural resources in developing countries will intensify poverty in the region generating political, social, and economic instability. The adoption of Inter-American legislation protecting the region's natural resources and promoting sustainable exploitation, becomes an essential tool to ensure regional peace and security.

Development of Internal Law

This landmark opportunity to adopt Inter-American legislation in the area of human rights and the environment surfaces not only due to the importance and magnitude of the problem, but also by its acknowledgment in internal law. Most regional constitutions prove this to be specially true as regards 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 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 (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 2.22), Constitution of Argentina (article 41) Constitution of Costa Rica (articles 46 y 50), Constitution of Uruguay, 1997 (article 47).

Even though internal law at the constitutional level has evolved significantly in the recognition of the importance of the environment, it is true that the eligibility of this right is almost inexistent. Therefore, it is necessary to strengthen internal law by acknowledging the relationship between human rights and the environment at the regional level. Experience shows, in a positive way, the influence of international law in the development of internal law. Inter-American legislation in this matter will be regarded as essential for the enjoyment of constitutional rights in this area, strengthening regional law in a significant way.

Development of International Law at the Regional Level

As regards the development of international law at the regional level, the recognition of the existing links between human rights and the environment completes the Inter-American system, widening its scope of protection and allowing it to adapt to the changes brought about by modern times, recognizing the impact of global economic trends on the environment and the enjoyment of human rights.

Inter-American legislation on this matter, not only will provide the necessary tools for the bodies of the system to interpret the scope of other rights already recognized, for example, in the Pact of San José and its facultative protocol, but will also ensure the full enjoyment of future generations' human rights.

Conclusion

Severe environmental crises, such as Bhopal, Chernobyl, Petrobras, etc., have clearly proven the transnational nature of the environmental impact and the multidimensional character of such damage. The state of the environment is now conceived as an international problem that is to be addressed in a coordinated and coherent way by means of combining forces of the international community.

The World Commission on the Environment and Development (Brundtland Commission) provides some statistics that portray the severity of the problem: since 1970 the planet earth has lost about 200 million hectares of forest, 11. 4 million hectares of rain forest annually, and a fifth part of the land devoted to agricultural production is now a desert.

Likewise, in its 1993 Report on Development, the World Bank stated that **more than 850 million persons live in regions affected by desertification**. The depletion of rain forest grows at a rate equivalent to a football camp per second. The inhabitants of industrialized countries consume ten times more energy than those living in developing countries, and produce 71% of the world's carbon dioxide emissions, and 68% of industrial waste. **More than 2 million deaths and billions of cases of diseases can be attributed to pollution. About 400 million and 700 million persons, mainly women and children in poor rural areas, live in severely polluted environments, over 300,000 and 700,000 of annual premature deaths can be attributed to the high levels of pollution in cities.** The

deterioration of the ozone layer could cause 300,000 additional cases of skin cancer in the world and 1,7 million cases of cataract.^[12]

The magnitude and severity of the problem is overwhelming, and its impact on the enjoyment of human rights in the region is alarming. Its transnational nature requires a coordinated response at the regional level. It is necessary to join forces to protect and ensure the enjoyment of human rights of the inhabitants of the region. States already have the tools to accomplish it. The adoption of specific Inter-American legislation to recognize and address the problem effectively constitutes a significant step towards the protection of the inhabitants of the region against environmental abuses, as well as to ensure future generations' guarantees towards development.

^[1] See Fatma Zohra Ksentini, Human Rights and the Environment, UN Special Rapporteur's Final Report, [hereafter Ksentini Report] UN Doc. E/CN.4/Sub.2/1994/9, July 6, 1994, paragraph 117

^[2] J.G.C. Van Aggelen, *Le rôle des organisations internationales dans la protection du droit à la vie*, Bruceles Story-Scientia, 1986, p. 32.

^[3] WHO, *The World Health Report 1995: Bridging the Gaps* (WHO, Geneva, 1995), pp.18-20.

^[4] World Health Organization, *The World Health Report 1995: Bridging the Gaps* (WHO, Geneva, 1995), pp.18-20. World Bank, "World Resources: A guide to the global environment 1996-97", p. 181-182. For more information see Mary E. Wilson, "Anticipating New Diseases", *Current Issues in Public Health*, Vol. 1 1995, pp 90-94. J. Lesderberg, R. E. Shope, y S. Oaks, "Emerging Infections: Microbial Threats to Health in the United States", Institute of Medicine, Ed. National Academy Press, Washington, D.C., 1992, p. 47

^[5] International Panel on Climatic change, "The Social Costs of Climatic change: Greenhouse Damage and the Benefits of Control"; Chapter 6 in *Second Assessment Report, Working Group III (April 1995 draft)* World Meteorological Organization/UNEP, Geneva, 1995) p. 9

^[6] J. Almdares et al., "Critical Region: A Profil of Honduras", in *Health and Climatic change (The Lancet*, London, 1994), pp.29-31 In higher regions, the rate of malaria is 500% times higher than in past years. The climate change patterns suggest that global warming will increase the cases of malaria, from 400 million annually to 500 million annually. Richard Stone, "If the Mercury Soars, So May Health Hazards", *Science*, Vol 267, No. 5199, (Feb 17, 1995), pp. 957-958.

^[7] Tod Robberson, "Dengu Fever Epidemic Spreads Despite Latin American Efforts", *Washington Post* (Oct. 20 1995) p.A22

^[8] Paul R. Epstein, "Emerging Diseases and Ecosystem Instability: New Threats to Public Health", *American Journal of Public Health*, Vol. 85, No. 2, (Feb. 1995), pp.168-172

^[9] Brundland Report, "Our Common Future", UNEP/GC. 14/13, Introduction, para. 20

^[10] For example the mining and oil sector in Papua New Guinea uses less than the 2 % of the population. However, the exports represent the 25% of the gross domestic product of the country.

^[11] "The realization of the right to development", Consultation, Geneva, 8-12, January 1990, HR/PUB/91/2,1991, para. 166, p. 48

^[12] For further information see *World Development Report*, World Bank, and *Human Development Report 1993*, UNDP.