



**SUBMISSION TO JOINT SEMINAR OF THE OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS AND THE UNITED NATIONS ENVIRONMENT PROGRAMME ON
HUMAN RIGHTS AND THE ENVIRONMENT**

11 JANUARY 2002

This submission will address three critical issues that have been given relatively less treatment in international efforts to integrate human rights and environmental issues. The CISDL's recommendations to all actors in this field are:

- I Utilise Existing Human Rights Institutions and Treaty Regimes,
- II Further Develop International Sustainable Development Law in the Areas of Human Rights and the Environment, and
- III Ensure that Human Rights Related to Poverty are Targeted Within the Framework of Environmental Protection.

I Utilise Existing Human Rights Institutions and Treaty Regimes in an Innovative Manner

1. International human rights institutions currently in place have begun to address issues relating to the environment within their mandates. However, the full potential of such institutions has not been realised as yet. It is submitted that such institutions have several key roles in the field of environmental protection:
 - to promote compliance with environmental treaties,
 - to fill gaps in these treaties,
 - to spur the development of environmental law.

These goals should be realised through three major strategies:

- greater recourse to the reporting bodies of the human rights treaties, such as the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*¹ and the *International Covenant on Civil and Political Rights (ICCPR)*,²

¹ *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, (1976), 993 U.N.T.S. 3. Although there is no process for individual or group complaints, NGOs and IGOs may participate in the reporting sessions of the Committee on Economic, Social and Cultural Rights.

- the promotion of human rights related to the environment in the media,³ and
 - formally considering the requirements of international human rights law in the process of treaty formation.
2. In particular, a number of economic, social and cultural rights are intrinsically related to environmental protection. According to the treaty body supervising implementation of the *ICESCR*, the Committee on Economic, Social and Cultural Rights (CESCR), the notion of sustainability is intrinsically linked to the right to food, implying that food must be accessible for both future and present generations.⁴ The right to health is violated by: “the failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries.”⁵ In particular, Article 12.2 (b) of the *ICESCR* which refers to “the improvement of all aspects of environmental and industrial hygiene” is understood by the Committee to require the reduction of all detrimental environmental conditions that directly or indirectly impact upon human health.⁶
 3. The issue of climate change illustrates the necessity that current human rights institutions address environmental issues. Climate change impinges on the *right to food*, as it will lead to a general reduction in crop yields in most tropical and sub-tropical regions.⁷ Such a result would undermine the access to food of families that depend on farming, either as source of their food or as a source of core income. Climate change reverses the realisation of the *right to health*, by increasing the number of people exposed to vector borne diseases such as malaria and water-borne diseases, such as cholera.⁸ Climate change will impinge on the *right to an adequate standard of living*. Flooding caused by anthropogenic climate change, could displace between 75 million to 200 million people, in most cases destroying their shelter and means of livelihood.⁹
 4. The *ICESCR* requires that economic, social and cultural rights be realised progressively,¹⁰ it has immediate requirements: that there not be discrimination in implementation of the rights, and that policies be implemented immediately with a view to progressively realise the rights contained in the *ICESCR*. The Committee has also pointed out that this precludes retrogression, i.e. moves backwards from measures to ensure enjoyment of

² *International Covenant on Civil and Political Rights (ICCPR)*, (1976), 999 U.N.T.S 171.

³ For the central role of the media as the primary tool of human rights actors, see, for example, William Korey, “Human Rights NGOs: The Power of Persuasion” (1998) 12 *Ethics and International Affairs*, at 158 ff.

⁴ Committee on Economic, Social and Cultural Rights, *General Comment No.12: The Right to Adequate Food*, UN ESCOR, 1999, UN Doc. E/C.12/1999/5, CESCR, para. 7. The General Comments serve as persuasive authority as to the interpretation of the *ICESCR*.

⁵ Committee on Economic, Social and Cultural Rights, *General Comment No.14: The Right to the Highest Attainable Standard of Health*, UN ESCOR, 2000, UN Doc. E/C.12/2000/4, para. 51.

⁶ *Ibid.*, para. 14.

⁷ Intergovernmental Panel on Climate Change (IPCC), Third Assessment Report, Working Group II, *Climate Change 2001: Impacts, Adaptation and Vulnerability*, 13-16 February 2001, <<<http://www.ipcc.ch/>>> at 5.

⁸ *Ibid.*, at 5.

⁹ *Ibid.*, at 13.

¹⁰ *ICESCR*, Article 2.1. A similar limitation on economic, social and cultural rights, albeit broader, exists in the Universal Declaration on Human Rights, which states in Article 22; “Persons are entitled to realization of their economic and social rights “through national effort and international co-operation and in accordance with the organization and resources of each State.”

economic, social and cultural rights by all, without discrimination. Certain forms of environmental degradation and environmental policies (including those caused by climate change) will be discriminatory in their impacts, and will limit some States' capacity to ensure enjoyment of economic, social and cultural rights (in the case of climate change for instance, small island States will be particularly affected). Moreover, environmental degradation can result in violation of 'minimum core obligations.' Core obligations consist of the minimum essential levels of each of the rights in the *ICESCR* and are "non-derogable."¹¹ This principle could assist in spurring the development of new international environmental law.¹² The fulfilment of core obligations probably requires states to accept greenhouse gas emission reductions beyond those indicated in the Kyoto Protocol.¹³

5. Human rights obligations may also assist in identifying international obligations in relation to environmental protection, complementing the principle of common but differentiated responsibilities. The *ICESCR* and the *Convention on the Rights of the Child* (which all States in the world, except the USA and Somalia, have ratified) specify that States realise the rights that they set out to the maximum of available resources. This requirement refers both to the resources available within a state and those available through international co-operation and assistance.¹⁴ In addition, the *ICESCR* places a general responsibility on developed states to assist developing states in times of emergency,¹⁵ and applies internationally, to render states and private actors responsible for the damage they cause to the rights of persons in other states.¹⁶

II Develop International Sustainable Development Law in the Areas of Human Rights and the Environment

6. International efforts should focus on capacity building in the integration of international human rights and environmental law. Intergovernmental institutions, such as the OHCHR and UNEP should establish research and implementation programmes that examine the contribution of human rights regimes to sustainable development, in cooperation with national actors and NGOs. The latter actors should also develop their own capacities in this regard.

¹¹ CESCR, *General Comment No. 14: The Right to Health*, para. 47.

¹² It has been argued that human rights law is useful for environmental protection because where a human right is put forward, it connotes a claim to an absolute entitlement that is "theoretically immune to the lobbying and trade-offs which characterize bureaucratic decision-making. Its power lies in its ability to trump individual greed and short-term thinking." Michael Anderson, "Human Rights Approaches to Environmental Protection: An Overview" in Alan Boyle & Michael Anderson, eds. *Human Rights Approaches to Environmental Protection* (Oxford: Clarendon, 1996) at 21.

¹³ The Kyoto Protocol listed reductions of about 5% from 1990 levels, amended in 2001 to reductions of about 1%-2%. However, according to the IPCC, stabilization of carbon dioxide levels in the atmosphere would require a very significant reduction in world carbon emissions levels from 1990 levels. Intergovernmental Panel on Climate Change, Third Assessment Report, Working Group III, 28 February- 3 March 2001, *Climate Change 2001: Mitigation*, <<<http://www.ipcc.ch/>>>at 5.

¹⁴ CESCR, *General Comment No. 3 (1990) The Nature of States Parties' Obligations*.

¹⁵ CESCR, *General Comment No. 14: The Right to Health*, para. 40.

¹⁶ (i.e. they will have violated their obligation to protect the rights of persons in other states from the actions of persons within their jurisdiction). The CESCR states that states must prevent third parties from violating the right to health in other countries, if they are able to influence these third parties by way of legal or political means. *Ibid* at para. 39.

7. There should be further development of International sustainable development law (ISDL). This is a body of law that exists at the **intersection** of international environmental, social (including human rights) and economic law - a specific, narrow set of instruments and provisions where environmental, social and economic considerations are integrated.¹⁷ This concept is reflected in Chapter 39 of *Agenda 21*, where states commit to objectives such as (a) to focus on the “further development of international law on sustainable development, giving special attention to the delicate balance between environmental and developmental concerns”; and recognises, at (b), the “need to clarify and strengthen the relationship between existing international instruments or agreements in the field of environment and relevant social and economic agreements or instruments, taking into account the special needs of the developing countries.”¹⁸

8. It will be necessary for human rights standard setting bodies, such as the treaty based bodies, to further clarify the relationship between the environment and human rights, such as through developing general comments. Bodies such as the Committee on Economic, Social and Cultural Rights and the Human Rights Committee have already demonstrated environmental awareness.¹⁹ However, given that these bodies have certain limitations, most significantly that they meet for only a few weeks each year as well as lack of certain technical expertise. It is necessary to grant these bodies the financial and technical resources.

III **Ensure that Human Rights Related to Poverty are Targeted Within the Framework of Environmental Protection**

8. A key concept of sustainable development, as defined by the World Commission on Environment and Development in the report, *Our Common Future*, is “[T]he concept of ‘needs’, in particular the essential needs of the world’s poor, to which overriding priority should be given.”²⁰ The *Rio Declaration on Environment and Development* which recognized the indispensable role of poverty alleviation in achieving sustainable development.²¹ The imperative of the eradication of hunger and poverty was given key importance in *Agenda 21*.²²

¹⁷ ISDL is not intended to be holistic. It would not include elements of environmental, social and economic law that do not explicitly relate to sustainable development; such as animal rights and the conservation of ‘charismatic mega-fauna’ in environmental law or protection against torture and privacy rights in human rights law.

¹⁸ *Agenda 21*, 1992 Report of the UNCED, I (1992) UN Doc. A/CONF.151/26/Rev. 1, (1992) 31 I.L.M. 874, Chapter 39.1 Objectives (a) and (b).

¹⁹ See para.2 in relation to the CESCR. In monitoring the right to life, the Human Rights Committee has consistently sought information on specific measures in the field of public health, including environmental matters such as the registration and transportation of nuclear waste. However, there remain doubts as to whether such rights are immediate or progressive. Robin Churchill, “Environmental Rights in Existing Human Rights Treaties” in Alan Boyle & Michael Anderson, eds. *Human Rights Approaches to Environmental Protection* (Oxford: Clarendon, 1996) at 90.

²⁰ World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University, 1987) at 43.

²¹ *Ibid.*, Principle 5.

²² *Agenda 21*, 1992 Report of the UNCED, I (1992) UN Doc. A/CONF.151/26/Rev. 1, (1992) 31 I.L.M. 874, Chapter 3, especially s. 3.1.

9. It is important that issues of basic human rights related to poverty²³ are adequately targeted within the framework of environmental protection. The imperative of providing ‘priority to the poor’ has further legal basis in the principle that state parties to the *ICESCR* are required to fulfil at least the the minimum essential levels of each right. In addition, when states parties to the *ICESCR* are facing severe resource constraints, all obligations under the Covenant remain valid, in particular for the most vulnerable population groups and individuals.²⁴
10. Such obligations should not be understood as implying limitations to the overall scope of environmental protection. The poor are often the communities most vulnerable to pollution and its adverse consequences. Rather, the principle of priority to the poor has two implications, first that poverty eradication be treated as a key objective of environmental protection, and second, that environmental protection measures are designed in a manner sensitive to the needs of the most vulnerable.
11. The first principle is critical since poverty has been described as a factor that reduces people’s capacity to use resources in a sustainable manner,²⁵ For subsistence reasons, the poor destroy resources that they require over the long-term.²⁶ A good example of an environmental instrument that addresses poverty is the *Desertification Convention*, which requires states to integrate strategies for poverty eradication into efforts to combat desertification²⁷ and to improve national economic environments with a view to eradicating poverty and ensuring food security.²⁸ However, human rights law could complement the *Desertification Convention*, such as by imposing stronger obligations for resource mobilization to address food security.²⁹
12. The second principle is to ensure that environmental measures take account of the basic needs of the poor. The issue of climate change reflects these human rights requirements. Emissions reductions programmes should be structured such that they do not unduly impact upon the standard of living of the poor.³⁰ Human rights law will require that certain categories of carbon emission sources be treated differently. A potential future example may be the production of methane by animal husbandry and rice cultivation. A

²³ These include the rights in the *ICESCR*, in particular the right to an adequate standard of living, civil and political rights and the right to development, the right to equality and non-discrimination and the right of those affected by a key decision to participate in the relevant decision-making process. Committee on Economic, Social and Cultural Rights, *Poverty and the International Covenant on Economic, Social and Cultural Rights*, UN ESCOR, 2001, UN Doc. E/C.12/2001/10, paras. 10-12.

²⁴ CESCR, *General Comment 12: The Right to Food*, para. 28.

²⁵ *Our Common Future*, at 49.

²⁶ Cletus Avoka, “Poverty and the Environment” in Felix Dodds, ed. *Earth Summit 2002: A New Deal* (London: Earthscan, 2000) at 124.

²⁷ *Convention to Combat Desertification in Those countries Experiencing Serious Drought and/or Desertification, particularly in Africa*, 17 June 1994, 33 I.L.M. 1328, Art. 2 (c).

²⁸ *Ibid.*, Art. 10.4.

²⁹ While the *Desertification Convention* requires states to fund these programmes “according to their capabilities,” the language in the *ICESCR* is tighter, requiring action from a state “to the maximum of its available resources by all appropriate means.” *Desertification Convention*, Art. 20.3, *ICESCR*, Art. 2.1.

³⁰ An example would be to use the proceeds from carbon taxes to compensate negatively affected low-income groups. IPCC, “*Mitigation*” at 9.

related implication of this principle is the obligation of states to address the needs of the poor in adapting to the effects of climate change. This imperative is more important given that the poorer peoples and states are less able to adapt to climate change.³¹

The recommendations in this submission are intended to highlight three imperatives in integrating human rights law and environmental law; first, to utilise existing human rights institutions and treaty regimes in an innovative manner, second, to develop International Sustainable Development Law in the areas of human rights and the environment and, third, to ensure that human rights related to poverty are targeted within the framework of environmental protection.

The Centre for International Sustainable Development Law (CISDL) commission is based in the McGill University Faculty of Law (founded in Montreal, Canada, in 1849), works in cooperation with the McGill School of the Environment, the Université de Montreal Faculty of Law, and the Université de Québec à Montreal, with guidance from the three Montreal-based multilateral environmental accords (the NAFTA Commission for Environmental Cooperation, the UNEP Biodiversity Convention, and the Montreal Protocol multilateral fund). Its mission is to promote sustainable societies and the protection of ecosystems by advancing the understanding, development and implementation of international sustainable development law.

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³¹ IPCC, "Mitigation" at 6-8. The issue of vulnerable states is reflected in the *Framework Convention on Climate Change* which requires developed countries to assist developing countries that are particularly vulnerable to the adverse effects of climate change to meet the cost of adaptation to these adverse effects. *United Nations Framework Convention on Climate Change*, 9 May 1992, 31 I.L.M. 849, Article 4.4.