

International Council of Environmental Law

- toward sustainable development -

Conseil international du droit de l'environnement

- vers un développement durable -

To the attention of:

Professor John H. Knox, UN Special Rapporteur on Human Rights and the Environment

Submitted by:

The International Council of Environmental Law (ICEL)

Concerning:

Preparation of a report on the effective implementation of human rights obligations relating to the environment

In view to providing input for subsequent reporting, the International Council of Environmental Law (ICEL) provides the following general comments: It is the Council's position that there are sufficient international instruments for the protection of the environment. More legal instruments are not required, but priority should be given toward implementing existing instruments at the national, regional and local levels. In view to implementation, there are several reasons for the lack thereof or failure to do so. Therefore, the following issues should be taken into consideration: lack of action/instruction from the competent offices; long-waiting times within parliamentary processes; problems of management (too many instruments and an inability to prioritize); insufficient personnel, funds or technical knowledge; translation issues: e.g., into national languages; changes of government and/or priorities, etc. Above all, the Rapporteurs third category of issues is considered most important and technical assistance should address the following:

- a. Practical and technical means for implementation;
- b. Means should be low-cost, low-tech and low-maintenance; and
- c. A manual or guidebook for implementation should be prepared and made widely available.

The implementation of environmental human rights obligations in non-metropolitan territories is also to be considered. One of the obstacles to global implementation of environmental human rights obligations specified in multilateral conventions is the continuing failure of European countries to extend the application of those instruments to their dependent territories overseas. For example, the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters has been ratified, inter alia, by Denmark, France, the Netherlands and the United Kingdom. Yet, Denmark excluded the Faroe Islands and Greenland from the scope of its ratification; France did so for New Caledonia, French Polynesia, Wallis and Futuna; the Netherlands expressly limited application of the Convention to the Kingdom in Europe; and the United Kingdom implicitly (according to the official interpretation of the Foreign and Commonwealth Office) does not apply it to overseas territories.

As a result, persons and groups in these territories are not entitled to the same substantive and procedural rights conveyed by the treaties on inhabitants of European metropolitan areas. It would therefore seem appropriate and timely to call on the countries concerned to extend application of the relevant treaties (such as the Aarhus Convention in particular, but also including the European Convention on Human Rights and possibly the UN Covenants) to their non-metropolitan territories – of course only after due consultation with the representatives of the inhabitants. The countries concerned should also be requested to ensure the availability or establishment of institutions and facilities for local implementation, and to report periodically to the HRC on action taken in this regard.

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At the national level, ICEL adds that at the 15th Philippine Congress (lawmaking body) (2010-2013), approved a proposal for a law entitled "An Act Protecting the Rights of Internally Displaced Persons". It was a response to the need to enact a law that adopts a human rights-based approach to disaster risk-reduction and management to ensure the continued protection of those who are internally displaced in a situation of natural or man-made disasters. However, the act was not signed into law by the President of the Philippines, citing in his veto message, among others, that the provision allowing individuals to claim financial assistance and compensation from the government goes against the non-suability of the state principle. The bill was refiled in the 16th Congress which will end in June 2016. The proposed law now provides for, among other things, protection of internally displaced persons (IDPs) during and after their displacement, as well as their resettlement, relocation and re-integration. When approved, it will be a model for countries facing issues of displacement and violation of people's rights when the government is unable to serve the general welfare of its constituents. Be it mentioned that in Southeast Asia, the Philippines ranks third after Myanmar and Indonesia as a country with the most number of IDPs and among top forty (40) countries in the world where internal displacement is considered a significant phenomenon.

Additionally, ICEL draws your attention to the following publications:

The Right to Water and the Protection of Fundamental Rights in Hungary, Edited by Marcel Szabó and Veronika Greksza

<https://www.ajbh.hu/documents/14315/121663/Right+to+water+Book.pdf/b0a67476-20a7-4f40-91f3-f2024df9ad49>

Article 10 (3) (b) of the resolution adopted by ILA Washington DC Conference in 2014 dealing with the question of human rights in relation to climate change: <http://www.ila-hq.org/en/committees/index.cfm/cid/1029>.