



# General Assembly

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## Human Rights Council

Nineteenth session

Agenda item 2

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

### **Written statement\* submitted by Nord-Sud XXI, a non- governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2012]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Comments on the OHCHR analytical study on human rights and the environment**

Nord-Sud XXI welcomes the commitment of the UN High Commissioner for Human Rights and her Office, and that of the Human Rights Council, for promoting a human rights approach to the environment. While we welcome these efforts and express our sincere appreciation, as a non-governmental organization in special consultative status with ECOSOC it is our responsibility to provide constructive input into and commentary upon such important work. As such, it is necessary for Nord-Sud XXI to express its concern about a number of substantive deficiencies and procedural irregularities concerning the OHCHR's Analytical Study on Human Rights and the Environment.

On a procedural level, Nord-Sud XXI is concerned about a lack of transparency during the process by which the Study was produced. For example, was it peer-reviewed by experts? Was it provided to State and/or civil society for comment before publication? If so, was it provided to all States and/or civil society actors?

We are also particularly concerned that the submission made by a collective of NGOs who are doing leading work in the area of climate change and human rights, the 'Human Rights and Climate Change Working Group', was apparently ignored by OHCHR and indeed is even mentioned in paragraph 4 of the Study that lists all the received and considered input.

On a substantive level, we are concerned that the report does not reflect the existing international law or the level of examination of this very important issue that should be expected from the OHCHR. The following are examples of our concerns:

- The Study does not reflect the current state of international law. The current state of international law reflects numerous issues surrounding the implementation of the right to a healthy environment as well as issue surrounding its precise elements. Arguments about whether or not such a right exists are made only by a very small majority of highly qualified publicists and other actors. The Study devotes disproportionate attention to this latter minority position, a perspective that is detrimental to the protection of individuals and groups' fundamental human rights.
- A serious (and perhaps fatal) flaw with the Study is the apparent bias against recognition of the existing right to a healthy environment. Instead of providing an opinion founded on existing sources of international law the report wrongly assumes that such a right does not exist. This is reflected, for example, in paragraph 6 where it is asked whether the international community should recognize a new human right to a healthy environment.
- In contrast with the false assumption that there is no existing right to a healthy environment, later in the Study it is admitted that such a right does exist in regional contexts. This inconsistency indicates a bias against a reasonable interpretation of human rights that would provide the best protection for human beings. Although we are well aware that some States do not agree that the right to a healthy environment is a human right, it is very odd indeed that the OHCHR supports this approach that is incorrect and inconsistent with States' existing human rights obligations.
- Moreover the separation of the nature of the relationship between human rights and the environment and questions as to whether the right to a healthy environment is a human right establish a dichotomy that is based on the erroneous assumption that there is no human right to a healthy environment. Again this assumption is wrong in law and detrimental to the protection of human rights.

- In paragraph 11 the Study completely ignores the fact that some authoritative international bodies have interpreted the right to a healthy environment to have important and specific meaning. These bodies have indeed applied the right to find States responsible for their failure to ensure this human right.
- In paragraph 16 the Study expresses the impact of human activity on the adverse impacts of climate change with such vague language as to appear to be uninformed of the provisions of the UNFCCC, especially article 2, that was agreed to by virtually all States in the international community twenty years ago. According to this article there is no doubt that the adverse consequences of climate change can be attributed to human activity. This is a legal fact to which every single UN Member State has agreed. The wording of paragraph 16 appears to question this long agreed consensus. Does the OHCHR want to be in the position of arguing against States' duties in existing legal instruments that have been agreed to by virtually every government in the world?
- The statement in paragraph 25 of the Study that regional human rights conventions "recognize the linkage between human rights and the environment" is misleading as several of these instruments recognize the right to a healthy environment. By failing to state this important fact the Study appears to again commit an error that puts it at odds with existing international law.
- Section V (paras. 29-31) of the Study seems not to be aware of the fact that the expression of a right to a healthy environment in national constitutions may indicate that the right is a general principle of international law recognized by civilized nations, and that these expressions may also contribute to State practice and opinio juris that is relevant to forming customary international law.
- In paragraph 34 the recognition by the 53 African States' of the right to a healthy environment, both explicitly in the legally binding African Charter of Human and Peoples' Rights and in the authoritative jurisprudence of the African Commission on Human and Peoples' Rights, is given insufficient attention. In fact, although it is the African continent that has developed this right to the most significant extent to date, without reason, it is the African continent's actions which are downplayed the most in favour of the Inter-American and European bodies. Such a juxtaposition of existing state of the law is confusing and unexplained, and appears to be the reflection of a very dangerous bias.
- The Study shows no knowledge of the relevant decision of the Kyoto Protocol Compliance Committee finding Canada in violation of international obligations under this treaty. This decision recognizes an important constituent of the right to a healthy environment that is based on the legal obligations of States under the UNFCCC and its Kyoto Protocol. Equally the Inuit Case brought before the Inter-American Commission of Human Rights, including the resulting statements, and the several petitions to UNESCO's World Heritage Committee under the World Heritage Convention, among petitions to other specialized international bodies are ignored. The statement issued by CEDAW on Gender and Climate Change, and the resolution adopted by the African Commission on Human and Peoples' Rights on Climate Change and Human Rights, are also ignored. Again these statements refer to legal obligations that are important for interpreting the human rights obligations of States, especially the obligation to ensure a safe and healthy environment.
- In paragraph 39 the Study reflects very briefly on the European Committee of Social Rights' consideration of the environmental dimensions of the right to health, but says nothing about the link between environment and work or social policy, both which are explicitly recognized in the European Social Charter.

- Section IX (paras. 64-73) on the extraterritorial dimensions of human rights and environment is very poorly documented with only very general references to documents or treaties (it is not always clear which). Again it is detrimental to the protection of human rights not to cite the numerous decisions and treaties that have widely interpreted human rights obligations to apply extraterritorially. Not a single decision is cited in this Section.
- Finally, the conclusions of the Study are weak, not based on the existing evidence nor evidence provided in the Study itself, and provide very little guidance to the Human Rights Council to take its work forward.

While we are very much concerned about this work, please understand our most sincere appreciation for the OHCHR commitment and effort. We also realize that the OHCHR often carries out many of its multiple responsibilities with limited resources. In this regards we recognize that civil society can and does often complement the resources of the OHCHR and we remain ready and willing to engage with the Human Rights Council, and with the High Commissioner and her Office, to ensure that the legal standards and principles relating human rights and the environment are duly reflected and promoted by the Human Rights Council's work on this area.

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