

Draft proposed by Joan Russow Ecological Rights association

Cochabamba Bolivia, April 2010



image of Cochabamba 2010 Water Walk

At a meeting on water in Cochabamba, I recommended that we draft an International Covenant on Ecological Rights, and proposed that the draft be put on the floor of the UN General Assembly, and to be negotiated at Prep Coms leading up to Earth Summit +20, and open for signatures at the Summit. And propose it as a legally binding document.

"Ecological Rights" – include the Earth Rights, or the Rights of Mother Earth and if this Covenant is made legally binding, the Ecosystem would have standing in Courts.

and "Ecological Rights" include the rights of present and future generations to safe environment, and ecological heritage.

The following is an update to the December 17, 1994 Charter of Ecological and Equitable Rights- a draft Proposal for submission to the United Nations. Submitted by Joan Russow and David White from the Ecological Rights Association (ERA) founded in 1991.

The Charter draws upon obligations undertaken by states through UN resolutions such as the "World Charter of Nature", globally agreed-to documents such as the United Nations Conference on Humans and the Environment (Stockholm, 1972), The Rio Declaration (UNCED, 1992) and Agenda 21 (UNCED, 1992) and the legally binding documents such as the Vienna Convention on Ozone (1986), the Montreal Protocol (1987), The Basel Convention (1989); (Convention on Environmental Impact Assessment in a Transboundary Context (1991); Convention on Biological Diversity (UNCED, 1992, in force, 1993) and the Convention on Climate Change (UNCED, 1992, in force 1993), and the Law of the Sea (in force 1994). This Charter also draws upon statements from international NGO resolutions, such as the Women's Action Agenda. In addition, this Charter also proposes additions that complement existing obligations or that are necessary so that compliance is possible, such as those proposed in the UN Proclamation for Transferring Rhetoric into Action. Subsequent instruments such as Beijing Platform for Action (1995) and Habitat II (1996) have been added.

International Covenant of Ecological Rights

DEFINITIONS:

Ecological Rights – include the Earth Rights, or the Rights of Mother Earth and if this Covenant is made legally binding. The Ecosystem would have standing in Courts.

and Ecological Rights include the rights of present and future generations to safe environment, and ecological heritage.

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PREAMBLE

REAFFIRMING the inherent worth of nature

"ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans], and to accord other organisms such recognition's, man [humans] must be guided by a moral code of action{ (World Charter of Nature, 1982)

and that the well-being and flourishing of human and non-human life on Earth have value in themselves (synonyms: intrinsic value, inherent value). These values are independent of the usefulness of the non-human world for human purposes. Richness and diversity of life forms contribute to the realization of these values and are also values in themselves.

and that all species of plant and animal life are equal and thus no one species (including humanity) should be accorded more rights over another. Humanity should not govern nature, the Earth's rhythms and processes should govern humanity. Humanity should not impose itself on but empathize with nature.

REAFFIRMING AS WELL that Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty hunger, ill-health and literacy and the continuing deterioration of the ecosystem on which we depend for our well-being (Agenda 21, UNCED, 1992).

AND THAT and that all survival ultimately depends on the integrity of ecosystems including its global form, the biosphere.

AND THAT Humanity's role is to understand and work with the rest of nature, not control, manage, dominate or conquer it.

RECOGNIZING THAT Humans and nature are interconnected.

"Humankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (World Charter of Nature).

And THAT humans are a part of Nature not apart from Nature and thus interspecies symbiosis is a universal phenomenon; humans cannot escape natural laws.

NOTING THAT

"One of the most serious problems now facing the planet is that associated with historical patterns of unsustainable consumption and production, leading to environmental degradation, aggravation of poverty and imbalances in the development of countries".] (4.3, Changing Consumption Patterns, Agenda 21, 1992)

and that "We have come to realize that the traditional consumptive patterns of development have contributed to poverty, to the inequitable distribution of resources, to over-consumption, to the

violation of human rights and to the potentially irreversible degradation of the ecosystem" (ERA Ecological Rights, Alternative Earth Charter, 1991)

and THAT

We demand recognition of the causes of economic and ecological crises arising from patterns of production and over-consumption in the rich North. This causes depletion of the world's resources, especially in the South, with all the accompanying negative ecological, social, economic and political consequences. (Statement from the Women of the South, Women and Sustainable Development Conference, 1994)

ACKNOWLEDGING the urgency of conserving and preserving nature

Humans can alter nature and exhaust natural resources by their actions or the consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources and preserving nature (World Charter of Nature).

ACKNOWLEDGING AS well the need for action

:We have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately. (affirmed by the NGO Earth Charter, 1992 Global Forum, UNCED)

APPLYING THE DOCTRINE OF LEGITIMATE EXPECTATION

"To create an expectation is an empty gesture without a promise to fulfill it. Before creating an expectation, an organization must assure itself of its ability to fulfill the promise it implies" (Introduction, B.C. Ombudsman Annual Report, 1991)

UNDERTAKING to transfer agreed-to principles into State practices

:The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at the international level: (1982 World Charter of Nature).

PRINCIPLES:

LIMITS-TO-GROWTH

There are real limits to consumption, population and pollution. Although their precise quantification is uncertain, there are implications of their imminent approach.

RESPECT FOR ESSENTIAL PROCESSES

Nature shall be respected and its essential processes shall not be impaired (World Charter of Nature).

APPLYING A MORAL CODE OF ACTION IN RESPECT OF NATURE

ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans], and to accord other organisms such recognitions, man [humans] must be guided by a moral code of action (World Charter of Nature).

ENSURING THAT CORPORATIONS INCLUDING TRANSNATIONAL CORPORATION COMPLY WITH ...INTERNATIONAL ENVIRONMENTAL INSTRUMENTS

Commitment made at the UN Conference of Women (Beijing, 1995) and the Habitat II Conference (Istanbul, 1996)

REVOKING CHARTERS AND LICENCES OF CORPORATIONS

that have violated human rights, including labour rights, indigenous rights, and women's rights: have contributed to war and conflict, have denied social justice, and have caused environmental devastation

ENUNCIATING THE PRIMACY OF THE ECOSYSTEM

Ensuring that in all decisions made about the environment that the ecosystem be given primacy

DETERMINING THE ECOLOGICAL FOOTPRINT

All states made a commitment to reduce the ecological footprint (Habitat 11, 1996) \

ENDORISING THE RIGHT TO A SAFE ENVIRONMENT

Everyone has the right to a safe environment including the right to safe drinking water, clean air, and land free from

PROPOSING SOCIALLY EQUITABLE AND ENVIRONMENTALLY SOUND DEVELOPMENT

OR Equitable, and ecologically sustainable use (Adopted by the IUCN, Annual General Meeting, 1994).

PROVIDING FOR BASIC NEEDS

"...the provision of a safe water supply and sanitation and the promotion of a safe food supply and proper nutrition. Particular attention should shall be directed towards food safety, with priority placed on the elimination of food contamination; comprehensive and sustainable water policies to ensure safe drinking water and sanitation to preclude both microbial and chemical contamination; and promotion of health education and [appropriate~] services regarding responsible planning of family size... (6.3., Protecting and Promoting Health, Agenda 21, UNCED. 1992)

INSTITUTING THE FAIR AND JUST TRANSITION PRINCIPLE

Where practices are demonstrated to be harmful to human health and the environment, there must be instituted a fair and just transition programme for affected workers and communities

ABIDING BY ANTICIPATORY PRINCIPLE

Mindful of the need and importance to develop anticipatory policies and of preventing, mitigating and monitoring significant adverse environmental impact in general and more specifically in a transboundary context (Convention on Environmental Impact Assessment in a Transboundary Context, 1991).

INVOKING THE PRECAUTIONARY PRINCIPLE

where there is a threat of serious or irreversible damage, lack of full scientific certainty should shall not be used as a reason for postponing measures to avoid or minimize such a threat (Principle 15 Rio Declaration

and from the Convention on Biological Diversity

And Where there is the threat of loss of biodiversity, the lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimise such a threat

AVOIDNG DOUBT

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should shall not proceed (World Charter of Nature).

ENABLING"CAUTIONARY" PRINCIPLE

Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes.

SHIFTING THE ONUS OF PROOF

The proponents of an intervention shall demonstrate the safety of the intervention rather than the opponent having to demonstrate the harm of the intervention. Reverse-onus principle

- **The onus of proving the non-hazardous nature of the product will be on the proponent of this new type of product [after a full life-cycle analysis of all the potential environmental harm by non-vested interest parties].**

ADOPTING "PREVENTION TECHNOLOGIES"

Prevention technologies < technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.

PROVIDING FOR ENVIRONMENTAL ASSESSMENT REVIEW

Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects, and where appropriate, allow for public participation in such procedures (Article 14, 1A, Convention on Biological Diversity).

- **And citizens must be involved in determining the Terms of Reference and throughout the decision making process**

- **and Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (AGENDA 21,**

7.42).

ASSERTING AVOIDANCE OF ACTIVITIES

Activities, which are likely to cause irreversible damage to nature, shall be avoided (World Charter of Nature).

UNDERTAKING OF INCLUDING ENVIRONMENTAL COSTS AND ECOLOGICAL CONSEQUENCES

Governments,...should develop procedures for monitoring the application of the cradle-to-grave approach, including environmental audits (AGENDA 21, 20.20 e).

Ecological values are of a class not readily quantified, particularly in economic units, but must be taken as a given, in that all life is dependent on sustaining the biosphere, the exclusive life-support system.

AFFIRMING INTERGENERATIONAL EQUITY

- Reaffirming that man [humans] must acquire the knowledge to maintain and enhance their ability to use natural resources in a manner, which ensures the preservation of the species and ecosystems for the benefit of present and future generations [human and non-human]. (World Charter of Nature)

to conserve and sustainably use biological diversity for the benefit of present and future generations, (Preamble, Convention of Biological Diversity)

the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.(definition, Biodiversity Convention).

PRESERVING NATURAL HERITAGE FOR FUTURE GENERATIONS

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of [humankind] as a whole (Convention for the Protection of the World Cultural and Natural Heritage, Preamble, 1972).

Considering that in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value... (Convention for the Protection of the World Cultural and Natural Heritage, Preamble, 1972).

- AFFIRMING POSITIVE-DUTY-TO PROTECT- LANDS OF INDIGENOUS PEOPLES

- recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people [S} concerned consider to be socially and culturally inappropriate (Agenda 21, 16.3. ii).

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ENFORCING THE TRANSBOUNDARY PRINCIPLE

States... have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. (Principle 2, Rio Declaration)

States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond

the areas where they exercise sovereign rights in accordance with this Convention. (Art. 194. 2., Law of the Seas, 1982)

IMPLEMENTING THE COMMON BUT DIFFERENTIATED RESPONSIBILITIES

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries (principle 7, Rio Declaration)

PREVENTING CRIME THROUGH SOCIALLY EQUITY

Reaffirms that crime prevention and criminal justice should be considered in the context of economic development, political, social and cultural systems and social values and changes, as well as in the context of the New International Economic Order (2 Crime Prevention and Criminal Justice and development, the General Assembly Resolution, 1981)

CANCELLING THIRD WORLD DEBT

In full knowledge that the industrialized nations have been the net beneficiaries of exploitation of the abundant natural resources of poor nations,

Observing the disastrous social, environmental, and economic consequences of international lending practices and current terms of trade between industrialized and non-industrialized nations,

Concerned about the negative impact on the poor, especially women and children, of the International Monetary Fund and World Bank structural adjustment policies,

Appalled by the flow of capital from poor nations to the banking systems of rich nations, depriving them of funds for needed domestic, social, economic, health and education programs,

Recognizing the grievous consequences of this practice for poor families in the developing countries and for the natural resources upon which we all depend,

We demand immediate official foreign debt cancellation. ... (1992, Women's Action Agenda)

ELIMINATING WEAPONS OF MASS DESTRUCTION

Man [Humans] and their environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement in the relevant international organs on the elimination and complete destruction of such weapons (UNCHE, 1972 Principle 26).

CONDEMNING ENVIRONMENTAL IMPACT OF MILITARY ACTIVITY

Realizing the disastrous environmental impact of all military activity, including research, development, production of weaponry, testing, manoeuvres, presence of military bases, disposal of toxic materials, transport, and resources use (Women's Action Agenda).

ENFORCING THE NON-TRANSFERENCE OF HARMFUL SUBSTANCES AND ACTIVITIES

States should [shall] effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health (Rio Declaration).

TRANSFERRING THE GLOBAL MILITARY BUDGET TO ECOLOGICALLY SOUND ACTIVITIES AND EMPLOYMENT

- Reallocating military expenses (Chapter 33, Agenda 21, UNCED, 1992)

We urge an immediate 50% reduction in military spending with the money saved reallocated to

socially useful and environmentally friendly purposes. ... (Women's Action Agenda);

Be it further resolved that a significant proportion of the global military budget be transferred to achieve social justice, to protect human rights, to preserve ecological heritage, to create ecologically safe and sound employment. (UN Declaration for Translating Rhetoric into Action).

PHASING OUT THE MINING OF URANIUM AND CIVIL NUCLEAR POWER

We urge that new nuclear research, development, production, and use be stopped, that uranium mining be halted, and that nuclear power production and use be phased out and replaced by environment-friendly energy sources, (Women's Action Agenda).

PHASING OUT OF FOSSIL FUEL AND NUCLEAR ENERGY

to establish a time-table for phasing out fossil fuel and nuclear energy and for the rapid development of solar and other forms of non-polluting energy, and for more efficient energy use; (Nobel Laureate Declaration, UNCED, 1992).

NOTE : This document has been prepared for the purpose of indicating what has already been agreed to internationally through various international instruments. The sections taken from international documents are documented. Where the international documents do not appear to address the issues, then international NGO resolutions and treaties have been included with appropriate citations. Where the ERA has not been able to find the documents to address the issues, the ERA has proposed wording; in this case all the non-documented statements are from an Earth Charter prepared by the ERA Ecological Rights Association in 1991, and circulated at the New York Prep Com for UNCED and at the Earth Summit and the Global Forum in Rio, in 1992. The basis of this proposal was to build on the 1982 World Charter of Nature, which was adopted by all states, except the United States of America.

RIGHT TO KNOW PRINCIPLE

Information is a necessary component of sustainability, "the obligation to survive gives us the right to know" (R. Carson).

Policies must therefore be changed. these policies affect basic economic, technological and ideological structures. The resulting state of affairs will be deeply different from the present. The ideological change is mainly that of appreciating life quality (dwelling in situations of inherent value) rather than adhering to increasingly higher standards of living... (from principles of Deep Ecology)

There is no rejection of the usefulness of science and technology but only of their misapplication and assumption of omnipotence, assumed elitism and flawless rationality which are barriers to ecological conservation.

The coin of sustainability has two faces, one is ecology and the other is equity. Both must be attained simultaneously to serve to achieve a sustainable future.

One in three people in the developing world still lacks these two [safe drinking-water and sanitation] basic requirements for health and dignity.

(18.47., Agenda 21, UNCED, 1992)

endorsing the right to a safe environment

Everyone has the right to a safe environment including the right to safe drinking water, clean air, and land free from contamination (Global Compliance Research Project)