A HUMAN RIGHTS APPROACH TO PROTECTING THE ENVIRONMENT AND THE POPULATIONS AFFECTED BY ENVIRONMENTAL HARM AND CLIMATE CHANGE

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RESEARCH AGENDA:

• Strengthening the human rights of vulnerable populations through a rights-based framework.
• Using a human rights framework for the protection of rights affected by environmental harm and climate change.
• Advocating for the recognition of the right to a healthy environment as an autonomous right.
HOW I ARRIVED AT THIS WORK

- Haitian Cholera victims litigation against the United Nations
- United Nations Advocacy on the Right to Water in Haiti
- National Coalition on Human Rights to Water and Sanitation.
- Connected to environmental justice lawyers in Puerto Rico to protect the rights of the population affected by the pollution created by the coal-ash plant.
- International advocacy through the United Nations Human Rights Committee.
ENVIRONMENTAL HUMAN RIGHTS WORK IN THE INTERNATIONAL HUMAN RIGHTS CLINIC

CROWDA AS A GRAVE VIOLATION OF THE RIGHT TO WATER IN SALTI

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International environmental law protects the environment by regulating the behavior of States and international organizations.

International human rights law imposes obligations on Governments to protect all persons in their territory or outside of their territory if they engage in wrongful acts or omissions that affect human rights.

Human rights protect the rights of all persons no matter their race, ethnicity, religion, language, immigration status, or any other status or living condition.

State Responsibility in international human rights law provides that States (Governments) are responsible for violations of human rights. The Doctrine of State Responsibility holds States responsible for its acts (through state actors) and non-state actors for such violations of human rights abuses, including environmental human rights abuses.

States may be held responsible for violations of human rights abuses by Non-state actors (such as corporations) when the State knew or should have known of the wrongdoing.
HUMAN RIGHT TO A HEALTHY ENVIRONMENT

• Every person has the right to a healthy environment. The right to a healthy environment protects from environmental harm that interferes with the full and effective enjoyment of human rights (such as rights to life, health, food, water, property, culture, and non-discrimination).

• This right requires that the environment is safe, clean, healthy, and sustainable.

• The right to a healthy environment recognizes that individuals and communities affected by environmental harm and climate change are rights-holders entitled to protection.
This article seeks to show that while the human right to a healthy environment has not been widely recognized, a robust juridical framework enables environmental justice advocates and affected communities to vindicate the rights of vulnerable communities.

The case of Puerto Rico is illustrative of so many poor, disenfranchised, and vulnerable communities around the world, affected by environmental harm and in need of a human rights-based framework.
“We have to take a lot of cases and lose. We have to build a body of law.”
“We have to press the reset button.”


Juliana v. United States
https://www.ourchildrenstrust.org/juliana-v-us
This article seeks to propose that in order to protect the human rights of vulnerable persons facing environmental harm and/or climate change in the Americas, the Inter-American System for the Protection of Human Rights (“Inter-American System”) must use the right to a healthy environment as its normative framework.
VULNERABLE POPULATIONS IN RELATION TO ENVIRONMENTAL DEGRADATION

- Indigenous people
- Women
- Children
- Communities dependent on natural resources
- Groups or individuals historically vulnerable to discrimination
PROTECTION OF INDIGENOUS POPULATIONS THROUGH “GREENING”

The “greening” of human rights refers to human rights that have considered environmental harms and injuries that affect the full and effective enjoyment of human rights (life, property, water, food, culture, religion, and others).

- Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Inter-Am. Ct. H.R., (ser. C) No. 79 (Aug. 31, 2001);
WHAT ABOUT NON-INDIGENOUS VULNERABLE POPULATIONS?

Afro-descendants (Black communities) in Esmeraldas, Ecuador fighting against polluting industries.

Campesino communities being displaced, punished and killed in Catacumbo, Colombia.
NON-INDIGENOUS VULNERABLE COMMUNITIES

Groups that are vulnerable and are outside the framework or protection:
- Campesinos
- Afro-descendants
- Fishing and Coastal communities
- Immigrants

Common themes:
- Live in extreme poverty;
- Rely on their natural environment;
- Disproportionately at risk or affected by environmental degradation; and
- Historically marginalized and discriminated.
WHAT PROTECTIONS DOES THE RIGHT TO A HEALTHY ENVIRONMENT PROVIDE?

The Inter-American human right to a healthy environment has been explicitly recognized as an autonomous and independent right.

Article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural rights “Protocol of San Salvador” provides that “[e]veryone shall have the right to live a healthy environment and to have access to basic public services.”
ADVISORY OPINION OC-23/17 ON THE ENVIRONMENT AND HUMAN RIGHTS

• Groundbreaking in the field of environmental human rights.

• Recognizes the right to a healthy environment (Art. 11 Protocol of San Salvador) as justiciable through Art. 26 of the American Convention on Human Rights.

• Recognizes that while the right to a healthy environment is an economic, social, and cultural right, it is indivisible from civil and political rights.

• Highlights the importance of protecting vulnerable populations in relation to environmental degradation.
ADVISORY OPINION OC-23/17: STATE OBLIGATIONS

1. Obligation of Prevention
2. Precautionary Principle
3. Obligation to Cooperate
4. Procedural Obligations

*Due Diligence* as the foundational principle in human rights and for in relation to the environment.
HOW CAN WE USE IT AS A TOOL FOR ADVOCACY?

The Inter-American Court relies on the work of the Working Group on the Protocol of San Salvador and its five indicators:

(a) guaranteeing everyone, without any discrimination, a healthy environment in which to live;
(b) guaranteeing everyone, without any discrimination, basic public services;
(c) promoting environmental protection;
(d) promoting environmental conservation; and
(e) promoting improvement of the environment.
WHAT I HOPE TO ACCOMPLISH WITH THIS WORK AND HOW I THINK THAT IT WILL FIT INTO THIS GROWING FIELD

- Continue developing my scholarship in this area as to keep Kumi Naidoo’s call to action.
- Take projects and cases in the International Human Rights Clinic that seek to engage in creative and impactful advocacy.
- Train a corpus of human rights advocates in this field.