

THE RIGHT TO A HEALTHY ENVIRONMENT IN INTERNATIONAL HUMAN RIGHTS LAW

Uluslararası İnsan Hakları Hukukunda Sağlıklı Çevre Hakkı

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Öz

İnsan haklarının kullanılması çevresel bozulmadan olumsuz etkilenmektedir. Bununla birlikte, insan haklarının sağlıklı bir çevre hakkı ile ilişkilendirilmesi bu hakkın sadece bir yönüdür. Diğer yönünü ise güncelde insan haklarını etkilemeyen çevresel bozulmalar oluşturmaktadır. Fakat bu çevresel bozulmalar kısa vadede olmasa da uzun vadede insan hakları olumsuz yönde etkileyebilecektir. Bu bağlamda bu hak, ekolojik ve ekosistemin bozulmasını, bunları geliştirmeyi ve korumayı kapsayan daha geniş kapsamlı bir haktır.


Güvenli, temiz, sağlıklı ve sürdürülebilir bir çevre, Birleşmiş Milletler Genel Kurulu'nun kabul ettiği A/76/L.75 sayılı kararla 2022'de ilk kez küresel ölçekte temel bir insan hakkı olarak tanınmıştır. Bu hak az sayıda sözleşmede yer almaktadır. Fakat bu hakkın doğrudan sınırlı olarak sözleşmelerde yer alması, diğer sözleşmelerin bu hakkı korumadığı anlamına gelmemektedir. Bu kapsamda bu çalışma, sağlıklı çevre hakkını tanımlamayı ve sağlıklı çevre hakkının

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uluslararası hukuk tarafından ne ölçüde korunduğunu tespit etmeyi amaçlamaktadır.

Anahtar kelimeler: İnsan Hakları, Sağlıklı Çevre, Çevresel Bozulma, İnsan Haklarının Korunması, Sağlıklı Çevre Hakkı.

Abstract

The exercise of human rights is adversely affected by environmental degradation. Nevertheless, linking human rights to the right to a healthy environment is just one aspect of this right. The other aspect is environmental degradation, which currently does not negatively affect human rights. However, these environmental degradations may adversely affect human rights in the long term. This broader right covers ecological and ecosystem degradation, development, and protection in this context.

“A safe, clean, healthy, and sustainable environment” was recognized as a fundamental human right for the first time ever on a global scale with the adoption of the UN General Assembly’s resolution A/76/L.75 in 2022. There are only a few conventions that directly protect this right. However, this does not mean that other accords do not also safeguard this right. This study aims to define the notion of the right to a healthy environment and ascertain to what extent “the right to a healthy environment” is protected under international human rights law.

Keywords: Human Rights, Healthy Environment, Environmental Degradation, Human Rights’ protection, Right to a Healthy Environment.

INTRODUCTION

The first international agreement to acknowledge the connection between human rights and the environment was the Stockholm Declaration on the Human Environment, which was adopted in 1972. A form of environmental right is mentioned in Principle I of the Declaration, despite the fact that it is not legally

obligatory.¹ It declares that “[m]an has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”.² The Preamble recognizes the intimate connection between environmental preservation and the fulfillment of human rights, emphasizing that access to a healthy environment is a prerequisite to exercising such rights.³

The Preamble of the 1998 Aarhus Convention recalls Principle 1 of the 1972 Stockholm Declaration on the Human Environment. Additionally, it acknowledges that “adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself” and “every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations”. The first legally-binding international environmental instrument with a clear human rights reference is the Paris Agreement of 2015. Its Preamble provides that States “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights”. These commitments are reiterated in the Glasgow Climate Pact.⁴

A clean, healthy, and sustainable environment is recognized as a human right for the first time by the United Nations (UN) General Assembly in 2022.⁵ It has also been incorporated into a few regional instruments. It is widely acknowledged that people can only fully enjoy their human rights in a healthy environment, even

¹ Sumudu Atapattu, “The Right to a Healthy Life or the Right to Die Polluted?: The Emergence of a Human Right to a Healthy Environment Under International Law,” *Tulane Environmental Law Journal*, Vol. 16, No. 1(2002) 65-126, 68.

² “Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration, 1972),” Principle 1.

³ Atapattu, “The Right to a Healthy Life”, 68.

⁴ Decision -/CP.26.

⁵ UN General Assembly, “The human right to a clean, healthy and sustainable environment”, A/76/L.75, 26 July 2022.

though the right to a healthy environment is still up for debate.⁶ Recognising the right to a healthy environment would bring violations into sharp focus by clarifying the obligations of states to protect the environment and defining the outer limits of state discretion in environmental decision-making.⁷ The Inter-American Court of Human Rights (the IACtHR) reiterated in an advisory opinion that maintaining a healthy environment is a prerequisite for exercising human rights.⁸ When we look at the precedents set by American and European human rights courts, it is evident that there is a definite connection between the preservation of the environment and the exercise of other human rights.⁹ Human rights interdependence and indivisibility were reaffirmed by the IACtHR after it was observed that there is a "unquestionable" link between environmental protection and the realization of other human rights.¹⁰ The IACtHR has also discussed the connection between a healthy environment and the protection of

⁶ See John H. Knox and Ramin Pejan, "Introduction," in *The Human Right to a Healthy Environment*, eds. John H. Knox and Ramin Pejan, (Cambridge: Cambridge University Press, 2018), 1; United Nations General Assembly, "Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/73/188," 19 July 2018, para.12.

⁷ Rebecca Bratspies, "Do We Need a Human Right to a Healthy Environment?," *Santa Clara J. Int'l L*, 13(1), (2015):31-69, 42.

⁸ Inter-American Court of Human Rights Advisory Opinion Oc-23/17 of November 15, 2017 Requested By the Republic of Colombia the Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) In Relation to Articles 1(1) And 2 Of The American Convention On Human Rights).

⁹ See *Kawas-Fernández v. Honduras*, 2009 (Merits, Reparations and Costs), IACtHR, para.148; *Guerra and others v. Italy*, 1998, App no: 116/1996/735/932, ECtHR; *López Ostra v. Spain*, 1994, App no: 16798/90, ECtHR, and *Fadeyeva v. Russia*, 2005, App no: 55723/00, ECtHR.

¹⁰ Maria Antonia Tigre, "International Recognition of The Right to A Healthy Environment: What Is the Added Value For Latin America and the Caribbean?," 117 *AJIL Unbound*, (2023), 185.

human rights in instances involving the land rights of indigenous and tribal peoples.¹¹

Examining both regional and universal human rights frameworks helps to better understand how the environment and human rights are related. The international human rights literature provides evidence that the right to a healthy environment is explicitly defined in some regional and many national instruments, that rights are applied to environmental rights in regional or universal treaties, and that procedural rights are included in environmental treaties.

The right to a healthy environment has two dimensions: while it is a universal value owed to the present and future generations in its collective dimension, it also contains an individual component because of its connections to other rights¹². In this context, a healthy environment is a fundamental human right because environmental degradation can hurt humans in ways that are irreparable.¹³

Currently, no legally enforceable international instrument recognizes the right to a healthy environment even though it is covered by certain regional legal instruments. More research is required to establish the extent of the right to a healthy environment. In this context, this study aims to define the notion of the right to a healthy environment and examine the extent to which this right is recognized under international human rights law. If environmental degradation negatively impacts the rights in regional or international treaties, the study addresses the extent to which this right is incorporated through courts, commissions, or committees within this framework. Gaining a deeper understanding of the relationship between human rights and the environment can be achieved by analyzing regional and universal human rights frameworks.

¹¹ See *Yakye Axa Indigenous Community v. Paraguay*. (Merits, reparations and costs), 2005, IACtHR para.137; *Sawhoyamaya Indigenous Community v. Paraguay*. (Merits, reparations and costs). 2006, IACtHR para.118; *Saramaka People v. Suriname*. Preliminary objections, (Merits, reparations and costs), 2007, IACtHR, paras.121-2; *Kaliña and Lokono Peoples v. Suriname*, (Merits, Reparations and Costs), 2015, IACtHR, para.173.

¹² Inter-American Court of Human Rights Advisory Opinion Oc-23/17, para.59.

¹³ Inter-American Court of Human Rights Advisory Opinion Oc-23/17, para.59.

I. THE NOTION OF THE RIGHT TO A HEALTHY ENVIRONMENT

The right to a healthy environment¹⁴ is accepted as an autonomous right.¹⁵ But it has not yet been defined in any international instrument. In any case, it is difficult to define this right precisely and to determine its scope.

The jurisprudence of international or/and regional courts and committees indicates that environmental issues can impact various rights, including the ability to engage in cultural activities, health, and the availability of sufficient food and water. However, the right to a healthy environment “differs from the environmental content that arises from the protection of other rights, such as the right to life or the right to personal integrity”.¹⁶ To put it differently, it cannot be argued that human rights advocates a human-centered method for environmental protection since environmental issues affect a significantly more extensive range of people and species than human rights violations.¹⁷ The relationship between human rights and the environment is one facet of the right to a healthy environment.¹⁸ It is addressed under two subheadings in this framework: procedural rights and substantive rights.

In this context, holding governments responsible for their incapacity to prevent and control environmental nuisances, encompassing those caused by corporations, to ensure access to justice, and to uphold the laws of environment and court rulings, and considering environmental protection as a human rights issue contributes to the preservation of the rule of law.¹⁹ States have a duty to

¹⁴ “The right to a healthy environment” is also substituted with “the right to a satisfactory, or decent, or healthy, clean, and sustainable environment.”

¹⁵ Inter-American Court of Human Rights Advisory Opinion Oc-23/17, para.203.

¹⁶ See Inter-American Court of Human Rights Advisory Opinion Oc-23/17, para.63.

¹⁷ Atapattu, “The Right to a Healthy Life,” 67.

¹⁸ See Can Hamurcu, “Çevre Hakkı Üzerine Düşünceler,” *İnsan Hakları Yıllığı*, (1983-4): 171-180 174; Mehmet Semih Gemalmaz, “Bir İnsan Hakkı Olarak Çevre Hakkı ve Türk Düzenlemesi,” *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası*, 52(1-4), (2011):233-278, 240, 24.

¹⁹ Alan Boyle, “Human Rights and the Environment: Where Next?” *EJIL*, 23(3), (2012):613–642, 613-4.

protect human rights against environmental damage caused by business and industry, whether or not they control or manage the business or industry in question.²⁰ Human rights have environmental components that can be direct or indirect, meaning that a substandard environment can directly hinder the ability of an individual or a community to exercise a right that is legally promised to them or that a substandard natural world can hinder the ability of an individual or community to fully understand their rights or make it more difficult for a government to uphold and safeguard the rights of people living under its control.²¹ Therefore the exercise of human rights is impacted by the environment.²² Furthermore, environmental components may be included in the right to the environment without impairing the rights of individuals.²³ The other dimension of the environment adopts more than just a human-centered approach; it includes protecting, improving, and developing the environment. In other words, it is environmentally oriented.²⁴ According to the IACtHR, even in the absence of proof that there is a harm to people, forests, rivers, and oceans are among the natural

²⁰ See Boyle, 620.

²¹ See Bridget Lewis, *Environmental Human Rights and Climate Change: Current Status and future Prospects*, (Singapore: Springer, (2018), 16.

²² See Human Rights and the Environment, Final report prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur, E/CN.4/Sub.2/1994/9, 6 July 1994.

²³ See for the rights of the environment, Zerrin Savaşan, "Çevre Hakları: İnsan Hakları Kuralları ile Korunmadan Asli Korumaya," in *Çevre Hukuku ve Politikaları-Kavramlar, Teoriler ve Politikalar*, eds. Zerrin Savaşan, Çağlar Söker ve Fırat Harun Yılmaz, (Ankara: Seçkin, 2021); Ceren Pınar Gayretli, "Bildiğimiz Çevre Hukuku'nun Sonu: Doğaya Haklar Tanımak," in *Uluslararası Çevre Hukuku ve Politikaları- Dünden Bugüne ve Geleceğe*, eds. Zerrin Savaşan ve Hakan Ünay, (Ankara: Yetkin Yayınları, 2021); Hakan Olgun ve Volkan Işık, "Bir "İnsan Hakkı" olarak "Çevre Hakkı" ve Türk Hukukundaki Yeri," *Uluslararası Politik Araştırmalar Dergisi*, Nisan 2017, 3(1), 2017:33-52, 38.

²⁴ See Ahmet M. Güneş, *Çevre Hukuku*, (Gözden Geçirilmiş ve Güncellenmiş 5. Baskı, Ankara: Adalet Yanınevi, 2023),334; Faruk Bilir ve Berkan Hamdemir, "Çevre Hakkı ve Uygulaması," *International Conference On Eurasian Economies*,(2011):143-9, 143; Muhammed Yunus Bilgili, "Anayasal Bir Hak Olarak Çevre Hakkı," *Çankırı Karatekin Üniversitesi Sosyal Bilimler Enstitüsü Dergisi*, 6(2), (2015): 563-584, 566-68.

elements that are protected under the right as independent, legitimate interests..²⁵ Within this framework, the right to a healthy environment is a broad notion that includes safeguarding the global environment, climate²⁶, ecosystems, ecology, and all living things that coexist with people and are worthy of protection. The right to a healthy environment safeguards nature and the environment for the benefits they provide to people or from any harm that their degradation could bring to other human rights, and for the sake of the species that inhabit the planet with us and deserve protection in their own right.²⁷ Human rights can contribute to environmental protection. In protecting the environment via the application of human rights, we address particular people's rights rather than the environmental consequences on the environment as a whole. Consequently, the right encompasses defending not only people against injury but also the ecosystem and the earth from deterioration or damage, whether it be caused directly or indirectly. Therefore states are required to stop significant environmental harm both inside and outside of their borders.²⁸

²⁵ Inter-American Court of Human Rights Advisory Opinion Oc-23/17, para.62. See also İbrahim Ö. Kaboğlu ve Nihan Yancı Özalp, *Çevre Hakkı*, (Tümüyle Yenilenmiş ve Genişletilmiş 4. Baskı, İstanbul: Tekin Yayınevi, 2021), 89-115.

²⁶ See relationship between climate change and security Bengü Çelenk, "Climate change and security debates in the United Nations Security Council between 2007-2021," *Critical Studies on Security*,(2023):1-20; Bengü Çelenk, "İklim Değişikliği, Tehdit Çarpanı Etkisi ve Güvenlik: İklim Güvenliğinden Uluslararası Güvenliğe," *Güvenlik Stratejileri Dergisi*, 19(46), 2023:537-59.

²⁷ Inter-American Court of Human Rights Advisory Opinion Oc-23/17, para.62.

²⁸ See Inter-American Court of Human Rights Advisory Opinion Oc-23/17.

II. THE RIGHT TO A HEALTHY ENVIRONMENT IN INTERNATIONAL HUMAN RIGHTS LAW

A. Legal Instruments That Directly Address The Right To A Healthy Environment

The right to a healthy environment is directly enshrined in the constitutions of a hundred countries.²⁹ It is guaranteed by legally binding national and/or international agreements signed by the governments of at least 155 nations.³⁰ When it comes to human rights conventions, the Universal Declaration of Human Rights,³¹ the International Covenant on Civil and Political Rights³² (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights³³ (ICESCR) do not refer to the right to a healthy environment because the main international human rights treaties were written in an era when most people did not recognize the extent and rate of environmental destruction brought on by human activity.³⁴ The right to a healthy environment is guaranteed by a few regional documents, but it is not covered by any worldwide convention. Article 24 of the 1981 African (Banjul) Charter on Human and Peoples' Rights (African Charter), Article 19 of the American Declaration on the Rights of Indigenous Peoples,³⁵ Article 28 of the ASEAN Human Rights Declaration,³⁶ Article 38 of the Arab Charter on Human

²⁹ David R. Boyd, "Catalyst for Change: Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment", in *The Human Right to a Healthy Environment*, eds. John H. Knox and Ramin Pejan, (Cambridge: Cambridge University Press, 2018), 18.

³⁰ Boyd, 18.

³¹ Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

³² Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976.

³³ Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force 3 January 1976.

³⁴ See Boyd, 38; Kerry Kennedy Cuomo, "Human Rights and the Environment: Common Ground", *Yale Journal Of International Law*, 18(227), (1993):227-233, 227.

³⁵ Adopted on June 15, 2016, AG/RES. 2888 (XLVI-O/16).

³⁶ Created 18 November 2012.

Rights³⁷ explicitly declare that every individual has “the right to a healthy environment.”

1. The African Court And Commission

The African Charter,³⁸ particularly Article 24, states that people have the right to a generally satisfactory environment. This is the first international instrument to acknowledge this right. The Article declares “[a]ll peoples shall have the right to a general satisfactory environment favorable to their development.” Article 24 imposes obligations on a government by guaranteeing the right to a general satisfactory environment, or commonly known as the right to a healthy environment. To the extent that their environment impacts an individual's security and quality of life, it recognizes the need for a clean and safe environment closely tied to economic and social rights.³⁹ In addition to the African Charter, other African treaties refer to the right to a healthy environment. According to Article 3 of the 1968 African Convention on the Conservation of Nature and Natural Resources,⁴⁰ “the right of all peoples to a satisfactory environment favourable to their development” will serve as the Parties' compass when they act to carry out its goals and put its provisions into practice. Women have the right to live in a healthy and sustainable environment according to Article 18 of the Protocol to the African Charter on the Rights of Women in Africa, which was adopted by the African Union in 2003. Allegations of infringement on the right to a healthy environment have been brought before the African Commission on Human and Peoples' Rights (African Commission) and the African Court on Human and Peoples' Rights (African Court). For example, the action was launched against Nigeria in March 1996 by two non-governmental groups, the Center for Economic

³⁷ 2004, <https://digitallibrary.un.org/record/551368?v=pdf> Accessed 24.05.2024.

³⁸ African Union, entered into into force October 21, 1986, <https://au.int/en/treaties/african-charter-human-and-peoples-rights>, Accessed 24.05.2024.

³⁹ 155/96: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, African Commission, para.51.

⁴⁰ African Union, entered into into force, June 16, 1969, <https://au.int/en/treaties/1160> , Accessed 24.05.2024.

and Social Rights (CESR) in New York and the Social and Economic Rights Action Centre (SERAC) in Nigeria. According to the communication, the Nigerian National Petroleum Business (NNPC), the state-owned oil company of the country and the leading partner of the Shell Petroleum Development Corporation (SPDC), is involved in actions that pollute the environment and endanger the health of the Ogoni people. Nigeria's military has direct participation in the production of oil. The applicants contend that Nigeria failed to respect, protect, and implement the right to a satisfactory and integral environment of thousands of persons adversely affected by the toxic waste dump. The African Commission states that the state must take appropriate and further steps to stop pollution and ecological deterioration.⁴¹ By both Articles 24 and 16 of the African Charter, governments must be involved in

“permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.”⁴²

The right to a general satisfactory environment “imposes clear obligations upon a government. It requires the state to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.”⁴³ Ultimately, the African Commission concluded that Article 24 had been breached.

Another example is the case of *Ligue Ivoirienne Des Droits De L'homme (Lidho) and Others v. Republic Of Côte D'ivoire*. The African Court determined that there was no dispute that toxic waste disposal has serious negative effects on the

⁴¹ 155/96: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, para.52.

⁴² 155/96: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, para.53.

⁴³ 155/96: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, para.52.

environment, including the deterioration of groundwater, and ruled that a state is to uphold, defend, develop, and carry out the rights enshrined in the agreements required by international law which it has ratified.⁴⁴ These obligations apply to a satisfactory environmental right to the extent that the Republic Of Côte D'ivoire had a duty to not only prevent waste from being dumped without meeting the necessary conditions but also to ensure complete and effective decontamination after the waste has been dumped (para.183). In this decision, the African Court observed that the authorities need to implement the necessary legislative, administrative, and other steps to forbid the importation of hazardous waste into their country (para.184). In addition, the African Court ruled that these authorities are responsible for ensuring that the cargo in question is unloaded into the defendant state's territory in a way that avoids any potential harm to the environment (para.184). Furthermore although the institutions in charge of disposing of and processing the waste are accountable, the Republic Of Côte D'ivoire is in charge of safeguarding and protecting the environment (para.184). The state failed to show that it has quickly and effectively cleaned up the contaminated sites (para.185). As a result, the African Court determined that under these circumstances, the state is not abiding by its obligation to uphold the right to an environment that is generally satisfactory and conducive to development (para.185).

2. The IACtHR And American Commission

The following is stated in Article 11 of the Protocol of San Salvador, an Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights:

“1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation and improvement of the environment.”

⁴⁴ Ligue Ivoirienne Des Droits De L'homme (Lidho) And Others v. Republic Of Côte D'ivoire, App no: 041/2016, African Court, para.182.

The preamble to the Social Charter of the Americas also accepted that “a safe environment is essential to integral development”. The right to an environment is one of the economic, social, educational, scientific, and cultural rights protected by Article 26 of the American Convention on Human Rights (American Convention),⁴⁵ and Article 26 safeguards the rights resulting from the Charter Of the Organization of American States’(OAS) economic, social, and educational provisions and those resulting from a conforming interpretation of the Convention.⁴⁶ The IACtHR asserts that the right is one of the cultural, social, and economic rights covered by Article 26. Thus, the IACtHR acknowledged in its advisory opinion that the American Convention guaranteed a basic right to a healthy environment for the first time.⁴⁷ The IACtHR states that right to a healthy environment “constitutes a universal value”, “is a fundamental right for the existence of humankind” and “as an autonomous right...” and it

“protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals. This means that it protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life or personal integrity, but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right.”⁴⁸

This does not mean that environmental harm cannot lead to violations of other human rights.⁴⁹ The IACtHR ruled states have a duty to uphold and defend the right to a healthy environment and one way to do this is to prevent violations.⁵⁰

⁴⁵ Adopted at the Inter-American Specialized Conference on Human Rights, 22 November 1969.

⁴⁶ Inter-American Court of Human Rights Advisory Opinion Oc-23/17, para.57.

⁴⁷ See Maria L. Banda, “Inter-American Court of Human Rights’ Advisory Opinion on the Environment and Human Rights”, *AM. SOC’Y INT’L L.: INSIGHTS*, (2018), 2.

⁴⁸ Inter-American Court of Human Rights Advisory Opinion Oc-23/17, paras.59 and 62.

⁴⁹ *Lhaka Honhat (Our Land) Association v. Argentina*, (Merits, reparations and costs), 2020, IACtHR, para.203.

⁵⁰ *Lhaka Honhat (Our Land) Association v. Argentina*, para.207.

Despite being acknowledged in Article 11 of the San Salvador Protocol, the right to a healthy environment is unenforceable through individual petitions.⁵¹

3. The United Nations System

No United Nations convention currently addresses the right to a healthy environment. Nevertheless, for the first time, the UN General Assembly “(r)ecognizes the right to a clean, healthy and sustainable environment as a human right” in resolution A/76/L.75 on 26 July 2022. It also accepted in resolution 76/300 that protecting the environment supports and enhances people's rights to full enjoyment of life as well as the rights of future generations in 2022.⁵² The resolution acknowledges that

“the impact of climate change, unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in services provided by ecosystems interfere with the enjoyment of a clean, healthy and sustainable environment and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights.”

It further asserts that “environmental degradation, climate change, biodiversity loss, desertification and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights”. It recognizes that preserving “a clean, healthy, and sustainable environment” depends on people effectively exercising their human rights, which involve the freedom to seek, receive, and distribute information, engage in public affairs and government, and get an appropriate remedy. The significance of “a clean, healthy and sustainable environment” for the fulfillment of every human right is emphasized in the

⁵¹ Salvador Protocol Article 19.

⁵² United Nations General, Assembly The human right to a clean, healthy and sustainable environment, A/RES/76/300, Resolution adopted on 28 July 2022.

resolution. The General Assembly's (and the UN Human Rights Council's)⁵³ recognition of the right has contributed to its establishment as customary international law.⁵⁴ The UN and other national, regional, and international organizations demonstrate great uniformity and precision in understanding human rights requirements about the environment.⁵⁵

A. Legal Instruments That Indirectly Address The Right To A Healthy Environment

Individuals who fall under the purview of current human rights treaties and whose rights are negatively impacted by environmental degradation may file a claim that their rights have been infringed. The courts, commissions, and committees' decisions demonstrate that environmental degradation has adverse effects on individual rights from both a substantive and procedural standpoint.⁵⁶ Consequently, environmental degradation may impede the effective exercise of human rights.

1. Substantive Rights

The Human Rights Council determines the substantial elements of "the right to a safe, clean, healthy, and sustainable environment" as "clean air," "a safe climate," "healthy and sustainably produced food," "access to safe water and adequate sanitation," "non-toxic environments in which to live, work, and play," "healthy ecosystems, and biodiversity".⁵⁷ According to the criteria established by

⁵³ See also, with the support of forty-three states, the Human Rights Council passed resolution 48/13, recognizing "the right to a safe, clean, healthy, and sustainable environment" as a fundamental human right in 2021 (Human Rights Council, "the human right to a clean, healthy and sustainable environment, A/HRC/RES/48/13, Resolution adopted by the Human Rights Council on 8 October 2021").

⁵⁴ Tigre, 184.

⁵⁵ Tigre, 184.

⁵⁶ See also Kaboğlu ve Yancı Özalp, 257-270; Güneş, 160-168.

⁵⁷ See Human Rights Council, "Right to a healthy environment: good practices", A/HRC/43/53, 30 December 2019.

the Human Rights Council, the rights to property, health, life, and a reasonable quality of living, as well as the right to respect for one's privacy and family life, are all deemed material factors in this study.

a. The Right To Health

i. the United Nation System

Articles 12 of the ICESCR, 5(e)(iv) of the Convention on the Elimination of All Forms of Racial Discrimination, 11(1)(f) and 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and Articles 19 and 24 of the Convention on the Rights of the Child (CRC) all protect the right to health within the framework of the UN organization.

The right to "the highest attainable standard of physical and mental health" is protected by Article 12 of the ICESCR. It covers more than only the right to health care and the phrase the right to health describes a wide range of socio-economic factors that encourage the development of conditions that allow people to live healthy lives, and housing, access to clean, safe water, "safe and healthy working conditions", and a healthy environment are all important aspects of health that are covered under the right to health.⁵⁸ In other words, Article 12 covers the basic determinants of health, including access to safe and potable water, adequate sanitation, food and nutrition, shelter, safe and healthy working conditions, and a healthy environment. Additionally, it involves preventing and reducing the exposure of the populace to hazardous materials, radiation, and other dangerous substances that have an adverse effect on human health, either directly or indirectly.⁵⁹ In parallel with this,

"States should also refrain from unlawfully polluting air, water and soil...through industrial waste from State-owned facilities, from using or testing nuclear, biological or chemical weapons if such testing results in the release of

⁵⁸ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4), para.4.

⁵⁹ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health, para.15.

substances harmful to human health, and from limiting access to health services”⁶⁰.

ii. the Regional Human Rights System

From a regional perspective, the right to health is recognized by the European Social Charter of 1961, as amended, Articles 11, the Article 16 of the African Charter, and Article 10 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights.⁶¹ Article 16 of the African Charter states that “1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.” The violations of Article 16 of the African Charter include the government's failure to supply essential services like safe drinking water, electricity, and medicines shortages that are necessary for a minimal standard of health.⁶² In the opinion of the African Commission, governments are required to stop directly endangering the health and environment of their citizens.⁶³ States have a responsibility to defend their citizens from harm that may be caused by third parties and this duty extends beyond just passing proper laws and enforcing them.⁶⁴ The African Court emphasizes that the African Commission highlighted that fulfilling one's widely recognized human right to health is essential to one's overall well-being and all other fundamental human rights and freedoms, and this right covers providing healthcare facilities and assuring equal access to goods and services for all people without discrimination.⁶⁵ In its ruling in Egyptian Initiative for Personal Rights and

⁶⁰ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health, para.34.

⁶¹ Adopted on November 17, 1988.

⁶² 25/89, 47/90, 56/91, 100/93 World Organisation Against Torture, Lawyers' Committee for Human Rights, Jehovah Witnesses, Inter-African Union for Human Rights v. Zaire, African Commission, para.47.

⁶³ Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, para.52.

⁶⁴ See Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, para.57.

⁶⁵ 241/01, Purohit and Moore v. Gambia, 29 May 2003, African Court, para.80.

Internight v. Egypt, the African Commission reaffirmed this principle.⁶⁶ In a similar vein, the African Commission ruled in *SERAC v. Nigeria* that “Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement, but also by protecting them from damaging acts that may be perpetrated by private parties”.⁶⁷ According to the ruling of the African Court, the state is in breach of its duty if it does not take all necessary steps to protect those under its control from third parties violating their right to health.⁶⁸

“Right to the preservation of health and to well-being” is regulated under Article XI of American Declaration of the Rights and Duties of Man. Severe environmental contamination that has the potential to harm people's health and cause them to suffer seriously is incompatible “with the right to be respected as a human being.”⁶⁹ According to the IACtHR, “Special detriment to the right to health, and closely tied to this, detriment to the right to food and access to clean water, have a major impact on the right to a decent existence and basic conditions to exercise other human rights”.⁷⁰ Therefore, “(i)n the case of indigenous peoples, access to their ancestral lands and to the use and enjoyment of the natural resources found on them is closely linked to obtaining food and access to clean water.”⁷¹ The right of community members to a decent existence is negatively impacted when indigenous peoples are denied access to and use of their traditional lands, according to the IACtHR. Since it stopped them from pursuing their customs, they could not use and benefit from the natural resources needed to acquire clean water, practice traditional medicine to treat and prevent illness, or

⁶⁶ 233/06, *Egyptian Initiative for Human Rights and INTERIGHTS v. Egypt*, 16 December 2011, African Commission, para. 261.

⁶⁷ *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, para. 57.

⁶⁸ *Ligue Ivoirienne Des Droits De L'homme (Lidho) And Others v. Republic Of Côte D'ivoire*, para.171; CESCR “General Comment No. 14: The Right to the Highest Attainable Standard of Health,” para.51.

⁶⁹ Inter-American Commission on Human Rights, Report On The Situation Of Human Rights in Ecuador, OEA/Ser.L/V/II.96, Doc. 10 rev. 1, 24 April 1997, Chapter VIII.

⁷⁰ *Yakye Axa Indigenous Community v. Paraguay*, para.167.

⁷¹ *Yakye Axa Indigenous Community v. Paraguay*, para.167.

engage in their traditional livelihoods.⁷² In line with this opinion, the Committee on Economic, Social and Cultural Rights noted that in indigenous communities, the individual's health is frequently connected to the society's overall health and has a collective dimension, and activities associated with development that result in the eviction of indigenous peoples from their customary lands and environments, deprived of their food sources, and disrupted in their communal life have a negative effect on their relationship with their lands and their health.⁷³

b. The Right To Life

Ensuring human survival entails protecting the environment.⁷⁴ Put another way, people cannot exercise their rights to those guaranteed by international human rights law without a healthy environment.⁷⁵ Both regional and international instruments protect the right to life.

i. the ECtHR

There shall be legal protection for everyone's right to life, according to Article 2 of the European Convention on Human Rights (ECHR). The ECHR makes no specific reference to the right to the environment. However, environmental problems have the potential to violate someone's right to life. Violations have taken place in this regard, particularly in the context of states' positive obligations. Similar to other disciplines, Article 2 is also applicable to cases when the state's actions or inactions result in a person's death, as well as in situations where a person's life is plainly in danger but no death occurs.⁷⁶

On April 28, 1993, a methane explosion happened at the municipal rubbish tip in Ümraniye, which had been using it despite breaking technical and health

⁷² *Yakye Axa Indigenous Community v. Paraguay*, para.168.

⁷³ CESCR "General Comment No. 14: The Right to the Highest Attainable Standard of Health," para.27.

⁷⁴ *Atapattu, The Right to a Healthy Life*, 99.

⁷⁵ *Atapattu, The Right to a Healthy Life*, 99.

⁷⁶ See *Budayeva and Others v. Russia*, App no. 15339/02, ECtHR, para. 146.

and safety regulations since it first started operations in the early 1970s. The applicants claimed that the national authorities were to blame for the explosion that killed their immediate family members and destroyed their property. According to the European Court of Human Rights (ECtHR), the risk to certain residents living close to the Ümraniye municipality rubbish tip was real and immediate, and it was known or should have been understood by Turkish officials at several levels.⁷⁷ The ECtHR observed that no actions had been taken by the state to inform the residents of the Ümraniye slum of the hazards they would suffer as a result of their choices (para.108). The ECtHR notes that the applicant and his immediate family were given permission by the authorities to reside in their house, in the social and family setting they had established, entirely undisturbed. Although the Ümraniye municipal garbage collection facility did not meet the necessary technical requirements, neither those in charge of its opening nor operation took the necessary precautions to assure the public's protection (para.109). Such conditions result in a substantial breach of Article 2 of the ECHR. The state is required by Article 2 to ensure an adequate response by using all available means for the proper implementation of the legal and administrative framework established to protect the right to life and to suppress and punish violations of this right in cases where lives are lost in circumstances that could be considered to be within the state's responsibility.⁷⁸ In this situation, those responsible for endangering life are those whose negligence is attributable to state representatives or bodies and when that negligence extends beyond a mistake of judgment or carelessness, and when those officials, fully aware of the potential results and abusing their authority, fail to take the required and sufficient precautions to prevent the risks inherent in a dangerous activity.⁷⁹ The violations of Article 2 include not having been charged with or prosecuted for a crime, regardless of any other remedies that might be available to people on their own.⁸⁰

⁷⁷ Öneriyıldız v. Turkey, App no.48939/99, 2004, ECtHR, para.101.

⁷⁸ Öneriyıldız v. Turkey, para.91; Kolyadenko and Others v. Russia, App nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, 2012, ECtHR, para.188.

⁷⁹ Öneriyıldız v. Turkey, para.93; Budayeva and others v. Russia, 2008, para.140.

⁸⁰ Öneriyıldız v. Turkey, para.93; Budayeva and others v. Russia, 2008, para.140; Kolyadenko and Others v. Russia, para.190.

The perpetrators of the events, however, were charged with negligence of duty rather than with violating the right to life.⁸¹ According to the ECtHR, there was insufficient protection provided by the "law" ensuring "the right to life" and discouraging "similar life-threatening" behavior in the future in relation to a tragic incident resulting from the conduct of a hazardous activity.⁸² As a result, the ECtHR determined that there was also a procedural breach of Article 2 of the ECHR.

The applicants in the case of *Budayeva and others v. Russia* reside in the mountainous Tyrnauz region, where two branches of the Baksan River that run through Tyrnauz are known to be vulnerable to mudslides. The case relates to a mudslide tragedy that occurred in the Russian village of Tyrnauz between July 18 and July 25, 2000. The ECtHR views persons who are victims of natural disasters, i.e., those who are flooded in a designated camping area, as engaging in dangerous activity. The ECtHR highlighted that the authorities had been given several warnings in the year prior to the mudslide in August 2000, which would have made them aware of the rising hazards and the authorities are therefore aware that any mudslide, regardless of its size, might have disastrous effects in Tirnovo due to the state of deterioration of the defence system following the previous mudslide.⁸³ Considering the elevated danger of mishaps in the event of a mudslide in 2000, the ECtHR believed that the authorities should have taken every precaution to warn civilians and make preparations for emergency evacuation and in any case, the ECtHR believed that to guarantee that the citizens in issue received adequate protection, it was necessary to alert the public about natural hazards.⁸⁴ This is one of the fundamental practical measures. Though the authorities would have to establish temporary observation posts in the mountains to be able to alert the neighborhood to the mudslide risk, they chose to ignore the specialized surveillance agency's repeated requests, despite the fact that such posts were crucial for ensuring the safety of the locals (para.154). Authorities were therefore

⁸¹ *Öneryıldız v. Turkey*, para.116.

⁸² *Öneryıldız v. Turkey*, para.118.

⁸³ *Budayeva and others v. Russia*, 2008, paras.148-149.

⁸⁴ *Budayeva and others v. Russia*, 2008, para.152; *Kolyadenko and Others v. Russia*, para.181.

unable to adequately enforce the evacuation order or provide residents with advance notice (para.154). Although the authorities can choose whatever essential steps they need to fulfill their positive obligations with a broad margin of appreciation, they did not act in this case until the day of the accident (para.156). The authorities had failed to uphold their positive obligation to create a legal and administrative framework intended to serve as an effective deterrent against threats to the right to life, as required by Article 2 of the ECHR, which constituted a substantive violation of that provision of the Convention (paras.159-160). The ECtHR found that there had been procedural violations of Article 2 because no judicial or administrative body has examined or evaluated the question of state responsibility for the Tyrnauz disaster (paras.161-165).

The applicants in the case *Kolyadenko and Others v. Russia* are six Russian individuals who reside close to the Pionerskaya River and reservoir in Vladivostok, which was constructed in 1936 to supply Vladivostok with drinking water. They were all impacted by the severe flooding that took place in Vladivostok on 7 August 2001 as a result of the urgent reservoir release. The ECtHR ruled that there was more to the events of August 7, 2001, than only the unfavourable weather circumstances that day. Indeed the President of the Water Company warned the Vladivostok Administration in a letter dated June 7, 1999 that it might be necessary to release water from the reservoir urgently in the event of heavy rain. The Vladivostok Administration later acknowledged in a letter dated May 29, 2000 that the water level in the reservoir was approaching the critical level and that some of it would need to be evacuated (para.165). The Pionerskoye reservoir was a man-made industrial structure in this situation, holding millions of cubic meters of water. It was in an area that frequently saw summer typhoons and torrential rain. The operation of such a reservoir, in the ECtHR's opinion, is unquestionably regarded as being under the category of hazardous industrial activities, in light of its location (para.164). Regardless of the weather, the ECtHR decided that the authorities were required to anticipate the prospect of water being released from the reservoir and any potential consequences (para.165). The ECtHR concludes that the state had positive responsibilities under Article 2 of the ECHR to evaluate every possible risk associated with reservoir operation and to act appropriately to guarantee the successful protection of individuals whose lives may be in danger (para.166). The ECtHR found that for many years, the authorities did not do enough to ensure that

the Pionerskaya River channel's throughput was adequate in light of the technical requirements of the Pionerskoye reservoir or, at the very least, to maintain the river channel's openness in order to reduce, if not entirely avoid, the risk and effects of flooding in the event of an emergency water release from the reservoir (para.180). The ECtHR held that there was a fundamental breach of Article 2 as a result of the government's failure to uphold its positive duty to protect the applicants' lives. The lack of effective judicial action by the authorities in the events of August 7, 2001, the ECtHR finds, constituted a procedural violation of Article 2 of the ECHR.

ii. the IACtHR and American Commission

"Every person has the right to have his life respected" reads Article 4 of the American Convention. This right will generally be safeguarded "from the moment of conception" and by the law. The IACtHR declared that "the right to life" is "a fundamental human right" and is required for the enjoyment of all human rights.⁸⁵ This right essentially comprises both the right of every person to not have their life taken from them against their will and the right to prevent the creation of circumstances that make it difficult or impossible to live a good life.⁸⁶ Human life and health are continuously at risk from environmental pollution and degradation and in this way, the American Commission stated that a person's physical environment is inextricably linked to, and in some ways dependent upon, the realization of their right to life as well as their right to physical security and integrity.⁸⁷ According to the American Commission "the right to life, liberty, and personal security" are recognized in Article I of the American Declaration of the Rights and Duties of Man, and Article XI reflects "the interrelationship between the rights to life and health," which guarantees the protection of each individual's health and well-being.⁸⁸

⁸⁵ *Yakye Axa Indigenous Community v. Paraguay*, para.161.

⁸⁶ *Yakye Axa Indigenous Community v. Paraguay*, para.161.

⁸⁷ "OEA/Ser.L/V/II.96 Doc. 10 rev. 1, 24 April 1997, chapter development Activities."

⁸⁸ "OEA/Ser.L/V/II.96 Doc. 10 rev. 1, 24 April 1997, chapter development Activities."

The IACtHR states that the obligation to respect inevitably includes restricting the state's exercise of its powers. States are required to abstain from any action or practice that denies or restricts access to necessities, like enough food and water, as well as from unlawful environmental pollution that has a negative impact on the conditions, enabling the individual to lead a life of dignity.⁸⁹ States are committed to guaranteeing rights, which means they must take all necessary measures to safeguard and maintain the right to life.⁹⁰ States' obligations to respect protective provisions go beyond the relationship between the state's own officials and persons under its jurisdiction and the acts of private individuals may be held against the state if the state fails to fulfill these obligations through the acts or omissions of its representatives while acting as guarantor.⁹¹ The failure of the state to regulate, control, or supervise the actions of those third parties that cause environmental harm may result in the state having international liability for the behavior of those third parties.⁹² The unique relationship that indigenous peoples have with their lands has led the IACtHR to find violations of their right to life. For instance, due to their displacement from their ancestral lands and the unsuitable conditions in the area where their temporary settlements were situated for farming or engaging in traditional subsistence practices like hunting, fishing, and gathering, members of the Yakye Axa Community have also encountered unique and severe difficulties in finding food.⁹³ There was not enough accommodation for the Yakye Axa Community's residents, nor were there enough facilities for even the most basic needs, such as running water and toilets (para.164). The IACtHR believes this has negatively impacted the right to a decent life because it prevents community members from engaging in traditional means of subsistence, using and enjoying the natural resources needed to acquire clean water, and using traditional medicine to stop and treat illness (para.168). Furthermore, the state has not made the required progress to guarantee that

⁸⁹ Inter-American Court of Human Rights Advisory Opinion Oc-23/17, para.117.

⁹⁰ Luna López v. Honduras, (Merits, Reparations and Costs), 2013, IACtHR, para.118; "Street Children" (Villagran-Morales et al.) v. Guatemala, (Merits), 1999, IACtHR, para.144.

⁹¹ "Mapiripán Massacre" v. Colombia, (Merits, Reparations, and Costs), 2005, IACtHR, para.111.

⁹² Inter-American Court of Human Rights Advisory Opinion Oc-23/17, para.119.

⁹³ Yakye Axa Indigenous Community v. Paraguay, para.164.

during their time of landlessness, residents of the Yakye Axa Community live in conditions that respect their dignity (para.168). Due to failure of the State to take action about the circumstances affecting the ability of Yakye Axa Community members to live a life of dignity, the IACTHR determined that the State had breached in conjunction with Articles 4(1) and 1(1) of the American Convention.

iii. the African Court and Commission

When it comes to the African Charter, Article 4, "Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right." According to the jurisprudence of the African Court, the right to life is the cornerstone of all other freedoms and rights.⁹⁴ The African Court referred the fact that States are required by international human rights to respect, protect, promote and implement the rights enshrined in the accords to which they are party. The state party is required to abstain from violating the obligation of respect; the state party is obliged to protect and defend rights holders from third-party violations; and the state party must take the required actions to ensure the effective distribution and exercise of the relevant rights to fulfill its commitments to promote and implement.⁹⁵ The right to life goes beyond the commitment of states to refrain from violating life and also imposes an obligation on states to prevent and deter violations of this right by third parties.⁹⁶ States parties are required to take all reasonable steps to safeguard people's lives from threats brought on by people or organizations whose actions cannot be justified by the state.⁹⁷ States parties shall make all the required safety measures to safeguard people from being deprived of their lives by foreign companies, states,

⁹⁴ African Commission on Human and Peoples' Rights v Kenya (merits) (2017) 2 AfCLR 9, para.152; Ligue Ivoirienne Des Droits De L'homme (Lidho) And Others v. Republic Of Côte D'ivoire, para.129.

⁹⁵ Ligue Ivoirienne Des Droits De L'homme (Lidho) And Others v. Republic Of Côte D'ivoire, para.131.

⁹⁶ Ligue Ivoirienne Des Droits De L'homme (Lidho) And Others v. Republic Of Côte D'ivoire, para.133.

⁹⁷ Human Rights Committee, General comment No. 36, Article 6: right to life, CCPR/C/GC/36, 3 September 2019, para.7.

and international organizations that operate within their borders or in other domains they control.⁹⁸

The African Court and Commission ruled that environmental deterioration or destruction may infringe upon that right under Article 4 of the Charter. For instance, in *Ligue Ivoirienne Des Droits De L'homme (Lidho) and Others v. Republic of Côte d'Ivoire*, 528 m3 of hazardous waste were released by the cargo ship *M.V. Probo Koala*, which was chartered by International Trafigura Limited, on August 19, 2006, upon its arrival at the port of Abidjan, Côte d'Ivoire. This had an impact on the city's outskirts and center of economic activity. The ship's existing trash was discharged, and the economic centre of Abidjan, and its outskirts were affected. Chemical waste treatment facilities are absent from all of these locations. Waste dumping caused air pollution and bad odors to spread throughout the Abidjan region. On the same day, thousands of people with symptoms of headaches, nausea, vomiting, rashes, and nosebleeds made their way to medical institutions. The applicants claim that hundreds of thousands of people have been injured, seventeen people have died from breathing toxic fumes, and environmental experts have found significant groundwater contamination, all according to Ivorian authorities. The applicants claim that the respondent state failed to reduce the risk to the lives and physical integrity of Abidjan citizens despite knowing or having a duty to know that the release of hazardous waste posed such a risk. First, Article 4 of the African Charter was cited by the African Court. The African Court then states that Article 4 of the Bamako Convention does not allow the import and dumping of dangerous wastes. Additionally, this Convention stipulates that all Parties shall take the proper administrative, judicial, and other measures. From these various Bamako Convention provisions, it is clear that States parties are required to prevent the importation of toxic wastes into their territories, for which they are required to be aware of the effects on human life.⁹⁹ If such toxic wastes are discovered on a state's territory, the state is required to take

⁹⁸ Human Rights Committee, General comment No. 36, Article 6: right to life, para.22; *Ligue Ivoirienne Des Droits De L'homme (Lidho) And Others v. Republic Of Côte D'ivoire*, para.135.

⁹⁹ *Ligue Ivoirienne Des Droits De L'homme (Lidho) And Others v. Republic Of Côte D'ivoire*, para.137.

action to limit the harmful consequences on human life and is responsible for repairing the harmful consequences on human life (para.137). According to the application and, in particular, the statements of the parties, the defendant state knew that the ship Prob Koala was transporting industrial chemical waste, but it still allowed the TRAFIGURA company to unload its cargo under the condition that it found a company to handle the waste (para.138). The African Court ruled that such authorizations breach the responsibility not to transgress the Bamako Convention's prohibition on the importation of hazardous waste (para.138). Even though the respondent state in the current application was required to prevent the release of dangerous waste, it did not (para.138). The African Court determined that even after the toxic waste, the respondent state did not take all necessary steps to lessen the effects and limit the harm to human life, and that this failure by the state violated several provisions of the Bamako Convention, which stipulate specific steps that states must take (para.140). Although the multinational corporation TRAFIGURA Limited, which hired the MV Probo Koala, was the source of the in question violations, the African Court found that the defendant state ultimately bore the primary responsibility for the human rights violations brought on by the dumping of toxic waste in Abidjan (para.143). The African Court ultimately decided that the right to life had been violated.

c. The Right to an Adequate Standard of Living

On a global scale according to Article 25(1) of the Universal Declaration of Human Rights, “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services”. The ICESCR's Article 11 also guarantees everyone to “an adequate standard of living including adequate food, clothing and housing, and to the continuous improvement of living conditions.” In accordance with Article 24 of the CRC, states parties are required to take appropriate steps to combat disease and malnutrition within the context of primary health care, including by providing adequate nutrient-rich food and water for drinking, while considering the dangers and threats posed by environmental contamination. In other words, the CRC recognizes that every child has the right to acquire enough, nutrient-rich food, while also taking into account the risks and hazards associated with environmental degradation.

Both regional and global instruments make reference to the right to a reasonable standard of living in various ways. For example, the human right to water is essential for “living a life of dignity” since water is essential for both life and health.¹⁰⁰ The right to water is mentioned as being crucial for life and health, along with food, clothing, and housing.¹⁰¹ A clear statement of the right to water can be found in CRC Article 24. The CEDAW recognizes that women have “a right to adequate living conditions,” which includes access to water (Article 14(2-h)). Resolution 64/292 of the UN General Assembly states that “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights”.¹⁰²

Again the Committee on Economic, Social and Cultural Rights thinks everyone has the human right to food, which is essential to achieving all other rights.¹⁰³ Article XI of the American Declaration of the Rights and Duties of Man also mentions the right to food. Additionally, according to Article 12(1) of the Protocol of San Salvador, all individuals possess the entitlement to sufficient nourishment, which ensures the potential to experience optimal physical, emotional, and cognitive growth. The IACtHR believes that this right effectively safeguards access to food that provides necessary and suitable nourishment to maintain health.¹⁰⁴ The African Charter does not mention the right to food, however the African Commission still recognizes it. According to the African Commission, “[t]he right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other

¹⁰⁰ See “General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant) Adopted at the Twenty-ninth Session of the Committee on Economic, Social and Cultural Rights, on 20 January 2003,” para.1.

¹⁰¹ See” generally General Comment No. 15: The Right to Water.”

¹⁰² “Resolution adopted by the General Assembly on 28 July 2010 [without reference to a Main Committee (A/64/L.63/Rev.1 and Add.1)] 64/292. The human right to water and sanitation, A/RES/64/292, 2.”

¹⁰³ CESCR “General Comment No. 12: The Right to Adequate Food (Art. 11) Adopted at the Twentieth Session of the Committee on Economic, Social and Cultural Rights, on 12 May 1999,” para.1

¹⁰⁴ *Lhaka Honhat (Our Land) Association v. Argentina*, para.216.

rights as health, education, work and political participation."¹⁰⁵ Moreover, the African Commission states that protecting and enhancing current food resources and ensuring that all citizens have access to sufficient food are obligations of states under the African Charter and international law.¹⁰⁶ The minimal requirement of the right to food calls on the relevant state to abstain from destroying or polluting resources used to produce food, without even mentioning the obligation to increase food production and ensure access and again, authorities should not permit private parties to contaminate or destroy food supplies and undermine efforts by people to feed themselves.¹⁰⁷ For instance, in the case of the Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria, the African Commission determined that the government's use of its security forces and the state-owned oil company to destroy food supplies, its approval of food supply destruction by independent petroleum firms, and its use of terrorism to erect significant barriers to the ability of Ogoni communities to feed themselves all constituted violations of the right to food (para.66).

Finally, the IACtHR states that "the right to cultural participation" includes the right to cultural identity.¹⁰⁸ This right is enshrined in Article XIII of the American Declaration and Article 14(1)(a) of the Protocol of San Salvador. According to the IACtHR, rights to food, participation in cultural activities, and access to water are all "particularly vulnerable" to "environmental impact".¹⁰⁹ In the universal sphere, 27(1) of the Universal Declaration of Human Rights protects to the right to participation in the community's cultural life. Article 15(1)(a) of the ICESCR shows the states parties acknowledge that everyone has "the right to take part in cultural life." One such clause can be found in Article 27 of the ICCPR. The

¹⁰⁵ Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, para.65.

¹⁰⁶ Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, para.65.

¹⁰⁷ Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, para.65.

¹⁰⁸ Lhaka Honhat (Our Land) Association v. Argentina, para.221.

¹⁰⁹ Lhaka Honhat (Our Land) Association v. Argentina, para.245.

Human Rights Committee states that for indigenous peoples, appreciating their culture can be connected to a way of life that is intimately tied to their land and how its resources are used, including customary hunting and fishing methods.¹¹⁰ Preserving this privilege, therefore, guarantees the survival and advancement of cultural identity (para.8.13). According to the Human Rights Committee, Article 27 protects individual rights, but these rights also rely on the minority group's ability to preserve "its culture, language, and religion" (para.8.13). In this regard, the Human Rights Committee ruled in *Daniel Billy et al. v. Australia* that Australia violated the applicants' right to enjoy minority cultures by failing to act promptly in taking appropriate adaptation measures that would have allowed the applicants to continue living according to their customs and culture, as well as pass on their knowledge and customs to their children and future generations (para.8.14).

d. The Right to Respect for Private and Family Life

i. the ECtHR

The right to respect for private and family life¹¹¹ and the preservation of the environment are linked, despite the fact that the European Convention on Human Rights lacks an article on environmental protection. This has been established by ECtHR case law. The ECtHR stated that environmental protection has become an increasingly important issue in today's society.¹¹² Given that neither the ECHR nor its Protocols safeguard the freedoms and rights regarding the preservation of nature, Article 8 does not always apply when environmental deterioration takes place.¹¹³ Therefore, interference must directly make an impact on the applicant's home, family, or private life in order to constitute an issue of environmental harm

¹¹⁰ *Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019.

¹¹¹ See Melike Orçin, "Özel ve Aile Yaşamına Saygı Hakkı Bağlamında Sağlıklı ve Dengeli Bir Çevrede Yaşama Hakkı," in Zerrin Savaşan and Hakan Ünay eds., *Uluslararası Çevre Hukuku ve Politikaları- Dünden Bugüne ve Geleceğe*, Ankara: Yetkin Yayınları.

¹¹² See *Ivan Atanasov v. Bulgaria*, 2010, App no: 12853/03, ECtHR, para.66; *Fredin v. Sweden* (No.1), 1991, App no: 12033/86, ECtHR, para.48; *Turgut and Others v. Turkey*, para.90;

¹¹³ See *Ivan Atanasov v. Bulgaria*, para.66; *Fadeyeva v. Russia*, para.68;

within the meaning of Article 8.¹¹⁴ Put it differently the general degradation of the environment is insufficient for the assessment of environmental harm under the purview of Article 8; therefore it creates a detrimental effect on the person's private and family life.¹¹⁵

For the purpose of bringing a claim under Article 8 “the adverse effects of the environmental pollution must attain a certain minimum level of severity”¹¹⁶ and “[t]he assessment of that minimum is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance, and its physical or mental effects.”¹¹⁷ It is also essential to consider the environment's general context and there would be no reasonable claim under Article 8 if the alleged harm were negligible compared to the environmental concerns in any contemporary city.¹¹⁸ States are required to create regulations that are relevant to the features of the activity in question, notably the level of risk that may be involved, when it comes to extremely hazardous activities.¹¹⁹ The licensing, establishment, operation, safety, and supervision of the activity should all be covered by these regulations, and all parties involved must take concrete steps to provide the necessary preservation of people whose lives may be put in danger by the inherent hazards.¹²⁰ In this context, the ECtHR has rendered numerous decisions. In *Kyrtatos v. Greece*, the applicants argued that urban expansion had

¹¹⁴ *Fadeyeva v. Russia*, para.68; *Borysiewicz v. Poland*, 2008, App no: 71146/01, ECtHR, para.51

¹¹⁵ *Kyrtatos v. Greece*, 2003, App no: 41666/98, ECtHR, para.52.

¹¹⁶ *Kyrtatos v. Greece*, para. 54; *Borysiewicz v. Poland*, para.51; *Leon and Agnieszka Kania v. Poland*, 2009, App no: 12605/03, ECtHR, para. 100; *Yevgeniy Dmitriyev v. Russia*, 2020, App no: 17840/06, ECtHR, para.32; *Kapa and Others v. Poland*, 2021, App nos: 75031/13 and 3 others, ECtHR, para. 153; *Solyanik v. Russia*, 2022 App no: 47987/15, ECtHR, para. 40.

¹¹⁷ *Fadeyeva v. Russia*, para.69; *Borysiewicz v. Poland*, para.51; *Leon and Agnieszka Kania v. Poland*, para.100; *Jugheli and Others v. Georgia*, 2017, App no: 38342/05, ECtHR, para.62; *Kožul and Others v. Bosnia and Herzegovina*, 2019, App no: 38695/13, ECtHR, para. 34; *Çiçek and Others v. Turkey (dec.)*, 2020, ECtHR, para. 22; *Yevgeniy Dmitriyev v. Russia*, para. 32; *Solyanik v. Russia*, para. 40.

¹¹⁸ *Fadeyeva v. Russia*, para.69; *Solyanik v. Russia*, para. 40; *Jugheli and Others v. Georgia*, para.62; *Çiçek and Others v. Turkey*, para. 22; *Yevgeniy Dmitriyev v. Russia*, para. 32; *Solyanik v. Russia*, 2022, App no:47987/15, ECtHR, para. 40.

¹¹⁹ *Di Sarno and Others v. Italy*, 2012, App no: 30765/08, ECtHR, para.106.

¹²⁰ *Di Sarno and Others v. Italy*, para.106.

wreaked havoc on the swamp next to their property. As a result, urban growth in Tinos' southeast had a severe effect on their quality of life and physical environment. They emphasized that the region has entirely lost its natural beauty and has fundamentally changed from being a natural environment for fauna to a development of tourism. The ECtHR's established case law holds that severe environmental pollution can have an adverse effect on people's well-being and make it difficult for them to enjoy their houses without substantially jeopardizing their health, which would have an adverse effect on their personal and family life.¹²¹ However, depending on the specifics of a case, the most important factor in determining whether environmental pollution negatively affects the rights guaranteed by Article 8(1) of the ECHR, is not merely the general deterioration of the environment but also the presence of a detrimental impact on "the person's private or family sphere" (para.52). The applicants have not presented compelling arguments to show that the asserted harm to "the birds and other protected species living in the swamp" would directly affect their rights under Article 8(1) of the ECHR, the ECtHR finds, even assuming that the urban development of the area has seriously damaged the environment (para.53). For instance, the ECtHR pointed out that if the alleged environmental degradation involved destroying a forest area close to the applicants' residences, it might have had a more immediate effect on their own well-being (para.53). Consequently, in the ECtHR's opinion, the disruption of the swamp animals' habitat did not amount to an assault on the applicants' private or family life (para.53). In line with the Ivan Atanasov decision, the ECtHR concluded that it was not persuaded that the disruption complained of amounted to an intrusion into the applicants' private lives in the absence of proof of a direct impact on the applicants or their quality of life.¹²²

¹²¹ *Kyrtatos v. Greece*, para.52; *López Ostra v. Spain*, para.51; *Guerra and Others v. Italy*, para.60; *Di Sarno and Others v. Italy*, para.104.

¹²² *Çiçek and Others v. Turkey*, 2020, App no: 44837/07, ECtHR, (inadmissible application), para.30-32.

“Article 8 may apply in environmental cases whether the pollution is directly caused by the State or whether State responsibility arises from the failure to regulate private industry properly.”¹²³

The ECtHR noted that noise disturbances or other nuisances that go beyond the ordinary difficulties of living with neighbours, whether caused by private individuals, commercial activities or public institutions, may affect the peaceful enjoyment of one's home.¹²⁴

Manfredonian citizens resided around a kilometer away from the Enichem chemical factory. This factory, which manufactured fertilizer and caprolactam and was deemed "high risk" due to the significant amount of combustible gases it generated, produced both products. Because of the failure of the Italian government to inform the applicants of the factory's health dangers, the applicants brought legal action against it. The ECtHR determined that all of the applicants resided in Manfredonia, which is about a kilometer away from the factory. The ECtHR also noted that the factory had released a significant amount of flammable gases and other hazardous materials, while it was in the process of producing fertilizers and caprolactam and therefore the factory had been classified as high risk in 1988.¹²⁵ It was discovered that Manfredonia frequently received emissions into the atmosphere as a result of the factory's geographic location.¹²⁶ Due to the direct impact of harmful “emissions on the applicants' right to respect for their private and family life,” the ECtHR declared that Article 8 is relevant.

In the case of *Taşkın and Others v. Turkey*, the permission to run a gold mine utilizing the cyanidation technique is at issue. The ECtHR stated that after conducting several investigations, the Supreme Administrative Court of Turkey determined that the licence was not granted in “the public interest” (para.112). The ECtHR also emphasized that, given the location of the gold mine and the local

¹²³ *Hatton and Others v. United Kingdom*, 2003, App no: 36022/97, ECtHR, para.98; *Borysiewicz v. Poland*, para.50; *Giacomelli v. Italy*, 2006, App no: 59909/00, ECtHR, para.78; *Zammit Maempel v. Malta*, 2011, App no: 24202/10, ECtHR, para.61.

¹²⁴ *Kapa and Others v. Poland*, para.151.

¹²⁵ *Guerra and Others v. Italy*, para. 57.

¹²⁶ *Guerra and Others v. Italy*, para. 57.

geology, “the use of sodium cyanide in the mine” posed “a threat to the environment and the right to life” of the community in the area and that the safety precautions the company had put in place were insufficient to completely get rid of the hazards associated with like an action (para.112). In light of the environmental impact assessment conducted under national legislation, the ECtHR determined that Article 8 is relevant (paras.112-114).

The applicant claimed that the continued use of the nearby cemetery had contaminated the soil on his property and his only source of drinking water, preventing him from using his home and its amenities normally and negatively affecting his and his family's physical and mental well-being. The ECtHR determined that the applicant's home was steadily approached by the cemetery.¹²⁷ The ECtHR finds that the expert assessments provided by the applicant corroborate the existence of hazardous environmental threats to their property, and these reports claim that the applicant's home is too close to the cemetery, in violation of the rules, and that the cemetery may pollute the applicant's property (para.43). The operation of the cemetery close to the applicant's home had contaminated his land and water well, according to the court, which determined that this had interfered with his rights under Article 8 of the ECHR (paras.44-5).

ii. the Human Rights Committee

Article 17 of the ICCPR states that nobody should become the arbitrary target or illegal interference with his family, home, correspondence, or privacy, nor should be the target of illegal attacks on his honor and reputation. For the first time, the Human Rights Committee found that Article 17 of the ICCPR had been violated., which states that family and private life are adversely impacted by climate change. The parties assert that climate change has already impacted their personal, domestic, and familial lives. They also mention that there are floods on the islands and that in 2010, floods completely wrecked Stanley Marama's home. The parties rely on agriculture, fishing, and other marine resources for their livelihoods. The Human Rights Committee states that Article 17 covers both the

¹²⁷ Solyanik v. Russia, para.42.

avoidance of arbitrary interference and the affirmative actions required to guarantee the effective exercise of the rights enumerated in Article 17 if state authorities and other physical or legal persons intervene (para.8.10). Regarding the loss of crops and fruit trees in the area where the authors reside and raise crops and the reduction of marine resources utilized for food, the Human Rights Committee observes that the state party still needs to offer alternate explanations. These aspects comprise the writers' home, family, and private lives (para.8.12). The Human Rights Committee observed that the authors' lives have been adversely impacted by the following: the inundation and flooding of their villages and ancestral burial grounds; the destruction or wilting of their traditional gardens as a result of flooding or seawater ingress; the decline of marine species that are important for culture and nutrition; as well as the resulting coral bleaching and ocean acidification (para.8.12). The Human Rights Committee takes note of the authors' claims that they have been anxious and distressed due to erosion getting closer to some of the homes in their communities. Their culture revolves around maintaining and visiting ancestral cemeteries, necessitating getting together with deceased family members. The Human Rights Committee notes the authors' argument that their most critical traditional rituals have significance only when performed on the grounds of indigenous communities (para.8.12). The Human Rights Committee believes that the right to one's home is directly impacted by the effects of climate change, particularly environmental deterioration on traditional territories in communities where sustenance heavily hinges on the availability of natural resources and where there is no available humanitarian help or other means of subsistence. Due to the severity of the effects, their length, and the bodily or psychological trauma they inflict, the negative effects are severe. Then, environmental deterioration can have a negative impact on people's well-being and be considered a severe and predictable breach of one's home, family, and privacy (para.8.12).

e. The Right To Property

i. the IACtHR

Damage to the environment may negatively impact one's right to property. The American Convention's Article 21 governs property rights. Particular significance is placed on property rights by indigenous peoples in the American

human rights system. In this regard, the IACtHR has stated that the indigenous peoples communally own the land according to their communitarian customs and that the concept of collective property of the land refers to the concentration of land ownership on the group and community, rather than on an individual.¹²⁸ The land is essential to indigenous peoples' culture, spirituality, integrity, and ability to survive economically, and these connections to it should be acknowledged.¹²⁹ Indigenous communities view their relationships to the land as more than just a matter of production and possession; they also view it as a tangible and spiritual component that in order to transmit their traditional heritage to subsequent generations, they must thoroughly appreciate it.¹³⁰ The IACtHR confirmed in *Yakye Axa Indigenous Community v. Paraguay* that both private property owned by people and communal property of indigenous peoples are protected under Article 21 of the American Charter (para.143). The IACtHR ruled that

“The culture of the members of the indigenous communities directly relates to a specific way of being, seeing, and acting in the world, developed on the basis of their close relationship with their traditional territories and the resources therein, not only because they are their main means of subsistence, but also because they are part of their worldview, their religiosity, and therefore, of their cultural identity.”¹³¹

In addition to the indigenous peoples' property rights, the IACtHR stated that they are also entitled to own the natural resources they have historically exploited in their territories¹³² and because members of indigenous and tribal peoples are inextricably linked to their land, Article 21 of the American Charter guarantees their basic survival by protecting their right to property over their territory.¹³³ Thus, in the context of indigenous and tribal people, It is valuable to have a

¹²⁸ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 2001 (Merits, Reparations and Costs), IACtHR, para.149.

¹²⁹ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, para.149.

¹³⁰ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, para.149.

¹³¹ *Yakye Axa Indigenous Community v. Paraguay*, para.135.

¹³² *Saramaka People v. Suriname*, para.121.

¹³³ *Saramaka People v. Suriname*, para.122.

connection between the natural resources on and within the land and the right to enjoy them.¹³⁴ Nonetheless, the IACtHR also ruled that the interpretation of Article 21 of the American Charter must not be construed to prohibit the state from any privilege for identifying and processing natural resources.¹³⁵ However, the restriction should not imply the rejection of traditions and practices that could harm the group's and its members' survival.¹³⁶

ii. the ECtHR

European cases involving property rights have taken up grounds akin to those concerning the right to private and family life, with plaintiffs arguing that deterioration of the environment impedes their ability to enjoy their property in peace.¹³⁷ The ECtHR reaffirmed that although the overall protection of the environment is not the express purpose of any article in the ECHR, it has become an increasingly important issue in today's society.¹³⁸ The ECtHR stated that the protection of the environment is a topic that draws the attention of public and public authorities.¹³⁹ According to the ECtHR, financial obligations and even some essential rights should not precede environmental protection considerations, especially when the state legislates.¹⁴⁰ Public authorities, therefore, have a responsibility, which should result in them intervening at the right time in practice to make sure that legal provisions implemented to protect the environment do not become completely ineffective.¹⁴¹ Later, it reiterated this position, particularly in the case of *Turgut and Others v. Turkey* of 2008.¹⁴²

¹³⁴ *Saramaka People v. Suriname*, para.122.

¹³⁵ *Saramaka People v. Suriname*, para.126.

¹³⁶ *Saramaka People v. Suriname*, para.128.

¹³⁷ Lewis, *environmental human rights and climate change*, 28.

¹³⁸ *Hamer v. Belgium*, 2007, App no: 21861/03, ECtHR, para.79.

¹³⁹ *Hamer v. Belgium*, para.79.

¹⁴⁰ *Hamer v. Belgium*, para.79.

¹⁴¹ *Hamer v. Belgium*, para.79.

¹⁴² App no: 1411/03, see para.90.

According to the ECtHR, accidents in the field of waste treatment, which is a topic related to industrial growth and urban planning, are under the jurisdiction of the state because it is governed and managed by the State.¹⁴³ The ECtHR believes that in this situation, the government must take all reasonable steps to safeguard private property interests.¹⁴⁴ However, the ECtHR believes that uncontrollable natural disasters do not necessitate as much state involvement as risky man-made activities do, and as a result, the state's positive obligations to safeguard property from weather dangers do not have to be as extensive.¹⁴⁵ The ECtHR believes that a distinction needs to be made between the obligations under Article 1 of the Protocol No. 1 to the ECHR and the positive obligations under Article 2 of the ECHR.¹⁴⁶ The states must take all reasonable steps to defend this right in the area of disaster relief as part of the extent of Article 2's positive obligations due to the right to life's fundamental importance.¹⁴⁷ However, the need to protect one's non-absolute right to enjoy one's property cannot be extended beyond reasonable limits.¹⁴⁸

In *Öneryıldız v. Turkey*, the ECtHR states that the real and effective enjoyment of the right guaranteed by Article 1 of the Protocol No. 1 depends not only on the state's duty to refrain from interfering and this is particularly true in cases where there is an obvious link between the applicant's ability to use his possessions and the responses he may reasonably anticipate from the government (para.134). The engulfment of the applicant's home is likewise covered by the established causal relationship between the state's gross negligence and the fatalities (para.135). Because state officials and the appropriate measures had not been taken by the state to protect the applicant's property rights, the ECtHR stated that a positive obligation had been broken (para.135). The ECtHR stressed that measures relating to regional planning and environmental protection, where the interests of society

¹⁴³ *Budayeva and Others v. Russia*, para.173.

¹⁴⁴ *Budayeva and Others v. Russia*, para.173.

¹⁴⁵ *Budayeva and Others v. Russia*, para.174.

¹⁴⁶ *Budayeva and Others v. Russia*, para.175.

¹⁴⁷ *Budayeva and Others v. Russia*, para.175.

¹⁴⁸ *Budayeva and Others v. Russia*, para.175.

as a whole are prioritized, provide the state greater discretionary power than in cases where civil rights are exclusively at issue.¹⁴⁹ In other words, the interests of society as a whole take precedence in environmental matters, and such cases, the state has more discretion than in cases where the only issue is civil rights.

2. Procedural Rights

International human rights law requires states to follow particular procedural obligations in order to safeguard the environment. Among these responsibilities are (a) determining the effects on the environment and providing the public with access to environmental information (b) enabling public involvement in environmental decision-making procedures while safeguarding the right to free speech and jurisdiction, and (c) giving victims of damage access to remedies.¹⁵⁰

Public access to environmental information¹⁵¹ is a requirement of many environmental instruments, such as Principle 10 of the Rio Declaration, Article 6 of the United Nations Framework Convention on Climate Change and Article 10 of the Stockholm Convention on Persistent Organic Pollutants. For the exercise of other rights, like participation rights, the right to information is also extremely important.¹⁵² The enjoyment of other rights, including the right to life, “the right to the best possible level of health,” adequate housing, and others, depends on the

¹⁴⁹ Depalle v. France, 2010, App no: 34044/02, ECtHR, paras. 84 and 87; Barcza and Others v. Hungary, 2016, App no: 50811/10, ECtHR, para.46; O’Sullivan McCarthy Mussel Development Ltd v. Irlande, 2018, App no: 44460/16, ECtHR, para. 124; Bērziņš and Others v. Latvia, 2021, App no: 73105/12, ECtHR, para. 90.

¹⁵⁰ “Human Rights Council, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, A/HRC/25/53, 30 December 2013, “para.29; Human Rights Council, “Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/31/52, 1 February 2016,” para.50.

¹⁵¹ See Meltem Sarıbeyoğlu Skalar, *Uluslararası Hukuk ve Sürdürülebilir Kalkınma*, (İstanbul: Beta, 2015), 147-156.

¹⁵² A/HRC/25/53, para.30.

right to information and participation.¹⁵³ Human rights mechanisms have highlighted the need for states to allow access to environmental data and evaluate potential environmental impacts to prevent environmental harm from affecting the enjoyment of human rights.¹⁵⁴ The ability to safeguard and defend one's rights against potentially detrimental environmental consequences is a prerequisite for having access to information, which is acknowledged as a human right by many.¹⁵⁵

Two regional conventions specifically guarantee procedural rights. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (widely known as the Aarhus Convention) is one of these. However the Aarhus Convention solely addresses the access to information and justice, involvement of the public in environmental decision-making. To put it another way, it is procedural. In compliance with the Convention's provisions, it will contribute to protecting all people's rights, present and future generations included, to live in environments that are appropriate for their health and well-being if state parties uphold access to information, the involvement of the public in environmental decision-making, and access to justice in environmental problems (Article 1). It is the obligation of parties to the Aarhus Convention to "ensure a healthy environment for the well-being of individuals" (Preamble).

The other is the Regional Agreement on Access to Information, Public Participation, and Justice in Environmental Matters in Latin America and the Caribbean, also known as the Escazú Agreement, as guarantees the complete and effective implementation of rights to access environmental information, public involvement in environmental decision-making, and access to justice in environmental problems in Latin America and the Caribbean (Article 1). It also helps to protect everyone's right to a healthy environment, both now and in the future (Article 1). Article 4 of the Escazú Agreement states that State Parties "shall

¹⁵³ Human Rights Council, "Promotion And Protection Of All Human Rights, Civil, Political, Economic, Social And Cultural Rights, Including The Right To Development, A/HRC/7/21, 18 February 2008," 2. and para.32.

¹⁵⁴ See A/HRC/25/53, para.31.

¹⁵⁵ A/HRC/43/53, para.14.

guarantee the right of every person to live in a healthy environment". This implies that a substantive environmental right is recognized by Article 4.

Additionally, regional courts have declared that withholding information on environmental issues from the general public may be a violation of the conventions' provisions. For instance, according to the ECtHR, regard for one's personal and family life as defined by Article 8 requires the establishment of an efficient and accessible procedure to ensure that such people receive all pertinent and appropriate information when a government engages in risky activities that may have latently harmful effects on people's health.¹⁵⁶ When a state's actions that could endanger the environment and infringe on individual rights are in question, the public must have access to the studies that the state has conducted on these issues and to information that will allow the general population to evaluate the risk to which they are exposed to prevent an infringement of Article 8.¹⁵⁷

The case of *Ligue Ivoirienne Des Droits De L'Homme (Lidho) and Others v. Republic of Côte d'Ivoire* serves as another illustration. The applicants assert that the respondent state failed to inform communities exposed to hazardous substances regarding the nature of the waste and its negative impact on the general public. Article 9 of the Charter provides "Every individual shall have the right to receive information." The African Court maintains that, in an objective sense, "the right to information" protected by Article 9 of the African Charter entails a guarantee that everyone has the right to access all information in the public domain (para.191). The ability to access information about any procedure or topic that interests them is part of their right to information (para.191). In this regard, the African Court stated that it is supported by current international standards on the right to information on the disposal of toxic waste and its effects on people and the environment, which acknowledge that before, during, and after waste dumping, states have an obligation to provide readily available, easily accessible information to those harmed or potentially harmed on an equal and non-discriminatory basis (para.193). States must also ensure that everyone can exercise

¹⁵⁶McGinley and Egan v. United Kingdom, 1998, 10/1997/794/995-996, ECtHR, para.101; Hardy and Maile v. United Kingdom, para.246.

¹⁵⁷ Taşkın and Others v. Turkey, para.119.

their right to information by providing access to information regarding public health and other issues that affect the general public (para.195).

CONCLUSION

It is a contentious issue whether the right to a healthy environment exists in international human rights law. The exact definition of the right to a healthy environment has yet to be established by an international document. Nonetheless, in any case, it is difficult to define this right and determine its scope. Although it is impossible to define this right, it can be assessed under elements. The relationship between human rights and the environment can be used to assess "the right to a healthy environment". In this context, it is divided into two sub-headings: substantive and procedural rights. When protecting the environment through the application of human rights, people's rights, including the rights to life, health, privacy, and property, are addressed rather than the consequences on the environment. The environmental protection is not directly at issue here. The other is that the right to the environment can include environmental elements without harming the rights of any individual. In this respect, the right appears broadly, requiring protecting the global environment, global climate, ecology, and all living creatures that live with humans and deserve protection.

In order to determine the scope of the right on a global scale, it is necessary to look at the regulations that directly include this right. It is regionally included in regulations such as the African Charter, the American Declaration on the Rights of Indigenous Peoples, and the San Salvador Protocol. The African Charter was the first document to include the right to a healthy environment. With the UN General Assembly's resolution, "a safe, clean, healthy, and sustainable environment" was acknowledged as a fundamental human right for the first time on a global scale.

The right is partially protected within the framework of human rights conventions such as the ECHR and the ICCPR, which do not include any right to the environment. Environmental problems and/or degradation must negatively impact the enjoyment of at least one convention-guaranteed right to qualify for protection under these conventions. In this context, the decisions of international and/or regional courts, committees, and commissions show that environmental problems may adversely affect the enjoyment of human rights. There is also a very big literature which criticise the role of human rights law in protecting

environment. That literature has not been engaged at all. These do not cover environmental protection or general degradation. The objective is to uphold the fundamental rights and freedoms outlined in the conventions. A direct impact on an individual's or individuals' rights, such as life, home, private or family life, and property, is necessary for environmental degradation to fall under this scope of violation. Individual health outcomes are not always negatively impacted by environmental degradation. For example, a person's property may have been harmed by environmental deterioration, or this degradation may have affected their private or family life. As a result, the right to a healthy environment has been accepted as falling under the purview of human rights in rules that do not mention it. The right to a healthy environment is only included if human rights are violated. The right to protect nature, or the protection of ecology or ecosystems, is not a goal that human rights bodies should achieve. Thus, environmental degradation does not directly apply to the relevant conventions. In summary, the right is only protected insofar as it pertains to the relationship between human rights and the environment, including substantive rights like the right to life and health and procedural rights like information access, environmental impact assessments, and public availability of environmental information. Without impairing the rights of any individual, the right to the environment can also encompass environmental components. Therefore, safeguarding ecosystems and ecology is part of the right to a healthy environment free from human harm. The right to a healthy environment is a broad concept that requires protecting the global environment, climate, ecology, and all living things that live together with humans and deserve protection.

This right will be recognized increasingly worldwide, as evidenced by the fact that it is recognized at the regional level and was first adopted as a right by the UN General Assembly. If the right to a healthy environment is directly included in the conventions, applications can be made only within the scope of the protection of nature, and thus, individuals will not need to prove that their rights have been violated. The recognition of the right to a healthy environment would explicitly oblige states to stop, protect, and improve the ecology and ecosystem from deterioration. Ultimately, the international recognition and enforceability of the right to a healthy environment would be essential in ensuring the full enjoyment of human rights and welfare for present and future generations. However, states have long been reluctant to recognize in international human

rights law an autonomous and fundamental right “to a healthy environment” nearly four decades of expertise with regional human rights treaties and national constitutions because of economic interests.¹⁵⁸ The recognition of a “new” human right with unclear implications or ambiguous content may understandably cause states to hesitate ¹⁵⁹

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¹⁵⁸ E. Cima, “The right to a healthy environment: Reconceptualizing human rights in the face of climate change” *RECIEL*, 31 (2022): 38-49, 43.

¹⁵⁹ A/73/188, para.38.

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