

RESEARCH BRIEF

THE HUMAN RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT: UNDERSTANDING ITS SCOPE, STATES' OBLIGATIONS AND LINKS WITH OTHER HUMAN RIGHTS¹

EXECUTIVE SUMMARY

The recognition of the right to a clean, healthy and sustainable environment (HR2HE) by the Human Rights Council and the United Nations General Assembly as a human right represents a significant milestone, especially in addressing the ongoing triple planetary crisis of pollution, climate change and biodiversity loss. It serves as a foundational element in the collective efforts to tackle the impacts of these pressing global challenges. Understanding and effectively implementing the HR2HE is paramount, requiring a comprehensive grasp of its scope and the obligations it imposes on States.

Remarkably, over 80% of UN Member States have recognized the HR2HE in various forms within their constitutions, legislations, judicial decisions or through acceptance of regional treaties, emphasizing a shared commitment to ensuring a conducive environment for human and ecosystem health and well-being. Moreover, various UN bodies, including Special Procedures, Treaty Bodies, the Office of the High Commissioner for Human Rights, the United Nations Development Programme and the UN Environmental Programme, alongside regional mechanisms and national courts contribute diverse viewpoints on the scope and obligations of the HR2HE. Their contributions enrich the ongoing discourse on this fundamental right, dispelling misconceptions and highlighting areas of common understandings.

Built upon the concept of human dignity, the HR2HE integrates the requirements of a clean, healthy and sustainable environment to secure dignified living for both present and future generations. The core components of the HR2HE, such 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 healthy biodiversity, are considered equally crucial for the enjoyment of other human rights, and many are also recognized as independent human rights themselves in international human rights treaties, like the rights to food, water and sanitation.

The understanding of the HR2HE is influenced by anthropocentrism and ecocentrism, mirroring the cultural and legal contexts within which this human right evolves and highlighting the dynamic interaction between humans and their environment. Anthropocentrism prioritizes human interests and well-being, while ecocentrism highlights the intrinsic value of the environment and ecosystems, emphasizing that humans are recognized as integral components of the broader ecological system with their well-being and health intricately linked to the health and balance of the environment. Alongside its collective dimension, the HR2HE influences the corresponding States obligations.

The urgency of environmental challenges underscores the need for a comprehensive, holistic and unified approach of the HR2HE at all levels, from local to global. This requires bridging the gaps between the anthropocentric and ecocentric perspectives, and acknowledging the collective dimension of the HR2HE for the benefit of present and future generations, thus bolstering human rights-based environmental policies. It also requires fostering international cooperation and accelerating actions at national and sub-national levels to respect, protect and fulfil the HR2HE.

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KEY RECOMMENDATIONS

1. **Incorporate a holistic understanding of the human right to a clean, healthy and sustainable environment.** Ensure that the HR2HE is understood to encompass both individual and collective well-being, acknowledging the interconnectedness of human health, environmental well-being and sustainability.
2. **Anthropocentric and ecocentric balance.** Integrate both the anthropocentric and ecocentric perspectives of the HR2HE, recognizing the intrinsic value of nature and ecosystems while safeguarding human interests in a healthy environment.
3. **Intergenerational dimension.** Embrace the intergenerational aspect of the HR2HE, emphasizing the responsibility to preserve a clean, healthy and sustainable environment for present and future generations.
4. **Multilateral environmental agreements.** Commit to the full and timely implementation of multilateral environmental agreements, aligning laws and policies with the principles of international environmental law, such as non-regression, precautionary principles, and in dubio pro natura.
5. **Interconnection with other human rights.** Acknowledge the fact that access to a clean, healthy and sustainable environment is essential for the fulfillment of all human rights, and strengthen the promotion of a human rights-based approach to environmental protection and climate action.
6. **Enhanced collaboration.** Encourage continued collaboration between UN institutions, regional bodies, national courts and tribunals, national human rights institutions, and civil society to leverage diverse perspectives on the scope and content of the HR2HE and strengthen its implementation.
7. **Climate change.** Integrate the human rights-based approach, including the HR2HE, into climate-related policy frameworks, prioritizing both mitigation and adaptation strategies to address the impacts of climate change on the environment and human rights.
8. **Biodiversity conservation.** Implement human rights-based measures, including the HR2HE, to conserve and restore biodiversity, preventing habitat destruction and over-exploitation. Prioritize conservation efforts and sustainable practices to protect ecosystems and species and ensure the fair sharing of the benefits derived from using biodiversity.
9. **Public awareness campaigns.** Initiate public awareness campaigns to inform citizens about their human rights, particularly their HR2HE, the deep interconnectedness of ecosystems and human rights, and their responsibilities towards the environment, fostering a sense of environmental stewardship and citizenship.
10. **Inclusive policy development.** Ensure that human rights-based environmental policies, including those based on the HR2HE, are developed through an inclusive and participatory process that takes into account the need, concerns, and perspectives of groups in vulnerable situations, including women, children, persons living in poverty, Indigenous Peoples, peasants and other people working in rural areas, older persons, persons with disabilities, migrants, refugees, and racial, ethnic and other minorities.
11. **Indigenous, local community and peasant involvement.** Acknowledge and respect the rights of Indigenous Peoples, local communities, peasants and other people working in rural areas to their lands and resources. Include these groups in decision-making processes that affect their environment, ensuring their free, prior and informed consent, and guarantee consultations in good faith. Recognize the value of traditional knowledge in sustainable environmental management. Integrate Indigenous laws, customs, and practices into policymaking to enhance conservation and sustainability efforts.
12. **Ensure the justiciability of the HR2HE at the national level.** Establish and reinforce legal mechanisms and remove barriers to legal action, to empower individuals and groups to seek legal remedies when the HR2HE is threatened or violated. In particular, in countries where the HR2HE is constitutionally or legally acknowledged, as well as in countries that are parties to regional instruments recognizing the HR2HE, but in which judges have not recognized the HR2HE as a justiciable and enforceable right, training should be provided and legal actions should be facilitated.
13. **Ensure the effective implementation of the HR2HE at the national level.** Establish robust legal and administrative frameworks to ensure the useful effect of the HR2HE in countries where this human right is already constitutionally or legally guaranteed, and in countries that are parties to regional instruments recognizing the HR2HE. To ensure the effective implementation of the HR2HE, it is recommended to ensure consistent and explicit reference to this human right in cases involving environmental issues.

INTRODUCTION

The global recognition of the human right to a clean, healthy and sustainable environment (HR2HE) through the resolutions 48/13² and 76/300³ adopted respectively by the UN Human Rights Council (HRC) and the UN General Assembly (UNGA) is an absolute and long-awaited success, the outcome of long and intensive negotiations. It marks a significant step toward fostering environmental justice and sustainable development. The challenge of securing the adoption of the UNGA resolution by all 193 UN Member States⁴, each with distinct interests, was successfully overcome thanks to the active efforts of the core group of States supporting the human rights and environment mandate at the UN, including Costa Rica, the Maldives, Morocco, Slovenia and Switzerland, as well as the active participation of UN special procedures mandate holders (SR-Env) – Special Rapporteurs David R. Boyd and John Knox – along with representatives from the civil society Global Coalition, Indigenous Peoples, social movements, local communities, UN agencies, and progressive businesses.

In the current context, where numerous environmental and climate cases⁵ are being filed across the world against governments and private companies – symptomatic of the ongoing triple planetary crisis of climate change, pollution and biodiversity loss – the recognition of the HR2HE has never been more pertinent. This importance is reinforced by a growing number of industry lawsuits challenging stronger environmental laws and regulations in which States have successfully defended themselves by invoking their obligation to respect, protect and fulfil the HR2HE.

However, while the global recognition of this human right is commendable, legitimate questions remain regarding its scope and connections with other human rights. Having its roots in the 1972 Stockholm Declaration and evolving through various movements such as environmental constitutionalism⁶, the progressive greening⁷ of human rights, and “humanizing of environmental law”⁸, the recognition of a HR2HE represents the pinnacle of the human rights-based approach to environmental protection⁹. It reflects a “powerful union”¹⁰ that combines environmental protection and human rights, while advancing sustainable development.

It is precisely the convergence of a human right with environmental protection that introduces intricacies in

understanding its meaning, substance, and resulting States’ obligations. Unprecedentedly, this human right aims not only to safeguard the affected individual’s right – ensuring the protection of personal physical integrity, well-being, and home – but also extends this protection beyond the individual to the surrounding environment, encompassing all its natural and man-made components. This dual protection benefits both the environment and individuals, offering holistic protection to both.

The present research does not seek to produce an unnecessary rigid definition of this particular human right, as human rights guaranteed by international or regional treaties are usually not strictly defined. Such binding human rights instruments merely articulate the guaranteed right without providing an exact definition, thus leaving the determination of their scope to their interpreters, either the Contracting Parties or their supervisory judicial and quasi-judicial bodies.

Embedded within the resolutions of the HRC and the UNGA, the scope and resulting States’ obligations of the HR2HE are inherently subject to various interpretations, depending on the legal actor involved in law-making, who employs, interprets and invokes this right. In this context, the present research confronts multiple challenges arising from diverse interpretations across legal systems, cultural contexts, and the intrinsic dual aspects – substantive and procedural, individual and collective, anthropocentric and ecocentric – that shape the HR2HE.

This research aims to provide clarification in defining the content and scope of the HR2HE, and the elements that might influence its understanding. Additionally, it scrutinizes States’ obligations stemming from this right and its interconnections with other human rights. Clarification of these crucial aspects of the HR2HE is key for its effective national implementation, the establishment of robust legal frameworks enabling environmental and climate justice, and increased protection of the HR2HE for the benefit of individuals, communities and ecosystems worldwide.

HUMAN DIGNITY AS THE FOUNDATION OF THE HR2HE

A clean, healthy and sustainable environment is a precondition for human dignity, the fundamental concept underpinning all human rights of present, but also future generations. The concept of human dignity, inherent in the HR2HE, undeniably shapes the essence of this human right. Human dignity, varying across cultures in its interpretation of lifestyles, relations to nature, inevitably molds the understanding of the HR2HE¹¹. The rights of Indigenous Peoples¹² serve as an illustration, emphasizing that their dignity is intricately tied to the respect and safeguarding of their right to preserve their culture, history, and unique way of life¹³. For Indigenous Peoples, the environment plays a paramount role, as their identity and traditions are deeply intertwined with the natural surroundings, contributing to “sustainable and equitable development and proper management of the environment”¹⁴.

THE MAIN ELEMENTS OF THE HR2HE IN INTERNATIONAL TREATIES AND NATIONAL CONSTITUTIONS

At the international level, the commonly designated human right to a healthy environment, crystallized through the UN resolutions, has evolved into a human right to a clean, healthy and sustainable environment. The terms “clean, healthy and sustainable” are the most commonly used adjectives in national and international legal instruments (constitutions, legislations and treaties)¹⁵. Each adjective carries a specific meaning: “clean” refers to an environment free from pollutants, contaminants or harmful substances; “healthy” implies support for the well-being and health of all living organisms, including humans; and “sustainable” indicates responsible and balanced resource use to ensure the well-being of present and future generations. The convergence of these three elements creates an environment that fosters a dignified life, ensuring the enjoyment of the HR2HE for both present and future generations.

At the national level, countries have adopted different formulations within their constitutional frameworks. However, the majority of countries recognizing explicitly the HR2HE in their constitutions, if not all of them, prioritize the importance of ensuring ‘a healthy’ or ‘healthful’ environment, acknowledging its direct connection to the health and well-being of individuals¹⁶. This shared adjective reflects a substantial level of agreement among

States. Others opt for a dual formulation underscoring both a healthy environment, emphasizing the well-being and overall health of individuals, and an ecologically balanced environment, highlighting the importance of maintaining a natural balance in ecological systems to preserve biodiversity and ensure the proper functioning of ecosystems¹⁷: a healthy and ecologically balanced human living environment (Cabo Verde, Costa Rica, France, Mozambique, Portugal, Slovenia, Fiji). Additionally, some States go beyond the condition of a healthy and ecologically balanced environment by incorporating additional conditions that guarantee sustainability and a good way of living (Ecuador, Guinea, Mauritania), one’s development (Argentina, Mexico and Peru), well-being (Mexico, South Africa), a favorable environment (Bulgaria, Czech Republic, Kyrgyzstan), a pleasant environment (South Korea), and a satisfying and lasting environment (Benin).

Regardless of the terminology employed, all the legal instruments aim to guarantee viable and satisfactory environmental conditions, “a living space”¹⁸ where the well-being and health of humans, as well as healthy ecosystems, can be fulfilled.

INTERCONNECTION WITH OTHER HUMAN RIGHTS

The international acknowledgement of the HR2HE represents the peak of the ‘greening human rights’ movement, with more than 160 out of 193 UN Member States recognizing this human right in their constitution, legislation, or through acceptance of regional treaties¹⁹. Consequently, the global recognition essentially mirrors the widely recognized human right at the national and regional levels.

The greening theory, ensuring fragmented and indirect protection of the environment through various human rights vulnerable to environmental degradation and climate change²⁰, emphasizes that the human rights foundations of the HR2HE have implicitly existed within both civil and political rights, as well as economic, social and cultural rights²¹.

In situations where the human right is not formally and explicitly acknowledged, the greening technique becomes imperative. This technique involves integrating environmental considerations into the general human

rights framework or recognizing that the HR2HE is implicit in other human rights²², compensating for the absence of a specialized recognition of the HR2HE. National and international human rights bodies, including national and regional courts, UN treaty bodies, and the SR-Env, have consistently acknowledged that environmental degradation violates various human rights, including the rights to life, privacy and home, health, housing, food, drinking water and sanitation, property²³, culture and development.

The most tangible example of application of such an approach is the European Court of Human Rights (ECtHR) providing the human rights-based protection of the environment²⁴ in the absence of the explicit recognition of the HR2HE by the Convention and its protocols. Under the general international human rights framework, establishing a connection between environmental harm and the invoked human right is always a necessary step. Conversely, with the standalone HR2HE, this link is inherently established, streamlining the process of addressing environmental concerns within the context of human rights. The specialized nature of the HR2HE allows for a more nuanced and direct approach to environmental protection, ensuring a comprehensive strategy for addressing environmental challenges.

The autonomous HR2HE is not only interrelated with other human rights but also encompasses essential elements of other specific human rights²⁵. As a prerequisite for upholding human dignity, it underscores the interconnected nature of all human rights, specifically illustrating their indivisibility²⁶. The HR2HE is a *sine qua none* condition, the foundation, for the enjoyment of all other human rights, in particular in the light of the triple planetary crisis.

Resolution 76/300 explicitly recognizes this interconnection, acknowledging that “environmental damage has both direct and indirect negative implications on the effective enjoyment of all human rights”. It specifically emphasizes that the HR2HE “is related to other rights and existing international law”, indicating that the human right is not isolated but intricately linked to broader international legal frameworks, in particular to the rights embedded in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of all forms of Discrimination Against Women

(CEDAW)²⁷, and the Convention on the Rights of Child (CRC)²⁸.

Litigation based on the HR2HE reflects this interconnected perspective, as litigants go beyond the mere assertion of this human right. A notable example is the *Lhaka Honhat v. Argentina* case, adjudicated by the Inter-American Court of Human Rights (IACtHR), where litigants, arguing the violation of the right to property over the ancestral territory of the indigenous communities, strategically employ the comprehensive human rights framework offered by the Inter-American Convention on Human rights (IACHR). In addition to the right to a healthy environment and to strengthen their claim, they also invoke rights related to communal property, food, water, and cultural identity²⁹.

Contrastingly, the landmark domestic climate case *Held v. State of Montana*³⁰, submitted by 16 youth plaintiffs challenging a State law that prevented Montana’s authorities from considering greenhouse gas emissions of industrial activities during the environmental assessment process, exclusively relied on the right to a clean and healthful environment, guaranteed by Article 2, Section 3 of Montana’s Constitution. Unlike *Lhaka Honhat* case, there was no explicit reference to other human rights. The case exemplifies a targeted strategy concentrating solely on the standalone right to a clean and healthful environment, showcasing the full potential of this standalone human right in the pursuit of environmental justice. The *Lhaka Honhat* case illustrates a holistic approach, recognizing the interconnectedness of the HR2HE with other human rights. Both approaches have unique merits and implications for the human rights-based environmental litigation.

THE KEY COMPONENTS OF THE HR2HE AND OTHER HUMAN RIGHTS

The key substantial components of the HR2HE, as outlined by the SR-Env³¹ and emphasized by UN bodies³², include 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 healthy biodiversity. These six elements, along with other procedural components outlined by the SR-Env, constitute the environmental dimension of the HR2HE, vital to ensuring its realization. The ‘greening human rights’ movement, which clearly asserted that polluted and

degraded environments lead to human rights violations, played a significant role in defining these essential HR2HE components. Moreover, these core aspects of the HR2HE are all considered essential for the enjoyment of other human rights³³, and many are also recognized as independent human rights themselves by international human rights treaties (e.g. food, water and sanitation). Nearly all six environmental aspects of the HR2HE have progressively been interpreted³⁴ by national and regional courts and human rights treaty bodies as essential conditions for the rights to life³⁵, health³⁶, private and family life, and home³⁷, and an adequate standard of living³⁸.

The right to life enshrined in the ICCPR, as the supreme right forming the foundation for the enjoyment of other human rights, can be adversely affected by ‘environmental degradation, climate change and unsustainable development’, considered to be the ‘most serious threats to the ability of present and future generations³⁹. In the case *Portillo Caceres v. Paraguay*⁴⁰, the applicants invoked the right to life, along with the right to physical integrity and family life (§ 6.3). The Human Rights Committee concluded that their rights, specifically the right to life, were jeopardized by toxic agrochemicals contaminating rivers that provide fish to the applicants, the well water they consume, the fruit trees, crops and farm animals that constitute their source of food (§ 7.5). Almost all environmental aspects of the HR2HE were at stake in this situation, including healthy and sustainably produced food, access to safe water and adequate sanitation, non-toxic environments, healthy ecosystems and healthy biodiversity.

According to the CESCR General Comment No. 14 on the right to the highest attainable standard of health enshrined in the ICESCR, “access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions⁴¹ are considered as underlying determinants of health. Similarly, the World Health Organisation emphasizes that key elements of the HR2HE, such as “clean air, stable climate, adequate water, sanitation and hygiene, safe use of chemicals, protection from radiation, healthy and safe workplaces (...) and a preserved nature are all prerequisites for good health⁴².

The right to privacy, family and home⁴³ has been interpreted to encompass the environmental dimension, aiming to safeguard individuals against toxic and polluting emissions.

In particular, these rights have been invoked in cases before the ECtHR concerning air and water pollution⁴⁴. The Strasbourg Court has recognized that “severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health⁴⁵.

The right to an adequate standard of living enshrined in the ICESCR includes the rights to food, housing, water and sanitation. As to the right to housing, General Comment No. 4 indicates that having an adequate house involves “sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage⁴⁶. This underscores the interconnected nature of housing with the HR2HE, emphasizing the pivotal role of environmental conditions in ensuring the right to housing. Two key elements of the HR2RE – access to safe water and adequate sanitation, and healthy and sustainably produced food⁴⁷ – serve not only as prerequisites for human rights but are also recognized as independent human rights⁴⁸. The rights to safe water and adequate sanitation are crucial for sustaining a dignified life, preventing waterborne diseases and ensuring basic hygiene. Simultaneously, the right to healthy and sustainably produced food is vital for promoting health, well-being and preventing malnutrition⁴⁹. Recognizing these interconnections reinforces the understanding that environmental factors are foundational to the fulfillment of all human rights.

FACTORS INFLUENCING THE UNDERSTANDING OF THE HR2HE

The understanding of the HR2HE is influenced by factors like anthropocentrism or ecocentrism, reflecting the cultural and legal context in which this human right evolves. The cultural context can shape the legal approach to this human right, just as the legal context can influence the approach adopted by a State or an international human rights body.

ANTHROPOCENTRIC AND ECOCENTRIC APPROACHES

The anthropocentric and ecocentric approaches to the HR2HE represent different perspectives on the relationship between humans and the environment. While the

anthropocentric approach centers on the protection of the environment for the well-being and benefit of human beings, the ecocentric approach emphasizes the intrinsic value of nature and recognizes the deep interdependency between humans and the environment⁵⁰.

The traditional and well-developed anthropocentric approach adopts a qualitative and utilitarian perspective, perceiving the environment as crucial and instrumental for human life, resources and conditions. This approach relies on human rights instruments to secure environmental protection, framing it within the context of the rights to life, health, private and family life, and other human rights. In the absence of a recognized HR2HE under the ECHR, the Strasbourg Court adopts a strong anthropocentric approach. It approaches environmental protection through the “green” interpretation of human rights, without explicitly recognizing the HR2HE. However, limitations of this approach arise from its failure to acknowledge the human dependence on biodiversity and ecosystems and the related failure to recognize the environment as an object deserving protection in itself. This aspect was reflected in the ECtHR’s landmark case *Kyrtatos v. Greece*⁵¹. In this case, the applicants argued that the destruction of a swamp, a natural habitat for wildlife, impacted their right to private and family life. The ECtHR, exhibiting a narrow anthropocentric stance, rejected this argument, asserting that Article 8 is “not specifically designed to provide general protection of the environment as such”⁵². This ruling illustrates the boundary of the anthropocentric approach of the human rights-based protection of the environment, as it declines to establish a direct link between the damage to the natural habitat of species living in the swamp and the applicants’ rights, consequently overlooking the significance of biodiversity and ecosystem services for human life⁵³.

In contrast, the ecocentric approach widens the focus from the instrumental value of the environment for humans to incorporate its intrinsic value, emphasizing the importance of ecosystems health independently of their usefulness to humans⁵⁴. It recognizes the environment as having inherent value⁵⁵, deserving protection for its own sake and for the well-being of all living organisms, not just for human interests, even “in the absence of certainty or evidence of a risk to individuals”⁵⁶. From the ecocentric perspective, humans are considered as one integral part of the broader ecological system, and their well-being and health are interconnected with the health and balance

of the environment. The ecocentric approach promotes the use of such principles as precautionary principle and *in dubio pro natura*⁵⁷. While the precautionary principle has broader applicability in both anthropocentric⁵⁸ and ecocentric approaches, the *in dubio pro natura* principle – which suggests that in cases of legal uncertainty and in case of events potentially harmful to the environment, the interpretation favoring the protection and conservation of the environment should be preferred⁵⁹ – is more inclined to be applied with ecocentric framework. The ultimate level of ecocentrism involves granting legal status to natural components like rivers or ecosystems (e.g. New Zealand, Uganda, Canada), or even Mother Earth (Pachamama), as in Bolivia, Ecuador and India.

The IACtHR supports this perspective by emphasizing that by protecting nature for its own legal interests, the HR2HE can be distinguished from other human rights⁶⁰. The *Lhaka Honhat* case marked a shift to an ecocentric paradigm by reiterating from the IACtHR’s landmark Advisory Opinion OC-23/17: “As an autonomous right, [the HR2HE], unlike other rights, 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”⁶¹.

Similarly, several constitutional⁶² and supreme courts⁶³ of Latin America have undertaken a progressive reconciliation of the two approaches. Building upon the IACtHR’s Advisory Opinion OC-23/17, the First Chamber of the Supreme Court of Justice of Costa Rica, not only recognized both ecocentric and anthropocentric aspects of the HR2HE, but also identified a growing trend in recognizing legal personality and, consequently, the rights of nature. This recognition is grounded in the understanding that the scope of protection of the HR2HE transcends human beings and encompasses various components of nature. Likewise, the Supreme Court of Mexico recognized that the violation of either dimension, ecocentric and anthropocentric, constitutes a breach of the HR2HE⁶⁴. Furthermore, the Constitutional Court of Portugal acknowledged that the HR2HE includes the conservation of biodiversity⁶⁵. Opposing the anthropocentric and ecocentric

approaches is artificial and superfluous. Instead of being in opposition, these approaches can be viewed as inherently complementary, each contributing to the comprehensive protection of human beings and the environment, and challenging the conventional, but biologically false, wisdom that humans are somehow separate from nature. As our understanding of human dependence on healthy ecosystems grows⁶⁶, the gap between anthropocentric and ecocentric approaches to environmental protection diminishes⁶⁷. These perspectives are not irreconcilable, instead, they offer valuable insights for a comprehensive framework ensuring the intertwined well-being of both the environment and humanity. The HR2HE offers a holistic approach by inherently encompassing both perspectives, mutually reinforcing and offering simultaneous protection to the environment and human life.

INDIVIDUAL AND COLLECTIVE DIMENSIONS

The HR2HE encompasses both individual and collective dimensions, each carrying substantial implications for the associated States' obligations. By recognizing the individual aspect, the emphasis lies on the imperative to protect the well-being of each person. Simultaneously, acknowledging the collective aspect underscores the societal responsibility to preserve the environment for both present and future generations⁶⁸. While the individual dimension of the HR2HE poses no difficulties for its understanding, its collective dimension requires more precision.

This collective perspective reflects the recognition of intergenerational justice, emphasizing the importance of passing on a healthy and sustainable environment and ecosystems to future generations. Some national constitutions⁶⁹ explicitly acknowledge the HR2HE of future generations. Furthermore, some international treaties recognize the rights of future generations, particularly in the context of ecocentric protection of the environment⁷⁰, and in addressing issues related to climate change⁷¹. Such a recognition reflects a commitment to intergenerational justice, ensuring the continuity of a clean, healthy and sustainable environment for future inhabitants of the planet⁷². In its General Comment No. 26⁷³, the Committee on the Rights of the Child explicitly recognizes that future generations, described as "children constantly arriving" are also entitled to the fullest realization of their human rights.

OBLIGATIONS STEMMING FROM THE HR2HE

Similar to any other human right, the HR2HE involves three key States' obligations: respect, protect and fulfill. This includes refraining from activities that compromise this human right (respect), protecting individuals and groups against abuses to this human right by third parties, through preventing and addressing environmental harm (protect), and actively taking measures to enhance environmental quality and sustainable development through policies, programs and initiatives (fulfill)⁷⁴.

The HR2HE engenders States' obligations contingent upon the interpretation and scope of this human right. Should the human right encompass a holistic perspective, inclusive of anthropocentric and ecocentric protection, addressing both individual and collective dimensions, the corresponding States' obligations inherently reflect these characteristics. The particularity of the HR2HE is underscored by the comprehensive clarification of its human rights dimension by various sub-national, national and regional courts and international human rights bodies. These entities have recognized the environmental aspects interwoven with human rights, encompassing the rights to life, health, privacy (private life) and home, food, water, housing, and other human rights⁷⁵, giving rise to a set of associated environmental obligations for States. The realization of the HR2HE is also intrinsically linked with the obligations placed on States⁷⁶ to safeguard and promote the environmental conditions that form the foundation of these human rights. However, the enforcement of the autonomous HR2HE also illustrates the obligations stemming from this specific human right.

Based on decisions from sub-national, national and regional courts, as well as UN treaty bodies, this research focuses on key substantive and procedural obligations encompassed by the HR2HE. The present set of obligations aims to complement the obligations outlined by the SR-Env in the Framework Principles on Human Rights and the Environment⁷⁷. Effectively fulfilling these obligations is imperative for creating a sustainable future and the full realization of human rights.

SUBSTANTIVE OBLIGATIONS

OBLIGATION TO PREVENT VIOLATIONS⁷⁸

The duty to prevent violations of the HR2HE is crucial, particularly in the face of urgent global challenges like climate change, pollution and biodiversity loss that pose potentially irreversible environmental harms. This obligation, recognized notably within the rights to life⁷⁹ and private life⁸⁰, requires States to adopt reasonable and appropriate measures to prevent or reduce foreseeable and serious risks of environmental harm to both human and ecosystems. For instance, the ECtHR recognizes this obligation by mandating the assessment of environmental risks as part of the decision-making process⁸¹. This ensures that potential environmental impacts, especially those with cross-border implications, are thoroughly assessed through a transboundary Environmental Impact Assessments⁸². The IACtHR, recognizing the holistic perspective of the right to a healthy environment, and highlighting the importance of this duty, especially in light of the potential irreversibility of environmental damage, offers insights into the obligation to prevent violations. This obligation is characterized as one “of means or conduct and non-compliance is not proved by the mere fact that a right has been violated”. The Court provides a non-exhaustive list of preventive measures that must be taken to ‘ensure’ the right to a healthy environment: “(i) regulate; (ii) supervise and monitor; (iii) require and approve environmental impact assessments; (iv) establish contingency plans, and (v) mitigate, when environmental damage has occurred”⁸³. The right to a general satisfactory environment under the African Convention imposes a “clear” obligation to prevent “pollution and ecological degradation”⁸⁴. Similarly, Montana’s right to a healthy environment prohibits environmental degradation causing harm to health, as well as the unreasonable depletion of natural resources affecting present and future generations⁸⁵.

OBLIGATION TO APPLY THE PRECAUTIONARY PRINCIPLE

The precautionary principle necessitates a proactive approach in the face of potential environmental risks, even in situations where scientific certainty is lacking. The obligation is to take precautionary measures to prevent or reduce harm to the environment and human health. Based on the rights to life and to personal integrity, the IACtHR has ruled that States must adhere to the precautionary principle to prevent severe or irreversible damage, even in the absence of scientific certainty⁸⁶. The obligation also involves integrating sustainable development

considerations into decision-making processes. This entails balancing environmental, social, and economic factors to ensure that current actions do not compromise the ability of future generations to meet their own needs.

OBLIGATION TO ADOPT LEGAL AND INSTITUTIONAL FRAMEWORKS

States bear the responsibility to establish robust legal and institutional frameworks enforcing the HR2HE. These frameworks should serve the dual purpose of protecting against environmental harm and ensuring the enjoyment of human rights, as for example already recognized under the environmental dimensions of the rights to life and to private life⁸⁷.

OBLIGATION TO PROHIBIT DISCRIMINATION⁸⁸

In light of the widespread environmental injustices across the world, exacerbated by the triple planetary crisis of climate change, pollution and biodiversity loss, the fundamental principle of international human rights law, which commands the prohibition of discrimination in relation to the enjoyment of a clean, healthy and sustainable environment, is key. This principle is rooted in the idea that environmental benefits should be distributed equitably among individuals and communities, without distinction based on prohibited grounds, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status⁸⁹. States bear the responsibility to protect against environmental risks and hazards resulting from or contributing to discrimination, ensure equal access to environmental benefits, and guarantee that their environmental policies and practices are not discriminatory.

OBLIGATION TO PROTECT GROUPS IN VULNERABLE SITUATIONS

The HR2HE implies the obligation to protect groups in vulnerable situations⁹⁰. This includes ensuring the well-being of women and girls, children, persons living in poverty, Indigenous Peoples, peasants and other people working in rural areas, older persons, persons with disabilities, migrants, refugees, and racial, ethnic and other minorities, who often bear a disproportionate burden of environmental degradation. This duty goes beyond the general principle of non-discrimination, necessitating targeted interventions to ensure fair and inclusive environmental protection tailored to the needs of vulnerable populations.

SPECIFIC OBLIGATIONS RELATED TO CLIMATE CHANGE

Acknowledging the specificity of harm originating outside the duty-bearer's territory, the requirement of a safe climate arising from the HR2HE implies distinctive obligations aimed at safeguarding both present and future generations⁹¹, involving the mitigation of greenhouse gas emissions in accordance with international obligations resulting from the UNFCCC and Paris Agreement, as well as adapting to the adverse effects of climate change. While the recent phenomenon of human rights-based climate litigation primarily relies on the rights to life and to private and family life⁹², there is also a growing trend in climate litigation specifically based on the HR2HE, demonstrating a higher likelihood of success⁹³. The landmark case *Held v. Montana (USA)* emphasizes that the right to a clean and healthful environment includes the climate, indicating the obligation to “take active steps to realize this right”⁹⁴.

OBLIGATION TO SAFEGUARD BIODIVERSITY⁹⁵

Reflecting the ecocentric dimension, the preservation of biodiversity plays a central role in preventing violations of the HR2HE. This human right requires States to safeguard biodiversity, recognizing the intrinsic value of ecosystems and the diverse species they support⁹⁶. The consequences of biodiversity loss can be multifaceted, far-reaching, affecting ecosystems, human health, economies and cultural aspects⁹⁷. The loss of forests⁹⁸ and other vital biodiversity, crucial for climate regulation, can exacerbate the adverse effects of climate change. It may also have a direct impact on food production, as many crops rely on diverse ecosystems for pollination, pest control and nutrient cycling.

OBLIGATION TO ENSURE CLEAN AIR

Air pollution, a significant environmental risk and a pressing global crisis, leads to an estimated 7 million premature death every year⁹⁹, with over 543,000 affected newborns and children under five¹⁰⁰. To fulfil the HR2HE within the context of air pollution, the SR-Env¹⁰¹ recommends seven key steps, grounded in existing case law¹⁰², namely: monitor air quality and its impacts on human health; assess sources of air pollution, both household and outdoor; make air quality information publicly available and easily accessible, including prominent public health advisories on days with poor air quality; establish air quality legislation, regulations, standards and policies, develop air quality action plans at the local, national and, if necessary, regional levels; implement air quality action plans and enforce the standards; and evaluate progress and, if necessary, strengthen plans to

ensure standards are met.

OBLIGATION OF INTERNATIONAL COOPERATION

International cooperation plays a fundamental role in safeguarding biodiversity and ecosystem services¹⁰³. It is also essential for tackling transboundary environmental pollution and addressing the challenges posed by climate change. Deriving from the principle of “good faith in international relations”¹⁰⁴, it recognizes a shared responsibility and the need for collective efforts to ensure protection against environmental damage specifically in cases of shared resources or ecosystems. This obligation transcends national borders, highlighting the interconnected nature of environmental issues on a global scale.

OBLIGATION OF NON-REGRESSION¹⁰⁵

This obligation refers to the principle that once a certain level of protection for the HR2HE has been achieved, it should not be weakened or rolled back. In other words, States have to maintain or improve existing environmental standards and safeguards rather than permitting a decline or regression in environmental quality¹⁰⁶. This principle ensures the continuous improvement and preservation of environmental standards for the well-being of present and future generations.

OBLIGATION TO APPLY THE BEST AVAILABLE SCIENTIFIC KNOWLEDGE

This obligation underscores the importance of utilizing the most current and reliable scientific knowledge when making decisions or policies in relation to environmental protection¹⁰⁷. This entails an obligation acknowledging that sound environmental governance should be informed by up-to-date scientific understanding to effectively address complex environmental challenges.

OBLIGATION TO PROTECT ENVIRONMENTAL HUMAN RIGHTS DEFENDERS

States should ensure safe civic spaces that allow individuals, groups and organizations to engage in human rights and/or environmental advocacy. It is imperative to actively and vigilantly safeguard environmental human rights defenders from intimidation, criminalization and violence. For instance, the year 2020 registered four killings of environmental human rights defenders every week, marking it the “deadliest year recorded”¹⁰⁸. This involves a

committed effort to diligently investigate, prosecute and punish the perpetrators of these crimes, and address the root causes of social-environmental conflict.

OBLIGATION TO ENSURE THE RESPECT OF THE HR2HE BY BUSINESSES¹⁰⁹

This obligation places a responsibility on States to undertake appropriate and proactive measures and establish effective regulatory frameworks to guarantee that businesses respect the HR2HE. It involves that all businesses, regardless of size or sector, bear the duty to respect the HR2HE. This encompasses enacting and enforcing laws and regulations, exercising due diligence to identify and mitigate environmental risks, adopting all reasonable and appropriate measures to protect, preserve and achieve the HR2HE, and holding businesses accountable for any adverse impacts on the HR2HE.

PROCEDURAL OBLIGATIONS

Procedural obligations arising from the HR2HE encompass a range of classic procedural obligations accompanying human rights, such as access to information, public participation and access to justice¹¹⁰. The HR2HE is also closely linked to the human rights of freedom of expression, freedom of assembly, and freedom of association.

ACCESS TO ENVIRONMENTAL INFORMATION

This obligation has its origins in the environmental aspect of the freedom of expression¹¹¹, encompassing the right to seek¹¹², receive and impart¹¹³ information on environmental matters. Relevant authorities are required to provide affordable, accessible and comprehensive information about environmental matters. This empowers individuals and communities, in particular environmental human rights defenders¹¹⁴, to be informed and to inform about potential risks, decisions, and actions affecting the environment. The Aarhus Convention and Escazu Agreement set rights-based standards for access to environmental information, including accessibility, affordability and timeliness.

PUBLIC PARTICIPATION IN THE ENVIRONMENTAL DECISION-MAKING

There is a requirement¹¹⁵ for a meaningful and inclusive public involvement, including environmental human rights defenders, in decision-making processes related to environmental issues. This allows the public and

environmental human rights defenders to contribute their perspectives, concerns, and insights, ensuring that decisions are inclusive and consider diverse viewpoints. It is imperative that States prevent the misuse of defamation and libel to repress the exercise of these rights, such as through strategic lawsuits against public participation (SLAPPs). The implementation of anti-SLAPP legislation is one essential means of protecting the HR2HE. States must take measures to ensure that individuals exercising their right to participation are not subjected to any form of retaliation.

ACCESS TO JUSTICE AND EFFECTIVE REMEDIES

States should guarantee that individuals and groups have access to legal mechanisms to seek redress in cases where the HR2HE is threatened or violated. This access to justice ensures that there is availability of legal remedies and accountability in environmental matters¹¹⁶. To uphold this States should prioritize rights-holders in remedy processes to ensure that: remedial mechanisms are responsive to the diverse experiences and expectations of rights-holders; remedies are accessible, affordable, adequate and timely; affected rights-holders are not victimized when seeking remedies; and a full range of preventive, redressive and deterrent remedies is available for business-related human rights abuses. States should also enact legislation and other measures (e.g. capacity building) to remove various substantive, procedural and practical barriers faced by victims of violations of the HR2HE (e.g. high costs, restrictive standing rules, a lack of accessible class action procedures)¹¹⁷.

CONCLUSION

The HR2HE stands as a pivotal human right. Its decentralized recognition has resulted in diverse understandings of the obligations associated with the HR2HE at the international level. The current landscape reveals a tapestry of perspectives from various UN bodies, including Special Procedures, Treaty Bodies, the Office of the High Commissioner for Human Rights, United Nations Development Programme, and United Nations Environmental Programme, regional mechanisms like the African Court and Commission, InterAmerican Court and Commission and the ECtHR, and courts and tribunals at the national and subnational levels. Each institution

contributes distinct viewpoints, enriching the ongoing discourse on this fundamental human right. It helps dispel misconceptions surrounding its understanding and resulting States' obligations while also contributing to the common understanding on the scope and content of the HR2HE. The 'greening human rights' movement, which established the interconnections between environmental degradation and various human rights, offers helpful insights into our understanding of the HR2HE and associated States' obligations as outlined by the SR-Env in the Framework Principles. In fact, many of the key elements of the HR2HE have been acknowledged as fundamental components of other human rights, necessitating obligations specific to the environmental dimension of human rights.

The urgency of environmental challenges, particularly in the face of the planetary crisis, emphasizes the need for a comprehensive, holistic and unified approach of the HR2HE. The narrowing window for action necessitates a more ambitious, urgent and concrete implementation of the HR2HE at all levels, from local to global. This requires bridging the gaps between the anthropocentric and ecocentric perspectives, acknowledging the collective dimension of the HR2HE for the benefit of present and future generations, fostering international cooperation, and accelerating actions at national and sub-national levels to respect, protect and fulfil the HR2HE for present and future generations.

END NOTES

7 The authors extend sincere gratitude to all the experts, including the UN Special Rapporteur on human rights and the environment, who generously agreed to participate in the peer review process by taking the time to review this Research Brief. Their insights and constructive feedback have significantly enriched its content.

2 During its 48th session on 18 October 2021, the HRC recognized the human right to a clean, healthy and sustainable environment (HR2HE) as a “human right that is important for the enjoyment of human rights”, A/HRC/RES/48/13, 2021.

3 On 28 July 2022, the UNGA echoed the recognition by reaffirming it as a human right, A/RES/76/300, 2022.

4 On political opposition to environmental rights at the UN, see: Limon M., “The Politics of Human Rights, the Environment, and Climate Change at the Human Rights Council. Toward a Universal Right to a Healthy Environment?”, in Knox J. H., Pejan R. (ed.), *Human Right to a Healthy Environment*, Cambridge University Press, 2018, pp. 189-214.

5 See the database mapping and analyzing significant case law and developments regarding the HR2HE, developed by NYU Law and UNEP: <https://www.r2heinfo.com>. Also, on cases filed in relation to climate change, see the database developed by Sabin Center for Climate Change Law at Columbia Law School and Arnold & Porter: <https://climatecasechart.com/non-us-case-category/human-rights/>

6 Sweden (1974), Portugal (1976), Spain (1978), Peru (1979), Austria (1984), Colombia (1991), Costa Rica (1949, amended in 1994), Argentina and Belgium (1994), Mexico (1917, added in 1999 and amended in 2012), Ecuador (2008).

7 SR-Env, Report, “Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment”, A/73/188, 2018, p. 5.

8 Fitzmaurice M., Wong M. S., Crampin J., *International environmental law. Text, cases and materials*, Edward Elgar Publishing, 2022, p. 119.

9 More than 80 per cent of UN Member States recognized the HR2HE in one way or another in their constitutions, legislations, judicial decisions and through acceptance of regional treaties. SR-Env, “Right to a healthy environment: good practices”, A/HRC/43/53, 2019.

10 David Boyd, SR-Env, Introductory presentation during Proceedings of the High-level Conference “Environmental protection and Human rights” organized by the Georgian Presidency of the Committee of Ministers of the Council of Europe, Strasbourg, 27 February 2020.

11 Human Rights Committee (HRCtee)’s General Comment No. 36 interprets the right to life as incorporating the imperative of preserving the environment and ensuring life with dignity, CCPR/C/GC/36, 2019, § 62. See also, HRCtee’s statement that the right to life also includes the right of individuals to enjoy a life with dignity, in *Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, 2019, §§ 9.4, 9.9.

12 Article 29 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as Article 18 of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), both guarantee the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. Furthermore, UNDROP highlights that States shall ensure a safe, clean and healthy environment without discrimination.

13 UNGA, Preamble of UNDRIP, 13 September 2007. See also, Petition to the IACtHR Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States, filed on 12 August 2005. Decision to decline the petition for lack of information provided, 16 November 2006.

14 Preamble of UNDRIP.

15 The right to a healthy environment is guaranteed by the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol). The Aarhus Convention indirectly protects the right “to live in an environment adequate to his or her health and well-being”. The ASEAN Human Rights Declaration guarantees the “right to a safe, clean and sustainable environment”. The African Charter on Human and Peoples’ Rights guarantees to all peoples the right to a general satisfactory environment favorable to their development.

16 See, annexes to SR-Env reports submitted on 14 February 2020, Annex IV: Africa Region, A/HRC/43/53/Annex IV; Annex V: Asia-Pacific, Region, A/HRC/43/53/Annex V; Annex VI: Eastern European Region, A/HRC/43/53/Annex VI; Annex VII: Latin and Caribbean Region, A/HRC/43/53/Annex VII; Annex VIII: Western Europe and Others Region, A/HRC/43/53/Annex VIII.

17 See, SR-Env, “Human rights depend on a healthy biosphere”, A/75/161, 2020.

18 ICJ, Advisory Opinion, *Legality of the Threat or Use of Nuclear Weapons*, 8 July 1996, § 29.

19 SR-Env, Report, “Right to a healthy environment: good practices”, A/HRC/43/53, 2019, updated to include Antigua and Barbuda, Belize, Canada, Grenada and Saint Lucia.

20 SR-Env, Report “Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment”, A/73/188, 2018.

21 See, SR-ENV, “Framework Principles on Human Rights and the Environment”, A/HRC/37/59, 2018, § 8. John H. Knox, “Constructing the human right to a healthy environment”, 16 *Ann. Rev. L. & Soc. Sci.* 79, 84, 2020. Also, the Committee on the Rights of the Child (CRC)’s General Comment No. 26 on children’s rights and the environment, with a special focus on climate change explains that the HR2HE “is implicit in the Convention”, CRC, *CRC/C/GC/26*, 2023, p. 11.

22 Several countries have recognized the HR2HE as implicitly guaranteed through other rights protected by their respective constitutions, such as rights to life (Bangladesh, India, Malaysia, Nigeria, Nepal, Pakistan, and Tanzania), to equality (Sri Lanka), to health (Guatemala, Italy). See, Boyd D. R., “The implicit constitutional right to live in a healthy environment”, *Review of European Community and International Environmental Law*, 20 (2) 2011, pp. 171-179.

23 If the right to property has not been integrated into globally legally binding human rights instruments, i.e. the ICCPR and ICESCR, it is explicitly incorporated in Article 17 of the UDHR. See Goley C., Cismas I., *Legal opinion. The right to property from a human rights perspective*, Geneva Academy of International Humanitarian Law and Human Rights, 2009. Furthermore, this right holds significance for regional systems, in particular for the one established by the European Convention on Human Rights, as it is guaranteed by Article 1 of the Additional Protocol adopted on 20 March 1952 and entered into force on 18 May 1954.

24 For more information on the case law of the ECtHR, see the Council of Europe, *Manual on Human Rights and the Environment*, 3rd edition, 2022. Also, Council of Europe/ ECtHR, *Guide to the case-law of the European Court of Human Rights – Environment*, updated on 28 February 2023.

25 See, for example, the decision of the Constitutional Court of Colombia, Center for Social Justice Studies et al. v. Presidency of the Republic et al. (The Atrato River Case), Judgment T-622/16, 10 November 2016, § 3.3: “the violation of the right to enjoy a healthy environment has repercussions on other constitutional rights and principles that both the text of the Constitution and the jurisprudence of the Court recognize as fundamental. Such are the rights to health, both of children and of the elderly, and the principle of human dignity, recognized as a fundamental principle in Article 1 of the Constitution”, translation available at: <http://files.harmonywithnatureun.org/uploads/upload838.pdf>

26 Article 5 of Vienna Declaration, 15 June 1993, states that all rights are interconnected, interdependent, and equally important. Daly E., May J.R., “Indivisibility of human and environmental right”, in May J.R., Daly E. (ed.), *Human Rights and the Environment. Legality, Indivisibility, Dignity and Geography*, Elgar Publishing, Cheltenham, 2019, p. 35.

27 The CEDAW Committee has recognized the nexus between environmental degradation and a range of human rights protected by CEDAW, see the General Recommendation N° 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, CEDAW/C/GC/37, 2018. Also, SR-Env, “Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment. Individual Report on the UN CEDAW”, A/HRC/25/53, 2013.

28 The General Comment N° 26 on children’s rights and the environment, with a special focus on climate change explains that the HR2HE “is implicit in the Convention and directly linked to the rights to life, survival and development, the highest attainable standard of health, an adequate standard of living, education, including the development of respect for the natural environment”. CRC, *CRC/C/GC/26*, 2023, p. 11.

29 IACtHR, *Case of Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, 6 February 2020, §§ 243 and 289. See also, Constitutional Court of Colombia, *Atrato River Decision*, T-622/16, 10 November 2016; Supreme Court of Panama, *Callejas v. Law No 406 (unconstitutionality of mining concession)*, 27 November 2023.

30 *Montana First Judicial District Court (USA)*, *Rikki Held et al., v. State of Montana*, 14 August 2023, CDV-2020-307.

31 On the components of the HR2HE, see to the SR-Env reports on “Clean air and human rights”, A/HRC/40/55, 2019; “Human rights and a safe climate”, A/74/161, 2019; “Human rights depend on healthy and sustainable food systems”, A/76/179, 2021; “The global water crisis and human rights”, A/HRC/46/28, 2021; “Human rights depend on a non-toxic environment”, A/HRC/49/53, 2022; “Human rights depend on a healthy biosphere”, A/75/161, 2020; “Human rights depend on a healthy biosphere: good practices”, Annex to A/75/161, 2020.

32 CRC, General Comment No. 26 on children's rights and the environment, with a special focus on climate change, CRC/C/GC/26, 2023. OHCHR, UNEP, UNDP, Information Note, “What is the Right to a Healthy Environment?”, 2023, p. 9. See also, Donald M., Human Rights and the Environment, Academy Briefing N° 21, Geneva Academy of International Humanitarian Law and Human Rights, 2022.

33 Kobylarz N., “Anchoring the Right to a Healthy Environment in the European Convention on Human Rights: What Concretized Normative Consequences Can Be Anticipated for the Strasbourg Court?”, in Antonelli, G. et al. (ed.), *Environmental Law Before the Courts. A US-EU Narrative*, Springer, 2023, p. 172.

34 SR-Env, “Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment”, A/HRC/25/53, 2013, §§ 17-25.

35 Article 3 of the UDHR; Article 6 of the ICCPR.

36 Article 25 of the UDHR; Article 12 of the ICESCR.

37 Article 12 of the UDHR; Article 17 of the ICCPR.

38 Article 25 of the UDHR, Article 11 of the ICESCR.

39 CCPR, General comment No. 36, CCPR/C/GC/36, 2019.

40 CCPR, *Portillo Cáceres v. Paraguay*, CCPR/C/126/D/2751/2016, 25 July 2019.

41 CESCR, General Comment No. 14 on the right to the highest attainable standard of health, E/C12/2000/4, 2000.

42 WHO, “Environmental Health”, https://www.who.int/health-topics/environmental-health#tab=tab_1

43 Article 17 of the ICCPR. In the ECHR framework, the right to privacy is articulated as the right to private and family life, as enshrined in Article 8 of the ECHR.

44 Concerning air pollution, ECtHR, *Lopez Ostra v. Spain*, app. n° 16798/90, 9 December 1994; *Fadeyeva v. Russia*, app. n° 55723/00, 9 June 2005; *Ledyeva and al. v. Russia*, app. n° 53157/99, 26 October 2006. Concerning water pollution, *Tatar v. Romania*, app. n° 67021/01, 27 January 2009; *Dubetska and al. v. Ukraine*, app. n° 30499/03, 10 February 2011.

45 ECtHR, *Lopez Ostra v. Spain*, § 51.

46 CESCR, General Comment No. 4: The right to adequate housing, E/1992/23, 1991, § 8.b.

47 CESCR, General Comment N° 12, The right to adequate food (Art. 11), § 4. “The right to adequate food is (...) indispensable for the fulfilment of other human rights”, E/C12/1999/5, 1999.

48 Article 11 of the ICESCR recognizes the right to adequate food. General Comment No. 15 recognizes the right to water as part of right to an adequate standard of living, CESCR, E/C12/2002/11, 2003. UNGA, Resolution “The human right to water and sanitation”, A/RES/64/292, 2010.

49 The Special Rapporteur on the right to food reported that in 2022, almost 258 million people suffered from “worse acute food insecurity”, “Right to food for food system recovery and transformation”, A/78/202, 2023, § 7.

50 For example, see the case ruled by the IACtHR, *The Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, 6 February 2020, § 203.

51 ECtHR, *Kyrtatos v. Greece*, app. n° 41666/98, 13 September 2001.

52 The Court, however, left the door open by noting that if the environmental deterioration had involved the destruction of a forest area near the applicants' home, it could have affected the

well-being of the applicants, § 53.

53 Kobylarz N., “Anchoring the Right to a Healthy Environment in the European Convention on Human Rights: What Concretized Normative Consequences Can Be Anticipated for the Strasbourg Court?”, in Antonelli, G. et al. (ed.), *Environmental Law Before the Courts. A US-EU Narrative*, Springer, 2023, p. 187.

54 Theil S., *Towards the Environmental Minimum. Environmental Protection Through Human Rights*, Cambridge University Press, 2021, p. 45.

55 On ecocentrism, see the positions of national courts, Constitutional Court of Colombia Judgment T-622-16, 10 November 2016, §§ 9.27 to 9.31; Supreme Court of Colombia, Radicación n° 08001-22-13-000-2019-00505-01, 18 June 2020; Constitutional Court of Ecuador, Judgment No. 218-15-SEP-CC, 9 July 2015, §§ 9 and 10. Also, the Supreme Court of India considered that ecocentrism is “life-centred, nature-centred where nature includes both humans and non-humans”, Centre for Environment Law, WWF-I v. Union of India and others, 7 November 1997, National Green Tribunal of India, Tribunal at its own motion v. Ministry of Environment others, app. N° 16/2013, 4 April 2014.

56 IACtHR, Advisory Opinion 23/17, § 63.

57 See, Kobylarz N., “Balancing its way out of strong anthropocentrism: Integration of ‘ecological minimum standards’ in the European Court of Human Rights ‘fair balance’ review”, *Journal of Human Rights and the Environment*, March 2022.

58 The anthropocentric approach does not preclude the application of the precautionary principle, which can be invoked in the face of threats of serious or irreversible damage to the environment or to human health to prevent such risks in the absence of a scientific certainty. Although the ECtHR applied this principle in its judgment *Tatar v. Romania*, it has not explicitly referred to it in its case law since that specific case. See, *Tatar v. Romania*, app. n° 67021/01, 27 January 2009, § 111.

59 See, Principle 5, IUCN World Declaration on the Environmental Rule of Law, Rio de Janeiro, 26-29 April 2016. See also, Supreme Court of Argentina, *Majul, Julio Jesús c/ Municipalidad de Pueblo General Belgrano y otros s/ Acción de Amparo Ambiental (Humadales)*, 19 July 2019, §§ 11-13.

60 IACtHR, Advisory Opinion 23/17, § 62.

61 Ibidem.

62 Constitutional Court of Colombia, Center for Social Justice Studies et al. v. Presidency of the Republic et al. (The Atrato River Case), Judgment T-622/16, 10 November 2016; Constitutional Court of Ecuador, Protection action by the GAD of Santa Ana de Cotacachi (Los Cedros), case No. 1149-19-JP / 20, 10 November 2021, §§ 236-252.

63 See *Walter Brenes Soto v. Costa Rican Institute of Fisheries and Aquaculture et al*, Resolución N° 00912 - 2023, case 17-008322-1027-CA, 21 June 2023.

64 “The objective or ecological that protects the environment as a fundamental legal asset in itself, which addresses the defense and restoration of nature and its resources regardless of its repercussions on human beings; and another subjective or anthropocentric, under which the protection of this right constitutes a guarantee for the materialization and validity of the other recognized rights of the individual”, see Supreme Court of Justice of Mexico, *Cutting of the Mangrove of the « Laguna Del Carpintero » for Construction of Ecological Park*, Amparo en Revisión 307/2016 (extract), 14 November 2018, p. 43, translation available at <https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/summary/2020-12/Summary%20AR307-2016%20HRO.pdf>.

65 Constitutional Court of Portugal, Ruling No. 83/2022 (on the protection of the Iberian wolf), case n° 492/2019, 26 Janvier 2022, p. 2.5.1.

66 ECtHR, partly dissenting opinion of Judge Zagrebelsky under *Kyrtatos v. Greece*.

67 Knox J.H., “Constructing the Human Right to A Healthy Environment”, 16 *Ann. Rev. L. & Soc. Sci.* 79, 84, 2020, p. 20.

68 IACtHR, Advisory Opinion 23/17, § 59. Also, see for instance, South Africa's High Court, *EarthLife Africa Johannesburg v. Minister of Environmental Affairs and Others*, no. 65662/16, 3 June 2017.

69 National constitutions either recognize the right to a healthy environment for the benefit of future generations (Argentina, Brazil, Kenya, Niger, Poland) or link environmental sustainability with the needs of future generations (France, Dominican Republic). Some countries recognize the

protection of the environment and natural resources in the interests of future generations, but do not explicitly recognize the HR2HE (Vanuatu and Germany).

70 The International Convention for the Regulation of Whaling, 1946; the World Heritage Convention, 1972; the Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973; the Bonn Convention on the Conservation of Migratory Species of Wild Animals, 1979; the Convention on Biological Diversity, 1992 and the Kunming-Montreal Global Biodiversity Framework, 2022.

71 The UN Framework Convention on Climate Change (UNFCCC), 1992 and the Paris Agreement, 2015.

72 See, for example, the decision of the Supreme Court of the Philippines ruling that each generation has a responsibility to preserve the rhythm and harmony of nature for the full enjoyment of a balanced and healthful ecology, *Minors Oposa v. Secretary of the Department of Environment and Natural Resources*, ILM 33, 30 July 1993. Also, the Supreme Court of Colombia links the environmental rights of future generations with the “i) ethical duty of the solidarity of the species and ii) on the intrinsic value of nature”, *Demanda Generaciones Futuras v. Minambiente*, n° 11001-22-03-000-2018-00319-01, 4 April 2018, p. 5.3.

73 CRC, General Comment No. 26 on children’s rights and the environment, with a special focus on climate change, *CRC/C/GC/26*, 2023.

74 SR-Env, “Framework Principles on Human Rights and the Environment”, *A/HRC/37/59*, 2018.

75 Refer to the developments above.

76 In connection with this matter, it is noteworthy to highlight two crucial advisory requests presented before two international courts – the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS). The request for an advisory opinion of the ICJ on the obligations of States in respect of climate change, was officially endorsed by the UNGA during its 64th plenary meeting on 29 March 2023, as per resolution 77/276. The Commission of Small Island States on Climate Change and International Law submitted a request for an advisory opinion to the ITLOS on 12 December 2022, seeking clarifications on States obligations in relation to climate change.

77 Framework principle 3, SR-Env, “Framework Principles on Human Rights and the Environment”, *A/HRC/37/59*, 2018.

78 The following States have adopted the duty to prevent environmental degradation or pollution in their constitutions: Dominican Republic, Ecuador, Greece, Guyana, Panama, Portugal, Republic of Malawi, South Africa, Turkey.

79 For the IACtHR, such prevention applies to significant environmental damage to the rights to life or personal integrity occurring within or outside the territory of the State of origin, *Advisory Opinion 23/17*, § 115. See, *Aguilera M. G., Environmental Human Rights. New Thinking from Latin America and the Caribbean*, Brill Nijhoff, 2023, p. 118. The ECtHR adopts the same approach while operating the protection of the environment through the right to life: *Öneryıldız v. Turkey*, § 101; *Di Sarno and others v. Italy*, app. n° 30765/08, 10 January 2012, § 106; *Tatar v. Romania*, § 109.

80 ECtHR, *Taskin and al. v. Turkey*, app. n° 46117/99, 10 November 2004, § 119.

81 ECtHR rules that “the decision-making process must firstly involve appropriate investigations and studies in order to allow them to predict and evaluate in advance the effects of those activities which might damage the environment and infringe individuals’ rights”, *ibidem*.

82 According to the ICJ, environmental impact assessment is a practice widely accepted by States “that it may now be considered a requirement under the general international law (...) where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource”, *ICJ, Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, 20 April 2010. See also, *ECtHR, Giacomelli v Italy*, app. n° 59909/00, 2 November 2006. African Commission on Human and Peoples’ Rights, ‘State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment’, 25 April to 9 May 2018, § 37.

83 IACtHR, *Case of Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, §§ 207-208; *Advisory Opinion 23/17*.

84 African Commission on Human and Peoples’ Rights, *Ogoni v. Nigeria*, Communication 155/96, 27 May 2022, § 52.

85 *Held et al. v. Montana*.

86 IACtHR, *Advisory Opinion 23/17*, §§ 175-180.

87 ECtHR, *Öneryıldız v. Turkey*, § 90; *Di Sarno and others v. Italy*, § 106; *Tatar v. Romania*, § 88. See also, the pending case of *La Oroya Community v. Peru* before the IACtHR addressing the international responsibility of the State for the damages inflicted on the La Oroya Community and its inhabitants due to pollution from a metallurgical complex, 30 September 2021.

88 Framework principle 3, SR-Env, “Framework Principles on Human Rights and the Environment”, *A/HRC/37/59*, 2018.

89 These grounds are listed in both Article 26 of the ICCPR and Article 2 of the ICESCR.

90 IACtHR, *Advisory Opinion 23/17*, § 67. HRC, “Report of the OHCHR on the relationship between climate change and human rights”, *A/HRC/10/61*, 2009, § 42. HRC, Report of the SR-Env, *A/HRC/31/52*, 2016, § 81; Report on Women, girls and the right to a clean, healthy and sustainable environment, *1/HRC/52/33*, 2023. Also, Principle 14, Framework Principles on Human Rights and the Environment, *A/HRC/37/59*, 2018.

91 *South Africa’s High Court, EarthLife Africa Johannesburg v. Minister of Environmental Affairs and Others*, no. 65662/16, 3 June 2017. Supreme Court of Colombia, *Salamanca Mancera et al v. Presidencia de la República de Colombia et al*, no 110012203 000 2018 00319 01, 5 April 2018.

92 Supreme Court of the Netherlands, *Urgenda Foundation v. State of the Netherlands*, *C/09/00456689*, 13 January 2020. In the absence of an explicit recognition of the HR2HE by the ECHR and its protocols, the applicants in pending climate cases before the ECtHR primarily relied on human rights guaranteed by the ECHR, namely the right to private and family life and home, and the right to life, see, *Duarte Agostinho and Others v. Portugal and 32 Other States*, app. n° 39371/20; *KlimaSeniorinnen v. Switzerland*, app. no. 53600/20; *Carême v. France*, app. n° 7189/21.

93 See, *De Vilchez Moragues P., Savaresi A., “The Right to a Healthy Environment and Climate Litigation: A Mutually Supportive Relation?”*, 2021, <https://ssrn.com/abstract=3829114> or <http://dx.doi.org/10.2139/ssrn.3829114>.

94 *Montana First Judicial District Court, Held et al. v. Montana*, § 45 and § 49 of the Part VI ‘The MEPA Limitation Violates the Montana Constitution’.

95 Recognized in national constitutions: Brazil, Chile, Ecuador, Lithuania, Nicaragua, Panama, Portugal, Sudan.

96 The right to a general satisfactory environment entails the obligation “to promote conservation, and to secure an ecologically sustainable development and use of natural resources”, *African Commission, Ogoni v. Nigeria*, § 52. “Duty to protect Plaintiffs’ right to a clean and healthful environment, and to protect Montana’s natural resources from unreasonable depletion”, *Held v. Montana*, § 55, p. 99.

97 HRC, ‘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/34/49*, 2017; SR-Env, *Boyd D. R., Keene S., “Human rights-based approaches to conserving biodiversity: equitable, effective and imperative”*, Policy Brief N° 1, 2021. On various examples of violations of the HR2HE found by national courts, see, SR-Env, “Healthy biosphere”, *A/75/161*, 2020, p. 15.

98 Supreme Court of Colombia, *Demanda Generaciones Futuras v. Minambiente*, n° 11001-22-03-000-2018-00319-01, 4 April 2018; *Parque Isla Salamanca, STC No. 3872-2020*, 18 June 2020; Supreme Court of Justice of Mexico, *Cutting of the Mangrove of the « Laguna Del Carpintero » for Construcción of Ecological Park, Amparo en Revisión 307/2016* (extract).

99 WHO, “Air Pollution”, https://www.who.int/health-topics/air-pollution#tab=tab_2.

100 WHO, “How air pollution is destroying our health”, <https://www.who.int/news-room/spotlight/how-air-pollution-is-destroying-our-health>.

101 Refer to SR-Env’s report on “Clean air and human rights”, *A/HRC/40/55*, 2019. For recommendations to States and the private sector, consult the OHCHR website: <https://www.ohchr.org/en/special-procedures/sr-environment/clean-air-and-human-rights>.

102 African Commission on Human and Peoples’ Rights, *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria*, Communication No. 155/96, § 52; ECtHR, *Cordella and others v. Italy*, app. n° 54413/13 and 54264/15, 24 January 2019; *Fadeyeva v. Russia*, app. n° 55724/00, 9 June 2005; *Grimkovskaya v. Ukraine*, app. n°. 38182/03, 21 July 2011. Among,

national courts see, High Court of South Africa (Gauteng Division Pretoria), *The Trustees for the Time Being of Groundwork Trust, Vukani Environmental Justice Alliance Movement in Action v. the Minister of Environmental Affairs et al.*, case n° 39724/2019; Supreme Court of Indonesia, *President of Indonesia and others vs. Arie Rompas and others*, decision n° 3555K/Pdt/2018; Supreme Court of Argentina, *Beatriz Silvia Mendoza, et al. v. National State of Argentina*, 8 July 8, 2008. *Francisco Chahuan Chahuan versus Empresa Nacional de Petróleos, ENAP S.A.*, Case n° 5888- 2019, 28 May 2019.

103 Principle 24 of the Stockholm Declaration, Principles 7 and 19 of Rio Declaration. Also, IACtHR, *Advisory Opinion 23/17*. Articles 55 and 56 of the Charter of the United Nations; Article 2 of the ICESCR.

104 ICJ, *Legality of the threat or use of nuclear weapons*, § 102, and *Case of Pulp Mills on the River Uruguay*, § 145. *Aguilera M. G., Environmental Human Rights. New Thinking from Latin America and the Caribbean*, p. 129.

105 See, Principle 12, IUCN World Declaration on the Environmental Rule of Law: "In order to achieve the progressive development and enforcement of the environmental rule of law, States, sub-national entities, and regional integration organisations shall regularly revise and enhance laws and policies in order to protect, conserve, restore, and ameliorate the environment, based on the most recent scientific knowledge and policy developments". Also, *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, opened for signature 9 April 2018, entered into force 22 April 2021, art 3 (c).

106 The principle of non-regression applies to the enjoyment of the HR2HE, as affirmed by the forward-looking decision of the Costa Rican Supreme Court's Constitutional Chamber, *Voto No. 7294-98 de las 16:15 horas del 13 de octubre de 1998*.

107 The Supreme Court of Norway acknowledged the findings of the IPCC as the best available science in relation to climate change, see, *Nature and Youth Norway et al v. The Ministry of Petroleum and Energy*, HR-2020-2472-P, (case no. 20-051052SIV-HRET), 22 December 2020. The ECtHR also refers to this principle in its case law. For example, the Court relied on available scientific data to determine that the applicant failed to demonstrate a causal link between the polluting emissions from a factory and the cause of her death, *leukaemia*, ECtHR, *inadmissibility decision*, *Smaltini v. Italy*, app. n° 43961/09, 16 April 2015. In the case *Tatar v. Romania*, the ECtHR relied on scientific knowledge to establish a serious and substantial risk to the health and well-being of the applicants, imposing on the State a positive obligation to adopt reasonable and adequate measures capable of protecting the right to the respect of private life and home, and more generally, the enjoyment of a healthy and protected environment, ECtHR, *Tatar v. Romania*, §§ 105-107.

108 OHCHR reported with references to the non-profit organization Global Witness on 9 March 2022, see, <https://www.ohchr.org/en/stories/2022/03/environmental-human-rights-defenders-must-be-heard-and-protected>. United Nations, *Guidance Note for United Nations Resident Coordinators & Country Teams: Supporting Governments to Better Respect, Promote and Protect Environmental Human Rights Defenders*, 2023. See also, the annual thematic reports of the Special Rapporteur on human rights defenders, <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/annual-thematic-reports>.

109 SR-Env, "Business, planetary boundaries, and the right to a clean, healthy and sustainable environment", A/HRC/55/43, 2024.

110 Procedural obligations have been enshrined in the Aarhus Convention, 25 June 1998, as well as in the *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, 4 March 2018.

111 Article 19 of the UDHR and Article 19 of the ICCPR.

112 ECtHR, *Tanasoaica v. Romania*, app. n° 3490/03, 19 June 2012.

113 ECtHR, *Vides Aizsardzibas Klubs v. Latvia*, app. n° 57829/00, 27 May 2004, § 42; *Steel and Morris v. the United Kingdom*, app. n° 68416/01, 15 February 2005, § 89.

114 SR on the situation of human rights defenders, Report, A/71/281, 2016.

115 Article 21 of the UDHR and Article 25 of the ICCPR.

116 Article 8 of the UDHR and Article 2 of the ICCPR.

117 Also, SR on extreme poverty and human rights, "Access to justice for people living in poverty", A/67/278, 2012.

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UNPACKING THE HR2HE: ITS SCOPE, IMPLEMENTATION AND IMPACT

This [project of the Geneva Academy](#) started by clarifying the content of the HR2HE, including substantive and procedural aspects, related States' obligations, as well as its interconnections with other human rights. In a second phase, we will evaluate the implementation of the HR2HE and how UNGA resolution A/76/300 that endorsed this human right has led to changes in domestic laws and policies, has influenced court cases, or has been referred to in decisions taken by regional and international human rights mechanisms. Such insights will be instructive for policy-makers, development programming agencies, environmental advocates, civil society, tribunals, and experts, as well as regional and international human rights mechanisms.

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