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.
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 76/300 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 States, 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 cases 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 constitutionalism; the progressive greening of human rights, and “humanizing of environmental law”, the recognition of a HR2HE represents the pinnacle of the human rights-based approach to environmental protection. It reflects a “powerful union” 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 HR2HE. The rights of Indigenous Peoples 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 life. 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".

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). 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 individuals. 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 ecosystems: 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” 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 treaties. 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 change, 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 rights.

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 rights, 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, property, 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 environment 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 rights. As a prerequisite for upholding human dignity, it underscores the interconnected nature of all human rights, specifically illustrating their indivisibility. The HR2HE is a sine qua non 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), and the Convention on the Rights of the Child (CRC).

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 identity.

Contrastingly, the landmark domestic climate case Held v. State of Montana, 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-Env and emphasized by UN bodies, include clean air, a safe climate, healthy and sustainably produced food, access to safe water and adequate sanitation, nontoxic 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
The right to a clean, healthy and sustainable environment plays a significant role in defining these essential components. Moreover, these core aspects of the HR2HE are all considered essential for the enjoyment of other human rights, and many are also recognized as independent human rights by international human rights treaties (e.g. food, water and sanitation). Nearly all six environmental aspects of the HR2HE have progressively been interpreted by national and regional courts and human rights treaty bodies as essential conditions for the enjoyment of other human rights and for the rights to life, health, private and family life, and home, and an adequate standard of living.

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 generations’. In the case Portillo Caceres v. Paraguay, the applicants invoked the right to life, along with the right to physical integrity and family life. 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. 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.

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 environment. 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. 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”.

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 life.

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 humans. It recognizes the environment as having inherent value, 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”. 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 the in dubio pro natura principle. While the precautionary principle has broader applicability in both anthropocentric 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 preferred – 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 rights. 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.”

Similarly, several constitutional and supreme courts 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 HR2HE. Furthermore, the Constitutional Court of Portugal acknowledged that the HR2HE includes the conservation of biodiversity. 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 grows, the gap between anthropocentric and ecocentric approaches to environmental protection diminishes. 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 generations. 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 constitutions 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 environment, and in addressing issues related to climate change. Such a recognition reflects a commitment to intergenerational justice, ensuring the continuity of a clean, healthy and sustainable environment for future inhabitants of the planet. In its General Comment No. 26, 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).

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 rights, 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 States 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 Environment. Effectively fulfilling these obligations is imperative for creating a sustainable future and the full realization of human rights.
**SUBSTANTIVE OBLIGATIONS**

**OBLIGATION TO PREVENT VIOLATIONS**

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 life and private life, 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 process. This ensures that potential environmental impacts, especially those with cross-border implications, are thoroughly assessed through a transboundary Environmental Impact Assessments. 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. The right to a general satisfactory environment under the African Convention imposes a “clear” obligation to prevent “pollution and ecological degradation. 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 generations.

**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 life.

**OBLIGATION TO PROHIBIT DISCRIMINATION**

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 status. 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 situations. 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 generations, 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 life, there is also a growing trend in climate litigation specifically based on the HR2HE, demonstrating a higher likelihood of success. 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”.

OBLIGATION TO SAFEGUARD BIODIVERSITY

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 support. The consequences of biodiversity loss can be multifaceted, far-reaching, affecting ecosystems, human health, economies and cultural aspects. The loss of forests 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 year, with over 543,000 affected newborns and children under five. To fulfil the HR2HE within the context of air pollution, the SR-Env recommends seven key steps, grounded in existing case law, 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 services. 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”, 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-REGRESSION

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 quality. 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 protection. 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.” 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 BUSINESSES**

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 justice. 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 expression, encompassing the right to seek, receive and impart 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 defenders, 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 requirement 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 matters. 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).

**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

1. 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/76/360, 2022.


5. See the database mapping and analyzing significant case law and developments regarding the HR2HE, developed by NYU Law and UNEP: https://www.2heinfo.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/


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/43/35, 2019.


11. Human Rights Committee (HRCttee)’s General Comment No. 36 interprets the right to life as incorporating the imperative of preserving and ensuring the environment and life with dignity, CCPR/C/60, 2019, § 62. See also, HRCttee’s statement that the right to life also includes the right of individuals to enjoy a life with dignity, in Tuletia v. New Zealand, CCPR/C/127/D/728/2016, 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 (UNDRP), both guarantee the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. Furthermore, UNDRP highlights that States shall ensure a safe, clean and healthy environment without discrimination.

13. UNGA, Preamble of UNDRP, 13 September 2007. See also, Petition to the IACHHR 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 UNDRP.

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 ASEN 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.


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 Galiay 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.


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.harmonywithnature.org/uploads/upload838.pdf.


28. The 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 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/66/26, 2023, p. 11.

29. IACHHR, Case of Indigenous Communities of the Lukha 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.


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/63/16, 2019.


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.


45 ECHR, Lopez Ostra v. Spain, § 51.


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 Honbat (Our Land) Association v. Argentina, 6 February 2020, § 201.


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.


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, Radicion n° 08001-22-13-000-2019-00505-01, 18 June 2020; Constitutional Court of Ecuador, Judgment No. 218-16-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.


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, § 71.

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, Majú, Julio Jesús c/ Municipalidad de Pueblo General Belgrano y otros s/ Acción de Amparo Ambiental (Humedales), 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 Atroato 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. T1499-19-10, 10 November 2021, §§ 236-252.


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 Carpenter” 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%20AR%20R307-2016%20HI0.pdf.

65 Constitutional Court of Portugal, Ruling No. 83/2022 (on the protection of the Iberian wolf), case n° 492/2019, 26 January 2022, p. 2.51.

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


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. 6566/16, 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).


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, Minor Opoa 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) the intrinsic value of nature”, Demanda Generaciones Futuras v. Minambiente, n° 11001-22-03-000-2018-00319-01, 4 April 2019, 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.


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 77/216. 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 clarification on States obligations in relation to climate change.


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, Aguilería M. G., Environmental Human Rights. New Thinking from Latin America and the Caribbean, Brill Nijhoff, 2023, p. 118. The ECHR adopts the same approach while protecting the operation of the environment through the right to life: Öoneyölyz v. Turkey, § 101; Di Sarno and others v. Italy, app. n° 30765/08, 10 January 2012, § 106; Tartar v. Romania, § 109.

80 ECHR, Taskin and al. v. Turkey, app. n° 46173/99, 10 November 2004, § 119.

81 ECHR 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, ECHR, Giacomelli v. Italy, app. n° 59099/00, 2 November 2006.

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


85 Held et al. v. Montana.

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

87 ECtHR, Öoneyölyz v. Turkey, § 90; Di Sarno and others v. Italy, § 106; Tartar 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.


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


91 South Africa’s High Court, EarthLife Africa Johannesburg v. Minister of Environmental Affairs and Others, no. 56625/16, 3 June 2017. Supreme Court of Colombia, Salamanca Manera 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/09/00456649, 13 January 2020. In the absence of an explicit recognition of the HR2HE by the ECtHR and its protocols, the applicants in pending climate cases before the ECtHR primarily relied on human rights guarantees provided by the ECtHR, 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; KlimaSjöarna et al v. Sweden, app. n° 53600/20; Carême v. France, app. n° 7189/21.


94 Montana First Judicial District Court, Held et al. v. Montana, § 45 and § 49 of the Part VI ‘The MPCA 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.


98 Supreme Court of Colombia, Demanda Generaciones Futuras v. Minambiente, n° 11001-22-03-000-2018-00319-01, 4 April 2018; Parque Islas Salamanca, STE No. 3872-2020, 18 June 2020; 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).


national courts see, High Court of Sout 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. Aris 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 Chahuán Chahuán 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. Aguillería M., 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-R (case no. 20-0510525IV-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.


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, Tanasaoica v. Romania, app. n° 3490/03, 19 June 2012.

113 ECtHR, Vides Aizsardzības 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.


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

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

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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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