DEFINING THE RIGHT TO A HEALTHY ENVIRONMENT: INSIGHTS FROM THE INTER-AMERICAN COURT OF HUMAN RIGHTS

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Examples of governments' failure to protect individuals from the devastating impacts of environmental degradation are widespread, and the ramifications are increasingly global, affecting transboundary concerns like human migration, food production and climate. The global nature of these problems calls for international law solutions, and advocates are increasingly interested in framing environmental degradation as a human rights problem. In March 2024, the Inter-American Court of Human Rights issued its decision in Inhabitants of La Oroya v. Peru, a groundbreaking case with significant implications for the right to a healthy environment. For the first time, the Court explained and applied its understanding of an individual's right to a healthy environment as a stand-alone right, independent from the environment's impact on other human rights. This Article will explain how a broader historical and legal context informed the development of this line of jurisprudence. It will also examine the meaning and scope of the human right to a healthy environment as envisioned by the Inter-American Court, including the obligations this norm might require of governments within the region. Finally, the Article will analyze how the Court's approach contributes to the development of human rights law in relationship to environmental law. As human rights advocates continue to push for other international and regional human rights bodies to recognize a justiciable human right to a healthy environment, the Inhabitants of La Oroya decision will provide an invaluable foundation for developing and defining the right even beyond the Inter-American System. This Article outlines the guideposts that others will need to build upon that foundation.

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I. INTRODUCTION

As the devastating potential of pollution and climate change becomes more tangible, advocates are increasingly interested in framing environmental degradation as a human rights problem. Some important manifestations of this trend are non-binding resolutions that the United Nations (U.N.) General Assembly and the U.N. Human Rights Council have recently passed recognizing a human right to a clean, healthy and sustainable environment.[1] Though these resolutions are a notable expression of the international community's aspirational interest in acknowledging that environmental degradation can have a very real impact upon an individual's human rights, these resolutions do not in and of themselves impose binding legal obligations upon nation-states.[2]

All international law is made up of legal obligations that nation-states have consented to be bound by and to obey, either by becoming a party to a treaty or by joining other nation-states in adopting specific customs and behaviors out of a sense of legal obligation.[3] This is true of international human rights law as well.[4] In the absence of explicit treaty language detailing a State's human rights obligations relating to environmental degradation, human rights bodies and tribunals have, during the last three decades, begun viewing environmental harms through the lens of how these harms impact other more long-established human rights, such as an individual's right to life, privacy, family, home and respect for physical integrity. One such human rights tribunal is the Inter-American Court of Human Rights.[5]

The Inter-American Court of Human Rights first approached environmental impacts on individuals' human rights by framing the right to life holistically. The Court looked at both a person's right "not to be arbitrarily deprived of [] life," as well as at other conditions that threaten a person's ability to live a "decent existence" or a life of dignity ("*vida digna*" in Spanish).[6] In several cases the Court identified environmental degradation as one element that can hinder access to

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[1] *See* G.A. Res. 76/300, ¶ 1 (July 28, 2022); Human Rights Council Res. 48/13, U.N. Doc. A/HRC/Res/48/13, at 3 (Oct. 8, 2021).

[2] In fact, while some States supporting G.A. Res. 76/300 saw it as a historic step forward, most States viewed it as something aspirational that would require further action on the part of States, including consent to being bound by any new obligations the right might entail. *See* Philip Alston, *The Right to a Healthy Environment: Beyond Twentieth Century Conceptions of Rights*, 117 AJIL UNBOUND 167, 169–70 (2023) (citing the record of the meeting at which G.A. Res. 76/300 was adopted, U.N. GAOR, 76th Sess., 97th plen. mtg., U.N. Doc. A/76/PV.9 (July 28, 2022)).

[3] For a more in-depth description of the sources of international law, *see* Hilary Charlesworth, *Law-Making and Sources*, *in* THE CAMBRIDGE COMPANION TO INTERNATIONAL LAW 187 (James Crawford & Martti Koskenniemi eds., 2012).

[4] LOUIS HENKIN ET AL., HUMAN RIGHTS 190 (2d ed. 2009).

[5] *See* discussion *infra* Part III.

[6] *See* Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶¶ 161–62 (June 17, 2005).

such a life, at least in the context of indigenous peoples.[7] In 2017, the Inter-American Court issued an advisory opinion that veered from its initial approach.[8] Instead, the Court recognized an individual's right to a healthy environment as an autonomous, stand-alone right, independent from the environment's impact on other human rights.[9] The Court affirmed this stance in a 2020 judgment, but the full meaning of such an autonomous right, as well as the scope of the obligations it imposes on States of the Inter-American region remained unclear.[10]

Against this backdrop, the Inter-American Court of Human Rights issued its final judgment in *Inhabitants of La Oroya v. Peru*[11] on March 22, 2024.[12] In this groundbreaking judgment, the Inter-American Court not only affirmed the ability of individuals to hold States responsible for violations of their right to a healthy environment, independent from any other claims, but also provided the most detailed analysis of the meaning and scope of the right to a healthy environment of any regional or international human rights body to date.[13] Originally filed before the Inter-American Commission on Human Rights in 2006, the case involved eighty residents of a small town in the Andean highlands of Peru who claimed the Peruvian government had violated their right to a healthy environment.[14] For decades, a metallurgical complex located in the town of La Oroya had been spewing enough lead, arsenic, sulfur oxides and cadmium into the air to earn the town the disgraceful distinction of being one of the ten most polluted places on earth.[15]

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[7] *See* Kaliña and Lokono Peoples v. Suriname, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 309, ¶ 172 (Nov. 15, 2015); Yakye Axa Indigenous Cmty. v. Para., Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 163.

[8] *See* The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in Relation to Articles 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23 (Nov. 15, 2017).

[9] *Id.* ¶ 62–63.

[10] *See* Indigenous Communities of the Lhaka Honhat (Our Land) Ass'n v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 400, ¶¶ 201–03 (Feb. 6, 2020).

[11] Inhabitants of La Oroya v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 511, (Nov. 27, 2023).

[12] *See* Press Release, Inter-Am. Ct. H.R., Peru Is Responsible for the Violation of the Right to a Healthy Environment, Health, Personal Integrity, Life, Special Protection of the Child, Access to Information, Political Participation, Judicial Guarantees and Judicial Protection to the Detriment of 80 Inhabitants of La Oroya, No. PR-17/2024, (Mar. 22, 2024), https://perma.cc/2QKP-NWD7 [hereinafter *Inhabitants of La Oroya* Press Release].

[13] *See* Astrid Puentes Riaño (Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment), *Overview of the Implementation of the Human Right to a Clean, Healthy and Sustainable Environment.*, ¶ 31, U.N. Doc. A/79/270 (Aug. 2, 2024).

[14] Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 2(b), 67, 85–86.

[15] *Inhabitants of La Oroya* Press Release, *supra* note 12. In 2006, the Blacksmith Institute (now known as Pure Earth) included La Oroya on its list of top 10 polluted sites

The *Inhabitants of La Oroya* case illustrates the very real personal harms that individuals can suffer when private industry is allowed to operate unchecked and with complete disregard for the environmental impact of its activities. Similar examples are widespread.[16] The failure of governments to protect individuals from activities that cause environmental harms has begun to have more global ramifications, affecting transboundary concerns like human migration and food production.[17] The global nature of these problems calls for international law solutions. The growing interest in addressing environmental harms through the lens of international human rights norms stems from the need to look beyond the interests of nation-states to ensure that the rights of individual citizens are also protected.

This Article will explore the meaning and scope of the human right to a healthy environment within the Inter-American System of Human Rights, as well as what obligations this norm might require of governments within the region.[18] It proceeds in four parts. Part II first provides an overview of the broader context within which the Inter-American System began to recognize the close relationship between environmental concerns and human rights. The historical context makes clear that the Inter-American Human Rights System is attempting to respond to some of the important questions that the international community has been grappling with for decades in relation to environmental concerns. These include: whether to prioritize State sovereignty or the rights of individuals; whether States should be responsible for transboundary harms or only harms that happen within their territories; whether all States should have the same responsibilities in responding to environmental concerns; whether the answers to environmental problems should be framed from an ecocentric or an anthropocentric point of view; and whether international environmental law and international human rights law can intersect or

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in the world. *See* BLACKSMITH INST., THE WORLD'S WORST POLLUTED PLACES: THE TOP TEN 8 (2006), https://perma.cc/E793-795A. However, extreme levels of pollution existed long before. *See* A. Arrieta & J. Guillen, *The Birthweight Toll of Mining Pollution: Evidence from the Most Contaminated Mine Site in the Andean Region*, 125 BJOG 1272, 1273 (2018).

[16] *See* David R. Boyd (Special Rapporteur on Human Rights and the Environment), *The Right to a Clean, Healthy and Sustainable Environment: Non-Toxic Environment,* ¶¶ 26–46, U.N. Doc. A/HRC/49/53 (Jan. 12, 2022) [hereinafter Special Rapporteur on Human Rights and the Environment, *The Right to a Clean, Healthy and Sustainable Environment: Non-Toxic Environment*] (describing examples of environmental injustices on every continent);.*see generally* David R. Boyd (Special Rapporteur on Human Rights and the Environment), *Additional Sacrifice Zones,* U.N. Doc. A/HRC/49/53, annex I (Feb. 3, 2022) (describing the same, in more detail).

[17] *See* Puentes Riaño, *supra* note 13, ¶¶ 54, 62 (discussing climate displacement and climate change as a threat to the right to food).

[18] This Article focuses on a single regional human rights system. Other frameworks that may exist within other domestic, regional or international legal systems for addressing environmental harms will therefore not be addressed.

whether they must remain on separate tracks. Part III then traces the evolution of the Inter-American Human Rights System's understanding of the right to a healthy environment, from initially framing it as a dependent right to more recently framing it as a stand-alone right. The newer framing of the right is rooted in an "evolutive interpretation" of what rights fall under the direct jurisdiction of the Inter-American Court.[19] Part IV analyzes the guidance the Inter-American System has provided regarding States' obligations to ensure each individual's right to a healthy environment. As the Court describes in *Inhabitants of La Oroya*, the right imposes substantive obligations on States, requiring them to protect the environment for its own sake as well for its importance to human well-being.[20] At the same time, the right imposes procedural obligations oriented toward supporting environmental policymaking that takes into account the interests and concerns of impacted individuals and communities.[21] In conclusion, Part V considers how the Inter-American System's approach contributes to the development of human rights law in relationship to the environment and potential challenges that this approach might present. Given there is some level of deliberation between different international and regional human rights bodies already, this Part also asks whether this approach might create a blueprint for other human rights bodies to emulate.[22] Finally, Part V offers some preliminary thoughts regarding, more generally, the usefulness of applying a human rights framework to environmental concerns.

The Inter-American approach offers some critical insights for those who are advocating to develop a human right to a healthy environment within other international and regional human rights systems. For example, the *Inhabitants of La Oroya* decision demonstrates how international environmental law and international human rights law can be brought into dialogue with each other, allowing both to inform a human rights body's understanding of States' obligations when it comes to securing the new right. Similarly, the Inter-American approach highlights how important it is that human rights bodies are prepared to address environmental priorities and concerns that are specific to a particular region. The Inter-American System also advances the development of a renewed approach to interpreting both human rights law and a human rights body's mandate that attempts to be more

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[19] *See The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 43 (Nov. 15, 2017).

[20] *See* discussion *infra* Section IV.C.

[21] *See* discussion *infra* Section IV.D.

[22] *See, e.g.*, U.N. Committee on the Rights of the Child, *Decision Adopted by the Committee Under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Concerning Communication No. 104/2019*, ¶ 10.5, U.N. Doc. CRC/C/88/D/104/2019 (Nov. 11, 2021) (noting that Advisory Opinion OC-23/17 of the Inter-American Court on Human Rights "clarified the scope of extraterritorial jurisdiction in relation to environmental protection").

responsive to evolving human rights needs as seen through the eyes of the rights holders themselves. Striving to expand its ability to protect additional rights may improve a human rights body's legitimacy in the eyes of the general public, but this must be balanced with legitimacy concerns of States, without whose participation the system cannot survive. These lessons may be broadly applicable beyond the Inter-American System.

II. INTERNATIONAL LAW'S HISTORICAL APPROACH: ENVIRONMENTAL CONCERNS AS EMBEDDED WITHIN OTHER WELL-ESTABLISHED HUMAN RIGHTS, RATHER THAN AS STAND-ALONE RIGHTS

A. 1972 Declaration of the U.N. Conference on the Human Environment at Stockholm

The international community first became concerned with protecting the environment in the late 1960s, resulting in the first joint declaration on the topic in 1972.[23] Known as the Stockholm Declaration, this instrument was meant to be aspirational, rather than binding.[24] Participating nations nonetheless saw it as an initial attempt at agreeing on some basic principles to guide their behavior in respect to the pressing matter of the environment.[25]

Though the Stockholm Declaration is usually seen as the beginning of a new era in international environmental law, the discussions amongst national delegates at Stockholm touched upon international human rights law as well.[26] The result was that the international community recognized, in the preamble of this first environmental declaration, that the state of the environment has a direct impact on the fundamental human rights of individuals.[27] More specifically, the Stockholm Declaration placed special emphasis on an individual's right

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[23] *See* U.N. Conference on the Human Environment, *Declaration of the U.N. Conference on the Human Environment and Development*, U.N. Doc. A/CONF.48/14/Rev.1, ch. 1 (June 16, 1972) [hereinafter *Stockholm Declaration*].

[24] *See* Louis B. Sohn, *The Stockholm Declaration on the Human Environment,* 14 HARV. INT'L L.J. 423, 514–15 (1973).

[25] *See* Marc Pallemaerts, *International Environmental Law from Stockholm to Rio: Back to the Future?*, 1 REV. EUR., COMPAR. & INT'L ENV'T L. 254, 254–55 (1992). For further information about the 1972 Stockholm Conference, including a list of the 113 participating nations, see *United Nations Conference on the Human Environment, 5-16 June 1972, Stockholm*, UNITED NATIONS, https://perma.cc/EMF6-SAT9 (last visited Nov. 6, 2024).

[26] Marc Limon, *United Nations Recognition of the Universal Right to a Clean, Healthy and Sustainable Environment: An Eyewitness Account*, 31 REV. EUR., COMPAR. & INT'L ENV'T L. 155, 156 (2022); *see also* Pallemaerts, *supra* note 25, at 255 ("[T]he Stockholm Declaration is generally regarded as the foundation of modern international environmental law.").

[27] *See Stockholm Declaration*, *supra* note 23.

to life, which was understood to encompass not just the ability to stay alive, but to live "a life of dignity and well-being" made possible by an environment of a certain quality.[28] Another innovation of the Stockholm Declaration was its recognition of a "responsibility to protect and improve the environment" not only for the benefit of currently existing individuals, but also for future generations.[29] These themes would later be picked up by human rights bodies as they began to grapple with the human rights implications of environmental harms.

As part of the negotiation process at Stockholm, some national delegations proposed elevating an adequate, wholesome, healthy and safe environment beyond a precondition for the enjoyment of other human rights by recognizing it as a new and distinct human right.[30] However, many other nations, and even some U.N. agencies, were opposed to the idea at the time.[31] Delegates were less concerned with identifying new responsibilities of States toward protecting the rights of individuals, focusing instead on the rights and responsibilities of States themselves vis-à-vis each other.[32] The Stockholm Declaration thus couples an explicit recognition of States' "sovereign right to exploit their own resources pursuant to their own environmental policies" with their responsibility "to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."[33] The instrument affirms the right of States to be free from transboundary environmental harms, but is silent regarding any specific responsibilities of States for environmental harms suffered by their own citizens.[34] Nation-states' decision to focus more heavily on their own sovereign rights was further expressed by their commitment at Stockholm to future cooperation aimed specifically at creating binding legal mechanisms to hold each other liable for transboundary harms.[35]

Inter-State relationships are the primary concern of most of international law, so it is not surprising that national delegates at Stockholm were thinking about the environment from this perspective. For developing States, many of whom had only recently emerged from colonial rule, protecting their sovereignty and independence felt

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[28] *See id.* ch. 1, princ. 1.

[29] *See id.*

[30] *See* Sohn, *supra* note 24, at 451–55 (discussing the divergent views expressed by the parties regarding the statement of principles).

[31] *See id.*

[32] *See, e.g.*, *id.* at 428, 450, 485–93, 504–06 (demonstrating that sovereignty and interests of States was a dominant theme in the discussions leading up to the Stockholm Declaration).

[33] *See Stockholm Declaration*, *supra* note 23, ch. 1, princ. 21.

[34] *See id.; see also* Pallemaerts, *supra* note 25, at 255 (noting the Stockholm Declaration's lack of provisions governing the obligation of States toward individuals).

[35] *See Stockholm Declaration*, *supra* note 23, ch. 1, at princ. 22.

especially important.[36] The Stockholm Declaration thus attempts to strike a balance between safeguarding the environment and upholding States' right to sovereignty, which includes the ability to chart their own course in pursuing greater development and exploiting their own natural resources. Because underdevelopment was generally seen as an important cause of environmental problems in developing countries, States also committed to cooperation around development efforts.[37] The text of the Declaration urges industrialized countries, in particular, to endeavor to "reduce the gap [between] themselves and the developing countries," especially considering that incorporating new environmental safeguards into their development plans could make those plans more costly and further widen the development and economic gap.[38]

B. 1992 U.N. Conference on Environment and Development

More than a decade after Stockholm, cooperation between industrialized and developing countries was at a standstill.[39] The two groups differed so greatly on the appropriate balance between safeguarding the environment and protecting individual States' sovereign right to exploit their own resources for economic development that progress seemed impossible.[40] The U.N.'s solution was to establish, in 1983, an independent World Commission on Environment and Development (WCED), tasked with proposing strategies that would increase cooperation on environmental matters between countries that found themselves at different stages of economic development.[41]

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[36] See PAMELA CHASEK, INT'L INST. FOR SUSTAINABLE DEV., STOCKHOLM AND THE BIRTH OF ENVIRONMENTAL DIPLOMACY 3–4 (2020), https://perma.cc/JN25-9XFW. For a visual representation of when different countries gained independence, see Eric Odenheimer, Countries by Date of Independence (Or, How Old Is Your Country?), E7ODIE (July 21, 2015), https://perma.cc/4767-U8U3.

[37] *See Stockholm Declaration*, *supra* note 23, ¶ 4. While industrialized nations were concerned with curbing environmental degradation and pollution that were resulting from their own unbridled development, developing nations were concerned with protecting their ability to continue growing their economies and bringing their people out of poverty. The general understanding was that the types of environmental problems that developing nations were facing could best be cured with further development efforts. *See* U.N. Conference on the Human Environment, *Development and Environment (Subject Area V)*, annex I, *Annex I: Development and Environment*, ¶¶ 3–5, U.N. Doc. A/CONF.48/10 (Dec. 22, 1971).

[38] *See Stockholm Declaration*, *supra* note 23, ch. 1, ¶ 4. For a discussion of developing countries' concerns about the added costs of incorporating environmental safeguards, see Sohn, *supra* note 24, at 469–71.

[39] *See* World Comm'n on Env't & Dev. (WCED), Development and International Economic Co-Operation: Environment, Annex, *Report of the World Commission on Environment and Development: "Our Common Future"*, U.N. Doc. A/42/427, at 13 (Aug. 4, 1987) [hereinafter Brundtland Report].

[40] *See id.* at 11–13.

[41] *Id.* at 1, 11.

The term "sustainable development" became best known through the work of the WCED.[42] Evoking the Stockholm Declaration's concern for taking into account the rights and interests of future generations, the WCED specifically advocated for the international community to "make development sustainable . . . to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs."[43] Sustainable development was thus meant to provide countries with a concept that could "reconcile economic development with protection of the environment."[44]

The WCED recommended that "[b]uilding on the 1972 Stockholm Declaration," the U.N. "General Assembly commit itself to preparing a universal Declaration and later a Convention on environmental protection and sustainable development."[45] As a result, the U.N. convened the 1992 Rio de Janeiro conference with an "environment and development" theme.[46] No binding treaty or convention was possible, but a new environmental declaration and agenda were agreed upon in Rio.[47]

Had sustainable development not been part of the agenda, however, most developing countries would have refused to participate.[48] They did not oppose protecting the environment.[49] Rather, developing countries continued to feel they must "ensure their urgent development needs were not impeded by a focus on international environmental concerns."[50] Industrialized countries had begun referring to tropical forests and some other select natural resources as common goods of mankind.[51] As a result, developing countries feared that their relationship with resources within their territories would transform from one of

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[42] *See id.* at 54. While most scholars credit the WCED with propagating the term, some trace the use of the concept all the way back to international arbitration occurring in the late 1890s. *See* Philippe Sands, *International Law in the Field of Sustainable Development*, 65 BRIT. Y.B. INT'L L. 303, 306 (1995) ("[I]nherent features of the concept have been an aspect of international legal relations since 1893, when the United States asserted a right to protect Pacific fur seals . . . .").

[43] Brundtland Report, *supra* note 39, at 24.

[44] Gabčíkovo-Nagymaros Project (Hung./Slovk.), Judgment, 1997 I.C.J. 7, ¶ 140 (Sept. 25); *see also* Brundtland Report, *supra* note 39, at 43.

[45] Brundtland Report, *supra* note 39, at 324.

[46] *See* G.A. Res. 44/228 (I), ¶ 1 (Dec. 22, 1989).

[47] *See generally* U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, princ. 2, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), annex I (Aug. 12, 1992) [hereinafter *Rio Declaration on Environment and Development*]; *see also* U.N. Conference on Environment and Development, *Agenda 21*, pmbl., U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), annex II (Aug. 12, 1992) [hereinafter *Agenda 21*].

[48] *See* Ileana M. Porras, *The Rio Declaration: A New Basis for International Co-operation*, 1 REV. EUR., COMPAR. & INT'L ENV'T L. 246 (1992) (explaining that "most developing countries had agreed to participate in an international environmental conference only because the theme of development was to be linked to that of environment").

[49] *Id.* at 251–52.

[50] *Id.* at 246.

[51] *See id.* at 251 (identifying such characterization as "globalising rhetoric").

ownership to one of mere guardianship or trusteeship, where the international community would have some say in how they used their own resources.[52] Industrialized countries had also begun to impose environmentally-minded import regulations.[53] Developing countries perceived these attitudes as a new form of "environmental colonialism," and the resulting declaration of the Rio Conference again reflected a strong emphasis on the independence and sovereignty of States.[54] Developing countries also argued it was unjust to constrain them without recognizing the outsized role that industrialized countries had already played in contributing to the problem of environmental degradation.[55]

Two decades after Stockholm, sovereignty concerns continued to permeate discussions about a new environmental declaration, especially in relationship to development. In fact, as the nations of the world came together in Rio, developing countries insisted that the new instrument reaffirm their "sovereign right to exploit their own resources pursuant to their own environmental and developmental policies" as well as "the responsibility [of all States] to ensure that activities within their jurisdiction or control [would] not cause damage to the environment of other States."[56] Though this particular provision was by then broadly accepted as an established binding norm of international environmental law, developing States' determination to emphasize it demonstrates their preoccupation with their own sovereignty.[57] Initially, this preoccupation with States' rights seemed to have dissuaded States from fully engaging with environmental impacts on the human rights of

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[52] *See id.* at 251.

[53] *See id.* at 246–47.

[54] *See id.* at 247, 251–52 ("Before they can let go of the 'rights' implied by sovereignty, developing countries will have to feel like equal players, able to influence and assent to the rules, rather than the receivers of dictates from stronger players.").

[55] *See id.* at 246, 249–50. This is recognized in Principle 7 of the Rio Declaration, as well as in the U.N. Framework Convention on Climate Change which had been negotiated just before. Both instruments allow for "States [to] have common but differentiated responsibilities" and the Rio Declaration further acknowledges that "developed countries [bear a responsibility] . . . in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command." *Rio Declaration on Environment and Development*, *supra* note 47, princ. 7; *see also* U.N. Framework Convention on Climate Change, art. 4, ¶ 1, May 9, 1992, 1771 U.N.T.S. 107.

[56] *Rio Declaration on Environment and Development*, *supra* note 47, princ. 2.

[57] *See* Porras, *supra* note 48, at 251 ("Although already contained in the major existing international environmental law instruments, and despite the fact that over the past 20 years it had achieved broad acceptance as a norm of international environmental law, the G-77 insisted on its inclusion in the Rio Declaration."). Other scholars indicate that the precursor of this Rio provision, Principle 21 of the Stockholm Declaration, was based on treaty and customary law already established by 1972. *See, e.g.*, ALAN E. BOYLE & CATHERINE REDGWELL, BIRNIE, BOYLE & REDGWELL'S INTERNATIONAL LAW AND THE ENVIRONMENT 51 (4th ed. 2021).

individuals.[58] The potential for taking human rights into account would eventually emerge, however, as the concept of sustainable development began to gain footing.

Countries also disagreed on how to frame the relationship between the environment and the human rights of individuals. Some commentators have argued that the Rio Declaration is regressive in comparison to the Stockholm Declaration in that it fails to explicitly mention human rights at all.[59] The Rio Declaration does nonetheless "entitle[]" human beings "to a healthy and productive life in harmony with nature."[60] In its very first Principle, the Rio Declaration also places "[h]uman beings . . . at the centre of concerns for sustainable development."[61] The anthropocentricity of this provision was highly contentious because it suggested that the environment was at the service of humans, and ultimately subordinate to their development activities.[62] Some industrialized countries, as well as environmental advocates, would have preferred to place human beings in a position of service and care toward the environment.[63] At the time, providing individual humans with a right to a healthy environment was also seen by some countries as less anthropocentric.[64] But developing countries felt strongly that "[t]o provide for an environmental right or admit to an environmental responsibility was to open the door to international interference with their development plans."[65]

C. Other Contributions Reflected in the Final Text of the 1992 Rio Declaration on Environment and Development

Despite criticisms that the Rio Declaration places too much emphasis on economic development to the detriment of the environment and human rights, this instrument nonetheless contributed to the advancement of international environmental law by pushing environmental concerns "from the periphery of international relations to

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[58] *See* Pallemaerts, *supra* note 25, at 259 ("There was an obvious reluctance . . . to accept unambiguously that individuals may be regarded as subject of international environmental law . . . . These governments have obvious reasons to fear the legal implications of the establishment of a direct relationship between international environmental law and the existing international legal mechanisms for the protection of human rights.").

[59] *Id.*

[60] *Rio Declaration on Environment and Development*, *supra* note 47, princ. 1.

[61] *Id.*

[62] Porras, *supra* note 48, at 247; *see also* Pallemaerts, *supra* note 25, at 263 (bemoaning how international environmental law has been subsumed into international economic law, as evidenced by Principle 4 of the Rio Declaration).

[63] Porras, *supra* note 48, at 247; *see also* Pallemaerts, *supra* note 25, at 260–61.

[64] *See* Porras, *supra* note 48, at 247 (highlighting that developed countries opposed placing human beings at the center of environmental and developmental concerns and instead proposed to hold human beings responsible for environmental well-being).

[65] *Id.*

the economic core."[66] The Rio Declaration also made several important contributions to the relationship between human rights and the environment, in addition to the reference to individuals' right to a certain quality of life, as mentioned above.

First, through Principle 10, the Declaration draws on the well-established international human rights norms protecting individuals' rights to information, participation, and access to justice in setting forth procedural obligations for governments designed to democratize environmental decisions and hold governments accountable to individuals.[67] Specifically, governments are required to ensure that individuals "have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities."[68] Principle 17 supports this access by requiring that environmental impact assessments are performed and the necessary information is collected.[69] In addition, Principle 10 ensures that individuals have "the opportunity to participate in decision-making processes."[70] States are to "facilitate and encourage public awareness and participation by making information widely available."[71] Finally, governments are required to create legal frameworks setting environmental standards and providing "[e]ffective access to judicial and administrative proceedings, including redress and remedy" for individuals suffering harm from environmental damage.[72] These procedural or participatory human rights, sometimes referred to as "rights whose exercise supports better environmental policymaking,"[73] have since been codified into two regional treaties: the 1998 United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention),[74] which is legally binding on 47 countries in Europe and

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66 Sands, *supra* note 42, at 324.

67 *See* BOYLE AND REDGWELL, *supra* note 57, at 321–22 (discussing "[t]he role of human rights law in democratizing national decision-making processes," including through the element of public participation in procedural rights, and the significance of Principle 10 of the Rio Declaration).

68 *Rio Declaration on Environment and Development*, *supra* note 47, princ. 10.

69 *Id.* princ. 17.

70 *Id.* princ. 10.

71 *Id.*

72 *Id.* princ. 10, 11.

73 John H. Knox (U.N. Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment), *Preliminary Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, ¶ 17, U.N. Doc. A/HRC/22/43 (Dec. 24, 2012) [hereinafter *Knox: Preliminary Report*].

74 *See* U.N. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, *opened for signature* June 25, 1998, 2161 U.N.T.S. 447.

Central Asia,[75] and the 2018 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement or ECLAC Agreement)[76], which is legally binding on 17 countries in Latin America and the Caribbean.[77] The European Court of Human Rights has also affirmed through its jurisprudence that States have a duty to provide individuals with information about environmental risks[78] and to guarantee their right to "participate in the decision-making process concerning environmental issues,"[79] as has the African Commission on Human Rights, at least with regard to indigenous peoples.[80]

Second, the Rio Declaration contributed to advancing the concept of human "rights whose enjoyment is particularly vulnerable to environmental degradation."[81] In underlining the "essential task of eradicating poverty as an indispensable requirement for sustainable development," the Declaration established the foundation for the sustainable development equation to balance not only environmental concerns and economic development goals, but also an additional social development component focused on improving the quality of individuals' lives.[82] These three components were coined as the three "pillars of sustainable development" much later, at the 2002 World Summit on Sustainable Development in Johannesburg.[83] However, Agenda 21, adopted jointly with the Rio Declaration and outlining extensive actions and goals for governments to undertake in pursuit of sustainable

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[75] For a list of parties to the Aarhaus Convention, see *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, UNITED NATIONS TREATY COLLECTION, https://perma.cc/8VVY-WJJ6 (last updated Feb. 11, 2024).

[76] Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Mar. 4, 2018, 3388 U.N.T.S. C.N.195.2018.

[77] *See Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, ECON. COMM'N FOR LATIN AM. AND THE CARIBBEAN (ECLAC), https://perma.cc/NL4Z-TTFN (last visited Nov. 3, 2024).

[78] *See* Brincat v. Malta, App. Nos. 60908/11, 62110/11, 62129/11, 62312/11, 62338/11, ¶¶ 114–15, Eur. Ct. H. R. (July 24, 2014), https://perma.cc/5Y57-8LNE.

[79] Press Release, Registrar, Eur. Ct. H. R., Chamber Judgment Tătar v. Romania, https://perma.cc/2ZUK-AH37.

[80] Soc. and Econ. Rights Action Ctr. (SERAC) and Ctr. for Econ. and Soc. Rights (CESR) v. Nigeria, No. 155/96, Decision, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶ 53 (Oct. 27, 2001), https://perma.cc/L7SG-GYMZ.

[81] *Knox: Preliminary Report*, *supra* note 73, ¶ 17.

[82] *See Rio Declaration on Environment and Development*, *supra* note 47, princ. 5; *see also* INTERNATIONAL UNION FOR THE PROTECTION OF NATURE (IUCN) ET AL., CARING FOR THE EARTH: A STRATEGY FOR SUSTAINABLE LIVING 211 (1991) (defining sustainable development as "[i]mproving the quality of human life while living within the carrying capacity of supporting ecosystems").

[83] World Summit on Sustainable Development, *Report of the World Summit on Sustainable Development*, Annex to Resolution 1, *Johannesburg Declaration on Sustainable Development*, ¶ 5, U.N. Doc. A/CONF.199/20 (Aug. 26-Sept. 4, 2022).

development—nonetheless specifically emphasized various aspects of the well-being of individuals, such as health, housing, food security and access to employment—all of which were already well-recognized as protected under the category of economic, social, and cultural human rights.[84] What is now commonly referred to as the social development pillar of sustainable development achieved its fullest expression with the adoption of the Sustainable Development Goals (SDGs) in 2015, the majority of which are broadly recognized as having a strong human rights component.[85]

Finally, stemming from the Rio Declaration's proclamation that the "right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations," sustainable development is also understood to take into account equity concerns, both intra-generational and intergenerational.[86] Intra-generational equity focuses on reducing the systemic inequities that subject individuals to conditions of poverty.[87] It does so not only on the national level, but also by calling for States to cooperate internationally "in the essential task of eradicating poverty . . . in order to decrease disparities in standards of living and better meet the needs of the majority of the people of the world."[88] This is evocative of States' responsibility under the International Covenant on Economic, Social and Cultural Rights to "take steps, individually and through international assistance and co-operation," toward the realization of the rights recognized under *that* covenant.[89] Intra-generational equity was seen by Rio delegates as key to achieving intergenerational equity—an idea which, in Stockholm, had centered around ensuring that natural resources are preserved for future generations to be able to sustain themselves.[90] The apprehension of developing nations at Rio that they would be unable to secure equity for both present and future generations without cooperation from industrialized nations was vividly illustrated by a Mozambiquan delegate: "you cannot ask a starving man who needs firewood to warm his young children to spare the mango tree that may one day feed his grandchildren."[91] This struggle to balance the very real needs of their

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[84] *See generally Agenda 21, supra* note 47.

[85] *See* Sumudu Atapattu, *The Paris Agreement and Human Rights: Is Sustainable Development the 'New Human Right'?*, 9 J. HUM. RTS. & ENV'T 68, 80–83 (2018) (discussing sustainable development, social development, and the adoption of SDGs).

[86] *Rio Declaration on Environment and Development*, *supra* note 47, princ. 3.

[87] *See* BOYLE AND REDGWELL, *supra* note 57, at 124.

[88] *Rio Declaration on Environment and Development*, *supra* note 47, princ. 5; *see* BOYLE AND REDGWELL, *supra* note 57, at 122 (discussing how "inter-generational equity is already a part of the fabric of international law").

[89] International Covenant on Economic, Social and Cultural Rights, art. II, Dec. 16, 1966, 993 U.N.T.S. 3.

[90] *See* BOYLE & REDGWELL, *supra* note 57, at 121, 124.

[91] Porras, *supra* note 48, at 248.

current populations with concern about the projected survival of future generations in a rapidly degrading environment continues to be keenly felt in developing countries today.[92]

D. Other Global Attempts to Recognize a Stand-Alone Human Right to a Healthy Environment

The Stockholm and Rio Declarations established some important building blocks that international human rights bodies would later pick up as they began to consider how to apply international human rights law to environmental harms. Yet, the reluctance of nation-states to recognize a stand-alone right to a healthy environment, at least under the auspices of the United Nations, continued for almost another thirty years, until the U.N. Human Rights Council and U.N. General Assembly issued their non-binding resolutions proclaiming the right in 2021 and 2022.[93]

In 1994 and 2009, attempts to present a draft declaration on human rights and the environment for the consideration of all U.N. Member States failed.[94] The 2015 Paris Agreement has been touted as a success in linking environmental concerns to human rights obligations on the global stage,[95] but the only reference to human rights in that treaty is a recognition that "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights."[96] The Paris Agreement does not specifically recognize any new human rights; it uses the weaker term "should" rather than the mandatory "shall;" and "human rights" are only recognized in its preamble, having been removed from the operating provisions.[97] Observers reported that some industrialized countries pushed for removing human rights language from one of the operative provisions in retaliation against developing countries who insisted on language establishing industrialized countries' liability for climate-related loss and damage and an obligation to pay

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[92] See Alpha Sesay, Deputy Minister of Justice, Sierra Leone, Panel 1: Participation of African States in Shaping International Law at the Harvard Law School Human Rights Program Symposium: African Perspectives on International Climate Change Law, YOUTUBE (Mar. 29, 2024), https://perma.cc/MQS4-93Z8 (explaining at a symposium that "for a developing country like Sierra Leone, what we put in climate-related mitigation is actually food out of the mouths of our children").

[93] *See* G.A. Res. 76/300, *supra* note 1, at 2; H.R.C. Res. 48/13, *supra* note 1.

[94] Alan Boyle, *Human Rights and the Environment: Where Next?*, 23 EUR. J. INT'L L. 613, 615 (2012).

[95] Atapattu, *supra* note 85, at 72.

[96] Paris Agreement Regarding the United Nations Framework Convention on Climate Change pmbl., Dec. 12, 2015, T.I.A.S. No. 16-1104 [hereinafter Paris Agreement].

[97] *Id; see* Sam Adelman, *Human Rights in the Paris Agreement: Too Little, Too Late?*, 7 TRANSNAT'L ENV'T L. 17, 26–27 (2018) ("Saudi Arabia, the US and Norway explicitly objected to any reference to human rights in the operative part of the Agreement, and several Member States of the European Union (EU) expressed non-public objections.").

compensation.[98] The final loss and damage language was also watered down in the final document.[99] On the whole, the Paris Agreement continued the trend of national delegates being willing to recognize that environmental concerns can impact human rights, while avoiding taking on any new human rights obligations with respect to the environment.[100] States' preference has been to mention human rights, but continue to articulate environmental issues within a framework that is more focused on States' relationships with each other rather than on their obligations toward individual persons.

Though it was not possible for nations to agree on a stand-alone human right to a healthy environment at a global level, some nations were willing to rally around some version of the idea at a regional level. For example, the African Charter on Human and Peoples' Rights (ACHPR), adopted in 1981, recognizes that "[a]ll peoples shall have the right to a general satisfactory environment favourable to their development."[101] The right, as conceived of in this provision of the ACHPR, is collective[102] rather than individual, and is inextricably linked to the concept of sustainable development.[103] As discussed further below, in 1988 the Organization of American States also adopted a protocol that appended to the American Convention on Human Rights and recognized of a series of economic, social and cultural rights, including "the right to live in a healthy environment."[104] It is notable that developing countries showed openness to recognizing a legally binding obligation to protect an individual's right to an environment of a certain quality within their own regions, but not on the global stage.[105]

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98 John Vidal & Adam Vaughan, *Climate Talks: Anger Over Removal of Human Rights Reference from Final Draft*, GUARDIAN (Dec. 11, 2015), https://perma.cc/4UC8-34XA.

99 *See* Adelman, *supra* note 97, at 28–29 (explaining the demands of developing countries, which "[did] not foresee an outcome in Paris without Loss and Damage" (quoting Pa Ousman Jarju, chair of the Least Developed Countries group of 48 nations)).

100 *See id.* at 27 ("The single reference to human rights does little to facilitate the justiciability of human rights or to put them at the core of the UNFCCC.").

101 African Charter on Human and Peoples' Rights art. 24, June 27, 1981, 1520 U.N.T.S. 217.

102 *See* Elinor Buys & Bridget Lewis, *Environmental Protection through European and African Human Rights Frameworks*, 26 INT'L J. HUM. RTS. 949, 960 (2022) (explaining that "This provision is a collective 'peoples" right with important economic, social and cultural connotations, particularly for communities who directly rely on the environment and natural resources for their physical and economic security.").

103 Elsabé Boshoff, *Rethinking the Premises Underlying the Right to Development in African Human Rights Jurisprudence*, 31 REV. EUR., COMPAR. & INT'L ENV'T L. 27, 29 (2022).

104 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights art. 11, Nov. 17, 1988, O.A.S.T.S. No. 69 [hereinafter Protocol of San Salvador].

105 *See* Limon, *supra* note 26, at 156 ("[M]any States had adopted notably progressive positions on human rights and the environment at the national level . . . . Yet at the international level, . . . those same States would generally reject the notion that environmental harm had implications for fundamental rights . . . .").

One possible explanation might be that developing countries feel more comfortable making certain commitments amongst regional peers, where there may be fewer power imbalances to negotiate around, and where it may be easier to achieve consensus as to the meaning and underlying objectives of those commitments.

Conversely, while some industrialized nations at least initially pushed for the recognition of a stand-alone right at the U.N. via non-binding declarations, they were unable to achieve such recognition within their own regions in any way that was legally binding. For example, attempts were made in 1970,[106] 1978,[107] 2005[108] and 2010[109] to add a protocol to the European Convention on Human Rights recognizing some kind of human right to the environment, but each effort failed. In contrast with the African region's embrace of an environmental right that was collective in nature, Europeans felt that a right to a healthy environment would not fit well with their highly individualistic human rights system because environmental problems so often affect whole classes of persons rather than particular individuals.[110]

As is evident from the record of discussions around the Paris Agreement, industrialized countries have been more divided in recent years as to whether to emphasize a connection between international environmental law and international human rights law.[111]

E. U.N. Treaty Bodies Recognizing Environmental Concerns as Embedded Within Other Well-Established Human Rights, Rather Than as Stand-Alone Rights

Despite States' generalized reluctance to proclaim a stand-alone right to a healthy environment on a global scale, U.N. human rights bodies have increasingly been willing to recognize environmental concerns as integral to an individual's ability to enjoy other well-established rights. Some experts refer to this development as the "greening" of human rights.[112]

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106 W. PAUL GORMLEY, HUMAN RIGHTS AND ENVIRONMENT: THE NEED FOR INTERNATIONAL CO-OPERATION 77 (1976).

107 F.G. Jacobs, *The Extension of the European Convention on Human Rights to Include Economic, Social and Cultural Rights*, 3 HUM. RTS. REV. 166, 176–77 (1978).

108 BOYLE & REDGWELL, *supra* note 57, at 290.

109 *Id.* at 290 n.47.

110 Jacobs, *supra* note 107, at 177.

111 *See Human Rights in Climate Pact Under Fire*, HUM. RTS. WATCH (Dec. 7, 2015), https://perma.cc/9K8Z-4ZTS ("Norway, Saudi Arabia and the United States have been criticized . . . for seeking to eliminate key references to rights in the document."); *see also* Adelman, *supra* note 97, at 27 ("[S]ome writers have argued that it is important that the temperature targets . . . were not muddied by the inclusion of human rights obligations.").

112 *See, e.g.*, John H. Knox (Special Rapporteur on Human Rights and the Environment), *Report of the Special Rapporteur on the Issue of Human Rights Obligations*

The U.N. Human Rights Committee was the first treaty body to interpret environmental considerations into one of the U.N. human rights treaties despite the treaty's silence on environmental matters.[113] Specifically, in a 2018 general comment, the Human Rights Committee expressed a broad understanding of individuals' right to life under the International Covenant on Civil and Political Rights (ICCPR) that went beyond the right to be "free from acts and omissions that are intended or may be expected to cause [a person's] unnatural or premature death" to also include that person's ability to "enjoy a life with dignity."[114] According to the Human Rights Committee, States' "duty to protect life [under the ICCPR] . . . implies that [they] should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity . . . [including] degradation of the environment."[115] This interpretation of the scope and meaning of the right to life was at least partly inspired by the "*vida digna*" ("dignified existence" or "life of dignity") jurisprudence of the Inter-American Court, discussed in Part III, below.[116]

Other U.N. treaty bodies, such as the Committee on the Elimination of Discrimination Against Women (CEDAW) and the Committee on Economic, Social and Cultural Rights (CESCR), have followed a similar approach, focusing predominantly on the impact of environmental degradation on other human rights recognized within

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Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, ¶ 12, U.N. Doc. A/HRC/37/59 (Jan. 24, 2018); *see* Hélène Tigroudja, *From the "Green Turn" to the Recognition of an Autonomous Right to a Healthy Environment: Achievements and Challenges in the Practice of UN Treaty Bodies*, 117 AJIL UNBOUND 179 (2023) (Hélene Tigroudja, former member of the UN Human Rights Committee, deeming it a "green turn").

113 U.N. Int'l Covenant on Civ. and Pol. Rts., Hum. Rts. Comm., *General Comment No. 36, Article 6: Right to Life*, ¶ 3, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019) [hereinafter Hum. Rts. Comm., *General Comment No. 36*].

114 *Id.*

115 *Id.* ¶ 26; *see also* Hum. Rts. Comm., *Views Adopted by the Committee Under Article 5 (4) of the Optional Protocol, Concerning Communication No. 2728/2016, (Teitiota v. New Zealand)*, ¶ 9.4, U.N. Doc. CCPR/C/127/D/2728/2016 (Sep. 23, 2020) [hereinafter Teitiota v. New Zealand] (recalling the Human Rights Committee's statements regarding the right to life and its applicable scope).

116 *See, e.g.,* U.N. Hum. Rts. Comm., *General Comment No. 36*, *supra* note 113, ¶ 23, fn. 74 (citing to the Inter-American Court's decision in Yakye Axa Indigenous Cmtv. v. Paraguay, Inter-Am. Ct. H.R. (ser. C) No. 125); Teitiota v. New Zealand, *supra* note 115, ¶ 9.5 ("[R]egional human rights tribunals have established that environmental degradation can compromise effective enjoyment of the right to life . . .." (citing in fn. 22 to the Inter-American Court's Advisory Opinion OC-23/17)). In a similar way, the European Court of Human Rights embeds environmental concerns within the scope of individuals' right to respect for private and family life. *See., e.g.,* Giacomelli v. Italy, App. No. 59909/00, ¶¶ 77–78 (Nov. 2, 2006), https://perma.cc/9T84-3BWF; Fadeyeva v. Russia, App. No. 55723/00, ¶¶ 66–69 (June 9, 2005), https://perma.cc/VY5W-KDF4; Taşkın and Others v. Turkey, App. No. 46117/99, ¶¶ 112–13 (Nov. 10, 2004), https://perma.cc/K38T-7LCW.

each of the treaties under their purview.[117] The U.N. Committee on the Rights of the Child (CRC), whose treaty includes specific language requiring countries to take "into consideration the dangers and risks of environmental pollution" in the context of protecting a child's right to health, also began talking about a healthy environment as a "human right itself," independent from other rights, although not until May 2023, several years after the Inter-American Court of Human Rights did so.[118]

III. THE INTER-AMERICAN HUMAN RIGHTS SYSTEM'S UNDERSTANDING OF THE RIGHT TO A HEALTHY ENVIRONMENT HAS EVOLVED FROM VIEWING IT AS A DEPENDENT RIGHT TO VIEWING IT AS A STAND-ALONE RIGHT.

The Inter-American system of human rights exists under the auspices of the Organization of American States (OAS) and has two human rights bodies, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.[119] The Commission is able to examine allegations of human rights violations against any Member State of the OAS under the American Declaration on the Rights and Duties of Man, as well as the American Convention on Human Rights.[120] The Court derives its power from the American Convention on Human Rights and is able to hear contentious cases filed by victims against one of the twenty Latin American and Caribbean States who are parties to the Convention and who have also accepted the Court's jurisdiction.[121] The Court most commonly receives its cases on referral from the Commission.[122] The Court also has advisory jurisdiction.[123]

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[117] *See, e.g.,* Comm. on Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 37 (2018) on the Gender-related Dimensions of Disaster Risk Reduction in the Context of Climate Change*, ¶¶ 2–8, U.N. Doc. CEDAW/C/GC/37 (Mar. 13, 2018); Comm. on Econ., Soc. & Cultural Rts. (CESCR), *General Comment No. 26 (2022) on Land and Economic, Social and Cultural Rights*, ¶¶ 1–4, U.N. Doc. E/C.12/GC/26 (Sept. 26–Oct. 12, 2022) (mentioning the right to a clean, healthy and sustainable environment in passing, but predominantly focusing on the role that land plays in the realization of other longer-established economic, social, and cultural rights).

[118] Comm. on the Rts. of the Child (CRC), General Comment No. 26 (2023) on Children's Rights and the Environment, with a Special Focus on Climate Change, ¶¶ 8–9, U.N. Doc. CRC/C/GC/26 (May 8–26, 2023).

[119] LISA J. REINSBERG, ADVOCACY BEFORE THE INTER-AMERICAN SYSTEM: A MANUAL FOR ATTORNEYS AND ADVOCATES 5 (2d ed. 2014).

[120] *See id.* at 7.

[121] *See id.* at 8. Twenty-three States are currently parties to the Convention (Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, and Uruguay). All but 3 of those States (Dominica, Grenada, and Jamaica) have accepted the contentious jurisdiction of the Court. *See What Is the I/A Court H.R.?,* INTER-AM. CT. HUM. RTS., https://perma.cc/Q5RY-HUFA.

[122] *See* Víctor Rodríguez Rescia, Inst. Interamericano de Derechos Humanos, Las sentencias de la Corte Interamericana de Derechos Humanos: guía modelo para su lectura y análisis 19 (2009), https://perma.cc/GK3Z-9B73.

The American Convention on Human Rights mainly focuses on civil and political rights.[124] This Convention also contains a provision that calls on States parties to "undertake to adopt measures . . . with a view to achieving progressively . . . the full realization of . . . economic, social, educational, scientific and cultural standards," but the provision does not explicitly recognize any specific economic, social and cultural rights.[125] Seventeen of the twenty-three States parties to the Convention are also parties to the Protocol of San Salvador, which attaches to the Convention a list of specific recognized economic, social and cultural rights.[126] One of the rights that the Protocol recognizes is the right of every person to "live in a healthy environment and to have access to basic public services."[127] However, the Protocol only explicitly gives jurisdiction to the Inter-American Court to hear individual claims for violations of the right to education and the right to unionize.[128] Until recently the practice of the Inter-American Court was therefore to examine possible violations of economic, social and cultural rights as secondary to or embedded within civil and political rights that were enumerated within the provisions of the Convention, such as the right to life, the right to physical integrity, or the right to judicial protection.[129]

More than thirty years after the Stockholm Declaration drew a connection between the environment and an individual's right to life, the Inter-American Court thus began to incorporate environmental concerns into its decisions as factors that could infringe upon the right to life.[130] By the early 2000s the Court had adopted a broad understanding of the right to life under article 4 of the American

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123 *See id.* at 8.

124 *See generally* American Convention on Human Rights: "Pact of San José, Costa Rica," Nov. 22, 1969, 1144 U.N.T.S. 123 [hereinafter American Convention on Human Rights].

125 *Id.* art. 26.

126 *See Signatories and Ratifications: A-52: Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights "Protocol of San Salvador,"* DEP'T OF INT'L L., ORG. OF AM. STATES, https://perma.cc/A5DS-T8Y6.

127 Protocol of San Salvador, *supra* note 104, art. 11, ¶ 1.

128 *See id.*, art. 19, ¶ 6 (noting that any violation of the rights established in article 8 (Trade Union Rights) or article 13 (Right to Education) may give rise to individual petitions under the American Convention on Human Rights).

129 *See, e.g.*, Suárez Peralta v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 261, ¶ 134 (May 21, 2013) (physical integrity); Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶¶ 157–178 (Jun. 17, 2005) (life); Sawhoyamaxa Indigenous Cmty. v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶¶ 74–112 (Mar. 29, 2006) (judicial protection).

130 *See* Yakye Axa Indigenous Cmtv. v. Paraguay, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 167 ("[D]etriment to the right to health, and…detriment to the right to food and access to clean water, have a major impact on the right to a decent existence and basic conditions to exercise other human rights.").

Convention which encompassed much more than an individual's freedom not to be "deprived of his life arbitrarily," including also the right to have the State take positive measures on his behalf to guarantee the conditions needed for "a dignified existence," a "life of dignity," or "*vida digna*".[131] Ironically, given that this jurisprudence developed so long after the Stockholm Declaration's proclamation on behalf of a life of dignity, this approach was seen as a somewhat bold expansion of the understanding of the right to life.[132]

In 2005, the Inter-American Court weighed environmental concerns for the first time as part of its analysis of a violation of the right to a life of dignity.[133] The case involved an indigenous community in Paraguay who had been living on the shoulder of a highway for almost a decade, under very precarious conditions, while fighting to regain access to their ancestral lands.[134] The Court made clear in this and in subsequent cases involving indigenous peoples that States had a responsibility to protect communities from interference with their ability to lead a life of dignity posed by poor environmental conditions and lack of access to natural resources essential to a community's subsistence.[135] Taking into account the particularly close cultural relationship that indigenous peoples have with their lands, the Court in a 2012 case highlighted how "lack of access to their territories" and "natural resources" could not only negatively impact their physical livelihood, but could also jeopardize their survival as distinct peoples.[136]

As part of this same line of cases, in 2007 the Court also began requiring States to perform or require environmental and social impact assessments prior to authorizing any development or conservation projects that might affect indigenous peoples' use of and access to their traditional lands.[137] These assessments were meant to complement

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[131] *See* "Street Children" (Villagrán-Morales) v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 144 (Nov. 19, 1999).

[132] For example, The U.N. Human Rights Committee did not adopt this broader understanding of the right to life under the International Covenant on Civil and Political Rights until 2018. *See* Hum. Rts. Comm., *General Comment No. 36, supra* note 114, ¶¶ 3, 26, 62.

[133] *See generally* Yakye Axa Indigenous Cmtv. v. Paraguay, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶¶162–68.

[134] *Id.* ¶¶ 50.92–50.96.

[135] *Id.* ¶ 167*; see also* Sawhoyamaxa Indigenous Cmty. v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶¶ 164, 166 (Mar. 29, 2006).

[136] Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 147 (June 27, 2012) (recognizing the particularly close relationship between indigenous peoples and their lands and how "lack of access to their territories may prevent indigenous communities from using and enjoying the natural resources necessary to ensure their survival," which could "jeopardiz[e] . . . their way of life, customs and language").

[137] *See, e.g.,* Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶¶ 129, 155, 194(e) (Nov. 28, 2007); Kaliña and Lokono Peoples v. Suriname, Merits, Reparations and Costs,

States' already established obligation under international law to meaningfully consult with indigenous peoples prior to putting in place any measures that might affect them.[138] Indigenous communities were to be given the opportunity and the information necessary to participate in and benefit from any decisions regarding the natural resources on their lands.[139] Additionally, the Court emphasized the compatibility and complementarity between protecting indigenous peoples' rights and safeguarding the environment, based on an understanding of the environment as having a socio-cultural dimension as well as a biological one.[140]

In 2017, the Inter-American Court's jurisprudence progressed in two other important respects. In the *Lagos del Campo v. Peru*[141] decision in August of that year, a majority of the Court agreed on applying an "evolutive interpretation" to the direct justiciability of economic, social and cultural rights under the American Convention, asserting that "the broad terms in which the Convention was drafted signify that the Court exercises full jurisdiction over all its articles and provisions," including article 26.[142] The Court then explained that, though article 26 does not enumerate specific economic, social and cultural rights, its "wording indicates that these are right [sic] derived from the economic, social, educational, scientific, and cultural standards set forth in the OAS Charter," which have long been read in conjunction with the rights enumerated in the American Declaration of the Rights and Duties of Man.[143] The Court's underlying premise for looking at all three instruments together was that "norms must be interpreted as part of a whole, the meaning . . . of which must be established based on the legal system to which they belong" (in this case the Inter-American System) and "tak[ing] into account" the various related agreements and

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Judgment, Inter-Am Ct. H.R., (ser. C) No. 309, ¶ 215 (Nov. 25, 2015); Kichwa Indigenous People of Sarayaku v. Ecuador, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶¶ 204-07.

138 *See* Saramaka People v. Suriname, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶¶ 133–37 (explaining the "[r]ight to consultation, and where applicable, a duty to obtain consent").

139 *See id.* ¶ 129 (laying out "[s]afeguards against restrictions on the right to property that deny the survival of the Saramaka people," including ensuring effective participation, guarantee of a reasonable benefit from projects on their land, and no concession until the completion of an environmental and social impact assessment).

140 *See* Kaliña and Lokono Peoples v. Suriname, Inter-Am Ct. H.R., (ser. C) No. 309, ¶ 173.

141 Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 340 (Aug. 31, 2017).

142 *Id.* ¶ 142.

143 *Id.* ¶¶ 143–144 (citing Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, Inter-Am. Ct. H.R. (ser. A) No. 10, ¶ 43 (July 14, 1989)). It is perhaps worth noting that the American Declaration includes economic, social and cultural rights as well as civil and political rights. American Convention on Human Rights, *supra* note 125, art. 26.

instruments within that system.[144] In subsequent decisions relating to economic, social and cultural rights, the Court has also included the Protocol of San Salvador within this system analysis, even with regard to rights over which the Protocol does not explicitly give the Court jurisdiction.[145]

To bolster its claim of authority to directly enforce economic, social and cultural rights by drawing from other instruments within the Inter-American System, the Court has looked to article 29 of the American Convention itself, which "expressly establishes that 'no provision of this Convention shall be interpreted as: [. . .] (d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature have.'"[146] Article 29(b) further cautions that "[n]o provision of the Convention shall be interpreted as . . . [r]estricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party."[147] Accordingly, the Court has also pointed to the explicit enumeration of economic, social, and cultural rights in domestic laws and constitutions of most of the Member States of the OAS and in the *corpus juris* of international human rights law more broadly.[148]

Notably, since the 2017 decision to expand the Court's jurisdiction over economic, social, and cultural rights under article 26 of the Convention, a minority of judges on the Court have consistently maintained their opposition to this approach, even after the Court's composition changed in 2022.[149] The dissenting judges have clarified

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144 Cuscul Pivaral v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 359, ¶ 82 (Aug. 23, 2018).

145 *See, e.g.*, *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 56 (Nov. 15, 2017). As mentioned previously, the Protocol of San Salvador only explicitly gives jurisdiction to the Inter-American Court to hear individual claims for violations of two rights: the right to education and the right to unionize. *See* Protocol of San Salvador, *supra* note 104, art. 19, ¶ 6.

146 Lagos del Campo v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 340, ¶ 144 (quoting American Convention on Human Rights, *supra* note 125, art. 29(d)).

147 American Convention on Human Rights, *supra* note 125, art. 29(b).

148 *See* Lagos del Campo v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 340, ¶¶ 145–46. For further discussion on the Inter-American Court's method of incorporating the *corpus juris* of international law into its decisions, see ALEJANDRO FUENTES, RAOUL WALLENBERG INST. HUM. RTS. & HUMANITARIAN L., RESEARCH BRIEF: SYSTEMIC INTERPRETATION OF INTERNATIONAL HUMAN RIGHTS LAW IN THE JURISPRUDENCE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS 6–7 (2019), https://perma.cc/CUR2-ZY3N; and Guevara Díaz v. Costa Rica, Merits, Reparations and Costs, Judgement, Concurring Opinion of Judge Rodrigo Mudrovitsch, Inter-Am. Ct. H.R. (ser. C) No. 453, ¶ 21 (June 22, 2022).

149 *See, e.g.*, Lagos del Campo v. Peru, Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 340, at ¶¶ 1, 4, 6–12; Casa Nina v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 419, ¶ 5 (Nov. 24, 2020); Guevara Díaz v. Costa Rica, Merits, Reparations and Costs, Judgment, Concurring and Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct.

that their disagreement has nothing to do with whether economic, social, and cultural rights exist nor whether States should work toward achieving them, in accordance with article 26.[150] They disagree, rather, about whether the Court has jurisdiction to rule on violations of these rights.[151] Their position is that the American Convention gives the Court the power to rule on violations of rights protected by the Convention, which would not include article 26, as it promotes rights protected outside of the Convention (in the OAS Charter).[152] They also assert that it was clearly the intent of States Parties to the Protocol of San Salvador to limit the Court's jurisdiction only to claims regarding the right to education and the right to unionize.[153] As Judge Eduardo Vio Grossi put it in his *Lagos del Campo* dissent, "the work of the Court is to interpret . . . the meaning and scope of [the] provisions" established in the Convention.[154] He went on to explain that he was not "seek[ing], under any circumstance, to weaken or restrict the effectiveness of human rights, but rather . . . [to] respond to the certainty that real respect for human rights is achieved if the States Parties to the Convention are required to comply with what they freely and sovereignly accepted."[155] Judge Grossi believed that the Court's jurisdiction over new or additional rights could only be expanded by the express consent of States via an additional protocol to the Convention.[156]

A few months after the *Lagos del Campo* decision in November of 2017, the Court's jurisprudence evolved a step further when it issued Advisory Opinion OC-23/17.[157] The opinion came in response to a request from Colombia for the Court to clarify the scope of States' obligations to "prevent environmental damage that could limit the effective enjoyment of the rights to life and personal integrity" under international environmental law and the American Convention on

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H.R. (ser. C) No. 453, ¶¶ 2–3 (June 22, 2022); Valencia Campos v. Bolivia, Preliminary Objection, Merits, Reparations and Costs, Judgement, Concurring and Partially Dissenting Opinion of Judge Patricia Perez Goldberg, Inter-Am. Ct. H.R. (ser. C) No. 469, ¶ 42 (Oct. 18, 2022); Aguinaga Aillón v. Ecuador, Merits, Reparations and Costs, Judgment, Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 483, ¶ 2–3 (Jan. 30, 2023).

150 *See* Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 340, at 3, 6 (Aug. 31, 2017).

151 Lagos del Campo v. Peru, Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 340, at 2 ("[I]t is not incumbent on the court to promote human rights.").

152 *Id.* at 9.

153 *Id.* at 8.

154 *Id.* at 2.

155 *Id.* at 3.

156 *Id.* at 11.

157 *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23 (Nov. 15, 2017).

Human Rights.[158] The "general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control" had been well-established in international environmental law for three quarters of a century.[159] The rights and obligations of States vis-à-vis each other were also fairly clear in regard to transboundary harm.[160] What was less clear was whether, under international human rights law, a State also owed legal obligations to individuals who had suffered the effects of transboundary harm outside of that State's territory.

The first noteworthy aspect of the advisory opinion was how the Inter-American Court resolved the questions of human rights jurisdiction. Together with other international tribunals, the Inter-American Court had already established that a State could be held responsible for violations of human rights that are perpetrated against individuals outside of that State's territory but under the asserted authority or effective control of that State.[161] In this advisory opinion the Court expanded the notion of extraterritorial violations of human rights treaties.[162] Rather than simply holding States responsible when they violate a person's rights while asserting authority or effective control over that victim outside of their territories, the Court would now hold States responsible for the downstream human rights effects of activities occurring within their territories, even absent effective control of the victim.[163]

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158 *Id.* ¶ 3.

159 Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶ 29 (July 8); *see also* Corfu Channel Case (U.K. v. Alb.), Judgment 1949 I.C.J. 4, 22 (Apr. 9) ("Such obligations are based . . . on certain general and well-recognized principles," including "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States."); Trail Smelter (U.S./Can.), 3 R.I.A.A. 1905, 1965 (1938) ("[U]nder the principles of international law . . . no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another [State].").

160 *See, e.g.,* Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.) and Construction of a Road in Costa Rica along the San Juan River (Nicar. v. Costa Rica), Judgment 2015 I.C.J. 665, ¶ 104 (Dec. 16) (detailing "requirement[s] under general international law" of practicing due diligence, carrying out environmental impact assessments, and "notify[ing] and consult[ing] in good faith with the potentially affected State.").

161 *See The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 73 (Nov. 15, 2017); *see also* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶ 111 (July 9) ("[T]he [International Court of Justice] considers that the International Covenant on Civil and Political Rights is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory.").

162 *See The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶¶ 82, 102–04 (Nov. 15, 2017) ("T]he exercise of jurisdiction by a State under . . . the Convention may encompass extraterritorial conduct . . . .").

163 *See id.*, ¶¶ 102–04 (explaining that "States may be held responsible for any significant damage caused to persons outside their borders by *activities* originating in their territory or under their effective control or authority." (emphasis added)).

Second, this opinion is the first effort by an international human rights body to perform a systemic analysis of ways that international environmental law could interact with human rights law.[164] Part IV of this Article will examine more closely how the Inter-American Court understands the interaction between these two areas of law.

Third, the majority's decision to recognize for the first time a right to a healthy environment as a stand-alone or "autonomous" right "included among the economic, social and cultural rights protected by Article 26 of the American Convention" broke new ground.[165] Despite two judges dissenting to this part of the opinion[166], the majority of judges sent a strong signal to member States in the region: the Court would assume jurisdiction over claims of possible violations of this new right to a healthy environment, regardless of whether victims could establish that any other human rights listed in the Convention had been violated.[167]

Advisory opinions are normally considered authoritative but non-binding.[168] Contentious jurisdiction would therefore be needed to solidify the Inter-American Court's jurisprudence on the topic. Given that the advisory opinion was solely focused on the ramifications of transboundary harm, the Court would also require additional opportunities to flesh out States' obligations with regard to the right to a healthy environment of individuals within their own territories.

In 2020, the Inter-American Court issued its first decision finding a violation of the right to a healthy environment in the contentious case of *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*.[169] However, the discussion of this right was relatively brief

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164 Monica Feria-Tinta & Simon Milnes, *The Rise of Environmental Law in International Dispute Resolution: Inter-American Court of Human Rights Issues Landmark Advisory Opinion on Environment and Human Rights*, EJIL:Talk! (Feb. 26, 2018), https://perma.cc/3RKY-2JCN (describing the Court's "first pronouncement on State obligations regarding environmental protection" as "the first ruling ever by an international human rights court that truly examines environmental law as a systemic whole, as distinct from isolated examples of environmental harm analogous to private law nuisance claims").

165 *See The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶¶ 57, 59, 62–64 (Nov. 15, 2017) (characterizing the right to a healthy environment "as an autonomous right [that] differs . . . from the protection of other rights, such as the right to life or . . . personal integrity").

166 *See* Concurring Opinion of Judge Eduardo Vio Grossi, *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶¶ 3–5 (Nov. 15, 2017); Concurring Opinion of Judge Humberto Antonio Sierra Porto, *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶¶ 3–8 (Nov. 15, 2017).

167 *Id.* ¶¶ 101–04.

168 See JO M. PASQUALUCCI, THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS 37 (2d ed. 2013).

169 *See* Indigenous Cmtys. of the Lhaka Honhat (Our Land) Ass'n. v. Argentina, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 400, ¶¶ 201–03 (Feb. 6, 2020).

and added little detail regarding State obligations to protect the right, perhaps because the Court's jurisprudence on land, natural resources, and cultural rights of indigenous peoples was already so robust.[170] The Court nonetheless made a point in the *Lhaka Honhat* decision to address the right to a healthy environment separately from other implicated rights; to emphasize Argentina's obligation to protect the right under its own domestic laws; and to anchor the right within a broader regional practice of protecting the right through domestic laws.[171]

This last strategy—grounding the right to a healthy environment within the domestic legal systems of States—could prove pivotal to the long-term survival of this line of jurisprudence, even despite the ongoing disagreement between members of the Inter-American Court's bench. The Court's approach could help to establish that States already consider themselves to be bound by a norm safeguarding an individual's right to a healthy environment. In other words, grounding a rule in a common practice amongst Inter-American States of recognizing a right to a healthy environment in their domestic law, especially if the scope and meaning of the right is shared, might help to indicate that a customary norm already exists within the region and that the Court's jurisprudence is simply evolving in tandem. The right to a healthy environment is in fact already explicitly protected by the constitutions of at least eighteen of the twenty-three States Parties to the American Convention.[172]

The judgment in *Inhabitants of La Oroya v. Peru*, released on March 22, 2024, and described in detail in the following Part, is the Court's first attempt to address environmental harms suffered in a non-indigenous community.[173] In this case the Court provides a much fuller picture of how it understands the human rights obligations of States with regard to the environment, as well as how the negative

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[170] *See generally id.* ¶¶ 200–03; *c.f. id.* ¶¶ 92–98 (discussing right to indigenous cultural property, including land and natural resources). For an overview of the Inter-American Court's jurisprudence on land, natural resources and cultural rights of indigenous peoples, *see also supra* notes 133–140 and accompanying text.

[171] Indigenous Cmtys. of the Lhaka Honhat (Our Land) Ass'n. v. Argentina, Inter-Am. Ct. H.R. (ser. C) No. 400, ¶ 203–07.

[172] *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 58, n.88 (Nov. 15, 2017) (listing sixteen countries in the Americas). The U.N. Special Rapporteur has identified two additional countries whose constitution implicitly recognize a right to a healthy environment, and one more that does so explicitly. *See* David R. Boyd, *Catalyst for Change: Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment*, *in* THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT 17, 17–18, 24 (John H. Knox & Ramin Pejan eds., 2018).

[173] *See* Thalia Viveros-Uehara, La Oroya *and Inter-American Innovations on the Right to a Healthy Environment*, VERFASSUNGSBLOG (May 16, 2024), https://perma.cc/GQD6-PZ98; David Boyd, *Landmark Court Decision on Right to a Healthy Environment: La Oroya v Peru*, GLOB. NETWORK FOR HUM. RTS. & THE ENV'T (Mar. 24, 2024), https://perma.cc/F6YQ-WUB3.

environmental impacts of privately owned businesses fit into the human rights framework.

IV. IN ITS 2024 DECISION IN *INHABITANTS OF LA OROYA V. PERU*, THE INTER-AMERICAN COURT OF HUMAN RIGHTS CLARIFIES THE SCOPE AND MEANING OF THE RIGHT TO A HEALTHY ENVIRONMENT, INCLUDING STATES' OBLIGATIONS TO RESPECT AND GUARANTEE THAT RIGHT.

A. Basic Facts of the Case

The *Inhabitants of La Oroya v. Peru* case presented the Inter-American Court with a first opportunity to analyze the right to a healthy environment in a contentious case involving industrial pollution.[174] The case involved eighty residents of a small town in the Andean highlands of Peru who claimed the Peruvian government was responsible for violations of their rights to a healthy environment, health, life, personal integrity, information and political participation, as well as violations of the rights of the child.[175] Though the Court has determined that Peru had violated all of these rights,[176] this Part will mainly focus on the contours of the right to a healthy environment as described in the decision.

The facts presented before the Court were devastating. A metallurgical complex, first run by the Peruvian government and later by a private U.S.-owned company, had for decades been spewing enough lead, arsenic, sulfur oxides and cadmium into La Oroya's air to earn the town a reputation of being one of the ten most polluted places on earth in 2006.[177] Several months before the Court heard the case in 2022, the U.N. Special Rapporteur on Human Rights and the Environment identified La Oroya as a "sacrifice zone," a Cold War term originally used for places rendered uninhabitable by nuclear testing, used today to designate "a place where residents suffer devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and heavily contaminated areas."[178]

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174 Boyd, *supra* note 173.

175 *See Inhabitants of La Oroya* Press Release, *supra* note 12.

176 *See* Inhabitants of La Oroya v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 511, Operative Paras. ¶¶ 5–10 (Nov. 27, 2023).

177 In 2006, Blacksmith Institute (now known as Pure Earth) included La Oroya on its list of the top ten most polluted sites in the world. BLACKSMITH INST., *supra* note 15. However, extreme levels of pollution existed long before. *See* Arrieta and Guillen, *supra* note 15,.

178 Special Rapporteur on Human Rights and the Environment, *The Right to a Clean, Healthy and Sustainable Environment: Non-Toxic Environment*, *supra* note 16, ¶ 26–27, 40.

Residents had suffered a variety of serious health effects as a direct result of the high levels of particulate matter in the air, water and soil of their community.[179] Studies conducted in 1999 by the Peruvian government and in 2001 by the mining and metallurgical company itself both showed that the blood lead levels in children under the age of ten were on average three times higher than the limit recommended by the World Health Organization (WHO) at the time.[180] A 2005 study found these elevated blood lead levels in 99.9% of almost 800 children tested.[181]

Both children and adults presented with elevated levels of arsenic and cadmium in their systems, as well as cognitive and neurological effects, and respiratory, cardiac, gastro-intestinal, renal and skin problems.[182] At least four generations have already suffered these types of health impacts, and other serious health effects can reasonably be expected to continue emerging in the coming years or even decades.[183] The alleged victims in the case claimed that the government of Peru failed to comply with its responsibility to regulate and supervise the activities of the smelting operation in their town and to ensure that

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179 Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 158, 174.

180 *Id.* ¶ 191 (noting that the WHO threshold for lead toxicity at the time was 10 µg/dL). Current WHO guidance indicates that "[t]here is no known safe blood lead concentration; even blood lead concentrations as low as 3.5 µg/dL may be associated with decreased intelligence in children, behavioural difficulties and learning problems." *Lead Poisoning*, WORLD HEALTH ORG. (Sept. 27, 2024), https://perma.cc/GE57-YQFY.

181 La Oroya Cmty. v. Peru, Case 12.718, Inter-Am. Comm'n H.R., Report No. 330/20, OEA/Ser.L./V/II, doc. 348 ¶ 59 (2020).

182 *Id.* ¶ 7.

183 *See* Inter-American Court of Human Rights, *Public Hearing in the Case of La Oroya. v. Perú. Part 3*, YOUTUBE at 3:20:45 (Oct. 13, 2022), https://perma.cc/5UH8-MBWK (closing arguments of the victim's representatives); Nicholas Rees & Richard Fuller, U.N. Child's. Fund [UNICEF] & Pure Earth, *The Toxic Truth: Children's Exposure to Lead Pollution Undermines a Generation of Future Potential*, at 1–2 (2d ed. 2020) (highlighting the well-established threat—both immediate and latent—that lead and other heavy metals like arsenic and cadmium can pose to human health, sometimes "wreak[ing] havoc silently and insidiously" on multiple body systems, unnoticed for years or even decades). For additional discussion regarding these adverse health effects, see, for example, Karen Bandeen-Roche et al., *Cumulative Lead Dose and Cognitive Function in Older Adults*, 20 EPIDEMIOLOGY 831, 838 (2009) (concerning the long-term effects of lead). *See also* Paul B. Tchounwou et al., *Heavy Metal Toxicity and the Environment*, *in* 3 MOLECULAR, CLINICAL & ENV'T TOXICOLOGY 133, 135 (Andreas Luch ed., 2012) (concerning the long-term effects of heavy metals like arsenic, cadmium, chromium, lead and mercury); Anne M. Sweeney & Ronald E. LaPorte, *Advances in Early Fetal Loss Research: Importance for Risk Assessment*, 90 ENV'T HEALTH PERSPS. 165, 166 (1991) (indicating that "the latency period between exposure and cancer is typically measured in decades"); Mahdi Balali-Mood et al., *Toxic Mechanisms of Five Heavy Metals: Mercury, Lead, Chromium, Cadmium, and Arsenic*, FRONTIERS IN PHARMACOLOGY, April 2021, No. 643972, at 2 ("[L]ow-dose [heavy metals] exposure is a subtle and hidden threat . . . .").

steps were taken to mitigate and redress resulting harms, and the Inter-American Court has agreed.[184]

B. General Contours of the Right to a Healthy Environment as Envisioned by the Inter-American Court of Human Rights

In its *Inhabitants of La Oroya* judgment, the Inter-American Court recalled that according to its own Advisory Opinion OC-23/17, discussed above in Part III, "[e]nvironmental degradation may cause irreparable harm to human beings; [which is why] a healthy environment is a fundamental right for the existence of humankind."[185] Once again, the Court grounded the right to a healthy environment in its article 26 jurisprudence on economic, social, and cultural rights, drawing a link to the provisions in the OAS Charter that relate to economic, social, educational, scientific, and cultural standards.[186] The Court added that the main goal of these provisions is to identify State obligations toward advancing "integral development"—a synonym for "sustainable development" used within the OAS.[187] The Court viewed these provisions through the same three-pillared sustainable development lens described above in Part II, in the context of the Rio Declaration, where the advancement of human rights, the environment, and economic development must occur in tandem.[188] The result is that the

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[184] Inhabitants of La Oroya v, Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 262–63; La Oroya Cmty. v. Peru, Case 12.718, Inter-Am. Comm'n H.R., Report No. 330/20, ¶¶ 4–21.

[185] Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 177 (citing The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 59 (Nov. 15, 2017). Elsewhere in its opinion, the Court adds,

> [i]t is difficult to imagine international obligations with a greater importance than those that protect the environment against unlawful or arbitrary conduct that causes serious, extensive, lasting and irreversible environmental damage, especially in the context of the climate crisis that threatens the survival of species. In view of this, international environmental protection requires the progressive recognition of the prohibition of such conduct as a peremptory norm (jus cogens), accepted by the international community as a whole as a norm from which no derogation is permitted.

Id. ¶ 129. Judges Ricardo C. Pérez Manrique, Eduardo Ferrer Mac-Gregor Poisot and Rodrigo Mudrovitsch explain this idea in more detail in a concurring opinion that they attached to the *Inhabitants of La Oroya* decision. Inhabitants of La Oroya v. Peru, Concurring Vote of Judges Ricardo C. Pérez Manrique, Eduardo Ferrer Mac-Gregor Poisot and Rodrigo Mudrovitsch, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 71–98.

[186] Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 115 (citing Charter of the Organization of American States arts. 30–31, 33–34, Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3).

[187] *Id*.; *Integral Development*, ORG. OF AM. STATES, https://perma.cc/R9UG-RA63 (last visited Nov. 5, 2024) ("Integral development is the general name given to a host of policies that work in tandem to foster sustainable development in both developing and underdeveloped countries.").

[188] *See* Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 244 (citing G.A. Res. 70/1, at 19 (Sept. 25, 2015)). U.N. General Assembly Resolution. 70/1 explains how States must "endeavour to decouple economic growth from environmental degradation." G.A. Res. 70/1, at 19 (Sept. 25, 2015).

Court determined that the right to a healthy environment can be derived from those sustainable development provisions in the OAS Charter.[189] The link to sustainable development is of vital importance given the Court's jurisdiction over a region largely composed of developing countries.

The Court also referred to the language in the Protocol of San Salvador that recognizes a human right to a healthy environment, noting that Peru is a party to the Protocol.[190] To further support its recognition of the right, the Court pointed once more to the countries in the region who have already recognized it in their domestic constitutions.[191] And to signal even broader support beyond the region, the Court recalled the steps that the U.N. Human Rights Council, General Assembly and Special Rapporteur on Human Rights and the Environment have taken to promote recognition of the right.[192]

The Court went on to describe the content of the right to a healthy environment. Again, drawing upon the foundation that was laid in Rio, the Court envisions this right as "compris[ing] a set of procedural and substantive [elements]."[193] The procedural elements include the rights to access information, to political participation and to access to justice. As mentioned above, these are "rights whose exercise supports better environmental policymaking."[194] The substantive elements include clean air, clean water, food, a healthy ecosystem and climate, among others.[195] Whereas human rights normally have an anthropocentric focus, the Inter-American Court conceives of a bifaceted right to a healthy environment that encompasses an ecocentric perspective as well. As the Court describes it, the ecocentric facet of the right "protects the components of the environment, such as forests, rivers and seas and others, as legal interests in themselves, even in the absence of certainty or evidence of risk to individuals."[196] In other words, States are "obliged to protect nature and the environment not only because of the benefits they provide to humanity, but also because of their importance to the other living organisms with which we share the planet."[197] The anthropocentric facet of the right focuses on the importance of each of the components of the environment for human well-being and survival.[198] For example, when it comes to water, the ecocentric facet of

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189 Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 115.

190 *Id.* ¶ 116 (citing Protocol of San Salvador, *supra* note 104, art. 11).

191 *Id.* ¶ 116, n.175.

192 *Id.* ¶ 117.

193 *Id.* ¶ 118.

194 *Knox: Preliminary Report, supra* note 73.

195 Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 118.

196 *Id.* (quoting *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 62 (Nov. 15, 2017)); *see id.* ¶ 124 (describing the ecocentric premise on which the right to a healthy environment is based).

197 *Id.* ¶ 118.

198 *Id.* ¶ 124.

the right would focus on protecting water from contamination that would threaten the ecosystem it is in more broadly, whereas the anthropocentric facet would focus on ensuring that contamination doesn't infringe upon human access to safe water and sanitation.[199]

C. Substantive Obligations of States Derived from the Right to a Healthy Environment

The Inter-American Court's bifaceted approach to the right to a healthy environment allows it to layer within its analysis some well-established principles from both international human rights law and international environmental law. The first environmental principle the Court incorporates into its decision is the well-established principle of prevention, which traditionally requires each State to ensure that activities carried out within its jurisdiction do not cause significant harm to the environment beyond its own national boundaries.[200] As mentioned above, the Court's 2017 Advisory Opinion had already broadened this principle to require States to avoid transboundary environmental harms that pose a significant risk to the human rights of individuals outside of their territories.[201] In *Inhabitants of La Oroya*, the Court expanded this principle further to require States to avoid harms to the environment that pose a "significant risk" to individuals' enjoyment of human rights within their own jurisdictions.[202]

The International Law Commission (ILC) has defined the "risk of causing significant transboundary harm" as including risks that pose "a high probability of causing significant transboundary harm" as well as those that pose "a low probability of causing disastrous transboundary harm."[203] The ILC has further defined "'significant' [as] something more than 'detectable' but . . . [less than] 'serious' or 'substantial.'"[204] In its 2017 Advisory Opinion, the Inter-American Court indicated that "any harm to the environment that may involve a violation of the rights to life and to personal integrity . . . must be considered significant."[205] In *Inhabitants of La Oroya*, the Court determined that contamination levels greater than the minimum threshold recommended by the WHO

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[199] *Id.* ¶¶ 119, 124.

[200] *Id.* ¶ 126. For further explanation of the principle of prevention, see BOYLE & REDGWELL, *supra* note 57, at 156, 159–63.

[201] *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶¶ 102–10 (Nov. 15, 2017).

[202] Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 204, 207.

[203] Int'l Law Comm'n, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, at 152 (2001).

[204] *Id.* (emphasis omitted).

[205] *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 140 (Nov. 15, 2017).

presented a significant risk to individuals' health.[206] The Court did not require the victims to prove causality, only to "establish that the State permitted the existence of levels of contamination that put the health of persons at significant risk and that in effect [these] persons were exposed to the environmental contamination, so that their health was at risk."[207] The Court further indicated that the burden is on the State to prove that it is not responsible for the contamination or that no significant risk existed.[208]

States are not responsible for preventing risks that are unforeseeable, but States are responsible for continuously working to identify threats.[209] Under a second principle of international environmental law known as "the precautionary principle," States are required to take preventive action once a threat is identified, even if scientific uncertainty still exists regarding what the actual impact of the threat will be.[210] Both international environmental law and international human rights law require States to act with due diligence, ensuring that their prevention efforts are appropriate and proportional to the degree of risk of harm.[211] More concretely, the Inter-American Court indicated that due diligence requires States to, at minimum, "a) regulate [activities that could negatively impact the environment]; b) supervise and monitor [those activities]; c) require and approve environmental impact assessments; d) establish contingency plans, and e) [take measures to] mitigate" when environmental damage has already occurred.[212]

From the Court's perspective, the State obligations that are required as part of environmental due diligence complement the general obligation "to respect . . . and to ensure . . . the free and full exercise" of

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[206] Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 189–90, 204.

[207] *Id.* ¶ 204 (quote translated by author).

[208] *Id.*

[209] *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 136 (Nov. 15, 2017) (citing Int'l Law Comm'n, *supra* note 203, at 153–54).

[210] *See* Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511., ¶ 127. For further explanation of the precautionary principle, see BOYLE AND REDGWELL, *supra* note 57, at 170–83.

[211] *See* Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 126, 157, 167.

[212] *Id.* ¶ 126. Similarly, under international environmental law the obligation of due diligence "entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in [a State's] enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators." Pulp Mills on the River Uruguay (Arg. v. Uru.), Judgment, 2010 I.C.J. 14, ¶ 197 (Apr. 20). This includes an obligation to ensure that environmental impact assessments are performed. *Id.* ¶ 204; *see also* Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.) and Construction of a Road in Costa Rica Along the San Juan River (Nicar. v. Costa Rica), Judgment, 2015 I.C.J. 665, ¶ 104 (Dec. 16).

all rights protected under the American Convention.[213] The duty to respect is meant to restrict the conduct of State actors from infringing upon the rights of individuals.[214] And the duty to ensure is specifically oriented toward the measures that States must take to prevent non-State actors from violating human rights.[215] Both duties were at play in the *Inhabitants of La Oroya* case, since the metallurgical complex in La Oroya was operated first by a State-owned company and later by a foreign private company.[216] The Court stressed in its opinion the importance of States adopting measures to regulate, supervise and monitor corporate activity, but also to encouraged businesses to adopt

> a) appropriate policies for the protection of human rights; b) due diligence processes for the identification, prevention and redress of human rights violations, as well as to ensure decent and dignified work [conditions]; and c) processes that allow businesses to remedy human rights violations that result from their activities, especially when these affect people living in poverty or belonging to vulnerable groups.[217]

Citing heavily to the U.N. Guiding Principles for Business and Human Rights, the Court called for businesses to take the initiative of adopting responsible behavior in their activities and for States to better regulate them.[218]

Given how the Court conceived of the right to a healthy environment as connected to sustainable development and consequently belonging to the family of economic, social, and cultural rights, the Court also incorporated into its analysis the progressive realization framework called for by article 26 of the American Convention for this category of rights.[219] Under this framework, and under international human rights law more generally, States are expected to immediately adopt measures for respecting and protecting economic, social, and cultural rights, but may work progressively toward the goal of fully realizing those rights.[220] States have a duty to continuously move forward and to avoid taking any measures that would be

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[213] American Convention on Human Rights, *supra* note 125, art. 1, ¶ 1; *see also* Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 157.

[214] Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 108-09.

[215] *Id.* ¶ 109.

[216] *Id.* ¶ 106.

[217] *Id.* ¶ 112.

[218] *Id.* ¶¶ 110–14. For additional instances in which the Inter-American Court had previously cited to the U.N. Guiding Principles on Business and Human Rights, see Miskito Divers (Lemoth Morris) v. Honduras, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 432, ¶ 48 (Aug. 31, 2021), and Vera Rojas v. Chile, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 439, ¶ 84 (Oct. 1, 2021).

[219] *See* Inhabitants of La Oroya v. Peru, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 183.

[220] *See id.* ¶¶ 183–84.

retrogressive.[221] The government of Peru impermissibly regressed in the *Inhabitants of La Oroya* case when it lowered the air quality standards to allow for greater levels of pollution than those recommended by the WHO without any justification that took into account the rights of affected individuals.[222] As a guarantee of non-repetition geared toward protecting the community collectively, including present and future generations, the Court ordered Peru to set new air quality standards that do take into account the WHO's most up-to-date guidelines.[223]

D. Procedural Obligations of States Derived from the Right to a Healthy Environment

As mentioned in Part II, procedural environmental rights, or "rights whose exercise supports better environmental policymaking"[224] were first recognized in the Rio Declaration. The Inter-American Court also previously recognized this set of rights in the context of indigenous peoples.[225] Procedural environmental rights are grounded in other rights that are well-established in international human rights law. In the *Inhabitants of La Oroya* case, the Inter-American Court found violations of all three procedural rights.

The first procedural right implicated in this case involves the ability to access information regarding activities and projects that could have an environmental impact.[226] The Court has determined that access to this type of information is in the public interest because it can be essential to the ability of people to enjoy other rights.[227] This type of information must be made available to the public without requiring individuals to establish a direct interest in or to request this type of information.[228] Instead, governments are required to practice what the Court calls "active transparency," and provide information on their own

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[221] *See id.* ¶ 185.

[222] *Id.* ¶¶ 184–86 (citing Comm. on Econ., Soc. & Cultural Rts., *An Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" Under an Optional Protocol to the Covenant*, ¶ 9, U.N. Doc. E/C.12/2007/1 (Sept. 21, 2007) ("[T]he burden of proof rests with the State party to show that [a retrogressive measure] . . . was based on the most careful consideration and can be justified by reference to the totality of the rights provided for in the Covenant and by the fact that full use was made of available resources.")).

[223] *See* Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 324 ("the Court considers that, given the nature of this case, the human rights violations had a collective scope"), 346 ("the State shall take into account the most recent criteria established by the World Health Organization and the available scientific information").

[224] *Knox: Preliminary Report*, *supra* note 73, ¶ 17.

[225] *See* Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶¶ 129–33 (Nov. 28, 2007).

[226] Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 144–49, 247.

[227] *Id.* ¶¶ 145–46.

[228] *Id.* ¶ 145.

initiative in a complete, comprehensible, accessible, effective, and timely fashion.[229] The right to seek and receive information more generally is enshrined in article 13 of the American Convention.[230]

Second, the Court discussed how the right to political participation, grounded in the right to take part in the conduct of public affairs under article 23(1)(a) of the American Convention, "allows citizens to take part in the decision-making process and thereby play a role . . . in decisions that affect the environment."[231] Participation is also a mechanism for "establish[ing] limits on the State's actions" and for holding government entities accountable.[232] In the *Inhabitants of La Oroya* case, the Court was especially concerned that the record did not reflect that the alleged victims were provided with "a real opportunity to be heard and to participate in decision-making on the matters submitted to public consultation, or how their views were taken into account by the State when deciding on environmental polic[ies affecting them]."[233]

The third procedural right relates to access to justice, referred to as the "right to judicial protection" in article 25 of the American Convention.[234] In this particular case, the alleged victims had obtained a favorable decision from Peru's constitutional tribunal that ordered the State to implement various measures to better regulate and mitigate the problem of environmental pollution in La Oroya and address the healthcare needs of the population.[235] Some of the measures were partially implemented by the State, but none were complied with fully.[236] When analyzing whether a violation of the right to judicial protection has occurred, the Inter-American Court explained that "the State's responsibility does not end when the competent authorities issue a decision or judgment; it also requires the State to guarantee effective means and mechanisms to execute the final decisions . . . [in a way that is] complete, perfect, comprehensive and timely."[237]

E. Violations of Other Rights

As in previous judgments involving violations of economic, social, and cultural rights under article 26, in the *Inhabitants of La Oroya* case

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[229] *Id.* ¶ 146.

[230] *See* American Convention on Human Rights, *supra* note 125, art. 13; *see also* Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 144, 255 (describing the right to seek and receive information under Article 13 of the Convention and finding the State impaired that right).

[231] Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 256.

[232] *Id.*

[233] *Id.* ¶ 260.

[234] American Convention on Human Rights, *supra* note 125, art. 25.

[235] Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 275–79, 284–85.

[236] *See id.* ¶¶ 283, 290, 297, 302.

[237] *Id.* ¶ 274.

the Inter-American Court was once again divided on the question of whether to hold Peru responsible for violating the rights to a healthy environment and to health, five judges to two.[238] The Court was nonetheless unanimous in its determination that Peru had violated the rights to life, "vida digna" ("dignified existence" or "life of dignity"), personal integrity, information and political participation, and the rights of the child.[239] Environmental harms thus implicate economic, social and cultural rights as well as civil and political rights, and in its judgment the Court carefully established how each right was violated, as well as ways that the different rights are interrelated.[240] For example, the rights to information and political participation are deemed to have been violated in their own right, under articles 13 and 23 of the American Convention, but also as procedural elements necessary for ensuring the right to a healthy environment.[241]

Of special significance is the Court's finding that the environmental harms that the victims suffered violated their right to "vida digna" under article 4 of the American Convention. In so holding, the Court referred back to the 2005 case in which it had first weighed environmental concerns in the context of an indigenous community whose ability to lead a dignified life was impeded by poor environmental conditions and lack of access to natural resources essential to the community's subsistence.[242] Specifically, in its *Inhabitants of La Oroya* decision, the Court recalled that in its previous jurisprudence it had identified "access to and quality of water, food and health" as "conditions that have an acute impact on the right to a dignified existence and on basic conditions for exercising other human rights."[243] While advancing a new line of jurisprudence that expands the Court's reach by recognizing a new stand-alone right to a healthy environment supported by the majority of the judges, the decision thus also sought to achieve as much consensus as possible by carefully laying out a basis for Peru's responsibility that brings even the dissenting judges on board.

Another notable point of consensus between all of the judges concerned Peru's violation of its special duty toward children's rights

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238 *Id.* at 141.

239 *Id.*

240 *Id.* 141–42. For further reading on how the right to a healthy environment implicates both categories of rights and transcends other mechanisms that have traditionally been used to define international human rights norms, see Alston, *supra* note 2, at 168.

241 Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 144–52, 246–61.

242 *See id.* ¶ 136 n.230 (citing Yakye Axa Indigenous Cmty, Merits, Reparations and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 167 (June 17, 2005)).

243 *Id.* ¶ 221 (quote translated by author).

under article 19 of the American Convention.[244] The Court underscored the heightened standard of care that States have toward children, considering their particular vulnerability to environmental contamination while their bodies are still developing, and the disproportionate long-term impacts of exposure to pollutants early in life.[245] The Court explained that "their condition [as children] requires special protection . . . which [is] additional and complimentary to . . . other rights" recognized for all individuals.[246] This special protection of children was viewed by the Court as a conduit for protecting the rights of future generations, as envisioned by the principle of intergenerational equity discussed in Part II above.[247] States are thus required to prioritize children's best interests in any decisions that could affect them both in the present and in the future.[248] The Inter-American Court's marked emphasis on children as a distinct vulnerable group is reminiscent of the Court's previous environmental cases which focused on another group broadly recognized as particularly vulnerable: indigenous peoples.[249] One former U.N. expert has recently suggested that human rights bodies may have an easier time linking environmental degradation to human rights violations involving such vulnerable groups given the heightened obligation that States generally have to protect these groups.[250] Additionally, environmental protection of certain vulnerable groups may arguably be a more clearly identifiable norm under international law.[251]

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[244] *See* American Convention on Human Rights, *supra* note 125, art. 19 ("Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.").

[245] *See* Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 139, 244.

[246] *Id.* ¶ 139.

[247] *See id.* ¶¶ 141–42 (citing the Maastricht Principles on the Human Rights of Future Generations); *accord* SANDY LIEBENBERG ET AL., MAASTRICHT PRINCIPLES ON THE HUMAN RIGHTS OF FUTURE GENERATIONS pmbl. ¶ VII (2023), https://perma.cc/E67C-LVUY ("Children and youth are closest in time to generations still to come and thus occupy a unique position, and have an important role to play, within this transition to long-term, multigenerational thinking. Accordingly, their perspectives and participation in decision-making with respect to long-term and intergenerational risks must be accorded special weight.").

[248] *See* Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 140 (invoking the principle of the "child's best interest" as set forth in the Convention on the Rights of the Child); *accord* Convention on the Rights of the Child art. 3, ¶ 1, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3. For additional guidance on the application of this principle under the Convention on the Rights of the Child, see generally Comm. on the Rts. of the Child, *General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1)*, U.N. Doc. CRC/C/GC/14 (May 29, 2013).

[249] *See supra* notes 133–140 and accompanying text.

[250] Tigroudja, *supra* note 112, at 181–82.

[251] For example, as mentioned in Part II, the U.N. Convention on the Rights of the Child includes specific language requiring countries to take "into consideration the dangers and risks of environmental pollution" in the context of protecting the health of

All in all, the imagery that comes to mind to describe the Inter-American Court's decision in *Inhabitants of La Oroya* is that of a tapestry of interwoven rights. In this tapestry, the right to a healthy environment is woven in the predominant color and, as described in the previous Section, is composed of an entire bundle of threads. Other longer-established human rights, namely the rights to life, "vida digna," personal integrity, information and political participation, and the rights of the child, are nonetheless also carefully layered into this tapestry, and a healthy environment serves as an integral component to these rights as well. As the Court moves to expand its jurisprudence in a historic way, this weaving together and layering of the different rights makes for a stronger, more resilient tapestry that will enable this decision against Peru to remain standing. Even in the event that the healthy environment threads were pulled, the longer established rights on which the court voted unanimously will remain.

V. CONCLUSION: IMPLICATIONS OF THE INTER-AMERICAN COURT'S CONTRIBUTIONS TO ADDRESSING ENVIRONMENTAL HARMS AND WHETHER ITS APPROACH MAY SIGNAL A BROADER TREND

A. Benefits and Risks of the Inter-American Court's Approach in Inhabitants of La Oroya

International environmental instruments have consistently recognized the existence of a link between human rights and the environment since the first environmental declaration agreed upon fifty-two years ago in Stockholm. But acknowledging the connection is not the same as undertaking binding legal obligations to protect individuals from environmental harm. International environmental law has thus largely developed in a silo, separate from human rights law. Like most other areas of international law, international environmental law has focused mainly on the rights of nation-states vis-à-vis each other. Its norms are largely ecocentric, oriented toward protecting the environment for its own sake as well as for its value to the State in whose territory it lies. This body of law has primarily focused on

children. Convention on the Rights of the Child, *supra* note 248, art. 24. In regard to indigenous peoples, the U.N. Declaration on the Rights of Indigenous Peoples recognizes their "right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources" as well as States' duty to "mitigate adverse environmental . . . impact" on them. G.A. Res. 61/295, annex, United Nations Declaration on the Rights of Indigenous Peoples, art. 29 (Sept. 13, 2007). Finally, despite its unsatisfactory engagement with the human rights dimensions of climate change, the Paris Agreement does include a list of vulnerable groups whose interests must be safeguarded as part of countries' climate change response. *See* Paris Agreement, *supra* note 96, pmbl.

governmental interests in addressing environmental harm, often obscuring the possible impact on individuals and communities.

In contrast, international human rights law is unique in that it has been established by States, not for their own benefit, but for the benefit of individual persons. Its focus on protecting the well-being and inherent dignity of persons makes human rights law anthropocentric by definition. The great advantage of framing environmental degradation as a human rights problem is that it enables individuals to bring forth claims against governments for environmental harms. However, because its norms are ultimately created by governments reluctant to recognize new norms explicitly requiring them to protect individuals from environmental harm, international human rights bodies and tribunals have often been limited to addressing environmental impacts in terms of rights that have already been explicitly recognized.

The Inter-American Court has thus made a crucial contribution to this problem of siloing: by bringing environmental and human rights law together, the Court allowed both bodies of law to inform its understanding of States' obligations when it comes to securing this new right to a healthy environment. This approach is what allows the Court to begin bridging the gap between the anthropocentric and the ecocentric points of view. Borrowing from international environmental law norms and principles, the Court is also better able to fill in some of the environmental management gaps that human rights law does not directly address.

Putting environmental and human rights law in dialogue with each other also enables the Inter-American Court to conceive of a right to a healthy environment that is intrinsically linked to sustainable development. This approach addresses a concern that continues to be central to developing countries, many of which are located within the Inter-American region. As mentioned in Part II, developing countries have been more open to recognizing legally binding environmental obligations toward individuals within their own regions, possibly because within their regional groupings they find themselves amongst peers with whom they share developmental concerns and objectives, as well as certain social and cultural characteristics. It might follow that it would also be easier for them to take direction on environmental human rights obligations from their own regional court than from a human rights body or tribunal outside of the region. One commentator has noted specifically that the influence of Inter-American jurisprudence on domestic legal systems in the region is indeed much more noticeable than the influence of the U.N. human rights system.[252]

The most newsworthy aspect of the Court's recent environmental jurisprudence is its framing of a right to a healthy environment as an

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[252] *See* Par Engstrom, *Between Hope and Despair: Progress and Resilience in the Inter-American Human Rights System*, 113 AJIL UNBOUND 370, 373 (2019).

autonomous right that is able to stand independently from other previously recognized rights.[253] The Inter-American Court was able to ground this new right in a combination of legal instruments within its own regional system.[254] But questions remain about how such a progressive move will be received by the States on whose consent this regional human rights system is built. The Court's primary mandate is to act as a guardian of human rights in the region, but in order to do that successfully it requires the continued participation of States. This is not a trivial concern. As recently as 2019 a group of five States wrote a joint letter to the Court asking it to "use a 'strict application' of the doctrine of sources of international law."[255]

Some commentators see a resemblance between this concern and that expressed by the judges who have dissented to the methodology used by the majority to find the right to a healthy environment justiciable before the Court. Given the similarity, these commentators suggest that the dissents could signal to States "that the [I]nter-American system is operating outside its limits" and induce a backlash from States.[256] Such a backlash could mean that States attempt to reform the system, that States seek to elect judges that agree with the dissents, or that States simply exit the system. All three have happened during the last thirteen years and have the potential to undermine the legitimacy of the system.[257]

The extensive list of potentially costly reparations that the Court ordered in the *Inhabitants of La Oroya* case[258] could raise questions for States that echo another concern mentioned in States' 2019 letter to the Court. In the letter, States asked the Court to "take into consideration [S]tates' 'political, economic and social realities' when ordering reparations."[259] For example, some of the reparations the Court ordered

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253 *See* discussion *supra* Section IV.B.

254 *See id.*; *see also* Cuscul Pivaral et al. v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 359, ¶ 82 (Aug. 23, 2018).

255 Jorge Contesse, *Conservative Governments and Latin America's Human Rights Landscape*, 113 AJIL UNBOUND 375, 376 (2019) [hereinafter Contesse, *Conservative Governments*].

256 Jorge Contesse, *Judicial Interactions and Human Rights Contestations in Latin America*, 12 J. INT'L DISP. SETTLEMENT 271, 288 (2021).

257 In 2011, Venezuela led a group of States in a process of reform intended to weaken the Inter-American Human Rights System. *Id.* at 280. Later, in 2012 Venezuela withdrew from the Convention, removing itself from the Court's jurisdiction. Contesse, *Conservative Governments*, *supra* note 255, at 375–76; *see also What is the I/A Court H.R.?*, *supra* note 121 ("The Judges [of the Inter-American Court] are chosen on a personal basis by States parties, by secret ballot and by absolute majority, during the OAS General Assembly just before the end of term of the exiting Judges . . . [and] serve a term of six years and can be reelected once for the same period.").

258 Inhabitants of La Oroya v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 320–92 (Nov. 27, 2023).

259 *See* Contesse, *Conservative Governments*, *supra* note 255.

in the *Inhabitants of La Oroya* case included providing extensive health care, adopting legislative measures and building infrastructure for environmental monitoring and dissemination of information.[260] Requiring governments to regulate the activity of private businesses more tightly, as the Court has done with Peru, could also create some concern amongst States in the region about potentially negative economic implications of making business less attractive for foreign companies.

At the same time, the rules the Court set forth in the *Inhabitants of La Oroya* decision, if implemented in the entire region, would significantly limit the options of corporations seeking to operate in less restrictive legal settings.[261] A related concern is that human rights law only regulates State action.[262] While the Court's judgments can require States to regulate the activity of private corporations in certain ways, these judgments cannot directly reach the corporations themselves.[263] One tool that the Inter-American Court refers to in the *Inhabitants of La Oroya* judgment to supplement its guidance on government regulation of private enterprises is the U.N. Guiding Principles on Business and Human Rights, which currently comprises three pillars: the State's duty to protect, the corporation's responsibility to respect, and the responsibility of both to provide a remedy.[264] There is currently a group working on a proposal to add a community-centered fourth pillar.[265] The Inter-American Court should consider adding this to its future recommendations as it aligns closely with and complements the Court's guidance on the procedural elements of the right to a healthy environment.[266]

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[260] Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 393(14), (16), (18), (21).

[261] *See supra* notes 217–218 and accompanying text.

[262] *See* HENKIN ET AL., *supra* note 4, at 211, 214.

[263] *See* Sam Adelman, *Human Rights and Climate Change*, *in* HUMAN RIGHTS: CURRENT ISSUES AND CONTROVERSIES 411, 416 (Gordon DiGiacomo ed., 2016).

[264] Inhabitants of La Oroya v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 110; John Ruggie (Special Representative of the Secretary General), *Rep. of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, annex, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011).

[265] Members of Harvard Law School's Human Rights Entrepreneur's Clinic have helped incubate the Fourth Pillar initiative during the past decade along with other organizations. The initiative aims to articulate a set of community-centric principles to underscore the importance of rightsholder agency to the effective implementation of human rights protections such as those articulated in the UNGPs. *See* FOURTH PILLAR INITIATIVE, https://perma.cc/6NZY-YBPN (last visited Oct. 29, 2024).

[266] *See id.*

B. Does the Inter-American Court's Approach Signal New Trends that May Spread Beyond the Region?

It is currently unknown how human rights bodies at the U.N. or in other regions will respond to the decision in the *Inhabitants of La Oroya* case, especially given that at least one U.N. treaty body has already adopted the Inter-American stance on extra-territorial obligations from the Court's 2017 advisory opinion.[267] Whether other human rights bodies follow the Inter-American approach in *Inhabitants of La Oroya* will depend at least partly on what legal texts they have available to them and how broadly they view their mandate. For example, the U.N. Convention on the Rights of the Child and Covenant on Economic, Social and Cultural Rights contain provisions that may better lend themselves to protecting environmental rights than those included in the Covenant on Civil and Political Rights.[268] And in fulfilling their mandate these bodies may feel they must limit themselves to the provisions contained in the treaty that States have tasked them with interpreting, or they may feel it is their task to interpret the rights recognized in their treaty more holistically, within a broader legal system. The former is the approach preferred by the dissenting judges on the Inter-American Court, while the latter is the one preferred by the majority.[269]

Examining the U.N. General Assembly's non-binding recognition of the right to a healthy environment in 2022, Philip Alston suggested that we may be entering into a new era in the evolution of international human rights law, in which the generation of new norms no longer relies entirely on the consent of nation-states, but instead "involves a wide and diverse array of actors, with states sometimes struggling to keep up."[270] He explained that the resolution in the U.N. General Assembly was generated through a groundswell of activity from human rights scholars, "civil society groups [who] led movements to recognize national-level constitutional environmental rights," and international agencies, rather than through diplomatic negotiations.[271] The support from civil society was strong enough, that even though many governments "expressed considerable reservations about the process, [they did not feel] that they could oppose the resolution. Instead, they took refuge in detailed explanations of votes expressing caveats and

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267 *See* Tigroudja, *supra* note 112, at 181 (noting that the Convention on the Rights of the Child used the Court's Advisory Opinion No. 23 to adjudicate the question of states' extraterritorial obligations).

268 *See id.* at 179 (pointing out that other treaties "do not address environmental questions").

269 *See supra* notes 141–156 and accompanying text.

270 Alston, *supra* note 2, at 167.

271 *Id.* at 171.

conditions which, for the most part, will likely do little to slow the momentum."[272]

In a recent talk at Boston College, Inter-American Court Judge Pérez Manrique described some of the strategies that the Court is currently deploying to strengthen the Inter-American Human Rights System and avoid losing the support of States, indicating that the Court also sees the potential of raising support from the ground up.[273] For example, the Court is working hard to gain greater visibility and support within civil society by holding many of its sessions in various countries of the region, rather than at its headquarters in Costa Rica.[274] All of its hearings are live cast as well. Every year the Court also hosts multiple training sessions for advocates in different countries and online.[275] These efforts to more closely engage with the individuals and communities whose rights it is trying to protect, are combined with attempts to connect with domestic judiciaries as well.[276] Because the Court relies on domestic judges to incorporate its jurisprudence into their own legal systems, the Court's judges actively seek out opportunities to engage in dialogue with domestic judges through participation in a variety of regional and international judges' associations.[277]

What is reflected in these activities of the Court and in what Alston has observed is a renewed understanding of human rights law that is more responsive to public opinion and to urgent human rights needs, rather than simply allowing the will of States to reign supreme. This understanding aligns with how former Inter-American Court Judge A.A. Cançado Trindade described his role:

> It is not [the] function of the jurist simply to take note of what the States do, particularly the most powerful ones, which do not hesitate to seek formulas to impose their "will", including in relation to the treatment to be

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[272] *Id.*

[273] Judge Ricardo C. Pérez Manrique, Assessing the Current Challenges of the Inter-American Court of Human Rights Through the Lens of Former President Ricardo C. Pérez Manrique, Address at Boston College Law School (Apr. 19, 2024) [hereinafter Manrique, *Addressing the Current Challenges of the IACHR*]. For a summary of the event, see *Assessing the Current Challenges of the Inter-American Court of Human Rights Through the Lens of Former President Ricardo C. Pérez Manrique*, B.C. Ctr. for Hum. Rts. & Int'l Just. Newsl. (B.C. Ctr. for Hum. Rts. & Int'l Just., Chestnut Hill, Mass.), Summer 2024, at 11–12, https://perma.cc/6JDU-VNVU.

[274] *See* INTER-AM. CT. OF HUM. RTS., ANNUAL REPORT 2023, at 38-39 (2023), https://perma.cc/2343-HTZW.

[275] *See, e.g.*, *id.* at 220–31. (detailing the Court's training activities in 2023).

[276] For further information on these and other efforts of the Court to engage with different civil society actors, see *Latest News*, INTER-AMERICAN CT. OF HUM. RTS., https://perma.cc/V8BM-7H3D (last visited Oct. 29, 2024) (listing recent presentations and events where judges interacted with domestic judiciaries, journalists, and civil society groups).

[277] Manrique, *Addressing the Current Challenges of the IACHR*, *supra* note 273.

> dispensed to the persons under its jurisdiction. The function of the jurist is to show and to tell what the Law is . . . . This latter does not emanate from the inscrutable "will" of the States, but rather from human conscience. General or customary international law emanates not so much from the practice of States (not devoid of ambiguities and contradictions), but rather from the *opinio juris communis* of all the subjects of International Law (the States, the international organizations, and the human beings). Above the will is the conscience.[278]

As mentioned above, human rights systems require the participation of States to be effective, but they must also be able to project a certain level of independence from State control in order for civil society to perceive them as legitimate.[279]

A final question that needs to be asked is whether a human rights framework is useful for addressing environmental concerns. While other branches of international law contribute to reshaping State behavior to address environmental degradation, they are predominantly centered around the rights of States vis-à-vis each other. As noted above, the unique contribution that human rights law brings to the toolbelt is that it provides individuals and communities with an international law mechanism through which to bring forth their own claims for environmental harms suffered. Currently, human rights law is the only branch of international law that has the potential to protect the rights of individuals.[280] However, there are other areas of international law that have developed to address environmental issues in more direct ways than human rights law has. Therefore, as the Inter-American Court demonstrates through its *Inhabitants of La Oroya* decision, it is most useful to think of the different international law approaches to environmental problems as complimentary tools that are best applied in an integrated manner, each of them offering an important perspective but all of them insufficient on their own.

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[278] Juridical Condition and Rights of Undocumented Migrants, Concurring Opinion of Judge A.A. Cançado Trindade, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶ 87 (Sept. 17, 2003).

[279] *See* Engstrom, supra note 252, at 372.

[280] The International Criminal Court (ICC) is beginning to explore whether international criminal law could be employed to hold individuals and other non-State actors accountable for environmental harms. This could provide an additional legal tool that would specifically target a subset of environmental harms that are so egregious that they could be considered to rise to the level of genocide or crimes against humanity. *See* https://perma.cc/4Y53-6USJ (discussing the ICC's work on collecting input for a paper regarding the viability of criminally prosecuting individuals who harm the environment).