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THE HUMAN RIGHT TO A SAFE, CLEAN, HEALTHY AND SUSTAINABLE
ENVIRONMENT

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Lisboa, Maio de 2023
Dissertação de Mestrado em Direito Administrativo
Sob a orientação do Doutor Armando Rocha

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ENVIRONMENT

DISSERTAÇÃO

Para a obtenção do grau de Mestre em Direito Administrativo

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Sob a Orientação do Doutor Armando Rocha

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INDEX

INTRODUCTION.....	4
RECOGNITION OF THE RIGHT TO A HEALTHY ENVIRONMENT	7
LEGAL RECOGNITION OF THE RIGHT TO A HEALTHY AND SUSTAINABLE ENVIRONMENT	7
COURTS' RECOGNITION OF THE RIGHT TO A HEALTHY ENVIRONMENT...	9
THE SCOPE OF THE RIGHT TO A HEALTHY ENVIRONMENT	14
THE RIGHT TO CLEAN AIR.....	14
THE RIGHT TO HEALTHY BIODIVERSITY AND ECOSYSTEMS	19
THE RIGHT TO A NON-TOXIC ENVIRONMENT	23
THE RIGHT TO A SAFE CLIMATE	27
THE RIGHT TO SAFE WATER.....	31
RECOGNITION OF THE RIGHT TO A HEALTHY ENVIRONMENT IN PORTUGAL.....	38
COMMONALITIES IN OBLIGATIONS.....	43
IMPLEMENTATION OF THE RIGHT TO A HEALTHY ENVIRONMENT.....	45
CHALLENGES IN IMPLEMENTING THE RIGHT TO A HEALTHY ENVIRONMENT	45
OPPORTUNITIES IN IMPLEMENTING THE RIGHT TO A HEALTHY ENVIRONMENT	47
CONCLUSION	49
ANNEX.....	51
BIBLIOGRAPHY	52

INTRODUCTION

The human right to a safe, clean, healthy, and sustainable environment emerged in the 1970s as part of a growing recognition of the interdependence between human rights and environmental protection. In 1972, the United Nations held its first conference on the environment in Stockholm, Sweden, which led to the adoption of the Stockholm Declaration, and the recognition of the right to a healthy environment as a basic human right. According to principle 1 of the declaration “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations”. Since then, the concept of the right to the environment has evolved and expanded, with various international treaties and declarations emphasizing the importance of environmental protection as a human right.

The Rio Declaration in 1992, for example, declared that the right to a healthy environment is fundamental to achieve sustainable development, by stating that “Human beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature”. This declaration was confirmed by the Johannesburg Declaration on Sustainable Development of 2002. Additionally, in July 2022, the United Nations General Assembly, adopted a resolution where it recognized the human right to a clean, healthy and sustainable environment (Resolution 76/300).

These declarations have been complemented on the regional level. The Aarhus Convention, for example, states in its preamble that “every person has the right to live in an environment adequate to his or her health and well-being”. The African Charter on Human and Peoples’ Rights (1981) states on article 24 that “All peoples shall have the right to a general satisfactory environment favorable to their development”. The Arab Charter of Human Rights (2004) in article 38 and the Protocol of San Salvador to the American Convention on Human Rights (1998) in article 11 recognize the right of everyone to “live in a healthy environment”, and the Escazu Agreement seeks to defend “the right of every person of present and future generations to live in a healthy environment” (article 3).

The right to a healthy environment has, as well, been recognized by more than 155 States either in international agreements or their national constitutions, legislation, or policies.

In 1976, shortly after the Stockholm Declaration, Portugal became the first country to constitutionally recognize this right in article 66, where it states that “Everyone has the right to a healthy and ecologically balanced human environment and the duty to defend it”. Portugal has also ratified various international treaties and conventions related to environmental protection such as the United Nations Framework Convention on Climate Change (UNFCCC), Kyoto Protocol to the UNFCCC, Paris Agreement under the UNFCCC, Convention on Biological Diversity (CBD), Cartagena Protocol on Biosafety to the CBD, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Convention on the Conservation of Migratory Species of Wild Animals (CMS), Ramsar Convention on Wetlands of International Importance, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and Stockholm Convention on Persistent Organic Pollutants (POPs).

Portugal has made significant progress in addressing environmental issues in recent years, particularly in the areas of renewable energy. Portugal’s grid operator Redes Energéticas Nacionais (REN) announced in April that renewable energy plants produced enough power to meet 72% of the country's electricity demand in the first quarter of 2023¹. There have, as well, been implemented various policies and programs aimed at reducing greenhouse gas emissions, protecting biodiversity, and promoting sustainable development.

However, Portugal still faces significant environmental challenges. In an audit by *Tribunal de Contas*, this court concluded that Portugal missed all the targets it set itself in 2020 in the production and management of municipal plastic waste regarding plastic pollution, which is a significant issue as most of this plastic ends up in the ocean and beaches.

This is a crucial thematic as the right to a healthy environment is crucial for ensuring that everyone has access to clean air, water, and a safe living environment, as environmental

¹ Renewables now (2023), *Renewables cover 72% of Portugal's power consumption in Q1 2023*.

degradation can have a significant impact on people's health, particularly for vulnerable communities, including children, the elderly, and low-income groups.

Furthermore, the right to a healthy environment is essential for ensuring that future generations can also enjoy a healthy and sustainable planet. Environmental degradation and climate change pose significant threats to future generations' well-being, and protecting the environment is necessary for ensuring a sustainable future.

Given the importance of such a thematic, we propose an analysis of the State's obligations regarding the human right to a safe, clean, healthy, and sustainable environment in the international, European, and our domestic context, as well as an analysis of the common challenges and opportunities countries are facing in the implementation of the right.

Key words:

Environment, Recognition, Human Right, Environmental Rights, Clean Air, Biodiversity, Climate Change, access to clean Water, Non-Toxic Environment, Environmental justice.

RECOGNITION OF THE RIGHT TO A HEALTHY ENVIRONMENT

LEGAL RECOGNITION OF THE RIGHT TO A HEALTHY AND SUSTAINABLE ENVIRONMENT

The legal recognition of the right to a healthy and sustainable environment refers to the recognition of the fundamental right of every individual to a clean, healthy, and sustainable environment, and the legal obligations of States to protect and ensure this right.

The right to a healthy and sustainable environment has been recognized in the domestic constitution or legislation of several countries and the United Nations Human Rights Council has adopted a resolution recognizing the right to a clean, healthy, and sustainable environment as a fundamental human right.

United Nations Human Rights Council Resolution 48/13

The United Nations Human Rights Council (UNHRC) recognized the right to a clean, healthy, and sustainable environment as a human right in Resolution 48/13 proposed by Costa Rica, the Maldives, Morocco, Slovenia, and Switzerland. This resolution affirms that the right to a healthy environment is a fundamental human right that is essential to the full enjoyment of life, the protection of human rights, and the promotion of sustainable development.

The resolution acknowledges that environmental harm caused by “climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in services provided by ecosystems interfere(s) with the enjoyment of a clean, healthy and sustainable environment”. It also recognizes that the harm is “felt most acutely by those segments of the population that are already in vulnerable situations, including indigenous peoples, older persons, persons with disabilities, and women and girls”. Finally, it acknowledges the threat that this right constitutes to the enjoyment of human rights by present and future generations.

The resolution further calls on states to engage in capacity-building for the efforts to protect the environment, continue to share good practices and cooperate with each other and with the United Nations and other relevant international and domestic organizations, to adopt national policies in this matter, and to take this right into account in the implementation of and follow-up to the Sustainable Development Goals, reaffirming that States have the obligation to respect, protect and promote human rights, in all actions undertaken to address environmental challenges and affirming that the promotion of this right “requires the full implementation of the multilateral environmental agreements under the principles of international environmental law”.

This resolution passed in the United Nations General Assembly in 2022 with 161 votes in favor and 8 abstentions (Belarus, Cambodia, China, Ethiopia, Iran, Kyrgyzstan, the Russian Federation, and Syria). The abstentions were mainly due to the fact, as expressed by the Russian Federation “that neither universal environmental agreements nor international human rights treaties address the concepts of a clean, healthy or sustainable environment or similar notions. (And that) Only until such a right is recognized exclusively within international treaties as approved by States can they talk about a legally recognized right.”

The resolution remains non-legally binding and does not provide a definition of such right. However, it states several obligations such as: the duty of states to protect vulnerable communities from the impacts of environmental harms, the duty of states to cooperate in accordance with their international commitments and intergenerational justice. Furthermore, a 2019 report by the United Nations Human Rights Council identified the “vital elements” that could be part of such a definition, which will be analyzed in the following chapter.

European Union

The European Union has not recognized the right to a healthy and sustainable environment as a fundamental right, as it is not inscribed in the Charter of Fundamental Rights of the European Union. It has, however, included the right to a high level of environmental protection in Article 37 of the Charter by stating that “a high level of environmental protection and the improvement of the quality of the environment must be

integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.”²

The commitment expressed by the European Union in this European resolution to promote and protect the right to a healthy environment at the international level is visible through various agreements and initiatives.

The European Union has, for example, supported the adoption of the Paris Agreement in 2015, which is the first binding multilateral environmental agreement to include an explicit human rights reference, by stating that “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights”.

This treaty, was adopted by 196 countries and aims at combating climate change by limiting global warming to below 2°C above pre-industrial levels, aiming at 1.5°C.

COURTS’ RECOGNITION OF THE RIGHT TO A HEALTHY ENVIRONMENT

The right to a healthy environment has been recognized as a fundamental human right by the Inter-American Court of Human Rights (IACHR) on an advisory opinion (Advisory Opinion OC-23/17)³ issued in 2017.

According to the court “the human right to a healthy environment has been understood as a right with individual as well as collective connotations. In its collective dimension, the right to a healthy environment constitutes a universal interest, which is owed to present as well as future generations. Having said that, the right to a healthy environment also has an individual dimension, in that its violation can have direct or indirect repercussions on people due to its nexus with other rights, such as the right to health, personal integrity or life, among others. Environmental degradation can cause irreparable harms to human

² Paragraph AX of the European Parliament resolution of 9.06.2021, *EU Biodiversity Strategy for 2030: Bringing nature back into our lives*.

³ Inter-American Court of human rights, advisory opinion OC-23/17, of 15.11.2017.

beings, for which reason a healthy environment is a fundamental right for the existence of humanity”.

The court also defined the obligations of the states. “The Court considers that States have the obligation to avoid transboundary environmental harms that could affect the human rights of persons outside their territory (...). States must provide relief immediately, adequately and effectively to the persons and States that are victims of a transboundary harm resulting from activities carried out in their territory or under their jurisdiction, independently of whether the activity that caused said harm is not prohibited by international law. (..) (as long as there is) a causal relationship between the harm caused and the action or omission of the State of origin with respect to activities in its territory or under its control.”

This advisory opinion was later enforced by the court in the case of the indigenous communities of the *Lhaka Honhat Association v. Argentina*⁴. As Armando Rocha and Rômolo Sampaio⁵ explain “although the treaties do not directly protect the rights of indigenous groups, children or the elderly, restrictions to the enjoyment of human rights resulting from membership to a particular group might amount to a human rights infringement. The IACtHR took a further step and acknowledged that the right to a healthy environment is necessarily individual and collective at the same time, and violations of this right may result from restrictions regarding the enjoyment of natural resources that affect the culture and way of life of indigenous groups. This explains why its environmental case law is embedded in indigenous groups' rights—but also why the IACtHR is bolder than the ECtHR, since it is not just balancing human rights of individuals against a conflicting activity, but rather assessing the existence and way of life of a full indigenous community. Accordingly, the IACtHR views the rights of indigenous peoples to their property and their rights to land and natural resources as being linked to environment related obligations.”

⁴ Inter- American Court of Human Rights, *case of the indigenous communities of the Lhaka Honhat (our land) association v. Argentina*, of 06.02.2020.

⁵ ROCHA, Armando; SAMPAIO Rômulo, *Climate change before the European and Inter-American Courts of Human Rights: Comparing possible avenues before human rights bodies*. RECIEL. 2023;1-11. doi:10.1111/reel.12502.

On the other hand, the European Court of Human Rights (ECtHR) has yet to explicitly recognize a right to a healthy environment as the Charter of Fundamental Rights of the European Union does not have an article which explicitly recognizes the right to a healthy environment. It has, however, since the case of *López Ostra v. Spain* in 1994 sanctioned states for failing to protect and prevent environmental harm when this harm impacted the citizens ability to enjoy other rights and freedoms stipulated in the Charter of Fundamental Rights of the European Union such as the right to life (Articles 2) and right to private and family life (Article 8), making a *greener* interpretation of the Charter. The recognition of such a right by the court might be close as the Parliamentary Assembly of the Council of Europe has in September 2021 presented a resolution (Resolution 2396)⁶ for the recognition of an autonomous right to a healthy environment in the European Convention on Human Rights and the European Social Charter, as this “would finally give the Court a non-disputable basis for rulings concerning human rights violations arising from adverse environment-related impacts on human health, dignity and life.”

The European commitment to the recognition of the right to a healthy environment had already been expressed by a resolution from the European Parliament, in June 2021, where it stated that “the right to a healthy environment should be recognized in the Charter and that the European Union should lead the initiative to recognize a similar right internationally”⁷.

While such a right is not expressed in the Charter and, as such, is not enforced by the Court, authors such as Heloísa Oliveira claim the environmental framework is practically irrelevant for the vast majority of the decisions of the European Court of Human Rights, and the environmental protection resulting from this jurisprudence is merely incidental.⁸

⁶ Council of Europe, Resolution 2396 (2021), *Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe*.

⁷ Paragraph 143 of the European Parliament resolution of 9.06.2021, *EU Biodiversity Strategy for 2030: Bringing nature back into our lives*.

⁸ OLIVEIRA, Heloísa, *Direitos humanos e proteção do ambiente*. In *Direitos Humanos e Estado de Direito Proteção no quadro europeu e internacional*, pp 769- 806, DUARTE, Maria Luísa; GIL, Ana Rita; FREITAS, Tiago Fidalgo de. AAFDL, 2022.

As Armando Rocha and Rômolo Sampaio⁹ explain “The difficulties faced by both courts are similar, although it is likely that the IACtHR will end up being more open than the ECtHR to flesh out States' climate-related human rights obligations. Not only its judicial activism is more pronounced in general, but it also benefits from the implied reference to a right to a healthy environment in the American Convention on Human Rights, as well as from its own liberal reading of States' extraterritorial human rights jurisdiction. In the European system, the prospects are also favorable, even if the ECtHR may need to better explain how climate-related obligations can be derived from the ECHR, the victimhood character of the applicant(s) or States' extraterritorial jurisdiction.”

Similarly, the International Court of Justice (ICJ) has not explicitly recognized a standalone right to a healthy environment in its judgments. The court has, however, made several contributions to international environmental law. In the case *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*¹⁰, for example, the court clarified the meaning of the duty to prevent significant transboundary pollution, stating that such obligation “entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators, to safeguard the rights of the other party”. It also stressed that there is “a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource.”

Additionally, in the case *Costa Rica v. Nicaragua*, “the Court took the view that damage to the environment, in particular the consequent impairment or loss of the ability of the environment to provide goods and services, and the cost of the restoration of the damaged environment, was compensable under international law.”¹¹

⁹ ROCHA, Armando; SAMPAIO Rômulo, *Climate change before the European and Inter-American Courts of Human Rights: Comparing possible avenues before human rights bodies*. RECIEL. 2023;1-11. doi:10.1111/reel.12502.

¹⁰ International Court of Justice, (*Argentina v. Uruguay*), of 20.04.2010.

¹¹ International Court of Justice, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*.

However, the United Nations General Assembly has in March of 2023 requested an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change in Resolution A/77/L.58. According to the resolution the court must clarify “what are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations; (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to: States (...) (and) peoples and individuals of the present and future generations affected by the adverse effects of climate change?”. This opinion will not be binding but is expected to provide clarification and push for change in the international order.

THE SCOPE OF THE RIGHT TO A HEALTHY ENVIRONMENT

According to the Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment number A/HRC/43/53 from 30 December 2019, “the substantive elements include clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems.”¹²

THE RIGHT TO CLEAN AIR¹³

The right to clean air ensures every person the right to inhale air that is not contaminated with toxic elements or pollutants as air pollution can have severe negative impacts on public health, the environment, and economic development.

International recognition

Despite not being explicitly mentioned in international legislation such as the Universal Declaration of Human Rights, the European Convention on Human Rights, or the Convention on the Rights of the Child, this right can be derived from other articles.

The Universal Declaration of Human Rights, for example, recognizes that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family” (Article 25) and that, “everyone has the right to life, liberty, and security of person (article 3). The right to clean air can be derived from these articles based on the detrimental effects that air pollution can have on the health and well-being of individuals, possibly leading to illnesses and death. This is demonstrated, for example, through a 2016 study elaborated by the World Bank and the Institute for Health Metrics and Evaluation of the University of Washington.

¹² Human Rights Council Forty-third session, 30.12.19, A/HRC/43/53, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*.

¹³ Jankovic, S. (2021). *Conceptual Problems of the Right to Breathe Clean Air*. *German Law Journal*, 22(2), 168-183. doi:10.1017/glj.2021.1.

According to this study “in 2013, 5.5 million premature deaths worldwide, or 1 in every 10 total deaths, were attributable to air pollution. Air pollution has posed a significant health risk since the early 1990s, the earliest period for which global estimates of exposure and health effects are available. In 1990, as in 2013, air pollution was the fourth leading fatal health risk worldwide, resulting in 4.8 million premature deaths”¹⁴.

The Convention on the Rights of the Child, which has been ratified by Portugal, recognizes the right of children “to the enjoyment of the highest attainable standard of health” (Article 24, no. 1), which shall be done, as well, by the adoption of measures that take “into consideration the dangers and risks of environmental pollution” which, according to the Committee on the Rights of the Child General Comment No. 15¹⁵ includes air pollution, mentioning that “adequate housing includes non-dangerous cooking facilities, a smoke-free environment, appropriate ventilation”.

It has, as well, been recognized in the domestic legislation of several countries, such as the Philippines Clean Air Act, the Environmental Code of France and the General Law on the Environment and Natural Resources 2000 of the Dominican Republic.

There have, as well, been court decisions such as the one in the case of *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and Others*, in South Africa where the court enforced the right to a healthy environment by determining that the “undue delay without an explanation on the side of the Minister (in implementing the Highveld Plan which aims at the implementation of measures that would reduce harmful emissions and improve the overall air quality) cannot be condoned”¹⁶.

Another example is the opinion emitted by the Supreme Court of Mexico where it overturned a decision by an agency that would have allowed higher levels of ethanol in gasoline. The court stated that the precautionary principle and the right to a healthy

¹⁴ The World Bank and Institute for Health Metrics and Evaluation University of Washington, Seattle, *The Cost of Air Pollution Strengthening the Economic Case for Action*, 2016, p.5.

¹⁵ UN Committee on the Rights of the Child (CRC), *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, 17.04.2013, CRC/C/GC/15.

¹⁶ The High Court of South Africa, case number: 39724/2019, 18.03.2022.

environment required the consideration of the environmental risks associated with such emissions of ethanol. The decision was to invert the decision of the Mexico's Energy Regulatory Commission to increase the maximum ethanol content in gasoline from 5.8% to 10% nationwide, as the court stated that a higher ethanol content could lead to increased pollution and greenhouse gas emissions. The court acknowledged that the measure could reduce fuel costs but emphasized that economic factors must be balanced with environmental rights and Mexico's commitment to reducing emissions under the Paris Agreement. The court determined that any measure with significant environmental risks should be evaluated based on the best available scientific information and require public participation.¹⁷

European Union Law

Similarly, the right to clean air is not explicitly mentioned in the European Convention on Human Rights, nonetheless it can be derived from Article 2 (right to life), Article 8 (the right to respect for private and family life) and Article 1 of Protocol No. 1 (the right to property). This has been visible under the jurisprudence of the European Court of Human Rights.

It has been the understanding of the European Court of Human Rights that article 8 includes the right to clean air, when the negative impact of pollution is felt in individual's private and family life.

In the case of *López Ostra v. Spain* (1994)¹⁸, “the applicant alleged that there had been a violation of Article 8 (...) of the Convention on account of the smells, noise and polluting fumes caused by a plant for the treatment of liquid and solid waste sited a few meters away from her home”. According to the medical reports submitted into evidence, the Audiencia Territorial acknowledged that “the nuisances in issue impaired the quality of life of those living in the plant's vicinity” and “the Commission noted that hydrogen sulfide emissions from the plant exceeded the permitted limit and could endanger the health of those living nearby and that there could be a causal link between those emissions and the applicant's daughter's ailments”. The Court decided “that the State did not

¹⁷ La Suprema Corte de Justicia del Mexico, Amparo en revisión 610/2019.

¹⁸ European Court of Human Rights, case of *lópez ostra v. spain*, application no. 16798/90, 09.12.1994.

succeed in striking a fair balance between the interest of the town's economic well-being - that of having a waste-treatment plant - and the applicant's effective enjoyment of her right to respect for her home and her private and family life" violating article 8 of the convention.

Likewise, in the case of *Budayeva and Others v. Russia* (2008)¹⁹ where there was a series of explosions at a military ammunition depot, which caused extensive damage and pollution in the nearby area, the European Court of Human Rights reiterated "that Article 2 does not solely concern deaths resulting from the use of force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction, (...) include(ing) both substantive and procedural aspects, notably a positive obligation to take regulatory measures and to adequately inform the public about any life-threatening emergency, and to ensure that any occasion of the deaths caused thereby would be followed by a judicial enquiry", obligations which overlap with those of article 8. "The Court conclude(d) that there was no justification for the authorities' omissions in implementation of the land-planning and emergency relief policies in the hazardous area of Tynauz regarding the foreseeable exposure of residents, including all applicants, to mortal risk. Moreover, it finds that there was a causal link between the serious administrative flaws that impeded their implementation and the death of Vladimir Budayev and the injuries sustained by the first and the second applicants and the members of their family". As such, the court decided that there was a violation of articles 8 and 2 of the Convention.

Finally, in the case of *Fadeyeva v. Russia* (2005)²⁰, there was a chemical plant located near the applicant's home that was emitting harmful pollutants into the air, causing damage to her health and property. The European Court of Human Rights held that the government's failure to take adequate measures to reduce air pollution had seriously affected the applicant's right to the peaceful enjoyment of their home and property and, therefore, constituted a violation of Article 8 and Article 1 of Protocol No. 1 of the Convention.

¹⁹ European Court of Human Rights, case of *Budayeva and others v. Russia*, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 20.03.2008.

²⁰ European Court of Human Rights, case of *Fadeyeva v. Russia*, Application no. 55723/00, 09.06.2005.

Likewise, the International Covenant on Economic, Social and Cultural Rights recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” (Article 12) and the African Charter on Human and Peoples' Rights recognizes “that all people shall have the right to a general satisfactory environment favorable to their development” (Article 24).

In the European Union, there has also been implemented legislation in this regard. The European Union’s Ambient Air Quality Directive (2008/50/EC) was adopted by the European Parliament and the Council of the European Union on 21 May 2008 and sets out the legal framework for the monitoring and management of air quality in the European Union.

This directive sets out air quality standards for various pollutants in order to “avoid, prevent or reduce harmful effects on human health and the environment as a whole” (article 1). It establishes limit and target values for pollutants such as particulate matter (PM10 and PM2.5), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), lead, carbon monoxide (CO), and ozone (O₃). Member States are required to monitor and report on air quality (articles 4, 5 and 6), take measures to improve air quality where standards are not met (article 8), and ensure that the public is informed about air quality (article 7). Member States are also required to cooperate with one another given the transboundary nature of some pollutants (recital 20, article 1 and 3).

In 2021, the Court of Justice of the European Union emitted a judgment in *Commission v UK* [2021] EUECJ C-664/18, where it enforced this directive and that the UK had not complied with its obligations under the Directive. The court concluded that the UK had in a systemic and persistent way exceeded the annual limit value for NO₂ in sixteen zones (in areas such as Greater London, East Midlands, Southeast and Glasgow) and the hourly limit value in Greater London, therefore violating Article 13 of the Directive. The court also concluded that the UK was violating article 23 since the measures adopted to improve air quality failed to tackle the leading sources of NO₂ emissions. The court criticized the plan stating that it did “not provide an estimate of the improvement of air quality planned and of the expected time required to attain those objectives” and “the description of the

measures (...) are often insufficiently detailed, summary or vague”, “some of those measures are generic (...) and not legally binding”.

Additionally, The World Health Organization (WHO) Air Quality Guidelines provide recommendations on the levels and targets of common air pollutants such as PM, O₃, NO₂, and SO₂. These guidelines are also referred to in the Recital 2 of the European Union’s Directive, according to which “In order to protect human health and the environment as a whole, it is particularly important to combat emissions of pollutants at source and to identify and implement the most effective emission reduction measures at local, national and Community level. Therefore, emissions of harmful air pollutants should be avoided, prevented, or reduced and appropriate objectives set for ambient air quality taking into account relevant World Health Organization standards, guidelines and programs.”

THE RIGHT TO HEALTHY BIODIVERSITY AND ECOSYSTEMS

According to Elisa Morgera, in a paper was requested by the European Parliament's Subcommittee on Human Rights, “Broadly speaking, the term ‘biodiversity’ captures a complex understanding of nature as the variety of life forms on the planet; the dynamic interactions and inter-dependencies among living organisms, as well as between living organisms and non-living resources (ecosystems); and the benefits that humans derive from ecosystems for their wellbeing (ecosystem services).”²¹

International recognition

At the international level, there is no binding treaty or convention that explicitly recognizes the right to healthy biodiversity and ecosystems as a universal human right. However, similarly with the right to clean air this right can be found through interpretation in some regional human rights instruments such as the European Convention on Human Rights, the African Charter on Human and People’s Rights, the American Convention on Human Rights, and the Arab Charter on Human Rights.

²¹ MORGERA, Elisa, *Biodiversity as a Human Right and its Implications for the EU’s External Action*, 2020, ISBN: 978-92-846-6477-1.

Such an interpretation can be made as this right relates to other rights such as Right to life, right to health, right to food, right to water, right of indigenous peoples and other natural resource-dependent communities, children's rights, and women's rights. (see table 1).

However, there is an international legal instrument, namely the Convention on Biological Diversity, which has been rectified by Portugal and whose main objective is "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources" as stated in article 1. This Convention was adopted at the United Nations Conference on Environment and Development, also known as the Earth Summit, held in Rio de Janeiro, Brazil, in 1992 and has been ratified by 196 nations.

Under this convention, States are under the obligation to, in order to achieve the objectives of the convention and "in accordance with their conditions and capabilities develop national strategies, plans and programs" (article 6), "provide financial support and incentives" (article 20), identify, monitor and maintain relevant data related to the components of biological diversity that are important, as well as "identify (and monitor) processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity" (article 7). States are further obliged to "cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest" (article 5), including measures that support developing countries (article 12), the use of a "clearing-house mechanism to promote and facilitate technical and scientific cooperation" (article 14). Finally, under article 14, contracting parties shall "as far as possible and as appropriate, introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures."

There have been several domestic cases which have enforced this convention. One of which is the case *Sheikh Asim Farooq v Federation of Pakistan*²² where the Lahore High Court determined that Pakistan had an obligation “to do anything, they are required by law to do in order to safely manage, conserve, sustain, maintain, protect and grow forests and plant trees in urban cities”. It also stated that the government had an obligation to fulfill their duties under domestic and international law (including the ones from the Convention on Biological Diversity) while implementing its policies and that “Had above-mentioned laws and polices properly been implemented by the Respondents Departments in letter and spirit with proper mechanism and procedure, the forest of Pakistan could have been saved for further depletion and deforestation.”

Another case which analyses this convention, this time in regard to indigenous rights is the case of the *Kaliña and Lokono Peoples v. Suriname*²³, where the court reiterated that “the right of the indigenous and tribal peoples to the protection of the natural resources in their territories are compatible, and that, owing to their interrelationship with nature and their ways of life, the indigenous and tribal peoples can make an important contribution to such conservation. Thus, the criteria of a) effective participation, b) access and use of their traditional territories, and c) the possibility of receiving benefits from conservation are essential elements to achieve this compatibility which should be evaluated by the State” and therefore confirming article 8 of the convention which states that that each State shall “respect, preserve and maintain [...] practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, [...] and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.”

European Union Law

²² Lahore High Court, *Sheikh Asim Farooq V/S Federation of Pakistan etc*, Stereo HCJ DA 38, Writ Petition No.192069 of 201.

²³ Inter-American Court of Human Rights Case of the *Kaliña and Lokono Peoples v. Suriname*, 25.11.2015.

In the European Union there have, as well, been adopted several legal instruments to protect and conserve biodiversity and ecosystems.

In 1992, the European Union approved the Habitats Directive, officially known as Directive 92/43/EEC, which aims for the conservation and protection of natural habitats and species of wild fauna and flora, as well as species of Community interest.

The directive does so through the creation of protected areas (Natura 2000), where Member States are required to take measures to maintain or restore the habitats and species, and to avoid or reduce the impacts of projects or activities that may have negative effects on them.²⁴

Additionally, there is the Birds Directive (2009/147/EC), which was adopted on 30 November 2009 as a replacement for the Birds Directive of 1979. The directive focuses on the conservation of bird species and its natural habitats through: the prohibition of activities that directly threaten birds, such as deliberate killing, capture, destruction of nests, and trade in live or dead birds; the establishment of a network of Special Protection Areas (SPAs); the creation and restoration of habitats appropriate for birds; hunting restrictions; and international cooperation among member states, international organizations and Non-governmental organizations.

Finally, there is the Water Framework Directive (Directive 2000/60/EC) which aims at the protection and sustainable use of European Union's water bodies, including rivers, lakes, and coastal waters. This directive requires the European Union member states to develop and implement river basin management plans (article 4) in order to protect and improve the quality of their water bodies. These include strategies to prevent and reduce pollution, restore degraded water bodies, and achieve sustainable water use.

There is, as well, the European Union's Biodiversity Strategy for 2030, adopted in May 2020, which details the European Union's vision to step up the protection and restoration of nature, as it recognizes that "protection has been incomplete, restoration has been

²⁴ European Commission, Directorate-General for Environment, *Guidelines on climate change and Natura 2000 : dealing with the impact of climate change, on the management of the Natura 2000 network of areas of high biodiversity value*, Publications Office, 2014.

small-scale, and the implementation and enforcement of legislation has been insufficient”.

In this strategy, the European Union sets multiple targets, including, for example: the protection of at least 30% of the land and 30% of the sea in the European Union; the restoration and conservation of key ecosystems, such as forests, wetlands, grasslands, and marine habitats; promoting pollinator-friendly farming practices and creating habitats for pollinators; the promotion of organic farming and agroecology, reducing the use of pesticides and fertilizers, and improving soil health; and the mainstreaming of biodiversity.

THE RIGHT TO A NON-TOXIC ENVIRONMENT

The right to a non-toxic environment refers to the right of individuals to live in an environment that is free from harmful substances, pollution, and other hazardous conditions that could negatively impact their health and well-being.

International recognition

There are several international treaties concerning toxic substances such as the Basel Convention, the Stockholm Convention, the Rotterdam Convention, and the Minamata Convention. These treaties don't explicitly mention this right. However, they indirectly support and contribute to its realization by addressing causes of pollution, thus maintaining the environment and human health.

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, was adopted in 1989 and ratified by Portugal in 1994, and aims at “the reduction of hazardous waste generation and the promotion of environmentally sound management of hazardous wastes, wherever the place of disposal; the restriction of transboundary movements of hazardous wastes except where it is perceived to be in accordance with the principles of environmentally sound management; and a regulatory system applying to cases where transboundary movements are permissible”²⁵.

²⁵ The Basel Convention, *Convention Overview*.

It enforces a procedure called "*Prior Informed Consent*," which requires consent from the receiving country before shipments can be made or the shipment will be considered illegal. Additionally, shipments to and from countries that are not party to the Convention are illegal, unless there is a special agreement in place. The Convention requires each party to implement national legislation to prevent and penalize illegal trafficking of hazardous and other wastes. Furthermore, the Convention mandates that parties ensure environmentally sound management and disposal of hazardous and other wastes. Parties are expected to minimize the quantity of wastes generated and the amount moved across borders and treat and dispose of them as close to their place of generation as possible.²⁶

The Stockholm Convention on Persistent Organic Pollutants was adopted by the Conference of Plenipotentiaries in 2001 in Stockholm, Sweden, and accepted by Portugal in 2004. This convention requires its parties to prohibit and/or eliminate the production, use, importation, and exportation of intentionally produced POPs, as well as restrict the production and use of such chemicals (Article 3). It requires, as well, that parties take measures regarding: the adoption of implementation plans (Article 7); the facilitation of information exchange (Article 9); the promotion and facilitation of public information, awareness and education (Article 10); the encouragement of research, development and monitoring (Article 11); the provision of technical assistance to least developed countries (Article 12); reporting of measures adopted (Article 15); and the development and approval of procedures and institutional mechanisms for determining non-compliance and for addressing such practices (Article 17).

The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was adopted on 10 September 1998 by a Conference of Plenipotentiaries in Rotterdam, the Netherlands, and approved by Portugal in 2005. The Convention entered into force on 24 February 2004. This convention aims to regulate and monitor the international trade of hazardous chemicals and pesticides by promoting informed decision-making and ensuring the safe handling of these substances.

²⁶ The Basel Convention, *The Basel Convention At A Glance*....

The main mechanisms are: the Prior Informed Consent Procedure, which requires exporting countries to provide information about the hazardous characteristics and potential risks of chemicals and pesticides to the importing countries, so that these can make informed decisions about whether to accept or refuse the importation of these substances (Article 11); information Exchange on hazardous chemicals and pesticides between exporting and importing countries (Article 14); Capacity Building and Technical Assistance (Article 16); and procedures of noncompliance (Article 17).

The Minamata Convention on Mercury was adopted on 10 October 2013 at the Conference of Plenipotentiaries, held in Kumamoto, Japan, and entered into force on 16 August 2017. Portugal acceded to the Convention in 2018. It aims at the protection of “human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds” (Article 1) through measures regarding the use, emissions, and releases of mercury from various sources, including industrial processes, products, and waste.

The convention addresses a ban on new mercury mines and the phase-out of existing ones (Article 3), the phase-out and phase-down of mercury use in several products and processes (Article 4, 5 and 6), control measures on emissions to air (Article 8) and on releases to land and water (Article 9), and the regulation of the informal sector of artisanal and small-scale gold mining (Article 7). It also has articles on Information Exchange (Article 19) and Monitoring and reporting (Article 13).

This right has been enforced, through the right to a healthy environment, in a decision by the *African Commission on Human & Peoples Rights*, where it condemned Nigeria for not taking the necessary measures to prevent oil spillages and therefore failing to protect its citizens from damaging acts caused by private entities. The Commission stated that “the Government of Nigeria facilitated the destruction of the Ogoniland. Contrary to its Charter obligations and despite such internationally established principles, the Nigerian Government has given the green light to private actors, and the oil Companies in particular, to devastatingly affect the well-being of the Ogonis. By any measure of standards, its practice falls short of the minimum conduct expected of governments.”²⁷

²⁷African Commission on Human and Peoples' Rights, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, Comm. No. 155/96 (2001).

European Union Law

The European Union does not have a specific legal framework or legislation that explicitly establishes the right to a non-toxic environment. There are, however, several regulations and directives under European Union's law concerning toxic substances such as Regulation no. 1907/2006, the Water Framework Directive, the Ambient Air Quality Directives and the Waste Framework Directive. These indirectly support and contribute to the realization of such a right by addressing causes of pollution, thus maintaining the environment and human health.

There is Regulation no. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the registration, evaluation, authorization and restriction of chemicals (REACH). This regulation outlines requirements and provisions for the safe use and management of chemicals, by requiring manufacturers and importers to register their substances and provide information on their properties, uses, and safe handling. It also imposes obligations on users, distributors, and suppliers of articles that contain substances of very high concern.

The Water Framework Directive (Directive 2000/60/EC), mentioned previously, also materializes this right, by imposing that member states take action in the prevention or reduction of pollution in water caused by hazardous substances, mentioning in paragraph 43 that "pollution through the discharge, emission or loss of priority hazardous substances must cease or be phased out".

Similarly, the Ambient Air Quality Directives (Directive 2008/50/EC), mentioned previously, also materializes this right, by imposing that member states take action regarding the limitation of toxic substances emissions.

The Waste Framework Directive (Directive 2008/98/EC) also includes provisions that indirectly contribute to the management of toxic waste such as imposing the separation of hazardous waste (Article 18), the insurance "that the production, collection and transportation of hazardous waste, as well as its storage and treatment, are carried out in conditions providing protection for the environment and human health" (article 17), and

separate articles for some hazardous substances such as oil (article 21) and bio-waste (article 22).

THE RIGHT TO A SAFE CLIMATE

International recognition

There are several international treaties and agreements that recognize recognizes the threat posed by climate change to human rights, including the rights to life, health, food, water, and adequate housing, through international cooperation, environmental protection and climate change mitigation and adaptation. These include the United Nations Framework Convention on Climate Change, the Paris Agreement and the Kyoto Protocol.

The United Nations Framework Convention on Climate Change (UNFCCC) was adopted in 1992 and entered into force on 21 March 1994, with the goal of “stabilizing greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”.

The treaty establishes several obligations for the signing parties, while considering the common but differentiated responsibilities and respective capabilities of developed and developing countries in addressing climate change (Article 3, no. 2). According to the treaty “the Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.” (Article 3, no. 3).

The Paris Agreement is a legally binding international treaty on climate change. Adopted at the United Nations Climate Change Conference (COP21) in Paris, France, on 2015, it entered into force on 4 November 2016, year when Portugal ratified it.

In this treaty, countries have committed to “holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change; (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and (c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development” (Article 2). In this context, countries must “prepare, communicate, and maintain successive nationally determined contributions (NDC) that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.” (Article 4, no. 2). Developed countries have also committed to assist less developed countries in implementing their NDCs through “mitigation, adaptation, finance, technology transfer and capacity building” (Article 6, no. 8).

The Kyoto Protocol was adopted in 1997 entered into force on 16 February 2005, having been ratified by Portugal in 2002. Under the UNFCCC, the Kyoto Protocol is an international treaty aimed at reducing greenhouse gas emissions based on individually agreed targets. It includes legally binding emission reduction targets for developed countries and provides financial and technological support to developing countries, based on the principle of “common but differentiated responsibility and respective capabilities” (Article 10) since it recognizes the greater role played by developed countries in the greenhouse gas emissions. Countries must adopt policies and measures on mitigation of greenhouse gas emissions and report periodically (Article 2 and 3).

Lastly, the United Nations General Assembly has established as one of the Sustainable Development Goals and targets (SDGs) for the 2030 Agenda for Sustainable Development²⁸ “take urgent action to combat climate change and its impacts” (Goal 13).

²⁸ UN Committee on the Rights of the Child (CRC), General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), 17 April 2013, CRC/C/GC/15

As such, it has established as targets to accomplish “1. Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries. 2. Integrate climate change measures into national policies, strategies and planning. 3 Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning. 3.a Implement the commitment undertaken by developed-country parties to the United Nations Framework Convention on Climate Change to a goal of mobilizing jointly \$100 billion annually by 2020 from all sources to address the needs of developing countries in the context of meaningful mitigation actions and transparency on implementation and fully operationalize the Green Climate Fund through its capitalization as soon as possible. 3.b Promote mechanisms for raising capacity for effective climate change-related planning and management in least developed countries and small island developing States, including focusing on women, youth, and local and marginalized communities”.

An example of the application of such obligations is the case *Leghari v Federation of Pakistan*²⁹, presented at the Lahore High Court where, “a Pakistani farmer sued the national government for failure to carry out the National Climate Change Policy of 2012 and the Framework for Implementation of Climate Change Policy (2014-2030). Leghari argued that the government should pursue climate mitigation or adaptation efforts, and that the government’s failure to meet its climate change adaptation targets had resulted in immediate impacts on Pakistan’s water, food, and energy security. Such impacts offended his fundamental right to life”.³⁰ In its decision, the court concluded that “no substantial work has been done to implement the Framework by the Government and realizing that its effective and immediate implementation is necessary for the protection and safeguard of the fundamental rights of the people, this Court constituted (a) Climate Change Commission”. The court has also established “a Standing Committee on Climate Change, which will act as a link between the Court and the Executive and will render assistance to the above-mentioned Governments and Agencies in order to ensure that the Policy and the Framework continue to be implemented.”

European Union Law

²⁹The Lahore High Court, Asghar Leghari Versus Federation of Pakistan, etc, Case No: W.P. No. 25501/2015.

³⁰Climate Case Chart, *Leghari v. Federation of Pakistan*.

Aiming to mitigate greenhouse gas emissions, enhance resilience to climate impacts, and contribute to creating for safe climate, the European Union has implemented various laws and policies to address climate change and promote climate action.

In 2018, the European Union established several key targets for 2030, as part of the clean energy for all Europeans package. These include the Renewable Energy Directive 2018/2001/EU which establishes as a binding renewable energy³¹ target for the European Union for 2030 at least 32% share for renewable energy; the Directive on Energy Efficiency (2018/2002) which established an energy efficiency target for 2030 of at least 32.5%³²; and the European Union's Emissions Trading System, the Effort Sharing Regulation with Member States' and the Land use, land use change and forestry Regulation which implemented a target of at least 40% cuts in greenhouse gas emissions³³.

However, as part of the European Green Deal, the European Commission proposed in September 2020 to raise the 2030 greenhouse gas emission reduction target, including emissions and removals, to at least 55% compared to 1990. Given the need to increase European Union's energy independence, on 30 March 2023, a provisional agreement was reached, for a binding target for 2030 of at least 42.5%, but aiming to reach 45%. Regarding the energy efficiency target ensure an additional reduction of energy consumption of 9% was established on the European Union's Climate Target Plan, and later, in May 2022, in the REPowerEU plan it was proposed to increase the target from to 13%.

In the European Union, there is, as well, an Emissions Trading System³⁴ which operates in European Union's member states, Iceland, Liechtenstein, and Norway. This system creates a cap on the total amount of greenhouse emissions that can be emitted, and allows operators to "buy or receive emissions allowances, which they can trade with one another as needed." It covers gases such as carbon dioxide (CO₂) nitrous oxide (N₂O) and

³¹European Commission, *Renewable energy directive*.

³²European Commission, *Energy efficiency directive*.

³³European Commission, *2030 climate & energy framework*.

³⁴European Commission, *EU Emissions Trading System (EU ETS)*.

perfluorocarbons (PFCs) from different sectors. The system is regulated by the Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003.

An example of the application of these state obligations is the case *State of the Netherlands v. Urgenda Foundation*³⁵, trialed by the Supreme Court of the Netherlands in 2018. In this case, the Urgenda Foundation accused the government of not taking sufficient actions to reduce greenhouse gas emissions and therefore endangering people's health and well-being. The court decided that "under Articles 2 and 8, the Netherlands is obliged to do 'its part' in order to prevent dangerous climate change, even if it is a global problem" which is, as well, in accordance with the obligations of UNFCCC and confirmed the understanding of lower courts that the State should reduce greenhouse gas emissions by at least 25% by the end of 2020 compared to emissions from 1990.

Another example is the case *Neubauer and others v Germany*³⁶ presented to the German Federal Constitutional Court. In this case, a group of German Youth claimed that the Germany's Federal Climate Protection Act did not establish a high enough target of greenhouse emission reduction and therefore violated German's commitments under European Union and International Law (namely the Paris Agreement). The court recognized that "the only way to significantly slow down human-induced climate change is by reducing CO₂ emissions" and that "one generation must not be allowed to consume large portions of the CO₂ budget while bearing a relatively minor share of the reduction effort, if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom". As such, the reduction of 55% presented by the legislator was considered insufficient and the court concluded that "the legislator has violated fundamental rights by failing to take sufficient precautionary measures to manage the obligations to reduce emissions in ways that respect fundamental rights". As a consequence of this decision, Germany established in 2021 a minimum reduction of emissions of 65% from the levels of 1990 until 2030.

THE RIGHT TO SAFE WATER

³⁵Supreme Court of the Netherlands, case number ECLI:NL:HR:2019:2007.

³⁶German federal constitutional court, case number 1 bvr 2656/18, 24 march 2021.

According to the United Nations Department of Economic and Social Affairs³⁷, to realize this right, “the water supply for each person must be sufficient and continuous for personal and domestic uses; (...) free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health; (...) of an acceptable color, odor and taste; (...) physically accessible within, or in the immediate vicinity of the household, educational institution, workplace or health institution; (...) and affordable for all”.

International recognition

In 2015, in a report of the special rapporteur, the guidelines for the realization of the right to drinking water and sanitation had already been drafted as it stated that everybody had the right to “1.1 sufficient quantity of clean water for personal and domestic uses; 1.2 adequate and safe sanitation that is conducive to the protection of public health and the environment; 1.3 (and) a water and sanitation service that is: “(a) Physically accessible within, or near the household, educational institution, workplace or health institution; (b) Of sufficient and culturally acceptable quality; (c) In a location where physical security can be guaranteed; (d) Supplied at a price that everyone can afford without compromising their ability to acquire other basic goods and services”.

The human rights to safe water and adequate sanitation were recognized as human rights in 2010 by resolution 64/292³⁸ of the United Nations General Assembly and resolution 15/9³⁹ of the United Nations Human Rights Council and have been re-affirmed by other resolutions such as United Nations General Assembly resolution 68/157 and Human Rights Council resolution 27/7.

In the Human Rights Council resolution, states were called “(a) To develop appropriate tools and mechanisms, which may encompass legislation, comprehensive plans and strategies for the sector, including financial ones, to achieve progressively the full realization of human rights obligations related to access to safe drinking water and

³⁷ United Nations Department of Economic and Social Affairs, *The human right to water and sanitation*.

³⁸United Nations General Assembly, Resolution adopted by the General Assembly on 28 July 2010, 3 August 2010, A/RES/64/292.

³⁹Human Rights Council, Resolution n° 15/9 Human rights and access to safe drinking water and sanitation, 6 October 2010, A/HRC/RES/15/9.

sanitation, including in currently unserved and underserved areas; (b) To ensure full transparency of the planning and implementation process in the provision of safe drinking water and sanitation and the active, free and meaningful participation of the concerned local communities and relevant stakeholders therein; (c) To pay particular attention to persons belonging to vulnerable and marginalized groups, including by respecting the principles of non-discrimination and gender equality; (d) To integrate human rights into impact assessments throughout the process of ensuring service provision, as appropriate; (e) To adopt and implement effective regulatory frameworks for all service providers in line with the human rights obligations of States, and to allow public regulatory institutions of sufficient capacity to monitor and enforce those regulations; (f) To ensure effective remedies for human rights violations by putting in place accessible accountability mechanisms at the appropriate level”. In 2008 there had already been formalized in an Human Rights Council resolution 7/22 a mandate of the Special Rapporteur on the human rights to safe drinking water and sanitation.

Portugal has voted in favor of General Assembly resolution 64/292, it has, as well co-sponsored several Human Rights Council resolutions, including the ones mentioned above, that include the human right to safe drinking water as derived from the right to an adequate standard of living.

There are, as well, conventions that require states to provide safe water. In Article 14, no. 2, of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), for example, there is an obligation of states to ensure that women have the right to “To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.” Article 24, n. 2, of the Convention on the Rights of the Child establishes that states “shall take appropriate measures (...) to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, (...) the provision of adequate nutritious foods and clean drinking water”. Article 28 of the Convention on the Rights of Persons with Disabilities establishes that states must take appropriate measures “to ensure equal access by persons with disabilities to clean water services”.

Several courts have trialed cases related to the promotion and protection of the right to water. In the *Yakye Axa Indigenous Community v. Paraguay* case presented to the Inter-

American Court of Human Rights, it was proven in court that “The members of the Community have no access to clean water and the most reliable source of water is that collected during rainfall. The water they regularly use comes from deposits (“tajamares”) located in the lands they claim; however, it is used both for human consumption and for personal hygiene and it is not protected from contact with animals.”

Consequently, the court judged in favor of the Yakye Axa community and held that the Paraguayan government's failure to guarantee access to safe drinking water violated the community's rights to life, personal integrity, and cultural identity as the government had “deprived them of the possibility of access to their traditional means of subsistence, as well as to use and enjoyment of the natural resources necessary to obtain clean water and to practice traditional medicine to prevent and cure illnesses. Furthermore, the State has not taken the necessary positive measures to ensure that the members of the Yakye Axa Community, during the period in which they have been without territory, have living conditions that are compatible with their dignity” since it prohibited them to enter the territory, they considered their own.⁴⁰

Another example is the case *Residents of Bon Vista Mansions v. Southern Metropolitan Local Council*⁴¹, presented to the South African High Court. In this decision the court stated that “To deny the applicants the right to water is to deny them the right to lead dignified human existence, to live a South African dream: To live in a democratic, open, caring, responsive and equal society that affirms the values of human dignity, equality, and freedom. The denial would perpetuate the decades long poverty, deprivation, want and undignified existence of the recent past. The Bill of Rights guaranteed in the Constitution would, as a result of the denial, remain a distant mirage of unfulfilled dream. The denial is unconstitutional and therefore unlawful.” As such, the court set aside the decision “to limit free basic water supply to 25 liters per person per day or 6 kiloliters per household per month” and ordered the city to supply “free basic water supply of 50 liters per person per day”.

European Union Law

⁴⁰Inter-American Court of Human Rights Case of the Yakye Axa Indigenous Community v. Paraguay, 17.06.2005.

⁴¹High Court of South Africa, CASE NO: 06/13865.

In the European Union, the right to safe water is addressed through directives that protect water resources and the provision of safe drinking water. These include: the Water Framework Directive, the Drinking Water Directive, the Urban Wastewater Treatment Directive, the Groundwater Directive, and the Bathing Water Directive.

The Water Framework Directive (Directive 2000/60/EC), of 23 October 2000 is the main law for water protection within the European Union. It applies, according to article 1 to inland surface waters, transitional waters, coastal waters, and groundwater. According to article 4, the environmental objectives of this directive are to: prevent the deterioration of all bodies of water; protect, enhance, and restore all bodies of water; and reduce the pollution, ceasing or phasing out emissions, discharges, and losses of priority hazardous substances. The list of pollutants was revised in October 2022 through the adoption of a proposal from the European Commission.

The Drinking Water Directive (Directive 2020/2184) is a recast from the Directive from 1998. According to article 1, “the objectives of this Directive are to protect human health from the adverse effects of any contamination of water intended for human consumption by ensuring that it is wholesome and clean, and to improve access to water intended for human consumption”.

The obligations to Member States under this directive are set out in article 4 and include: an obligation to “ensure that water intended for human consumption is wholesome and clean”, by ensuring “that water is free from any micro-organisms and parasites and from any substances which, in numbers or concentrations, constitute a potential danger to human health”, and that water meets the quality standards and requirements imposed in the following articles”.

The Urban Wastewater Treatment Directive (Council Directive 91/271/EEC) which, according to article 1 “concerns the collection, treatment and discharge of urban wastewater and the treatment and discharge of wastewater from certain industrial sectors.” And establishes as “the objective of the Directive to protect the environment from the adverse effects of the abovementioned wastewater discharges.”

This Directive requires “the collection and treatment of wastewater in all urban areas of more than 2000 people; secondary treatment of all discharges from urban areas of more than 2000 people, and more advanced treatment for urban areas of more than 10000 people in catchments with sensitive waters; pre-authorization of all urban wastewater discharges, discharges from the food-processing industry and industrial discharges into urban wastewater collection systems; monitoring of the performance of treatment plants and receiving waters; controls of sewage sludge disposal and reuse, and treated wastewater reuse whenever it is appropriate.”

There are, as well, the Groundwater Directive and the Bathing Water Directive which establish measures for the protection, monitoring, quality evaluation and prevention of pollution for Groundwater and Bathing Water, respectively.

In the case of case of *Hudorovič and others v. Slovenia*⁴² presented to the European Court of Human Rights, “The Court makes clear that access to safe drinking water is not, as such, a right protected by Article 8 of the Convention. However, the Court must be mindful of the fact that without water, human beings cannot survive. A persistent and long-standing lack of access to safe drinking water can therefore, by its very nature, have adverse consequences for health and human dignity, effectively eroding the core of private life and the enjoyment of a home within the meaning of Article 8. Therefore, when these stringent conditions are fulfilled, the Court is unable to exclude the possibility that a convincing allegation may trigger the State’s positive obligations under that provision. The existence of any such positive obligation and its potential content are necessarily determined by the specific circumstances of the persons affected, but also by the legal framework and the economic and social situation of the State in question.” However, the court considered that “the applicants have not convincingly demonstrated that the State’s alleged failure to provide them with access to safe drinking water resulted in adverse consequences for health and human dignity effectively eroding their core rights under Article 8”.

The two judges who dissented believed that the prolonged denial of access to water and sanitation inherently harmed the fundamental rights to life and human dignity since water

⁴²European Court of Human Rights, case of hudorovič and others v. Slovenia, Applications nos. 24816/14 and 25140/14, 10.03.2020.

is essential for the survival of humans. They disagreed with the requirements imposed by the court since they believed there shouldn't be stricter requirements to be demonstrated in the case of water when compared to other causes such as pollution which had previously been recognized as a violation of Article 8 (right to respect for private and family life. (paras. 4, 6, 7)

RECOGNITION OF THE RIGHT TO A HEALTHY ENVIRONMENT IN PORTUGAL

Besides the recognition in international instances, such as the ones mentioned above, which, as well as the European Union's Directives binds Portugal to respect the Environment and fulfill the obligations expressed in the previous chapters, Portugal has recognizes the right to a healthy environment in article 66 of the Constitution, which establishes that "everyone has the right to a healthy and ecologically balanced environment and the duty to defend it." and that "the State shall promote the development of a balanced and sustainable economy, based on the protection and enhancement of the environment, and shall seek to ensure a fair distribution of the benefits and burdens of development." This article was pioneer at the time, inspiring other constitutions such as the Constitution of Mozambique which establishes the right to a healthy environment in its article 90.

The Constitution also provides for the protection of natural resources and biodiversity in article 84 by stating that "the State shall promote the conservation and exploitation of natural resources in a rational and sustainable manner, while ensuring their renewal and protecting them against pollution".

The protection of the environment is also characterized in the constitution as one of the fundamental tasks of the government in article 9 d) according to which "To promote (...) the effective implementation of (...) environmental rights by means of the transformation and modernization of economic and social structures" and e) "defend nature and the environment preserve natural resources".

Maria da Glória Garcia and Gonçalo Matias, clarify in their commentary to the Constitution⁴³ that this right is established as a fundamental task of the state, (article 9), meaning that the state has the task of promoting the well-being and quality of life of the people and the realization of environmental rights. This article must be read in

⁴³ GARCIA, Maria da Glória F. P. D. e MATIAS, Gonçalo – Artigo 66.º. In Constituição Portuguesa Anotada Volume I - Preâmbulo - Princípios Fundamentais - Direitos e Deveres Fundamentais - Artigos 1.º a 79.º, pp. 968-978, MIRANDA, Jorge; MEDEIROS, Rui. 2.ª edição. Lisboa: Universidade Católica Editora, 2017. ISBN 978-972-540-541-3.

conjunction with article 66, no. 2, which assigns the state, through its own agencies, various environmental protection activities, as well as with the provisions of article 81 a), l), m) and n), which define the priority tasks of the state in the economic and social sphere. The subjective dimension of the right is recognized in article 66, no. 1, and ensured as a social right.

They further explain the State's obligations through the recognition of a fundamental right to a healthy environment. These include a positive dimension, the State must take concrete measures in the promotion of healthy and ecologically balanced environment and a negative dimension, the State must regulate actions capable of degrading it, as well as limits or brakes on state action, preventing the state from acting if this action endangers the healthy and ecologically balanced environment.

Vasco Pereira da Silva⁴⁴, agrees with this interpretation as he believes the constitution has stated unequivocally that the right to the environment is a fundamental right and, as such, it prevents state aggressions, and obliges the public authorities to implement the right.

Maria da Glória Garcia and Gonçalo Matias⁴⁵, identify further a self-reflexive dimension of the right to a healthy environment. This fundamental right is not simply a right before the state and addressed to the state, it encompasses the duty of everyone to contribute to what they request from the State, i.e., the defense of a healthy and ecologically balanced environment.

The Portuguese Constitution establishes, as well, as Maria da Glória Garcia and Gonçalo Matias⁴⁶ identify, mechanisms that allow citizens to assure the compliance with this right.

⁴⁴ SILVA, Vasco Pereira da, *O verde é uma das cores do direito constitucional*, in direito do ambiente estudos em homenagem ao prof. Doutor Vasco Pereira da Silva, pp. 18-47.

⁴⁵ GARCIA, Maria da Glória F. P. D. e MATIAS, Gonçalo – Artigo 66.º. In Constituição Portuguesa Anotada Volume I - Preâmbulo - Princípios Fundamentais - Direitos e Deveres Fundamentais - Artigos 1.º a 79.º, pp. 968-978, MIRANDA, Jorge; MEDEIROS, Rui. 2.ª edição. Lisboa: Universidade Católica Editora, 2017. ISBN 978-972-540-541-3.

⁴⁶ GARCIA, Maria da Glória F. P. D. e MATIAS, Gonçalo – Artigo 66.º. In Constituição Portuguesa Anotada Volume I - Preâmbulo - Princípios Fundamentais - Direitos e Deveres Fundamentais - Artigos 1.º a 79.º, pp. 968-978, MIRANDA, Jorge; MEDEIROS, Rui. 2.ª edição. Lisboa: Universidade Católica Editora, 2017. ISBN 978-972-540-541-3.

The first mechanism is the right to complain to the ombudsman stipulated in article 23, according to which, “citizens may submit complaints against actions or omissions by the public authorities to the Ombudsman, who shall assess them (...) and shall send the competent entities and organs the recommendations needed to prevent or make good any injustices.”

The second mechanism identified is the right to petition stipulated in article 52. This mechanism assures citizens the right to, personally or through non-governmental environmental organizations, present petitions, complaints, denunciations or even legislative initiatives to sovereign bodies or other public authorities.

The third mechanism is the right of popular action, also stipulated in article 52. This right refers to the right to file a lawsuit to prevent, stop or prosecute violations of environmental preservation norms. In these cases, the environment is treated as autonomous from the subjective rights or legitimate interests of the individual. Related to this, and also applied are the rights of articles 20, 268, nos. 4 and 5, and 21, respectively, “access to law and effective judicial protection”, “impugnation of any administrative act”, “the right to challenge administrative norms” and the “right of resistance”.

Carla Amado Gomes⁴⁷ criticizes the Constitutional provision as she claims that instead of providing citizens with a right to a healthy environment, it provides them with the possibility of accessing information concerning environmental issues and filing lawsuits to safeguard the integrity of natural assets. Additionally, it does not provide a clear definition of environment, including multiple realities such as health, urbanism or cultural patrimony. Finally, she claims that the constitution establishes this right through an anthropocentrically view, i.e., the right to a healthy environment revolves around the person and his physical and mental needs, health and economic well-being, and is therefore a legal fiction of other autonomous rights such as the right to life (Article 24 of the Portuguese Constitution), to physical and psychological integrity (Article 25 of the Portuguese Constitution), to the development of personality (Article 26 of the Portuguese Constitution), and to property (Article 62 of Portuguese Constitution). As such, according to this author, what the constitution imposes is a duty of environmental protection and

⁴⁷ GOMES, Carla Amado – Introdução ao Direito do Ambiente. 5.^a edição, AAFDL, 2022. ISBN 978-972-629-758-1, pp 53-70.

environmental citizenship, which is punishable under criminal law in case of non-compliance (articles 274, 278, 279, 279-A and 281 of the Criminal Code).

Gomes Canotilho⁴⁸, defends that this anthropocentrically is not to be confused with quality of life, as it is not the same as environment even if they are interlinked. Quality of life is a situation of physical, mental, social and cultural well-being, while the environment is a value in itself insofar as it is also a value for the maintenance of the existence and extension of the happiness of human beings.

In addition to the constitutional provisions, there are several legal instruments that further promote and protect the environment. For example, the Law no. 19/2014 of April 14 which establishes the legal framework for environmental protection in Portugal and aims at the enforcement of environmental rights through the promotion of sustainable development, supported by adequate management of the environment, in particular of ecosystems and natural resources, contributing to the development of a low carbon society and a "green economy", rational and efficient in the use of natural resources, according to article 2.

This law also provides a definition, in article 5, no. 2, of the right to a healthy environment, characterizing it as the right of defense against any aggression to the constitutionally and internationally protected sphere of every citizen, as well as the power to demand from public and private entities the fulfillment of the duties and obligations, in environmental matters, to which they are bound under the terms of the law. It also restricts the natural environmental components which are protected, namely the air, water and sea, biodiversity, soil and subsoil, landscape, which is a more restrictive approach than the one in the constitution. According to Carla Amado Gomes, Rui Tavares Lanceiro and Heloísa Oliveira this is because the constitution focuses on reinforcing the transversal nature of environmental protection in relation to the implementation of various policies, instead of trying to define the environment.⁴⁹

⁴⁸ CANOTILHO, J. J. Gomes; MOREIRA, Vital; *Constituição da República Portuguesa Anotada*, Vol. I, 4ª Edição, Coimbra Editora, 2007, ISBN 978-972-32-1462-8, Pp 841-853

⁴⁹ GOMES, Carla Amado; OLIVEIRA, Heloísa; LANCEIRO, Rui Tavares – **Tratado de Direito do Ambiente**. Vol. I. Edição Centro de Investigação de Direito Público e Instituto de Ciências Jurídico-Políticas, 2021. ISBN 978-989-8722-49-2.

These authors further explain that such an identification of the components of the environment as object of protection of the environmental rules helps to understand the qualification of the environment as a diffuse interest, referring to a good whose qualities are individually inappropriate and collectively enjoyable. Making it clear today that the environment is the target of immediate protection, independent of the affectation of personal and patrimonial rights, and to this extent its quality and integrity can be defended through popular, procedural and procedural legitimacy.

The law also establishes the rights of access to environmental information, of participation in decision-making procedures with environmental impacts, and of access to justice in articles 6 and 7 as well as some environmental obligations such as the duty to protect, preserve and respect the environment, to ensure long-term sustainable development, particularly for future generations in article 8.

Portugal has also instituted the Portuguese Environment Agency (APA) whose “mission is to propose, develop and monitor public policies for the environment and sustainable development, in an integrated and participated manner, and in close cooperation with other sectoral policies and public and private entities.”⁵⁰

⁵⁰Agência Portuguesa do Ambiente, *About us*

COMMONALITIES IN OBLIGATIONS

Through the analyses made in the previous chapters we were able to identify trends in the right to a healthy environment such as: the protection of the most vulnerable, intergenerational justice, prevention, cooperation, and non-regression.

Either from the court cases that we've analyzed, either through the international treaties and conventions there is a general consensus that environmental harm does not affect all in the same matter. Certain groups, such as the ones identified in the United Nations Human Rights Council Resolution 48/13 will be more harshly affected. This is also the case for some countries which, due to geographical aspects as is the case with small island nations face the reality of extinction through the raising of the sea levels, or due to economic aspects meaning less developed countries suffer more due to the lack of infrastructure, financial capabilities, education, etc. to combat environmental disasters. This recognition has often lead to the affirmation in conventions of the principle of common but differentiated responsibilities, meaning that while this is a common threat to all countries, more developed countries have a higher responsibility to contribute to the solution of this issue as they were the most responsible ones for the current situation and since they have more resources to combat the threat.

Secondly, there is an overall recognition that environmental degradation will have an effect in current and future generation, as such, while making policies we need to take into consideration the rights of future generations and manage resources and responsibilities to make sure there will be a planet for the enjoyment of the future generations. As it is stated in the United Nations Framework Convention on Climate Change which acknowledges the principle of intergenerational equity and the need to consider the long-term consequences of climate change, the Paris Agreement, which explicitly recognizes the rights of present and future generations to a safe and sustainable environment and the Convention on Biological Diversity which emphasizes the importance of conserving biodiversity for the benefit of present and future generations, to name a few.

Thirdly, there is an emphasizes on the importance of taking proactive measures to prevent environmental degradation and mitigate potential harm through proactive actions to

minimize and eliminate potential environmental risks and promote sustainable practices. For example, the Basel Convention promotes the prevention of hazardous waste generation and encourages the environmentally sound management of waste by emphasizing the reduction, minimization, and prevention of waste generation as a primary objective.

Fourthly, there is a recognition of the need for global collaboration and collective action among countries, international organizations, and other stakeholders to address environmental challenges effectively in areas such as information sharing, technology transfer, capacity building and coordinated action, leading to more effective and sustainable environmental management at the global level. There is, thus, a general understanding that environmental issues transcend national boundaries and require collective efforts. For instance, the United Nations Framework Convention on Climate Change emphasizes the importance of international cooperation in combating climate change as it calls for developed countries to assist developing countries in adapting to the impacts of climate change and transitioning to low-carbon development pathways. Additionally, the Convention on Biological Diversity promotes cooperation among countries to conserve biodiversity and ensure its sustainable use, through the exchange of scientific and technical knowledge, capacity building, and the sharing of benefits derived from genetic resources.

Finally, there is a need to maintain and improve existing environmental standards and regulations to prevent the deterioration of the environment. While not explicitly stated in all environmental pieces of legislation, it serves as a guarantee against the loss of environmental gains and ensures that progress is made in addressing environmental challenges. This can be inferred in the Convention on Biological Diversity which recognizes the importance of preventing the loss of biodiversity and calls for the conservation and sustainable use of biological resources. Similarly, the Water Framework Directive states the requirement to maintain and improve environmental standards, prohibiting any weakening or deterioration of protections.

IMPLEMENTATION OF THE RIGHT TO A HEALTHY ENVIRONMENT

CHALLENGES IN IMPLEMENTING THE RIGHT TO A HEALTHY ENVIRONMENT

Implementing the right to the environment can pose several challenges. While the specific challenges can vary depending on the country and context, some common obstacles can be found around the world.

The first challenge is the lack of comprehensive legal frameworks in some countries, i.e., well-defined rules, rights, and obligations regarding the environment. In countries where the right to a healthy environment is not officially recognized in their legal framework, citizens are faced with less legal protection, having to rely on violations of other rights such as the right to life or the right to property to safeguard themselves against environmental violations.

This is the case of Saudi Arabia and Kuwait which do not have a specific legal provision or constitutional recognition of the right to the environment and environmental protection is mainly addressed through sector-specific regulations and policies. As well as the case of United Arab Emirates which does not have explicit recognition of the right to the environment but adopts environmental initiatives and regulations to address environmental challenges. Also, the United States of America, the United Kingdom or Australia which do not have a constitutional provision that recognizes the right to the environment but have established laws aimed at environmental protection. This can equally be seen in the case of the European Court of Human Rights, which, due to the lack of recognition of the right to a healthy environment in the European Charter of Human Rights has to judge environmental harms based on its violations to other rights.

Additionally, there may as well be an absence of a proper definition of what the right to a healthy environment is which leads to ambiguity and differing interpretations of what is or isn't protected. An example of this is the question that has been presented to the Portuguese Constitutional Court of whether the rights of animals are to be protected under the right to a healthy environment (Decision no. 843/2022 where the court decided that the domestic animal welfare protection was not contemplated in the Constitution, following the same ideas as in court case 867/2021, both with dissenting opinions

regarding such an interpretation). Carla Amado Gomes, for example, considers that only the environmental goods that due to their rarity, scarcity or situation prove to be essential components of the ecosystem justify constraints on their use and enjoyment to satisfy human needs.⁵¹

This can make it harder to enforce environmental protections and monitor compliance.

The second challenge is Lack of Enforcement. As the United Nations Report titled *Environmental Rule of Law: First Global Report*⁵² found “too often [environmental laws] exist mostly on paper because government implementation and enforcement is irregular, incomplete, and ineffective” and gives the example of legal limits of lead paint, which is regulated in some countries but lacks effective enforcement and compliance. Another example is the case of Indonesia, where although recognizing the right to a healthy environment in their Constitution, Human Rights Law, and Environment Protection and Management Law, it is not adopted in regulations for extractive industries since Indonesia’s economy is heavily dependent on oil and coal⁵³.

The third challenge is lack of political will and stakeholder support. While enacting comprehensive laws and policies is essential, both at national and the international level, the real challenges arise from the implementation of such laws and policies, as many times there is resistance from the affected members of society. The United Nations report, however, provides hope with a positive example of political will in the United States. “In the early 1970s, political leaders in the U.S. Senate recognized that industrial and motor vehicle pollution were unsustainable and were causing increasing levels of public discontent. They worked across political parties and with the executive branch to create a system of environmental laws that became a model for modern environmental law. Their vision of a cleaner environment coupled with a commitment to finding a system that would work despite opposition and several missteps along the way led to dramatic

⁵¹ GOMES, Carla Amado – *Introdução ao Direito do Ambiente*. 5.^a edição, AAFDL, 2022. ISBN 978-972-629-758-1, pp 42-43.

⁵² AAVV, *Environmental Rule of Law First Global Report*, January 2019, ISBN: 978-92-807-3742-4,.

⁵³NUR, Asrul Ibrahim, *Human Rights Aspectin the Indonesian Energy Transition: The Challenges of Promoting the Right to a Clean, Healthy and Sustainable Environment*, in *Human Rights in the Global South*, December 2022, ISSN: 2962-5556, pp 102-114.

improvement in environmental conditions in the United States and widespread public support for environmental regulation.”

The fourth challenge is insufficient resources and capacity to enact and enforce legislation. Without financial resources, it becomes harder to conduct the comprehensive environmental assessments, monitoring, and enforcement activities necessary to safeguard the environment. Likewise, it can cause technology difficulties, as some countries struggle with outdated infrastructure and monitoring systems, which complicates their capacity to detect and address environmental threats effectively. Moreover, this is further complicated when there is shortage of trained personnel and experts in environmental fields to facilitate the implementation of environmental policies and regulations.

Finally, there can also be challenges related to public awareness, civil society participation, and access to justice. Many people may not be fully aware of their environmental rights, the potential harm caused by environmental degradation, or the available avenues for participation due to factors such as limited access to information and inadequate education. However, even when citizens are informed, as is required in conventions, there may be barriers for genuine public participation of affected communities and civil society organizations in the decision-making processes. Lastly, in many countries, high costs, complex legal procedures, and limited legal aid can constitute barriers for the access to justice.

OPPORTUNITIES IN IMPLEMENTING THE RIGHT TO A HEALTHY ENVIRONMENT

Through the recognition of the challenges faced in the implementation of the right to a healthy environment, we can also recognize opportunities for improvement.

Regarding the legislative and policy frameworks, governments can develop robust legislative and policy frameworks that explicitly recognize and enforce the right to a healthy environment and define it in a systemic and comprehensive manner.

Public participation and engagement can be improved by creating platforms for public input and feedback and an effort by law makers to include the perspectives of affected communities and stakeholders. Such platforms can also include information regarding environmental matters, policies, and projects, which would enable informed decision-making and scrutiny. Another way to increase the dissemination of information, as well as provide environmental education and awareness is through the investment in public awareness campaigns, workshops, and the inclusion of such matters in formal school curriculum.

Access to justice could benefit from the promotion of legal aid and support systems for those seeking to pursue legal actions, and from addressing procedural barriers that undermine people's access to justice.

Finally, all the challenges could be facilitated through international cooperation and partnerships, among nations, international organizations, and civil society, related to the sharing of knowledge, best practices, and resources.

CONCLUSION

The planet is experiencing significant challenges such as climate change, biodiversity loss, deforestation, pollution, and resource depletion. These issues pose a threat to ecosystems, human well-being, and the sustainability of future generations.

The right to a healthy environment has gained significant recognition both internationally and within the European Union and can be a significant mechanism in the protection of the planet. As we've seen, internationally, the right to a healthy environment is not explicitly recognized as a standalone right in most binding international human rights instruments. However, while not recognized as a right, it is increasingly acknowledged through interpretations of existing rights, such as the right to life, the right to health, and the right to a private and family life. Furthermore, the United Nations Human Rights Council Resolution 48/13 gives hope of a future recognition of this right in binding instruments at shows some political will in its accomplishment.

The European Union itself does not explicitly recognize the right to a high level of environmental protection in its treaties or through the Charter of Fundamental Rights, however, the European Court of Human Rights has protected this right through the enforcement of other rights such as the right to life and the right to private property. This might, nevertheless, change soon as the European Parliament and the Parliamentary Assembly of the Council of Europe have manifested their will in including the right to a healthy environment in the European Charter. This would be in accordance with the general approach the European Union has taken in regard to its Environmental policy.

In the European Union, through multiple directives and regulations standards have been set for air and water quality, waste management, nature conservation, climate, etc. The European Court of Justice has played a crucial role in enforcing these standards by interpreting and ensuring compliance with European Union environmental law.

Additionally, the European Union promotes environmental sustainability through policies and initiatives such as the European Green Deal which is a comprehensive plan designed to make Europe the world's first climate-neutral continent by 2050. It sets targets for

reducing greenhouse gas emissions, increasing renewable energy sources, and promoting sustainable agriculture and circular economy practices.

Through the analysis of such legislation and jurisprudence, we can find that treaties and conventions regarding the environment establish a framework of common obligations that countries agree to uphold. These obligations reflect a shared recognition of the importance of addressing environmental challenges collectively and working towards sustainable solutions.

These common obligations, which include intergenerational justice, the protection of the most vulnerable, prevention, cooperation and non-regression, underscore the shared commitment of nations to address environmental issues collaboratively and responsibly. By upholding these obligations, countries aim to protect the environment, promote sustainable development, and ensure a better future for all.

The implementation of the right to a healthy environment faces challenges both internationally and within the European Union. These challenges include, for example, lack of legal recognition of the right, indetermination of concepts, insufficient enforcement mechanisms, limited resources for environmental protection, the need for information access and the need for better coordination between different governments, civil society, governmental agencies.

In conclusion, while the right to a healthy environment is not universally recognized as a standalone right, it is increasingly acknowledged and protected internationally and within the European Union. Its implementation involves a combination of legal frameworks, policies, and institutions aimed at promoting environmental protection and sustainability. However, challenges persist, and ongoing efforts are necessary to ensure effective implementation and address emerging environmental issues.

ANNEX

Table 1 Overview of the link between biodiversity and human rights

The relation between biodiversity and human rights is summarised and illustrated below, as a guide for understanding the current trends in biodiversity loss which are increasingly related to human well-being:

- **Right to life:** loss of coastal habitats and coral reefs has increased the risk to life and property for 100-300 million people from floods and hurricanes (Diaz et al, 2019);
- **Right to health:** biodiversity continues to remain a critical source for medicinal development; for instance, '10 of 14 major classes of antibiotics are derived from microorganisms' (Knox, 2017);
- **Right to food:** the stability and resilience of food sources are reliant on biodiversity: for instance, between USD 235-577 billion in annual global crop output is at risk as a result of the decline of pollinators (bees, birds, etc: Diaz et al, 2019);
- **Right to water:** forest areas improve water flow regulation, reducing runoff and providing greater water storage; diverse animal, plant and algae species help to draw excess nitrogen and phosphorus from aquatic ecosystems (Knox, 2017);
- **Rights of indigenous peoples and other natural resource-dependent communities:** biodiversity loss decreases access to natural resources on which their life, health and culture depend, reducing their freedom of choice and action (Knox, 2017);
- **Children's rights:** biodiversity loss interferes with children's normal development and may prevent them from enjoying their rights in the future (Knox, 2018b);
- **Women's rights:** biodiversity loss places a disproportionate burden on women by increasing the time they spend to obtain water, fuel wood and medicinal plants, thereby reducing the time they can spend on income-generating activities and education (Roe et al. 2019).

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Access to Justice in Environmental Matters (Aarhus Convention)
Constitution of the Portuguese Republic
Convention on Biological Diversity
Convention on International Trade in Endangered Species of Wild Fauna and Flora
Convention on the Conservation of Migratory Species of Wild Animals
Convention on the Rights of the Child
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European Convention on Human Rights
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