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The Human Rights-Based Approach to Environmental Protection in the Context of Corporate Litigation

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LIST OF ABBREVIATIONS

CDDH-ENV - Drafting Group on Human Rights and Environment within the Council of Europe

CJEU - Court of Justice of the European Union

COP – Convention of the Parties

CSDDD - Corporate Sustainability Due Diligence Directive

CSRD - Corporate Sustainability Reporting Directive

ECD - Environmental Crime Directive

ECHR - European Convention on Human Rights

ECOSOC - Economic and Social Council

ECtHR - European Court of Human Rights

ELD - Environmental Liability Directive

ENNHRI - European Network of National Human Rights Institutions

EU – European Union

HRBA - Human Rights-Based Approach

IACHR - Inter-American Commission on Human Rights

ICCPR - International Covenant on Civil and Political Rights

ICESCR - International Covenant on Economic, Social and Cultural Rights

INC/FCCC - Intergovernmental Negotiating Committee for a Framework Convention on Climate Change

IPCC - Intergovernmental Panel on Climate Change

NCP - National Contact Point

NDC – Nationally Determined Contributions

NECP - National Energy and Climate Plans

OECD - Organization for Economic Cooperation and Development

SDG – Sustainable Development Goals

TFEU - Treaty on the Functioning of the European Union

UDHR - Universal Declaration of Human Rights

UN - United Nations

UNFCCC - United Nations Framework Convention on Climate Change

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CHAPTER 1: INTRODUCTION

1. *"Existing or future international conventions dealing with transfrontier pollution or management of shared natural resources should enshrine certain key principles: the responsibility of every state not to harm the health and environment of other nations, liability and compensation for any damage caused by transfrontier pollution, and equal right of access to remedial measures by all parties concerned."*¹

2. This call to action was made in the Brundtland Report, published by the United Nations in 1987, more than thirty-eight years ago. The report acknowledged the pressure corporations and a growing global economy place on the environment and developing countries. The report concluded that failing to address these issues would lead to global environmental deterioration and called for reforms on an international level to tackle this problem and save our planet.²

3. One year ago, the Carbon Majors Report revealed that just fifty-seven companies and state entities were responsible for 80% of global emissions from fossil fuels and cement production between 2016 and 2022.³ Furthermore, between 2002 and 2017, 160 multinational corporations from developed countries were responsible for over 273 human rights violations, despite nearly all being signatories to the United Nations Global Compact.⁴

4. Despite numerous warnings from scientists, human rights organisations, and policymakers over the past decades, businesses continue to be among the most significant contributors to the ongoing environmental crisis. The prevailing economic model is grounded in constant growth, profit maximisation, and short-term decision-making, often at the expense of the environment and fundamental human rights. Businesses have disregarded the right to a healthy environment through corruption, greenwashing,

¹ World Commission on Environment and Development, *Our Common Future*, Oxford University Press 1987, p. 184.

² *Ibid.*, 67.

³ Carbon Majors, *Carbon Majors Launch Report*, April 2024, 34 pp, p. 26.

⁴ S. C. G. Thompson, M. A. Barton, 'Ecocentric and Anthropocentric Attitudes toward the Environment', *Journal of Environmental Psychology* 14(2) 1994, p. 1.

aggressive lobbying, and manipulation of public opinion.⁵ The result is a growing burden on global ecosystems, increased pollution, and unstoppable climate change.⁶

5. This reality has resulted in what is now called the 'triple planetary crisis': the interconnected crises of climate change, pollution, and biodiversity loss.⁷ These issues pose the biggest threat to humanity today and future generations. While their consequences are felt globally, the most severe impacts are borne by vulnerable groups, such as women, children, Indigenous peoples, and people living in poverty.⁸

6. Even within Europe, the effects of the triple planetary crisis are becoming increasingly visible. Each year, one in eight deaths in Europe is attributed to pollution. In addition to mortality rates, the triple planetary crisis notably heightens the risk of cancer, stroke, diabetes, and mental and neurological disorders.⁹

7. Despite the magnitude of this crisis, legal frameworks at the international, regional, and national levels remain insufficient. Since the 1972 Stockholm Conference, efforts have been made to establish rules, treaties, and policies to mitigate environmental harm. These have led to key international agreements such as the United Nations Framework Convention on Climate Change and the Paris Agreement, which aim to limit global temperature increases below 1.5°C. However, these agreements are primarily non-binding and lack strong enforcement mechanisms.¹⁰

8. At a regional level, the European Union has attempted to address corporate environmental responsibility through legal instruments such as the Corporate Sustainability Reporting Directive and the Corporate Sustainability Due Diligence Directive. While these directives represent progress, they primarily apply to large companies and do not provide individuals with a clear or enforceable path to justice when their rights are violated due to corporate environmental harm. Recent political developments within the

⁵ Special Rapporteur on Human Rights and the Environment (United Nations), *Report on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 2 January 2024, UN Doc A/HRC/55/43, p. 8.

⁶ *Ibid.*, 2.

⁷ UNFCCC, 'What Is the Triple Planetary Crisis?', *UNFCCC News* 2024, <https://unfccc.int/news/what-is-the-triple-planetary-crisis>.

⁸ UN Human Rights Council, *Report of the Secretary-General on the Impacts of Climate Change on the Human Rights of People in Vulnerable Situations*, 6 May 2022, UN Doc A/HRC/50/57, p. 2.

⁹ European Commission, Communication: *Pathway to a Healthy Planet for All* (COM(2021) 400), 12 May 2021.

¹⁰ Special Rapporteur on Human Rights and the Environment (United Nations), *Report on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 2 January 2024, UN Doc A/HRC/55/43, p. 4.

European Union, such as the Omnibus Package and the 'Stop-the-Clock' proposal, also threaten the existence of these directives.

9. The consequence of these non-binding or insufficient legal instruments is that victims of environmental harm continue to face significant obstacles when seeking justice. Many individuals lack the financial means or legal expertise to pursue claims against corporations. These obstacles are even greater in regions like the Global South due to under-resourced legal systems, weak enforcement mechanisms, and economic dependency on multinational corporations. Even within the European Union, holding a company legally accountable for environmental damage remains challenging for most individuals.

10. In response to these gaps, a human rights-based approach to environmental protection (HRBA) has been developed by the United Nations. This approach reconceptualises environmental harm as a human rights violation by recognising the link between human rights and the environment. In this thesis, the HRBA consists of three distinct approaches: the soft law approach, the greening of human rights by the European Court of Human Rights and the recognition of a standalone right to a healthy environment.

11. The main challenge that arises within these three approaches is that human rights law is primarily directed at states. In international and European human rights law, states are the primary duty-bearers and individuals the rights-holders. However, recent case law, most notably the case of *Milieudefensie et. Al v Royal Dutch Shell Plc*, has broadened the scope of human rights law to companies, recognising the indirect effect of human rights. The HRBA, in particular the recognition of the right to a healthy environment, has the potential to reinforce these developments and as a result strengthen corporate accountability.

12. This thesis seeks to evaluate whether the HRBA can strengthen the current foundation for corporate accountability in environmental litigation. It explores how the HRBA has been implemented in both case law and policy, assesses whether it has influenced corporate behaviour, and examines whether it enhances access to justice for victims of environmental harm caused by businesses. The thesis also considers whether the recognition of a new, explicit human right to a healthy environment could improve the effectiveness of this approach.

13. While this thesis focusses on the potential of the HRBA to enhance corporate accountability, it is important to acknowledge that this approach is only one of the many

that can be used to encourage businesses to adopt a more environmentally friendly practices and to improve access to justice for victims.

14. Finally, this thesis includes a case study on Cuba, a country that faces significant environmental challenges and differs significantly from the European Union in political, social, and economic terms. This case study investigates how environmental rights are articulated in Cuban law, the extent to which they are enforceable in practice, and whether victims of environmental harm have access to remedies. It further explores whether international or European developments, such as the potential recognition of the right to a healthy environment, could impact legal practice in countries like Cuba.

1.1 Research Question and Relevance

15. The main research question of this thesis is:

"To what extent does the human rights-based approach to environmental protection offer an effective legal framework to hold corporations accountable for environmental harm and to provide victims with access to justice, particularly within international and European law?"

16. This research question is relevant because it addresses one of the biggest challenges of our time: the failure of current legal systems to address the harm caused by businesses to the environment. Despite repeated warnings, corporations continue to operate in ways that damage the environment, thus threatening the health and well-being of individuals and communities. Protecting the environment is not only about preserving nature; it also directly impacts the enjoyment of fundamental human rights. The most vulnerable will suffer the consequences when air is no longer breathable, and water is no longer safe to drink due to corporate negligence. This thesis aims to be a call to action, not only to protect those most vulnerable but also to safeguard future generations.

17. To answer the main research questions, this thesis begins by providing an overview of the existing legal framework concerning business and the environment in Chapter 2. This chapter examines the international and European legal landscape, identifies the existing obligations imposed on corporations, highlights the key legal instruments in place, and outlines the structural shortcomings that prevent victims from accessing justice and receiving effective remedies.

18. Chapter 3 introduces the human rights-based approach to environmental protection as a possible alternative. After defining the concept and its core principles, the chapter explores how the approach can improve corporate accountability. This includes an analysis of the soft law approach to environmental protection, including the United Nations Guiding Principles on Business and Human Rights and the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises on Responsible Business Conduct, as well as their impact and limitations.

19. Chapter 4 focuses on the European human rights system, examining how the HRBA has been applied through the greening of existing rights by the European Court for Human Rights. It investigates how environmental concerns have been incorporated into case law and what this means for victims' access to justice. The chapter also addresses the weaknesses of this approach.

20. Chapter 5 explores the potential recognition of a standalone human right to a healthy environment. It assesses whether such a right would strengthen the HRBA and whether it could help bridge the current accountability gap. At the same time, it considers possible risks and challenges.

21. Chapter 6 offers a critical reflection on the HRBA from a Global South perspective, focusing on the case of Cuba. It examines whether and how the HRBA can be effectively implemented in legal systems that differ significantly from those in Europe. This case study is based on an interview with Professor Pascual Felipe Correa Álvarez, a law professor at the UCLV (Central University "Marta Abreu" of Las Villas).

1.2 Methodology

22. This thesis employs a descriptive and evaluative methodology to answer the main research question. It describes and critically analyses the current international and European legal frameworks related to corporate environmental accountability. A comparative legal analysis is also applied, contrasting European and international standards with those found in Cuba.

23. In addition to doctrinal research, the thesis includes a qualitative empirical component. A case study was conducted in Santa Clara, Cuba, during which an interview was held with Professor Pascual Felipe Correa Álvarez from the UCLV. This case study helps to assess how environmental rights are implemented in a Global South context and how they relate to the broader HRBA framework.

24. In the course of writing this thesis, ChatGPT was used as a language tool. It was not used to generate content or as a primary source. It was only used as a revision tool to identify spelling errors, improve the structure of the text and check for stylistic errors. Everything generated was always revised carefully and critically, and I take full responsibility for the final contents of this thesis.

1.3 Delineation and Important Definitions

25. This thesis focuses on corporate accountability for environmental harm within international and European human rights frameworks. Although national legal systems are occasionally referenced, they are not the primary subject of this research. The thesis does not provide an exhaustive overview of general environmental or corporate law.

26. The HRBA is examined through three main interpretations: soft law instruments, greening existing rights, and the potential recognition of a standalone right to a healthy environment. While this is a global concept, the primary focus of the thesis is on Europe. The final chapter, however, offers a Global South perspective through a detailed case study of Cuba.

27. This thesis aims to analyse how corporate accountability for environmental harm can be improved through a human rights lens, and thus focusses mainly on human rights law, not corporate law. While there are many other ways in which corporate accountability can be improved, the scope of this thesis is too narrow to explain these alternative avenues in a clear and relevant manner. The decision to focus on human rights law and not corporate law is the result of several classes by the Council of Europe on business and human rights I followed in 2024, which sparked my interest in this field.

28. Before proceeding with the analysis, it is necessary to clarify several key terms frequently used in this thesis.

- a. The term 'environment' is understood according to the European Union definition as "*the combination of elements whose complex interrelationships make up the settings, the surroundings and the conditions of life of the individual and of society, as they are or as they are felt.*"¹¹ This encompasses

¹¹ European Environment Agency, glossary entry 'Environment', *European Environment Agency* 2024, <https://www.eea.europa.eu/help/glossary/gemet-environmental-thesaurus/environment>.

both the natural and built environment, along with natural resources such as air, water, land, fauna, and flora.¹²

- b. 'Climate change' refers to the rise in global temperatures caused by greenhouse gas emissions.¹³ This thesis considers it one form of environmental harm, alongside other types of degradation such as pollution, biodiversity loss, and ecosystem damage.¹⁴
- c. 'Environmental harm' is defined broadly as the degradation of the environment, whether through deforestation, pollution, soil erosion, overexploitation, or other forms of ecological damage.
- d. 'Corporate litigation' refers to legal proceedings initiated against corporations for their role in causing or contributing to environmental harm, especially where such harm violates the human rights of individuals or communities.

¹² Council of Europe, *Manual on Human Rights and the Environment* (3rd ed.), February 2022, p. 17.

¹³ United Nations, 'What is climate change?', *United Nations* 2025, <https://www.un.org/en/climatechange/what-is-climate-change>.

¹⁴ Queensland Law Handbook, 'Environmental Harm', *Queensland Law Handbook Online* 2024, <https://queenslandlawhandbook.org.au/the-queensland-law-handbook/living-and-working-in-society/laws-affecting-the-environment/environmental-harm/>.

CHAPTER 2: CURRENT REGULATORY LANDSCAPE: BUSINESSES AND THE ENVIRONMENT

2.1 The Traditional Legal Framework on Businesses and the Environment

29. When examining access to justice for victims of environmental harm attributable to corporate conduct, it becomes evident that gaps in the current legal framework leave the most vulnerable groups without adequate remedies. The 'human rights-based approach to environmental protection' aims to address these gaps.

30. However, before delving deeper into the definition and the different aspects of the HRBA to environmental protection, it is essential to look at the existing rules, regulations, and policies that are binding for corporations and *can* already result in compensation for victims when breached.

31. At the international level, international environmental law and climate change law form a comprehensive legal framework, further reinforced by regional legal frameworks such as the European Union's Green Deal. These laws impose binding obligations on states, businesses, and individuals.

32. This chapter will briefly discuss these areas of law to identify the gaps which could be addressed through a human rights-based approach to environmental protection.

2.1.1 International Environmental Law and Climate Change Law

2.1.1.1 From Stockholm to Paris

33. The origins of international 'environmental' law trace back to the United Nations Conference on the Human Environment of 1972, more commonly referred to as the Stockholm Conference.¹⁵ Prior to the Stockholm Conference, environmental laws were primarily sector-specific (atmosphere, oceans, etc.). After 1972 and throughout the 1980s, environmental laws evolved to include cross-border issues and foster cooperation among states worldwide.¹⁶

34. Today, international environmental law consists of many binding regulations that impose obligations on states, businesses and individuals, with sanctions for non-compliance. A structured overview of the most relevant legislation in this context can be

¹⁵ United Nations General Assembly, *Report of the United Nations Conference on the Human Environment* (Stockholm Declaration annexed), 16 June 1972, UN Doc A/CONF.48/14/Rev.1, p. 3.

¹⁶ D. Shelton, *International Environmental Law* (3rd ed.), Brill 2021, p. 48.

found in the second edition of *The Oxford Handbook of International Environmental Law* (2021).¹⁷

35. Since 2015, international environmental law has been significantly influenced by the United Nations Sustainable Development Goals (SDGs), which are part of the United Nations' 2030 Agenda for Sustainable Development. These goals each focus on different themes such as good health and well-being, clean water and sanitation, affordable clean energy, and climate action.¹⁸

36. International 'climate change' law as a distinct field of law can be traced back to 1990 following the Intergovernmental Panel on Climate Change (IPCC), where scientists raised concerns about human activities contributing to global warming.¹⁹ During this panel, the climate change issue was brought to the juridical agenda for the first time:

*"There is concern that human activities may be inadvertently changing the climate of the globe through the enhanced greenhouse effect, by past and continuing emissions of carbon dioxide and other gases which will cause the temperature of the Earth's surface to increase - popularly termed the 'global warming'. If this occurs, consequent changes may have a significant impact on society."*²⁰

37. This panel led to the establishment of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INC/FCCC), which was tasked with creating an international legal framework regarding climate change.²¹ Two years later, the United Nations Framework Convention on Climate Change (UNFCCC) was adopted during the Earth Summit in Rio de Janeiro on May 9, 1992, and it entered into force in 1994.²² The UNFCCC sets out an ultimate objective for all Parties to the Convention, which is:

¹⁷ L. Rajamani, J. Peel et al. (eds.), *The Oxford Handbook of International Environmental Law*, Oxford University Press 2021, Table of Legislation.

¹⁸ UN DESA, 'The 17 Goals', *United Nations SDGs* 2025, <https://sdgs.un.org/goals>.

¹⁹ World Meteorological Organization, United Nations Environment Programme, *Climate Change: The IPCC Scientific Assessment* (First Assessment Report), 1990, iii.

²⁰ *Ibid.*, XIII

²¹ B. Mayer, 'The International Law on Climate Change', in *The International Law on Climate Change* Cambridge UP 2018.

²² United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107.

*"...to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."*²³

38. Today, there are 198 Parties to the UNFCCC, including the European Union and the United States of America.²⁴ All states that are party to the UNFCCC are represented at the Conference of the Parties (COP) annually. The COP, as established by Article 7 of the UNFCCC, is tasked with reviewing, assessing and promoting all efforts that are being taken by the Parties to achieve the ultimate objective.²⁵

39. The annual COP meetings have given rise to many of the most important international agreements on climate change, which use the UNFCCC as their basis, including the Kyoto Protocol, the Marrakech Accords, the Copenhagen Accord, the Glasgow Climate Pact, and the Paris Agreement.²⁶ Out of all these agreements, the Paris Agreement is the most relevant in the context of this thesis, as it is the most recent and has the most signatory parties (195 parties – the Kyoto Protocol only has 192 parties, and Canada and the United States aren't parties to the Kyoto Protocol, which significantly weakens its impact).²⁷⁻²⁸

40. The Paris Agreement was adopted at the 21st United Nations Climate Change Conference (COP21) in Paris.²⁹ All Parties to the Paris Agreement commit to achieving the ultimate objective set out in the UNFCCC by limiting the rise in average global temperature to below 2°C above pre-industrial levels, with an ultimate goal of keeping the increase to 1.5°C.³⁰ Additionally, the Paris Agreement aims for carbon neutrality by 2060-2080,

²³ *Ibid.*, art. 2

²⁴ *Ibid.*

²⁵ *Ibid.*, art. 7

²⁶ Planet2050, 'Article 6 of the Paris Agreement: how it works and what it means for carbon markets', *Planet2050 Blog* 4 December 2024, <https://planet2050.earth/blog/article6-pacm>.

²⁷ United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107.

²⁸ N. Grunewald, I. Martinez-Zarzoso, 'Did the Kyoto Protocol Fail? An Evaluation of the Effect of the Kyoto Protocol on CO₂ Emissions', *Environment and Development Economics* 20(1) 2015, p. 5.

²⁹ United Nations, 'The Paris Agreement', UNFCCC 2025, <https://unfccc.int/process-and-meetings/the-paris-agreement>.

³⁰ Art. 2 Paris Agreement, 12 December 2015, 3156 UNTS 107.

climate-friendly financial flows, and an increased ability to adapt to the consequences of climate change.³¹⁻³²

41. The Paris Agreement is unique within international law due to its flexibility for participating Parties. Each Party can independently outline, through Nationally Determined Contributions (NDCs), the specific steps it will take to achieve the Agreement's objectives. This approach recognises that not all Parties possess the same financial resources or capacities.³³ The NDCs follow a five-year review cycle, meaning that Parties must submit an updated NDC every five years, which should be more ambitious than the previous one.³⁴

42. The Agreement has had a positive impact on climate change regulation to date. It has led to the introduction of regulations such as the European Union's Carbon Border Adjustment Mechanism and platforms like the Global Climate Action Portal, a platform for various actors to register their commitments to combat climate change.³⁵ The Paris Agreement is also referenced in numerous important sources concerning businesses' obligations towards the environment, including the European Union's Corporate Sustainability Due Diligence Directive, the United Nations Guiding Principles on Business and Human Rights, and the OECD Guidelines for Multinational Enterprises, which will be discussed in further detail in sections 2.1.2 and 3.2.3.

43. However, while the Agreement has yielded several positive effects, it is still widely recognised that insufficient action is being taken to meet its targets. Every five years, the Parties to the Paris Agreement conduct a 'stocktake' of their efforts to achieve the ultimate objective and the other targets set out in the Agreement.³⁶ The first of these stocktakes occurred in 2023 at COP28, where it was concluded that Parties were not doing enough to reach the Agreement's targets. This inability to meet the targets may partly stem from the fact that the Paris Agreement does not impose legally binding emissions reduction

³¹ Art. 4 Paris Agreement, 12 December 2015, 3156 UNTS 107.

³² R. Cléménçon, 'The Two Sides of the Paris Climate Agreement: Dismal Failure or Historic Breakthrough?', *The Journal of Environment & Development* 25(1) 2016, p. 9.

³³ L. Lavrysen, *Handboek Milieurecht*, Wolters Kluwer s.d., p. 660.

³⁴ Art. 4.17 Paris Agreement, 12 December 2015, 3156 UNTS 107.

³⁵ J. F. Green, 'Global Climate Policy Beyond the Paris Agreement', *PS: Political Science & Politics* 57(1) 2024, p. 41.

³⁶ UNFCCC, 'Why the Global Stocktake Is Important for Climate Action This Decade', UNFCCC 2025, <https://unfccc.int/topics/global-stocktake/about-the-global-stocktake/why-the-global-stocktake-is-important-for-climate-action-this-decade>.

commitments. There is also no international court or governing body to enforce compliance with the Agreement.³⁷

44. The deadline for submitting the NDCs in February 2025 was met by only 13 Parties out of the 195 signatories to the Agreement.³⁸ It is also important to note that even if all existing NDCs were fully implemented and achieved, there would still be a global temperature increase between 2.7°C and 3°C.³⁹ The executive order signed by the current President of the United States (U.S.), Donald Trump, to withdraw the U.S. from the Paris Agreement could also negatively impact the realisation of the goals outlined in the Agreement.⁴⁰

45. To strengthen the impact of the Paris Agreement, other legal frameworks, including human rights law, should be employed as supplementary tools.⁴¹

2.1.2 Climate Change Law and Environmental Law in the European Union

2.1.2.1 The European Green Deal

46. Environmental and climate change law should be implemented not only at the international level but also at the regional level.⁴² The European Union (EU) has positioned itself at the forefront of these efforts with its ambitious plan, the Green Deal, which aspires to achieve a 'Healthy Planet for All' by 2050. Introduced by the European Commission in 2019 under the leadership of Ursula von der Leyen, the Green Deal aims to protect European citizens from environment-related risks, foster a sustainable economy, and promote innovation and research in the field of environmental protection.⁴³⁻⁴⁴

³⁷ R. Cléménçon, 'The Two Sides of the Paris Climate Agreement: Dismal Failure or Historic Breakthrough?', *The Journal of Environment & Development* 25(1) 2016, p. 9.

³⁸ UN Economic Commission for Africa, press note 'Only 13 of the 195 Parties to the Paris Agreement communicated their NDC 3.0 by the deadline of 10 February 2025', 13 February 2025, <https://www.uneca.org/stories/only-13-of-the-195-parties-to-the-paris-agreement-communicated-their-ndc-3.0-by-the-deadline>.

³⁹ R. Cléménçon, 'The Two Sides of the Paris Climate Agreement: Dismal Failure or Historic Breakthrough?', *The Journal of Environment & Development* 25(1) 2016, p. 13.

⁴⁰ European Parliament Think Tank, *US Withdrawal from the Paris Climate Agreement and from the WHO*, 5 February 2025.

⁴¹ L. Tubiana, 'Climate in court: The Paris Agreement's role in safeguarding human rights', *Climate Home News* 28 March 2023, <https://www.climatechangenews.com/2023/03/28/climate-in-court-the-paris-agreements-role-in-safeguarding-human-rights/>.

⁴² European Commission, Communication: *Pathway to a Healthy Planet for All* (COM(2021) 400), 12 May 2021.

⁴³ IEEP AISBL, 'About the Green Deal', *IEEP* 2024, <https://ieep.eu/about-the-green-deal/>.

⁴⁴ European Commission, Communication: *The European Green Deal* (COM(2019) 640), 11 December 2019.

47. The Green Deal encompasses a comprehensive monitoring and reporting system to prevent and remedy pollution of air, water, soil, and consumer products, among other environmental challenges.⁴⁵

48. The Green Deal was (and remains) crucial. In 2023, nearly 50,000 people in Europe died due to heatwaves, while approximately 30% of the southern European population faced permanent water stress (deterioration of freshwater quality or quantity⁴⁶).⁴⁷⁻⁴⁸ Additionally, poor air quality contributes to approximately 300,000 deaths annually in Europe, significantly increasing the risk of cancer and cardiovascular diseases.⁴⁹

49. The objectives of the Green Deal were codified with the adoption of the European Climate Law in 2021, which established key targets for climate neutrality by 2050 and a 55% reduction in greenhouse gas emissions by 2030 (compared to 1990 levels).⁵⁰⁻⁵¹

50. To achieve these goals, Member States are required to adopt National Energy and Climate Plans (NECPs) that outline how they will meet the EU's climate objectives for the period from 2020 to 2030.⁵² Additionally, each Member State is required to publish a progress report every two years, allowing the European Commission to conduct country-specific assessments and issue recommendations.⁵³⁻⁵⁴

⁴⁵ European Commission, Communication: *Pathway to a Healthy Planet for All* (COM(2021) 400), 12 May 2021.

⁴⁶ European Environment Agency, factsheet 'Water stress', <https://www.eea.europa.eu/archived/archived-content-water-topic/wise-help-centre/glossary-definitions/water-stress>.

⁴⁷ Directorate-General for Climate Action (European Commission), *Progress Report 2024 — Climate action: Leading the way from plans to implementation for a green and competitive Europe*, 2024, DOI 10.2834/8000893, p. 8.

⁴⁸ European Environment Agency, *Responding to Climate Change Impacts on Human Health in Europe: Focus on Floods, Droughts and Water Quality*, 2024, DOI 10.2800/4810, p. 46.

⁴⁹ European Environment Agency, news article 'De lucht in Europa wordt schoner, waardoor de volksgezondheid verbetert', 4 November 2023.

⁵⁰ European Commission, online factsheet 'European Climate Law', 2025, https://climate.ec.europa.eu/eu-action/european-climate-law_en.

⁵¹ Art. 2-4 Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, *OJ L 328 21.12.2018*.

⁵² *Ibid.*, rec. 25.

⁵³ European Commission, portal page 'National energy and climate plans', https://commission.europa.eu/energy-climate-change-environment/implementation-eu-countries/energy-and-climate-governance-and-reporting/national-energy-and-climate-plans_en.

⁵⁴ European Commission, Communication: *EU-wide Assessment of the Draft Updated National Energy and Climate Plans*(COM(2023) 796), 18 December 2023.

51. To ensure the effective implementation of these goals, the European Commission must publish a progress report every five years, beginning on September 30, 2023.⁵⁵ This report must be based on scientific research and developed in consultation with independent experts.⁵⁶ Member states that fail to contribute sufficiently will face sanctions, in accordance with European legislation.⁵⁷

52. The first progress report from 2023 indicates that the European Union is on the right track, having achieved an 8% reduction in greenhouse gas emissions.⁵⁸

2.1.2.2 Corporate Obligations under the European Green Deal

53. To achieve the ambitions set out in the European Green Deal, it is necessary to translate these goals into enforceable corporate obligations. The European Union has acknowledged that businesses play a significant role in ensuring environmental protection, and as such, has introduced multiple legislative instruments to ensure corporate responsibility in environmental protection.

54. These legislative instruments include the EU Taxonomy Regulation, the Corporate Sustainability Reporting Directive, the Sustainable Finance Disclosure Regulation, the Corporate Sustainability Due Diligence Directive, the EU Waste Framework Directive, and many others.⁵⁹ Not all legislative instruments introduced by the European Union will be discussed, as these already amount to thousands of policy initiatives aimed at achieving the Sustainable Development Goals alone.⁶⁰

55. This chapter will analyse four instruments: the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD), which impose binding obligations on businesses to increase transparency and mitigate environmental harm, and the Environmental Liability Directive (ELD) and the

⁵⁵ Rec. 36 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality, *OJ L 243* 9.7.2021.

⁵⁶ *Ibid.*, rec. 37.

⁵⁷ *Ibid.*, art. 6.3.

⁵⁸ Directorate-General for Climate Action (European Commission), *Progress Report 2024 — Climate action: Leading the way from plans to implementation for a green and competitive Europe*, 2024, DOI 10.2834/8000893, p. 7.

⁵⁹ PwC, 'ESG Regulatory Landscape', *PwC Belgium* 2024, <https://www.pwc.be/en/challenges/esg/regulatory-landscape.html>.

⁶⁰ European Commission Joint Research Centre, page 'Overview of policy mapping at Goal and Target level', <https://knowsdqs.jrc.ec.europa.eu/policy-mapping>.

Environmental Crime Directive (ECD), which establish legal frameworks for holding corporations accountable when they fail to comply with environmental regulations.

2.1.2.2.1 The Corporate Sustainability Reporting Directive and the Corporate Sustainability Due Diligence Directive

56. Although the CSRD and the CSDDD both represent crucial steps toward a healthier environment and more sustainable corporate behaviour, the following section does not aim to examine the directives' obligations in depth. Instead, it aims to briefly assess the extent to which these instruments are sufficient to hold corporations accountable for environmental harm and to provide victims with access to justice. This will serve as a basis for considering whether complementary human rights mechanisms, such as the human rights-based approach to environmental protection, can address the existing shortcomings.

57. The Corporate Sustainability Reporting Directive (Directive 2022/2464) was enacted on January 5th, 2023, and builds upon the Non-Financial Reporting Directive.⁶¹

58. The CSRD requires certain European companies to disclose information about the environmental impact of their activities, as well as the risks and opportunities arising from environmental or social issues.⁶² The CSRD introduces a 'double materiality' test, which requires businesses to report on their environmental impact on people and the environment (inside-out) and on the risks and opportunities created by these sustainability-related developments (outside-in).⁶³

59. The CSRD applies to listed European Union companies and large companies (both EU and non-EU) that meet specific requirements.⁶⁴ The reports prepared by these companies must be reviewed by an external auditor, who should be appointed and approved by the Member State under whose jurisdiction the company operates.⁶⁵

⁶¹ Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 as regards corporate sustainability reporting, *OJ L 322 16.12.2022*.

⁶² European Commission, online factsheet 'Corporate sustainability reporting', 2025, https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en.

⁶³ PwC, 'CSRD – Double Materiality Assessment', *PwC Netherlands* 2024, <https://www.pwc.nl/en/topics/sustainability/esg/corporate-sustainability-reporting-directive/csrd-double-materiality-assessment.html>.

⁶⁴ VLAIO, 'Corporate Sustainability Reporting Directive — CSRD', *VLAIO* 2025, <https://www.vlaio.be/nl/begeleiding-advies/duurzaam-ondernemen/duurzaamheidsverslag/corporate-sustainability-reporting-directive-csrd>.

⁶⁵ Art. 26, c. Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 as regards corporate sustainability reporting, *OJ L 322 16.12.2022*.

60. The Corporate Sustainability Due Diligence Directive (Directive 2024/1760) entered into force on the 25th of July 2024.⁶⁶⁻⁶⁷ Originally, Member States of the European Union will have to transpose the CSDDD into national law by July 26, 2026.⁶⁸ However, the recent 'Stop-the-Clock' proposal of the European Commission has postponed the application of the CSDDD (*infra* sec. 2.2.3).⁶⁹

61. The CSDDD's main objective is to promote sustainable and responsible corporate behaviour in companies' operations and throughout their global value chains.⁷⁰ It establishes obligations for EU and non-EU companies engaged in activities within the EU to ensure they identify, avoid, mitigate, end, and remedy adverse impacts on human rights and the environment across their operations and supply chains.⁷¹

62. Additionally, the Directive aims to hold companies accountable when they fail to meet these obligations. The CSDDD establishes a unified legal framework that addresses the significant fragmentation of national laws currently hindering effective environmental and human rights due diligence.⁷²

63. With these objectives in mind, the CSDDD is expected to benefit individuals, companies, and developing countries, according to the European Commission. On an individual level, the Directive will allegedly enhance human rights protections, improve access to justice for victims of adverse environmental or human rights impacts, and

⁶⁶ European Commission, online factsheet 'Corporate sustainability due diligence', 2025, https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en.

⁶⁷ White & Case LLP, client alert 'Time to get to know your supply chain: EU adopts Corporate Sustainability Due Diligence Directive', *White & Case Insight* 5 July 2024, <https://www.whitecase.com/insight-alert/time-get-know-your-supply-chain-eu-adopts-corporate-sustainability-due-diligence>.

⁶⁸ Art. 37 Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence, *OJ L 202 5.7.2024*.

⁶⁹ Council of the European Union, press release 'Simplification: Council gives final green light on the "Stop-the-clock" mechanism to boost EU competitiveness and provide legal certainty to businesses', 14 April 2025, <https://www.consilium.europa.eu/en/press/press-releases/2025/04/14/simplification-council-gives-final-green-light-on-the-stop-the-clock-mechanism>.

⁷⁰ European Commission, online factsheet 'Corporate sustainability due diligence', 2025, https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en.

⁷¹ A. Schall, 'The CSDDD: Good Law or Bad Law?', *European Company Law* 21(3) 2024, p. 56.

⁷² European Commission, online factsheet 'Corporate sustainability due diligence', 2025, https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en.

increase trust in companies. For companies, the Directive will provide legal certainty through its unified approach and create greater customer trust. Lastly, for developing countries, the Directive aims to improve living conditions and promote better international sustainability standards.⁷³ While these are the anticipated outcomes of the CSDDD, it remains uncertain whether they will fully materialise.

64. The CSDDD establishes a due diligence duty for all companies within its scope.⁷⁴ Due diligence is defined as: “*a continuous process to help enterprises identify risks relating to human rights, labour rights, and the environment with a view to ending, preventing or mitigating those risks*”.⁷⁵ These obligations apply not only to companies’ own operations but also to the operations of their subsidiaries and the activities of their business partners within their chains of activities.⁷⁶ The ‘chain of activities’ is a new concept that refers to the activities of a company’s upstream and downstream business partners.⁷⁷

65. In this light, the financial sector will be treated preferentially, as the definition of the term chain of activities will exclude downstream business partners in the case of regulated financial undertakings.⁷⁸

66. In addition to the due diligence obligations, the CSDDD requires companies to create a transition plan for climate change mitigation. This plan should aim to ensure that the company’s business model and strategy align with the objectives of the Paris Agreement and the European Green Deal, specifically limiting global warming to 1.5°C and achieving climate neutrality in the European Union by 2050.⁷⁹

67. While the CSDDD appears to be a positive development, it will take a couple more years before its obligations become binding for large companies, and recent political developments threaten its scope and existence (*infra* sec. 2.2.3).⁸⁰

⁷³ *Ibid.*

⁷⁴ Art. 5 Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence, *OJ L 202 5.7.2024*.

⁷⁵ M. B. Zaken, ‘Due Diligence – OECD Guidelines – NCP’, *OECD-Guidelines.nl* 15 Mar 2018, <https://www.oecdguidelines.nl/oecd-guidelines/due-diligence>.

⁷⁶ Art. 1.1 (a) Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence, *OJ L 202 5.7.2024*.

⁷⁷ *Ibid.*, art. 3, g.

⁷⁸ *Ibid.*, rec. 26.

⁷⁹ *Ibid.*, rec. 73.

⁸⁰ B. Katan, ‘Een ritselende revolutie’, *Transformation Forums Magazine* June 2024, p. 3.

2.1.2.2.2 The Environmental Liability Directive and the Environmental Crime Directive

68. Corporations should be held accountable for the environmental damage they cause. This principle was legally enforced through Directive 2004/35/EC, commonly known as the Environmental Liability Directive, which was introduced in 2004 and brought the 'polluter pays' principle to life.⁸¹ As the name suggests, this principle ensures that corporations that harm the environment or engage in activities that could potentially do so are held financially responsible for the damage and required to restore it. In this context, environmental damage extends beyond air and water pollution to include harm to protected species, natural habitats, and land contamination, particularly when it poses risks to human health.⁸²

69. However, for liability to be established under the Environmental Liability Directive, several conditions must be met: the polluter must be identifiable, the damage must be concrete and measurable, and a clear causal link must exist between the polluter's actions and the resulting harm. Notably, the Directive does not apply to personal injury, damage to private property, or economic losses.⁸³

70. In 2024, the EU Environmental Crime Directive (Directive 2024/1203) was also introduced, further strengthening corporate accountability by criminalising certain environmental offences.⁸⁴ The ECD requires Member States to incorporate environmental crimes into their national legislation, ensuring that violations are subject not only to civil liability but also to criminal sanctions. Unlike the ELD, which focuses on financial responsibility, the ECD applies to corporations and individuals, emphasising the increasing legal pressure to enforce environmental protection at all levels.

⁸¹ Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, *OJ L 143 30.4.2004*.

⁸² *Ibid.*, rec. 3-4.

⁸³ *Ibid.*, rec. 13-14.

⁸⁴ Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law, *OJ L 113 30.4.2024*.

2.2 The Limits of the Traditional Legal Framework and Access to Justice for Victims

71. Despite the extensive nature of the traditional environmental and climate change legal framework, significant gaps persist concerning access to justice for victims of environmental harm or climate change caused by corporate actions.

72. Although the European Union has already introduced several initiatives to increase corporate awareness and accountability for environmental damage, holding companies legally liable remains far from straightforward. Within the EU, a distinction can be made between two forms of litigation, both of which will be briefly discussed. The first approach is a general liability claim under Article 263, paragraph 4 of the Treaty on the Functioning of the European Union. The second approach involves holding a company accountable based on specific regulations and policies.

2.2.1 General Liability Claim Based on the Treaty on the Functioning of the European Union

73. Article 263, paragraph 4 of the Treaty on the Functioning of the European Union (TFEU) establishes the conditions under which individuals and legal entities can challenge EU acts before the Court of Justice of the European Union (CJEU). It states that:

“Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.”⁸⁵

74. This provision suggests that individuals and legal entities can bring cases directly before the CJEU, provided they demonstrate that they are individually concerned by the act in question. This principle, known as the ‘Plaumann formula’, requires a degree of distinctiveness to justify legal standing.⁸⁶ This standard of distinctiveness has been criticised for its lack of clarity and the restrictive nature of its application. Over time, two competing interpretations of this criterion have emerged. The first is the facts-based approach, which focuses on whether the contested act has caused substantial, concrete, and adverse effects on an individual or entity. The second is the rights-based approach,

⁸⁵ Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326 26.10.2012.

⁸⁶ ECJ, *Plaumann & Co v. Commission of the EEC*, 15 July 1963, Case 25/62, ECLI:EU:C:1963:17, ECR 1963 p. 95.

which considers whether the act has infringed upon a legally protected right of the claimant.⁸⁷

75. This standard has been criticised for “*paradoxically denying legal protection in cases where harm is severe and widespread*”.⁸⁸ This was exemplified by the *Carvalho* case, where the CJEU told farmers and hotel owners suffering from the consequences of climate change that their claim was inadmissible. The court ruled that the applicants’ interest was insufficiently distinct, despite the significant impact of climate change on their livelihoods.⁸⁹⁻⁹⁰

76. Given the restrictive nature of direct access to justice under the TFEU, most cases are brought before the CJEU indirectly. One of the primary mechanisms for indirect claims is based on the Aarhus Convention, an international treaty adopted under the United Nations Economic Commission for Europe in 1998.⁹¹ Signed in Denmark, the Aarhus Convention grants the public three key rights in environmental matters: access to information, public participation in decision-making, and access to justice.⁹² The underlying rationale for this convention is that greater public participation and accountability can lead to stronger environmental protection.

77. The introduction of the Aarhus Convention within the EU legal system led to the adoption of the Regulation on the Application of the Provisions of the Aarhus Convention, which establishes procedures for environmental organisations to challenge EU decisions that breach European climate law.⁹³ Articles 10 to 12 of this regulation outline the criteria organisations must meet to bring such challenges.

⁸⁷ G. Winter, ‘Plaumann Withering: Standing Before the EU General Court Underway from “Distinctive” to “Substantial” Concern’, *European Journal of Legal Studies* 15(1) 2023, p. 6–7.

⁸⁸ *Ibid.*

⁸⁹ GC, *Armando Carvalho and Others v. European Parliament and Council of the EU*, Order of 8 May 2019, Case T-330/18, ECLI:EU:T:2019:324.

⁹⁰ C. Eckes, ‘Strategic Climate Litigation before National Courts: Can European Union Law Be Used as a Shield?’, *German Law Journal* 25(6) 2024, p. 1029.

⁹¹ *Ibid.*, 1030.

⁹² Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 25 June 1998, 2161 UNTS 447.

⁹³ Rec. 2 Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, *OJ L* 264 25.9.2006.

78. This mechanism has potential implications for corporate litigation, as it enables environmental organisations to contest decisions that disproportionately favour corporations at the expense of environmental protection. However, pursuing legal challenges through this route remains a complex and lengthy process, and the EU legal system has been criticised for imposing significant procedural barriers that limit access to justice.⁹⁴

2.2.2 Liability Claims Based on Specific EU Regulations and Policies

79. Despite the existing regulatory framework, holding businesses accountable for environmental damage remains difficult. Although instruments such as the Corporate Sustainability Due Diligence Directive and the Corporate Sustainability Reporting Directive aim to establish a harmonised legal framework across Europe, it remains to be seen how effectively they will be implemented in practice. The CSRD has only recently been transposed into Belgian law, and the CSDDD is still awaiting transposition across EU Member States.⁹⁵ As such, the actual impact of these directives will become apparent only after a few years of application.

80. First, the scope of these directives remains limited. The CSDDD and CSRD primarily target large corporations, meaning that small and medium-sized enterprises (SMEs) are largely exempt from obligations. This creates an uneven playing field and reduces the overall impact of sustainability measures within the corporate sector. According to an article by Oxfam EU's Economic Justice Policy Lead, the CSDDD only applies to 1% of European companies.⁹⁶ It is, however, important to note that the influence of the directives may cause a ripple effect through the entire business chain of activities. Smaller businesses may face indirect pressure to comply with the directives' standards. While this may lead to improved sustainability practices across the board, it also raises concerns about regulatory overload for SMEs, which may lack the resources to meet heightened expectations.⁹⁷

⁹⁴ X, 'The Feasibility of the Sustainable Development Goals', in *Complexity Economics and Sustainable Development* Cambridge UP 2024, 167-187, DOI 10.1017/9781009022910.010, p. 1031.

⁹⁵ Wet van 2 december 2024 betreffende de openbaarmaking van duurzaamheidsinformatie door bepaalde vennootschappen en groepen en de assurance van duurzaamheidsinformatie en houdende diverse bepalingen, *BS 2 December 2024*.

⁹⁶ Oxfam International, press release 'New EU proposal on sustainable business needs fixing to work for people and the planet', 23 February 2022, <https://www.oxfam.org/en/press-releases/new-eu-proposal-sustainable-business-needs-fixing-work-people-and-planet>.

⁹⁷ D. M. Ahern, 'The Sustainability Reporting Ripple: Direct and Indirect Implications of the EU CSRD for SME Actors', *SSRN Working Paper* 30 June 2023, <https://papers.ssrn.com/abstract=4517356>, p. 2.

81. Secondly, both the CSDDD and CSRD are directives and not regulations, meaning that Member States must transpose them into national legislation. This creates the risk that the directives may be implemented incorrectly or incompletely, leaving individuals and organizations in certain countries with less ability to hold companies accountable effectively.⁹⁸

82. Another major challenge is the 'corporate veil'. The corporate veil refers to the notion that shareholders are excluded from personal liability for the actions of their companies.⁹⁹ Additionally, parent companies are often not held accountable for the actions of their subsidiaries operating in foreign jurisdictions.¹⁰⁰ This issue contributes to 'forum shopping', where businesses actively seek jurisdictions with the most lenient regulations.¹⁰¹

83. Moreover, directives such as the Environmental Liability Directive and the Environmental Crime Directive present additional challenges due to their high burden of proof (*supra* par. 69). This makes it difficult to hold companies accountable for environmental harm.

84. Finally, economic and social barriers further restrain victims from filing complaints against companies. This is particularly problematic for vulnerable groups, who often face high litigation costs, limited access to legal representation, and the absence of class action mechanisms in Europe, making collective legal action against corporations far less accessible than in jurisdictions such as the United States.¹⁰² The issues that arise when trying to hold corporations accountable for their environmental damage in the European Union also exist internationally, leaving victims with almost nowhere to go.¹⁰³

⁹⁸ K. Yordanova, 'First glance at the EU's corporate due diligence and accountability framework', *International Bar Association* 25 May 2021, <https://www.ibanet.org/eu-corporate-due-diligence-and-accountability-framework>.

⁹⁹ Cambridge University Press, *Cambridge Business English Dictionary*, Cambridge 2011, p.180.

¹⁰⁰ There are some cases in which a parent company was held responsible for the actions of its subsidiary, for example, the cases of *Okpabi v. Royal Dutch Shell plc*, *Lungowe v Vedanta Resources Plc*.

¹⁰¹ European Parliamentary Research Service, C. Navarra, *Corporate Due Diligence and Corporate Accountability: European Added-Value Assessment*, October 2020, DOI 10.2861/594198, p. 15.

¹⁰² *Ibid.*, 21.

¹⁰³ E. Morgera, *Corporate Accountability in International Environmental Law*, Oxford University Press 2020, p. 38-49.

2.2.3 The Current Political Landscape and Its Impact on Environmental Obligations

85. The limitations of the traditional legal framework in regulating businesses and providing access to justice for victims of corporate environmental harm are not solely the result of substantive shortcomings in the legislation itself. Law does not operate in a vacuum. Instead, it is shaped by the broader political and societal context in which it is developed and implemented.¹⁰⁴ In the last years, there has been a growing concern within the European Union that initiatives such as the Green Deal are losing momentum because of changing political priorities.¹⁰⁵

86. This concern is far from unfounded. The European Commission, led by Ursula von der Leyen, has made simplifying existing regulations, including the CSRD and the CSDDD, a priority. Among other proposals, the Commission has suggested decreasing corporate reporting obligations by 25 to 35%.¹⁰⁶ The so-called Omnibus Package marks a first step in this direction. This Omnibus Package aims to narrow the scope and obligations of both the CSRD and the CSDDD. This will lead to the exemption of over 80% of companies currently subject to the obligations set out in the directives.¹⁰⁷⁻¹⁰⁸ The Omnibus Package also includes the 'Stop-the-Clock' proposal, which aims to postpone the entry into force of several of the directives' key obligations.¹⁰⁹

87. This deregulatory shift has encountered resistance from several companies. In a joint statement, companies such as Patagonia, Nestlé, Oatly, and Decathlon have called upon EU institutions to uphold the commitments made in the Green Deal. The companies believe that simplifying corporate environmental obligations will not only damage the

¹⁰⁴ M. Cerar, 'The Relationship Between Law and Politics', Annual Survey of International & Comparative Law 15 2009, p. 20.

¹⁰⁵ V. Malingre, 'Europe's Green Deal is attacked on all sides', *Le Monde* 29 January 2024, https://www.lemonde.fr/en/environment/article/2024/01/29/europe-s-green-deal-is-attacked-on-all-sides_6474382_114.html.

¹⁰⁶ Dufour M., S. Tzvetkova, P. Escrig, *Four Tests Driving EU Politics in 2025: And What They Mean for Climate Action*, E3G, December 2024, <https://www.jstor.org/stable/resrep65932>, p. 3.

¹⁰⁷ Directorate-General for Financial Stability, Financial Services and Capital Markets Union (European Commission), press release 'Proposal for a Directive: Commission simplifies rules on sustainability and EU investments, delivering over €6 billion in administrative relief', 26 February 2025, https://finance.ec.europa.eu/publications/commission-simplifies-rules-sustainability-and-eu-investments-delivering-over-eu6-billion_en.

¹⁰⁸ European Commission, news item 'Omnibus package', 1 April 2025, https://finance.ec.europa.eu/news/omnibus-package-2025-04-01_en.

¹⁰⁹ Council of the European Union, press release 'Simplification: Council gives final green light on the "Stop-the-clock" mechanism to boost EU competitiveness and provide legal certainty to businesses', 14 April 2025, <https://www.consilium.europa.eu/en/press/press-releases/2025/04/14/simplification-council-gives-final-green-light-on-the-stop-the-clock-mechanism>.

climate but will also create legal uncertainty and an uneven playing field for companies that are already investing in sustainable business practices.¹¹⁰

88. These regulatory developments are the result of a broader political landscape that is increasingly deprioritising environmental protection. Eurosceptic and nationalist political parties have gained traction in the European Union over the past couple of years, many of which advocate for rolling back environmental legislation.¹¹¹ Meanwhile, at the international level, the recent re-election of Donald Trump as President of the United States has further exacerbated the issue of environmental deregulation. His administration has, among other things, opened protected lands for oil drilling and exploitation, and dismantled numerous environmental protection standards.¹¹²⁻¹¹³

89. The result of these international developments is a growing belief that ambitious climate and environmental laws will place businesses in the EU at a competitive disadvantage. Macron recently joined German Chancellor Friedrich Merz in advocating for the withdrawal of the CSDDD, claiming that the directive imposes excessive burdens on businesses and risks harming the EU's global competitiveness, particularly in relation to China and the United States.¹¹⁴

90. These recent political developments cast a dark shadow on current regulatory frameworks such as the CSRD and the CSDDD. Although both directives represent an essential step in promoting corporate environmental responsibility, they remain vulnerable to changes in the political landscape. Moreover, the directives fall short in addressing key structural issues concerning access to justice and the availability of effective remedies for victims of environmental harm.

¹¹⁰ Various Companies, Business Associations and Investors, 'A business perspective: Strong environmental standards foster long-term competitiveness', joint statement 2024, p. 1-2.

¹¹¹ Tzvetkova S., M. Dufour, P. Escrig, *Opportunities and Risks for Climate Action after the EU Elections*, E3G, June 2024, p. 2.

¹¹² D. Noor, 'Trump signs order to withdraw US from Paris climate agreement for second time', *The Guardian* 20 January 2025, <https://www.theguardian.com/us-news/2025/jan/20/trump-executive-order-paris-climate-agreement>.

¹¹³ O. Milman, 'Trump has launched more attacks on the environment in 100 days than his entire first term', *The Guardian* 1 May 2025, <https://www.theguardian.com/environment/2025/may/01/trump-air-climate-pollution-regulation-100-days>.

¹¹⁴ McGowan, 'Macron calls for end of EU sustainability due diligence law', *Forbes* 20 May 2025, <https://www.forbes.com/sites/jonmcgowan/2025/05/20/macron-calls-for-end-of-eu-sustainability-due-diligence-law/>.

91. Against this backdrop, the introduction of a human rights-based approach to environmental protection offers a complementary and reinforcing framework that prioritises the rights of individuals and communities. The HRBA to environmental protection not only carries symbolic weight but also enables victims to hold companies accountable, not only under environmental law, but also on the grounds of human rights law. The following chapter(s) will analyse the scope of this approach, its practicalities, and how it can strengthen legal responsibility, supported by instruments such as the CSRD and the CSDDD.

CHAPTER 3: THE HUMAN RIGHTS-BASED APPROACH TO ENVIRONMENTAL PROTECTION

92. The current regulatory framework seeks to create more environmentally responsible business practices. Still, it fails to provide an adequate liability regime for individuals or non-governmental organisations seeking to hold companies accountable for environmental damage. Legal procedures are often too complex, time-consuming, and expensive, especially for vulnerable people (who are most at risk of being victims of climate change and environmental harm) (*supra* sec. 2.2).

93. Within this context, the concept of a human rights-based approach (HRBA) to environmental protection has emerged. The HRBA to environmental protection aims to address the shortcomings of the current framework by linking environmental protection to fundamental human rights, not only at the international level but also at the regional and national levels. By doing so, it offers a stronger and more coherent basis for holding companies accountable and aims to improve access to justice for victims of environmental harm. Rather than replacing regulatory initiatives such as the CSRD and CSDDD, the HRBA reinforces their impact by placing human rights at the centre of corporate environmental responsibility.

94. The HRBA to environmental protection originated in 1972 when the idea was first introduced during the United Nations Conference on the Human Environment (*supra* par. 7). The concluding report that was written after the conference opened with the following statement:

"Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself."

95. Since 1972, the recognition of the link between the environment and human rights has gained traction and has evolved into a widely accepted principle in international law. The shift in perspective towards human rights and the environment is primarily driven by the threat climate change and environmental harm pose to our society. David Attenborough, a renowned biologist and natural historian, referred to climate change as

"the biggest threat to security that modern humans have ever faced" during the United Nations Security Council's high-level open debate on climate and security in 2021.¹¹⁵ This statement highlights the urgency of integrating environmental concerns within the human rights framework.

96. Human rights and the environment are co-dependent. Our society needs a healthy environment to enjoy certain human rights, such as the right to food, the right to health, the right to life, and even the right to self-determination. On the other hand, human rights like access to information and participation are necessary to protect the environment, because they enable individuals and organisations to advocate for environmental protection and to hold governments and businesses accountable for environmental harm.¹¹⁶

97. This chapter will examine the HRBA both in a general context and specifically in the context of environmental protection. It will then assess whether and how businesses fall within the scope of the HRBA. Finally, this chapter will discuss how the HRBA can (and already does, in some cases) enhance access to justice for victims of environmental harm and climate change.

3.1 Defining the Human Rights-Based Approach

3.1.1 The Human Rights-Based Approach as a Methodology

98. The 'Human Rights-Based Approach' is a methodology that the United Nations introduced in the context of decolonisation after the Cold War.¹¹⁷ Different organisations used human rights as a legal foundation for development assistance in Asian and African countries. However, the inconsistent application of human rights principles led to discrepancies between different organisations' practices. To address this issue, the United Nations Development Group published a statement titled 'The Human Rights-Based Approach to Development Cooperation – Towards a Common Understanding Among the United Nations Agencies' in 2003.¹¹⁸

¹¹⁵ UN Meetings Coverage, 'Climate Change "Biggest Threat Modern Humans Have Ever Faced", World-Renowned Naturalist Tells Security Council', *UN Meetings Coverage and Press Releases* 23 February 2021, <https://press.un.org/en/2021/sc14445.doc.htm>.

¹¹⁶ UN High Commissioner for Human Rights, *Analytical Study on the Relationship Between Human Rights and the Environment*, 16 December 2011, UN Doc A/HRC/19/34, p. 4.

¹¹⁷ M. Broberg, H.-O. Sano, 'Strengths and weaknesses in a human rights-based approach to international development', *The International Journal of Human Rights* 22(5) 2018, p. 664-680.

¹¹⁸ United Nations Development Group, *The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies*, 2003.

99. In this statement, the UN Development Group set out six key principles that form the basis of the HRBA. Today, the United Nations defines only five key principles: universality (everyone has rights), indivisibility (all rights are equally important), equality and non-discrimination, participation (individuals must be involved and heard), and accountability (duty-bearers must be held responsible for respecting and fulfilling rights).¹¹⁹⁻¹²⁰

100. The HRBA is generally defined as an “*approach to addressing societal challenges by placing human rights at the center*”.¹²¹ The core idea is that laws, policies, and projects should be developed and implemented based on the rights and obligations enshrined in the international human rights framework.¹²²

101. The HRBA focuses on two distinct groups: the ‘duty-bearers’ and the ‘rights-holders’. Duty-bearers must respect, protect, and fulfil human rights. At the same time, rights-holders are the individuals and communities who hold these rights and must have access to effective remedies when these rights are violated.¹²³ The states are the primary duty-bearers in the international human rights framework.¹²⁴ The HRBA attaches specific societal goals to legal rights that individuals can use to enforce compliance by the duty-bearer.¹²⁵ Although businesses do not fall under the scope of duty-bearers, they are indirectly impacted by state obligations to regulate private actors. This indirect accountability will be further discussed in section 3.2.

102. The ‘international human rights’ framework has its origins in the Charter of the United Nations (1945), which is the founding document of the United Nations, adopted

¹¹⁹ UN Sustainable Development Group, ‘Human Rights-Based Approach’, *UNSDG* 2025, <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>.

¹²⁰ European Union, ‘Human Rights-Based Approach — HRBA Toolbox’, *Capacity4Dev* 2025, https://capacity4dev.europa.eu/library/human-rights-based-approach-hrba-toolbox_en.

¹²¹ UN Sustainable Development Group, ‘Human Rights-Based Approach’, *UNSDG* 2025, <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>.

¹²² *Ibid.*

¹²³ UN OHCHR, UNEP, UNDP, *What Is the Right to a Healthy Environment?* Information note, January 2023, 12, <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf>.

¹²⁴ O. De Schutter, *International Human Rights Law* (3rd ed.), Cambridge University Press 2020, DOI 10.1017/9781108564588, p. 1996.

¹²⁵ M. Broberg, H.-O. Sano, ‘Strengths and weaknesses in a human rights-based approach to international development’, *The International Journal of Human Rights* 22(5) 2018, p. 664–680.

after the Second World War in San Francisco.¹²⁶ Although the Charter did not include a complete catalogue of human rights, it led to the formation of the United Nations Economic and Social Council (ECOSOC), which established the Commission on Human Rights, chaired by Eleanor Roosevelt.¹²⁷ It was within this commission that, in 1948, the Universal Declaration of Human Rights (UDHR) was adopted.¹²⁸

103. Although initially a non-binding resolution, the UDHR has, over time, been recognised as a source of customary international law.¹²⁹ Eight years after its adoption, in 1956, two key binding treaties were adopted: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with the UDHR, these form the International Bill of Human Rights.¹³⁰

104. Since 1945, the United Nations has created nine core human rights treaties, which shape the international human rights framework.¹³¹ These human rights are monitored by both charter-based bodies (such as the Human Rights Council) and treaty-based bodies (such as the Committee on the Rights of the Child and the Committee Against Torture).¹³²

105. The European Union also applies the HRBA to its external actions. In 2000, the Charter of Fundamental Rights of the European Union was adopted, which became legally binding in 2009 when the Treaty of Lisbon entered into force.¹³³ The Treaty of Lisbon also established the obligation for Member States to advance human rights in EU external action (interventions, policies, and technical assistance in countries outside of the EU).¹³⁴ From that moment on, many conclusions have been published by the EU on applying the HRBA to help face different challenges. This includes the Conclusion on the Rights-Based

¹²⁶ Charter of the United Nations, 26 June 1945, *UNTS*.

¹²⁷ O. De Schutter, *International Human Rights Law* (3rd ed.), Cambridge University Press 2020, DOI 10.1017/9781108564588, p. 147.

¹²⁸ United Nations, 'History of the Declaration', *United Nations* 2025, <https://www.un.org/en/about-us/udhr/history-of-the-declaration>.

¹²⁹ I. Zamfir, *The Universal Declaration of Human Rights and Its Relevance for the European Union* European Parliament 2021, p. 1.

¹³⁰ OHCHR, 'International Bill of Human Rights', *OHCHR* 2025. OHCHR, 'International Bill of Human Rights', *OHCHR* 2025.

¹³¹ UNICEF, 'The International Human Rights Framework', *UNICEF Armenia* 2024, <https://www.unicef.org/armenia/en/stories/international-human-rights-framework>.

¹³² OHCHR, 'Instruments & mechanisms', *OHCHR* 2025, <https://www.ohchr.org/en/instruments-and-mechanisms>.

¹³³ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 13 December 2007, *OJ C 306 17.12.2007*.

¹³⁴ *Ibid.*, art. 10, a.

Approach to Development Cooperation, which encompasses all human rights and was published by the Council of Europe, as well as the Gender Action Plan III, which focuses on discrimination based on gender.¹³⁵

106. Currently, the HRBA is being used in many different contexts, including health, development, drug policy, and, of course, environmental protection.¹³⁶⁻¹³⁷

3.1.2 The Human Rights-Based Approach to Environmental Protection

107. The idea of applying a human rights-based approach to environmental protection and climate change continued to evolve after the 1972 Stockholm Conference, which marked a turning point in recognising the link between human rights and environmental protection (*supra* sec. 2.1.1.1). Initially emerging as an academic concept, the HRBA to environmental protection has developed into a widely applied practice. To maintain clarity and coherence, this thesis will categorise the HRBA into three distinct 'approaches'. It is important to note that these approaches are not entirely separate from one another; rather, they have influenced and shaped each other over the years. However, when considering access to justice, different arguments can be made for or against each approach. From this point forward, the term 'HRBA' will always refer to the HRBA to *environmental protection* and not the HRBA in general.

108. In this thesis, the human rights-based approach will be examined through three lenses: (1) the application of soft law norms, such as the United Nations Guiding Principles on Business and Human Rights; (2) the 'greening' of existing human rights, primarily seen in European Union case law; and (3) the introduction of the 'right to a healthy environment' as an independent human right.

109. Chapters 4 and 5 will analyse how 'greening' human rights or creating a new right to a healthy environment can improve access to justice for victims of environmental damage or climate change. Before diving into these topics, however, one important issue needs to be addressed: does international human rights law apply to businesses?

¹³⁵ European Union, 'The Human Rights-Based Approach – Virtual Toolbox', *EU International Partnerships Academy* 2025, <https://webgate.ec.europa.eu/intpa-academy/mod/scorm/view.php?id=5734>.

¹³⁶ P. Hunt, 'Interpreting the International Right to Health in a Human Rights-Based Approach to Health', *Health and Human Rights* 18(2) 2016, p. 109–130.

¹³⁷ P. Uvin, 'From the Right to Development to the Rights-Based Approach', *Development in Practice* 17(4-5) 2007, p. 597–606.

110. This sub-chapter aims to answer that question by examining how international human rights law, which is traditionally state driven, can also be used to hold businesses accountable. Subsequently, a brief overview of existing soft law frameworks that aim to apply international human rights law directly to companies will be presented. This will then be followed by an analysis of why these soft law norms are insufficient to ensure corporate accountability effectively.

3.2 The Scope of the Human Rights-Based Approach: Can Businesses be Held Accountable for Environmental Harm in the Context of Human Rights Law?

111. Although the human rights-based approach to environmental protection may be the only way to effectively address the current climate and environmental challenges, two key issues must be addressed before it can be effectively applied to create corporate accountability. These issues are best illustrated by Principle 26 of the UN Guiding Principles on Business and Human Rights, which states:

*"States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy."*¹³⁸

112. Two terms in this passage stand out, especially in a document that addresses corporate human rights violations: 'States' and 'should'. Using the word 'States' raises questions about the extent to which human rights obligations are binding for businesses and whether companies have a direct duty to respect these rights. Secondly, using the term 'should' instead of 'must' creates the impression of a non-binding obligation, which raises the question of whether human rights commitments are mandatory for businesses.¹³⁹

¹³⁸ Business & Human Rights Resource Centre, *United Nations Guiding Principles on Business and Human Rights* 2011, Principle 26.

¹³⁹ V. Rouas, 'Achieving access to justice through an international treaty on business and human rights', in *Achieving Access to Justice in a Business and Human Rights Context* U. of London Press 2022, p. 335

3.2.1 States as Primary Duty-Bearers in International Human Rights Law

113. According to international human rights law, states that have ratified international human rights treaties must respect, protect, and fulfil those rights.¹⁴⁰ The first pillar, the 'duty to respect', means that states must not interfere directly or indirectly with the enjoyment of an individual's human rights. The second pillar, the 'duty to protect', requires states to prevent third parties from interfering with human rights. The third pillar, the 'duty to fulfil', entails that states should take positive steps to ensure the enjoyment of human rights.¹⁴¹

114. The obligations of states to respect the international human rights framework have been elaborated upon by the Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001).¹⁴² Although these draft articles are not binding, they are considered a source of customary international law.¹⁴³ According to the draft articles, a state can be held responsible for its actions if two cumulative conditions are met:

"There is an internationally wrongful act of a State when conduct consisting of an action or omission:

(a) is attributable to the State under international law; and

*(b) constitutes a breach of an international obligation of the State."*¹⁴⁴

115. In this context, states can also be held liable for human rights violations committed by businesses, provided that the company's conduct can be qualified as an 'act of a state'.¹⁴⁵ Whether something is regarded as an act of the state is determined by international law, not national law.¹⁴⁶ When using this approach, actions of businesses are not generally considered the responsibility of the state, except when the company is part of the state apparatus (such as state-owned enterprises), exercises public powers on

¹⁴⁰ R. Macklin, 'Respecting, protecting, and fulfilling human rights', in *Double Standards in Medical Research in Developing Countries*, Cambridge University Press 2009, p. 194.

¹⁴¹ OHCHR, 'International Bill of Human Rights', OHCHR 2025.

¹⁴² International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *ILC Yearbook* 2001 II/2, *UN Doc. A/56/10*.

¹⁴³ V. Engström, *Who Is Responsible for Corporate Human Rights Violations?* Åbo Akademi University 2002, p. 13.

¹⁴⁴ Art. 2 International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *ILC Yearbook* 2001 II/2, *UN Doc. A/56/10*.

¹⁴⁵ D. M. Chirwa, 'The Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights', *Melbourne Journal of International Law* 5(1) 2004, p. 5.

¹⁴⁶ Art. 3 International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *ILC Yearbook* 2001 II/2, *UN Doc. A/56/10*.

behalf of the state, or acts under the "*instructions, direction or control*" of the state (Articles 4, 5, and 8 of the Draft Articles).

116. However, the state can still be held accountable for corporate human rights violations based on the 'due diligence rule of state responsibility'. The obligation of due diligence was extended to international human rights law through the case of *Velásquez Rodríguez v. Honduras* (1989), where the Inter-American Court of Human Rights held that:

*"States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation".*¹⁴⁷

117. Therefore, states are responsible for regulating corporate conduct through measures such as criminalising certain behaviours and ensuring access to justice when violations occur.¹⁴⁸

118. The due diligence obligation within the international human rights framework is not an obligation of *result* but rather an obligation of *conduct*.¹⁴⁹ To hold a state liable for corporate human rights violations, it must be proven that the state failed to meet its duty of care. This is assessed using the reasonableness criterion, which examines whether it would have been reasonable to expect the state to take action to prevent or remedy the violation in the given circumstances.¹⁵⁰

119. Within the European human rights framework, the traditional obligation to protect, respect, and fulfil has been replaced by a division between *negative* and *positive* obligations. Negative obligations require states to refrain from interfering with the enjoyment of human rights. In contrast, positive obligations compel states to take proactive measures to protect human rights or ensure victims' access to justice.¹⁵¹

¹⁴⁷ IACtHR, *Velásquez Rodríguez v. Honduras*, Judgment (Merits), 29 July 1988, *Series C No. 4*, §166.

¹⁴⁸ Human Rights Committee, General Comment 31, UN Doc CCPR/C/21/Rev.1/Add.13 (29 Mar 2004).

¹⁴⁹ T. Koivurova, K. Singh, 'Due Diligence', *Max Planck Encyclopedia of International Law* (online, s.d.), <https://opil.ouplaw.com/>.

¹⁵⁰ O. De Schutter, *International Human Rights Law* (3rd ed.), Cambridge University Press 2020, DOI 10.1017/9781108564588, p. 537.

¹⁵¹ J-F. Akandji-Kombe, 'Positive obligations under the European Convention on Human Rights', in *Human Rights Handbooks 7*, Council of Europe 2007, p. 5-7.

120. As a consequence of due diligence obligations under international human rights law and positive obligations under European human rights law, states can be held accountable for the actions of businesses if they have not done enough to prevent or remedy violations, primarily when a reasonable expectation existed that the state should have acted. For instance, in the case of *López Ostra v. Spain*, the state was held responsible under Article 8 of the European Convention on Human Rights for failing to adequately address pollution from a wastewater treatment plant, which made the living environment of the López Ostra family uninhabitable.¹⁵²

121. While this approach may, in some situations, lead to liability for environmental damage, it immediately confronts a crucial issue: the multinational character of enterprises. Due to globalisation, many businesses are multinationals, while states are limited in fulfilling their human rights obligations to "*all individuals within their territory and subject to their jurisdiction*".¹⁵³ This is where the state-centred approach proves challenging, highlighting the need for more direct human rights obligations for businesses.

3.2.2 The Indirect Horizontal Effect of Human Rights

122. The international human rights framework primarily operates with a vertical effect, where the state is the primary duty-bearer (*supra* par. 101). However, for many years, there has been ongoing debate about whether businesses can be held directly accountable for human rights violations. A landmark development in this context was the decision of the Court of Appeal of The Hague in the *Milieudefensie et al. v. Shell Plc* (Shell case), which recognised the indirect horizontal effect of human rights.

123. On May 26, 2021, the District Court of The Hague ordered the multinational Royal Dutch Shell to reduce its annual CO₂ emissions by 45% by 2030, compared to its 2019 levels.¹⁵⁴

124. Shell disagreed with the ruling and appealed to the Court of Appeal of The Hague. On November 12, 2024, the Court of Appeal ruled in favour of Shell, overturning the

¹⁵² ECtHR, *López Ostra v. Spain*, 9 December 1994, App. No. 16798/90, *Series A 303-C*.

¹⁵³ Art. 2 International Covenant on Civil and Political Rights, 16 December 1966, 999 *UNTS* 171.

¹⁵⁴ Rechtbank Den Haag, *Milieudefensie et al. v. Royal Dutch Shell plc*, 26 May 2021, ECLI:NL:RBDHA:2021:5339, §4.4.1.

emission reduction order. In February of 2025, Milieudefensie announced that they are filing an appeal before the Dutch Supreme Court.¹⁵⁵

125. In 2024, the Court of Appeal did, however, confirm the indirect horizontal effect of human rights based on the social standard of care.¹⁵⁶ The Court of Appeal emphasised the urgency of the climate issue, labelling it as "*the greatest problem of our time*".¹⁵⁷

126. In the Shell case, the Court ruled that:

*"Although (treaty) provisions regarding human rights are primarily directed at the government, this does not alter the fact that they can have an impact on private law relationships by giving substance to open standards, such as the social standard of care. When defining the social standard of care, it comes down to the question of what action is required of a person or company, especially when that action is not prescribed by specific rules (under public law or otherwise). Whether the social standard of care is breached depends on a variety of factors. The severity of the threat of a particular danger, the contribution to the creation of the danger and the capacity to contribute to the combating of the danger are factors to be considered."*¹⁵⁸

127. This ruling established that the international human rights framework has an indirect horizontal effect, making it applicable to businesses as well. Companies are thus required to comply with the social standard of care, which is determined by various factors, such as the nature and extent of the risk created and whether the risk can be avoided.¹⁵⁹

128. The Court also noted that climate change can have life-threatening consequences if left unaddressed. It concluded that the climate crisis threatens both Article 2 (the right to life) and Article 8 (the right to respect for private and family life) of the European Convention on Human Rights.¹⁶⁰ This conclusion was grounded in case law from both

¹⁵⁵ B. Johannsen, L. J. Kotzé, C. Macchi, 'An Empty Victory? Shell v. Milieudefensie et al 2024, the Legal Obligations of Carbon Majors, and the Prospects for Future Climate Litigation Action', *Review of European, Comparative & International Environmental Law* 34(2) 2025, p. 2.

¹⁵⁶ Gerechtshof Den Haag, *Milieudefensie et al. v. Royal Dutch Shell plc*, 12 November 2024, ECLI:NL:GHDHA:2024:2099, §7.18, 7.27.

¹⁵⁷ *Ibid.*, §7.25.

¹⁵⁸ *Ibid.*, §7.24.

¹⁵⁹ *Ibid.*, §7.53.

¹⁶⁰ *Ibid.*, §7.25.

national and regional courts, including the Urgenda case, the Verein KlimaSeniorinnen Schweiz v. Switzerland case, as well as other significant international climate cases.¹⁶¹⁻¹⁶²

129. The Court concluded that the responsibility to protect the environment and combat climate change does not rest solely with states but also extends to companies, given that they are significant contributors to the climate crisis.¹⁶³⁻¹⁶⁴ The absence of binding public law regulations and the mere existence of soft law sources such as the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and the UN Guiding Principles on Business and Human Rights (UNGPs) do not alter this obligation.¹⁶⁵ Courts are increasingly using soft law standards to invoke corporate responsibility.

130. So, to return to the central question posed at the beginning of this section, '*Does international human rights law apply to corporations?*', the answer is nuanced. While human rights law does not directly impose binding obligations on corporations in the traditional sense, it affects them indirectly yet meaningfully. This occurs through two main routes: first, via state obligations to regulate and prevent human rights violations by private actors, and second, through the indirect horizontal effect recognised in domestic legal systems, where human rights standards create a duty of care that applies between private parties.

131. These mechanisms, when effectively applied, can hold corporations directly accountable for environmental harm and trigger behavioural change, even in the absence of direct legal duties under international human rights treaties. Thus, while the legal structure remains state-centric, the practical reach of human rights law extends to the private sector, making it a crucial component in the fight against corporate environmental harm.

132. However, the impact of these cases remains subject to debate. While judgments like the Shell case carry significant symbolic weight, the absence of binding enforcement

¹⁶¹ *Ibid.*, §7.6.

¹⁶² S. Dethier, P. Gillaerts, 'Plicht maar geen bevel voor Shell: op zoek naar de juiste versnelling', *Juristenkrant* 2024, p. 3.

¹⁶³ Gerechtshof Den Haag, *Milieudefensie et al. v. Royal Dutch Shell plc*, 12 November 2024, ECLI:NL:GHDHA:2024:2099, §7.17.

¹⁶⁴ Eubelius, 'Het Shell-arrest: moeten ondernemingen voor het klimaat zorgen?', *Eubelius News* 22 November 2024, <https://www.eubelius.com/nl/nieuws/het-shell-arrest-moeten-ondernemingen-voor-het-klimaat-zorgen>.

¹⁶⁵ Gerechtshof Den Haag, *Milieudefensie et al. v. Royal Dutch Shell plc*, 12 November 2024, ECLI:NL:GHDHA:2024:2099, §7.26.

mechanisms often limits their consequences.¹⁶⁶ Companies are not automatically sanctioned through fines or behavioural obligations unless national legislation provides for such remedies. This is why regulations such as the CSDDD remain crucial. The CSDDD allows national authorities to impose financial sanctions of up to 5% of a company's global turnover for non-compliance.¹⁶⁷

3.2.3 Soft Law: Towards a Binding Treaty on Business and Human Rights?

133. The Shell case has revolutionised the human rights-based approach by extending the social standard of care not only to states but also to private actors. However, years before this landmark decision, soft law instruments were already being used to create direct human rights obligations for businesses, including the duty to ensure access to justice in the context of environmental harm and climate change.

134. Two of the most notable soft law sources in this context are the United Nations *Guiding Principles on Business and Human Rights*, which is seen as the basis of the relationship between business and human rights, and the OECD *Guidelines for Multinational Enterprises on Responsible Business Conduct*.

135. Despite their ambitious goals, these soft law instruments have not fully ensured accountability for corporate human rights violations. This chapter will introduce both frameworks and critically assess why they fall short to provide adequate remedies to victims.

3.2.3.1 The United Nations Guiding Principles on Business and Human Rights

136. One of the most important international sources regarding environmental protection is the United Nations Guiding Principles on Business and Human Rights (UNGPs). The Guiding Principles were established by the United Nations in 2011. They were drafted by the former UN Secretary General's Special Representative on the issue of human rights and transnational corporations, John Ruggie.¹⁶⁸

137. The UNGPs consist of 31 principles, which form a 'protect, respect and remedy' framework for businesses and states, aimed at preventing and addressing human rights

¹⁶⁶ I. Kanalan, 'Horizontal Effect of Human Rights in the Era of Transnational Constellations: On the Accountability of Private Actors for Human Rights Violations', SSRN Working Paper (1 Sept 2014).

¹⁶⁷ Art. 27, 4. Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence, *OJ L 202 5.7.2024*.

¹⁶⁸ S. Deva, 'Guiding Principles on Business and Human Rights: Implications for Companies', *European Company Law* 9(2) 2012, p. 101.

abuses. The principles serve as the first universally accepted global business and human rights framework.¹⁶⁹⁻¹⁷⁰ These 31 principles can be categorised into three key pillars: (1) the obligations of states to protect, respect, and fulfil human rights and fundamental freedoms (2) the responsibility of businesses to comply with the law and respect human rights and (3) the access to an effective remedy for individuals whose rights have been violated.¹⁷¹

138. The 'human rights' which fall under the scope of the UNGPs are outlined in principle 12. This principle states that businesses (and states) must, at a minimum, respect the human rights set out in the International Bill of Rights and in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work.¹⁷² Furthermore, it emphasises that businesses may also need to adhere to additional standards, particularly when dealing, for example, with the rights of women, children, and indigenous peoples.

139. Environmental protection, or the right to a healthy environment, is not explicitly recognised as a human right in these sources.¹⁷³ However, it is still considered within the scope of the UNGPs. This interpretation was confirmed by the United Nations Working Group on Human Rights and Transnational Corporations and Other Business Enterprises in its 2023 Information Note on Climate Change.¹⁷⁴ This information note has been recognised by the United Nations as a complement to the UNGPs. The working group adopts an indirect approach to include environmental protection within the scope of the UNGPs. While environmental protection is not a human right under Principle 12, failing to protect the environment can indirectly violate other human rights.¹⁷⁵ For example, deforestation can indirectly impact the right to food, leading to a loss of biodiversity that disrupts existing food systems. Similarly, climate change can indirectly affect the right to housing, as extreme weather events and rising sea levels lead to an increase in displacement.

¹⁶⁹ D. Augenstein, M. Dawson, P. Thielbörger, 'The UNGPs in the European Union: The Open Coordination of Business and Human Rights?', *Business and Human Rights Journal* 3(1) 2018, p. 1.

¹⁷⁰ UN Development Programme, *UNGPs Brochure* 2023, <https://www.undp.org/sites/g/files/zskgke326/files/migration/in/UNGP-Brochure.pdf>, p. 2.

¹⁷¹ Council of Europe, HELP Programme, 'An overview of business and human rights', *HELP* 2024.

¹⁷² Business & Human Rights Resource Centre, *United Nations Guiding Principles on Business and Human Rights* 2011, p. 14.

¹⁷³ Working Group on Business and Human Rights, 'Climate Change and the UNGPs', OHCHR 2024, <https://www.ohchr.org/en/special-procedures/wg-business/climate-change-and-ungps>.

¹⁷⁴ Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Information Note on Climate Change and the United Nations Guiding Principles*, June 2023, p.3

¹⁷⁵ OHCHR, 'Human Rights and Climate Change — Key messages', *OHCHR* 2025.

140. As a result of this recognition, businesses (and states) are required to protect and respect the environment, and in the same way, they must address all other human rights falling within the scope of Principle 12. The Information Note on Climate Change aims to serve as a guide in this regard, outlining various actions businesses can take to improve in this context. For instance, companies should develop policies that detail their current and potential impacts on human rights in relation to climate change, and climate change considerations should be integrated into their due diligence processes. Furthermore, they could, for example, introduce positive incentives for directors and executives to enhance their efforts in combating climate change.¹⁷⁶

141. The UNGPs don't only require businesses to respect and protect human rights related to climate change and the environment, but they also require businesses and states to remediate any potential violations in this context. This dual responsibility highlights the intersection of environmental protection and corporate litigation. Holding businesses and states accountable for their actions is outlined in the third pillar of the UNGPs, 'access to remedy.'

142. This pillar encompasses two critical aspects. The first is that all states and businesses must uphold the 'right to an effective remedy,' as outlined in the Universal Declaration of Human Rights (Article 8) and the International Covenant on Civil and Political Rights (Article 2(3)).¹⁷⁷ This right includes the victim's right to access to justice and access to all relevant information concerning violations and reparation mechanisms.¹⁷⁸

143. To ensure that victims face no obstacles in accessing justice, judicial and non-judicial mechanisms should be available. Non-state-based non-judicial grievance mechanisms are, for example, operational-level grievance mechanisms established by businesses.¹⁷⁹ These operational-level grievance mechanisms allow individuals or communities affected by a company's failure to uphold the human rights outlined in Principle 12 to seek remedy directly.¹⁸⁰

¹⁷⁶ Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Information Note on Climate Change and the United Nations Guiding Principles*, June 2023, p. 6.

¹⁷⁷ Art. 2.3 International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171.

¹⁷⁸ Art. VII UN General Assembly Res 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, 16 December 2005, UN Doc. A/RES/60/147.

¹⁷⁹ Business & Human Rights Resource Centre, *United Nations Guiding Principles on Business and Human Rights* 2011, Principle 29.

¹⁸⁰ *Ibid.*, principle 31.

144. These mechanisms need to meet substantive and procedural criteria. The procedural aspects, also known as the 'effectiveness criteria', are set out in Principle 31.¹⁸¹ The mechanisms should be legitimate, accessible, predictable, equitable, transparent, and rights-compatible (in line with internationally recognised human rights). Furthermore, they must serve as a source of continuous learning and be based on engagement and dialogue between businesses and affected stakeholder groups.¹⁸²

145. The second element of access to remedy is that, when businesses identify that they have engaged in activities harming human rights, they must take steps to remediate these harms. This includes addressing current human rights abuses, remedying past harm, and protecting future generations from harm. Remedy can take many forms, such as financial compensation, sanctions, or, for instance, a guarantee of non-repetition.¹⁸³

146. While the UNGPs third pillar is highly promising on paper, its effectiveness in the context of corporate litigation and environmental protection has been limited. According to the Business and Human Rights Journal published by the University of Cambridge in 2016, only one effective remedy was ordered in the first ten years following their adoption.¹⁸⁴

147. This can partly be attributed to the soft law character of the UNGPs. The UNGPs are non-binding, allowing human rights violations related to business activities to continue. The lack of a central oversight body to enforce the UNGPs further contributes to this problem.¹⁸⁵

3.2.3.2 OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

148. The United Nations Guiding Principles on Business and Human Rights are a relatively general source regarding businesses and human rights violations, which have

¹⁸¹ J. Harrison, M. Wielga, 'Grievance Mechanisms in Multi-Stakeholder Initiatives: Providing Effective Remedy for Human Rights Violations?', *Business and Human Rights Journal* 8(1) 2023, p. 44.

¹⁸² Business & Human Rights Resource Centre, *United Nations Guiding Principles on Business and Human Rights* 2011, Principle 31

¹⁸³ *Ibid.*, principle 25.

¹⁸⁴ M. Wielga, J. Harrison, 'Assessing the Effectiveness of Non-State-Based Grievance Mechanisms', *Business and Human Rights Journal* 6(1) 2021, p. 91.

¹⁸⁵ B. Faracik, 'Implementation of the UN Guiding Principles on Business and Human Rights', European Parliament Study 2 Feb 2017, DOI 10.2861/527765, p. 2.

only recently begun to focus more closely on climate-related issues. Other international sources concentrate more specifically on climate change and environmental protection. An important source in this regard is the Guidelines for Multinational Enterprises on Responsible Business Conduct (Guidelines) established by the Organisation for Economic Co-operation and Development (OECD).¹⁸⁶

149. The OECD Guidelines are recommendations made by participating governments to multinational enterprises. Today, there are 51 participating governments.¹⁸⁷ The Guidelines focus on multiple key business areas, including human rights, the environment, science & technology, consumer interests and more.¹⁸⁸ They were created to ensure that businesses conduct due diligence and align their activities with specific sustainable development goals.¹⁸⁹

150. To improve the effectiveness and implementation of the Guidelines, all participating governments must establish a National Contact Point (NCP or NCPs). These NCPs have two key responsibilities. First, they provide guidance to businesses on meeting the due diligence standards outlined in the Guidelines and actively promote their adoption. Second, they function as a non-judicial grievance mechanism.¹⁹⁰

151. The Guidelines, like the UNGPs, are a form of soft law, but they are used to influence the development of hard law in various ways.¹⁹¹ Lawmakers, for example, have combined the OECD Guidelines and the UNGPs as a basis for creating hard law. One example of this approach is the European Union's *Corporate Sustainability Due Diligence Directive*, which references the Guidelines in recital 6.¹⁹² Another method of enforcing the implementation of the Guidelines is their use in court cases, as demonstrated in cases such

¹⁸⁶ OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* 2023, p. 79.

¹⁸⁷ OECD, 'What are National Contact Points for RBC?', OECD 2025, <https://mneguidelines.oecd.org/ncps/>.

¹⁸⁸ OECD Centre for Responsible Business Conduct, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, 8 June 2023, DOI 10.1787/81f92357, p. 1.

¹⁸⁹ *Ibid.*, 2.

¹⁹⁰ OECD, 'What are National Contact Points for RBC?', OECD 2025, <https://mneguidelines.oecd.org/ncps/>.

¹⁹¹ M. Ingrams, K. Booth, *Hardening Soft Law: Strategic Use of the OECD Guidelines to Achieve Meaningful Outcomes*, CCSI Working Paper 351 (20 Feb 2023).

¹⁹² Rec. 6 Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence, *OJ L 202 5.7.2024*.

as *Milieudefensie et al. v. Shell Plc* (*supra* sec. 3.2.2).¹⁹³ In the Shell case, the Guidelines were incorporated into Dutch law.¹⁹⁴

152. Chapter 6 of the Guidelines is the most relevant in the context of environmental protection, as it focuses specifically on environmental issues.¹⁹⁵ This chapter recognises that businesses can have a negative impact on climate change, biodiversity loss, degradation of land, marine, and freshwater ecosystems, deforestation, air, water, and soil pollution, and improper waste management, including hazardous materials.¹⁹⁶ It also sets out several expectations for businesses in this regard, such as implementing an environmental management system, establishing disaster plans, and providing employees with adequate training on environmental, health, and safety issues.¹⁹⁷

153. Unlike the UNGPs, the OECD Guidelines do not include a separate chapter on remediation, like the 'access to remedy' pillar. However, they do establish the possibility of filing a complaint against a business if it does not meet the expectations outlined in the Guidelines.¹⁹⁸ NCPs handle such complaints in their role as a non-judicial grievance mechanism.¹⁹⁹

154. While the NCP system's principle of accepting complaints appears promising, the OECD's annual State of Remedy Report indicates that many NCPs are not functioning to their full potential. This is partly due to a lack of financial resources and challenges in meeting their objectives. OECD governments acknowledge these shortcomings and aim to address them in the future.²⁰⁰ Of the 20 complaints filed in 2023, only five resulted in an agreement between the parties or saw positive developments outside the NCP process.²⁰¹

¹⁹³ Rechtbank Den Haag, *Milieudefensie et al. v. Royal Dutch Shell plc*, 26 May 2021, ECLI:NL:RBDHA:2021:5339, §3.2.

¹⁹⁴ M. Ingrams, K. Booth, *Hardening Soft Law: Strategic Use of the OECD Guidelines to Achieve Meaningful Outcomes*, CCSI Working Paper 351 (20 Feb 2023), p. 2.

¹⁹⁵ OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* 2023, p. 6.

¹⁹⁶ *Ibid.*, 33.

¹⁹⁷ *Ibid.*, 33–38.

¹⁹⁸ OECD Watch, 'National Contact Points complaints' (factsheet, PDF), *OECD Watch* June 2024, <https://www.oecdwatch.org/wp-content/uploads/sites/8/2024/06/Final-complaints-webpages-English.pdf>.

¹⁹⁹ OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* 2023, p. 56.

²⁰⁰ OECD Watch, *State of Remedy 2023*, June 2024, p. 15.

²⁰¹ *Ibid.*, 4.

3.2.3.3 A Binding Treaty on Business and Human Rights?

155. Even though the ambitions of the UNGPs and the OECD Guidelines align with what is needed to improve access to justice for victims of environmental damage and climate change, their implementation has proven challenging due to their non-binding nature.

156. To address this issue, the United Nations established the Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights in June 2014, tasked with creating a binding framework for companies to respect human rights.²⁰²⁻²⁰³ Last year, the group celebrated its 10th anniversary and held its 10th session from 16 to 20 December 2024. The next session is scheduled to take place from 20 to 24 October in Geneva.²⁰⁴⁻²⁰⁵

157. During the 10th session in 2024, various states, non-governmental organisations, and business leaders gathered to review and discuss the current draft of the binding treaty. One of the most prominent topics addressed was access to justice for victims of corporate human rights abuses. However, whether and when the treaty will become a reality remains uncertain. There is still significant debate among states regarding the scope of application of the treaty and the enforceability of its provisions.²⁰⁶

158. It's important to note that many actors, including the European Union and John Ruggie, have reservations about a binding framework, viewing it as overly broad. They advocate instead for smaller, more targeted regulatory frameworks.²⁰⁷

²⁰² I. Zamfir, *Towards a Binding International Treaty on Business and Human Rights* EPRS PE 620.229 (Apr 2018), p. 1.

²⁰³ Art. 2 UN Human Rights Council Res 26/9, *Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights*, 14 July 2014, UN Doc. A/HRC/RES/26/9.

²⁰⁴ Business & Human Rights Resource Centre, 'UN Binding Treaty', *Business & Human Rights Resource Centre* 2024, <https://www.business-humanrights.org/en/biq-issues/governing-business-human-rights/un-binding-treaty/>.

²⁰⁵ UN Human Rights Council, 'Tenth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights', 2024, <https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/session10>.

²⁰⁶ Business & Human Rights Resource Centre, '10th Session recap: Progress and the path forward for the binding treaty on business and human rights', *Business & Human Rights Resource Centre Blog* 17 November 2023, <https://www.business-humanrights.org/en/blog/10th-session-recap-progress-and-the-path-forward-for-the-binding-treaty-on-business-and-human-rights/>.

²⁰⁷ I. Zamfir, *Towards a Binding International Treaty on Business and Human Rights* EPRS PE 620.229 (Apr 2018), p. 5.

3.3 The Human Rights-Based Approach and Access to Justice

159. As previously discussed, the current regulatory framework provides little support for victims of environmental and climate damage caused by businesses. Vulnerable groups are particularly affected, as they often lack the financial resources and legal assistance needed to stand up against large multinationals' vast legal and financial capabilities.²⁰⁸

160. One significant issue arises from the unequal distribution of environmental harm, where Western multinationals frequently exploit developing countries. Governments in these countries often attempt to attract corporate investment by offering economic incentives, including cheap labour, lenient regulations, minimal oversight by local authorities, and low-cost production opportunities. While this may seem like an economic paradise for multinationals, fostering significant economic growth, it is often disastrous for local communities and flora and fauna. The establishment of Western multinationals in developing countries frequently leads to widespread human rights violations and severe environmental damage.²⁰⁹

161. One example of this is the Glencore case, a Swiss company that operated two coal mines in Colombia. These mines not only generated dangerous levels of coal dust, well beyond the safety limits set by the World Health Organisation, but also contaminated five rivers, leading to increased cases of stomach cancer and respiratory diseases among the local population. Despite these harmful impacts, many large European banks, financial institutions, and pension funds continue to invest in Glencore, with the French BPCE Group being one of the largest investors.²¹⁰

162. Another example is the Filipino conglomerate San Miguel Corporation, which received funding from the Dutch company Royal Boskalis Westminster NV. San Miguel was responsible for the construction of the New Manila International Airport. This project resulted in the displacement of hundreds of families, half of whom did not receive any compensation. Additionally, the development caused significant damage to the local biodiversity.²¹¹

²⁰⁸ E. Emeseh, 'Environmental Victims, Access to Justice and the Sustainable Development Goals', in C. Eboe-Osuji, E. Emeseh (eds.), *Nigerian Yearbook of International Law 2017*, Springer 2018, p. 291.

²⁰⁹ G. L. Skinner, 'Victims' Rights to Remedy for Business-Related Human Rights Violations', in G. L. Skinner (ed.), *Transnational Corporations and Human Rights: Overcoming Barriers to Judicial Remedy*, Cambridge University Press 2020, p. 14-27.

²¹⁰ WWF European Policy Office, *Banking on Destruction: How European Financial Institutions Fuel Environmental Crises 2023.*, p. 9.

²¹¹ *Ibid.*, 11.

163. Despite the clear adverse impacts in both cases, access to justice through soft law mechanisms has proven ineffective. Although victims can theoretically seek redress through National Contact Points or operational-level grievance mechanisms, these avenues are often slow, underfunded, and lack binding authority. Consequently, victims are frequently left without adequate compensation or effective remedies. This underscores the importance of directives like the CSRD and the CSDDD, which enable enforcement through sanctions (*supra* par. 132).

164. At the same time, there have been promising development for corporate accountability and access to justice for victims. The Shell case recognised the indirect horizontal effect of human rights on businesses through the interpretation of other legal standards such as the social duty of care. This form of 'greening' human rights, where existing human rights are interpreted to include environmental aspects, create new ways to hold companies accountable (*supra* sec. 3.2.2).

165. However, the Shell case remains limited, as it is dependent on national legislation and the interpretation of other legal norms. A top-down recognition of environmental human rights at a European level would create a more stable legal framework which would strengthen corporate accountability (and thus access to justice for victims of environmental harm). There are two avenues to achieve this recognition. The first is the 'greening' of existing human rights by the European Court of Human Rights. The second is the formal recognition of a standalone right to a healthy environment within the European human rights framework.

166. The following chapters will explore both avenues and assess which is the most effective approach in safeguarding environmental rights and holding businesses accountable.

CHAPTER 4: THE 'GREENING' OF HUMAN RIGHTS

167. As outlined in paragraph 108, a human rights-based approach can be applied to environmental protection in three main ways. The previous chapter provided an overview of the first method: enforcing the right to a healthy environment through soft-law instruments, such as the United Nations Guiding Principles on Business and Human and the OECD Guidelines for Multinational Enterprises. Although these soft-law frameworks are highly ambitious on paper, they fall short in practice due to their non-binding nature and the weakness of their enforcement mechanisms (*supra* sec. 3.2.3).

168. Alongside the soft-law approach, another human rights-based approach to environmental protection has emerged: the so-called greening of human rights by the European Court of Human Rights. This chapter examines how the greening of human rights has enabled access to justice for victims of corporate environmental harm.

169. First, the concept of 'greening' will be defined, along with an overview of where and how it is already being applied. Subsequently, this chapter will focus on how greening is used within the European legal system. To do so, a brief overview of this system will be provided, followed by an analysis of how it has been greened to incorporate environmental protection. This will be illustrated through several landmark cases brought before the European Court of Human Rights, focusing on those concerning businesses.

170. This section will also reflect on how this affects businesses, given that the European human rights framework, like the international human rights framework discussed in previous chapters, is directed at states rather than private actors. Finally, the chapter will assess why the greening of human rights does not offer sufficient access to justice for victims of corporate environmental harm.

4.1 The Concept of Greening Human Rights

171. As discussed in Chapter 3, a healthy environment is necessary to enjoy the rights protected by instruments such as the European Charter for Human Rights and the Universal Declaration of Human Rights. Vice versa, some human rights, such as the right to participation and information, are also necessary to ensure a healthy environment.²¹²

²¹² L. Boisson de Chazournes, R. Desgagné, 'Le respect des droits de l'homme et la protection de l'environnement à l'épreuve des catastrophes écologiques : une alliance nécessaire', *Revue de droit de l'ULB* 1995, p. 1.

172. This link, which was first established during the Stockholm Conference, has been confirmed on multiple occasions since then, including the 2008 report by the International Council on Human Rights Policy, which stated:²¹³⁻²¹⁴

*"The first is that, as a matter of simple fact, climate change is already undermining the realisation of a broad range of internationally protected human rights."*²¹⁵

173. Today, this link has evolved to environmental rights being called a 'third generation' of human rights.²¹⁶ This has created new opportunities for victims of environmental harm or climate change to turn to human rights bodies, such as the European Court of Human Rights (ECtHR) and the Inter-American Commission on Human Rights (IACHR).²¹⁷⁻²¹⁸

174. The concept of greening human rights refers to the reinterpretation of existing rights by these human rights bodies, such as the right to life or the right to private and family life, to include environmental protection. This approach could provide a new way for victims to indirectly hold businesses accountable through the obligations imposed on states under human rights law.²¹⁹

175. Greening human rights can also strengthen direct corporate accountability. In the Shell case, for instance, the Dutch court relied in part on Articles 2 and 8 of the ECHR in its ruling (*supra* sec. 3.2.2). This is a form of greening, albeit not by the European Court of Human Rights itself. Should the ECtHR further develop and clarify the environmental dimensions of several human rights, it would strengthen the basis upon which national courts can rely to hold corporations directly accountable for environmental harm.

²¹³ UN News, 'Living in a pollution-free world is a basic human right, says top UN rights body', *UN News* 27 April 2001, <https://news.un.org/en/story/2001/04/2712>.

²¹⁴ Z. Aissa, 'Human Rights, Health and Environmental Protection: Linkages in Law and Practice', *WHO Background Paper* 28 Sept 2019, p. 1.

²¹⁵ International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, 2008, p. 1.

²¹⁶ B. Rainey, P. McCormick, C. Ovey et al., Jacobs, White and Ovey: *The European Convention on Human Rights* (9th ed.), Oxford University Press 2021, p. 7.

²¹⁷ It is important to note that while ensuring a healthier environment has gained success through this approach, combatting and achieving justice for consequences of climate change hasn't proven to be as straightforward because of its complex and intergenerational nature. (E. Cima, 'The Right to a Healthy Environment: Reconceptualizing Human Rights in the Face of Climate Change', *Review of European, Comparative & International Environmental Law* 31(1) 2022, p. 39.)

²¹⁸ *Ibid.*

²¹⁹ A. Chalabi, 'A New Theoretical Model of the Right to Environment and Its Practical Advantages', *Human Rights Law Review* 23(4) 2023, p. 1-2.

176. The idea of greening human rights dates back to the Inuit Petition case in 2005.²²⁰ The case concerned Sheila Watt-Cloutier, an Inuk woman who filed a petition before the Inter-American Commission on Human Rights, urging the Commission to address the United States' greenhouse gas emissions due to their harmful effects on the Arctic environment and the Inuit population.²²¹ Although the Commission dismissed the petition, it set an important precedent for other cases of environmental harm to be brought before human rights courts.

177. Since then, case law based on the environment and human rights has grown exponentially in the United States as well as in the African and European human rights systems.²²² The following subchapters will delve deeper into the European system.

4.2 Greening Human Rights in the European Legal System

4.2.1 A Brief Overview of the European Human Rights Framework

178. Before examining the greening of human rights within the European legal framework and its (potential) implications for businesses, it is essential to provide a brief overview of the European human rights system. This section will be limited to a general outline of a few key components of the European human rights system: the European Convention on Human Rights and the European Court of Human Rights. The European Social Charter and the European Committee on Social Rights also apply greening to human rights. However, due to limitations of scope and length, this thesis focuses exclusively on the European Convention on Human Rights and the case law of the European Court of Human Rights.

179. After the Second World War and the adoption of the Universal Declaration of Human Rights in 1948, the Council of Europe was founded. The Council of Europe aims to create more unity between its members by, among other things, working on further realising human rights and fundamental freedoms.²²³ The European Union's human rights treaty was adopted in 1950 to achieve this aim. The Convention for the Protection of Human

²²⁰ E. Cima, 'The Right to a Healthy Environment: Reconceptualizing Human Rights in the Face of Climate Change', *Review of European, Comparative & International Environmental Law* 31(1) 2022, p. 40.

²²¹ I. Grover, 'Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming', in *Global Warming and Climate Change*, Taylor & Francis 2008, 691-700, DOI 10.1201/b11007.

²²² E. Cima, 'The Right to a Healthy Environment: Reconceptualizing Human Rights in the Face of Climate Change', *Review of European, Comparative & International Environmental Law* 31(1) 2022, p. 4.

²²³ Art. 1 Statute of the Council of Europe, 5 May 1949, *ETS* 1.

Rights and Fundamental Freedoms, generally referred to as the European Convention on Human Rights (ECHR), came into force in 1953 and gave a binding character to the provisions laid out in the UDHR.²²⁴ Today, the Convention has 46 Parties.²²⁵

180. As time passed, sixteen protocols were added to the ECHR, introducing new human rights, such as the right not to be denied education and the restriction of the death penalty.²²⁶ The European Court of Human Rights (ECtHR) was established in 1959 to protect the rights set out in the Convention.²²⁷

181. Neither the Convention nor its protocols included an explicit right to a healthy environment. However, the recognition of this right has grown due to the development of case law.²²⁸ Today, over 300 cases regarding human rights and the environment have come before the ECtHR. A thorough overview of the most relevant cases and their conclusions can be found in the 'Manual on Human Rights and the Environment (3rd edition)', which was published by the Council of Europe in 2022.

4.2.2 The Scope of the European Human Rights Framework

182. The European Convention on Human Rights and the European Court of Human Rights were established to protect individuals from state human rights violations. As a result, the European human rights system resembles the international human rights framework discussed in Chapter 3. It was created to regulate the vertical relationship between a state and its subjects rather than the horizontal relationship between private actors.²²⁹ Under Article 1 of the Convention, states are required "*to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention.*"²³⁰

²²⁴ European Court of Human Rights, 'European Convention on Human Rights', *European Court of Human Rights* 2025, <https://www.echr.coe.int/european-convention-on-human-rights>.

²²⁵ Council of Europe, 'States parties to the Convention', *Council of Europe* 2025, <https://www.coe.int/en/web/cpt/states>.

²²⁶ European Court of Human Rights, 'Protocols to the Convention', *European Court of Human Rights* 2025, <https://www.echr.coe.int/protocols>.

²²⁷ European Court of Human Rights, 'General presentation', *European Court of Human Rights* 2025, <https://www.echr.coe.int/general-presentation>.

²²⁸ Council of Europe, *Manual on Human Rights and the Environment* (3rd ed.), February 2022, p. 13.

²²⁹ C. M. O'Brien, *Business and Human Rights — A Handbook for Legal Practitioners* Council of Europe 2019, p. 17.

²³⁰ Art. 1 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), 4 November 1950, *ETS* 5.

183. Even though the Convention does not directly bind businesses, they are still indirectly expected to respect the human rights protected by it. The Convention creates positive and negative obligations for states (*supra* par. 119).²³¹ On the one hand, states must provide remedies for harm caused by businesses to individuals under their jurisdiction if a state fails to take adequate measures to prevent such damage. On the other hand, states must take preventive steps to avoid human rights violations from occurring in the first place. As a result, businesses are indirectly bound by human rights law.

184. Because only states have legal obligations under the Convention, they are the only ones that can be held accountable before the European Court of Human Rights. While individuals, companies, and organisations cannot be brought before the Court as defendants, they may file applications under Article 34 of the Convention if they are victims of a human rights violation committed by a member state.²³² Thus, businesses cannot be directly held accountable before the ECtHR for violating human rights. However, a state may be held responsible for failing to regulate or prevent harmful conduct by private actors, including businesses. The State may hold the company liable under domestic law in such cases.²³³ Businesses may also become subject to liability through the indirect horizontal effect of human rights law (*supra* sec. 3.2.2).

4.2.3 An Overview of Already Greened Human Rights in European Union Case Law

185. As mentioned, more than 300 cases have been decided by the European Court of Human Rights concerning environmental human rights violations. These cases are based on nine rights protected under the Convention: the right to life (Art. 2), the prohibition of inhuman or degrading treatment (Art. 3), the right to liberty and security (Art. 5), the right to a fair trial (Art. 6), the right to respect for private and family life and the home (Art. 8), the freedom of expression (Art. 10), the freedom of assembly and association (Art. 11), the right to an effective remedy (Art. 13), and the right to the protection of property (Art. 1 of Protocol No. 1).²³⁴

²³¹ J-F. Akandji-Kombe, 'Positive obligations under the European Convention on Human Rights', in *Human Rights Handbooks 7*, Council of Europe 2007, p. 5–7.

²³² Art. 34 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), 4 November 1950, *ETS* 5.

²³³ J-S. Vanwijngaerden, 'De werking van grondrechten tussen particulieren', *Jura Falconis* 44 (2008) 217, p. 242–243.

²³⁴ Council of Europe, *Manual on Human Rights and the Environment* (3rd ed.), February 2022, p. 236.

186. However, most of these cases do not concern the indirect liability of businesses for environmental harm. Instead, the majority focus on state negligence, for example, the failure to take sufficient measures in the event of natural disasters or pollution.²³⁵⁻²³⁶ These types of cases will not be discussed further in this thesis.

187. When focusing on cases relevant to holding businesses indirectly accountable, four human rights emerge as particularly significant: the right to life, the right to private life, the right to the protection of property, and the right to an effective remedy. The discussion below will focus on the right to life and a private life in this context.

A. Article 2 ECHR - The Right to Life

188. Article 2 of the Convention states that “*everyone’s right to life shall be protected by law.*”²³⁷ In principle, this imposes a negative obligation on states: they must refrain from conduct that would violate this right. However, as case law has evolved, a positive obligation has also emerged in some instances, requiring states to protect individuals against violations of this right by private actors, including corporations.²³⁸

189. In this respect, the scope of Article 2 in environmental cases was expanded in 2025 by the judgment in *Cannavacciuolo and Others v. Italy*. Before this ruling, a causal link had to exist between the environmental damage and the ‘life-threatening’ health impacts experienced by the victims. For example, in *L.C.B. v. the United Kingdom*, a young girl alleged that the United Kingdom’s failure to warn and advise her parents of the dangers of the nuclear tests to any future children, as well as the State’s failure to monitor her health, constituted violations of its obligations under Article 2.²³⁹ The ECtHR rejected the claim, finding that there was no proven causal connection between the father’s radiation exposure and the child’s leukaemia.²⁴⁰

²³⁵ ECtHR, *Kolyadenko and Others v. Russia*, 28 February 2012, Apps. Nos. 17423/05 et al.

²³⁶ ECtHR, *Hatton and Others v. the United Kingdom*, 8 July 2003, App. No. 36022/97, ECLI:CE:ECHR:2003:0708JUD003602297.

²³⁷ European Court of Human Rights, ‘Protocols to the Convention’, *European Court of Human Rights* 2025, <https://www.echr.coe.int/protocols>.

²³⁸ ECtHR, *L.C.B. v. the United Kingdom*, 9 June 1998, App. No. 23413/94, §B.2.

²³⁹ Council of Europe, *Manual on Human Rights and the Environment* (3rd ed.), February 2022, p. 23.

²⁴⁰ ECtHR, *L.C.B. v. the United Kingdom*, 9 June 1998, App. No. 23413/94, §39.

190. In Cannavacciuolo, however, the Court ruled that the State's positive obligations under Article 2 are triggered by a "*real and imminent*" risk to life.²⁴¹ As soon as enough evidence indicates that certain activities are causing severe environmental damage and posing a significant threat to public health, the State must intervene, even if no specific individual has yet suffered concrete health consequences.²⁴²⁻²⁴³ However, Cannavacciuolo is unlikely to alter the ECtHR's approach to climate-related cases and permanently expand the scope of Article 2 ECHR.²⁴⁴

B. Article 8 ECHR - The Right to Respect for One's Private and Family Life, His Home and His Correspondence

191. Article 8 of the Convention states that "*everyone has the right to respect for his private and family life, his home and his correspondence.*".²⁴⁵ Like Article 2, it is initially directed at state interference. However, it can also give rise to positive obligations in certain circumstances, requiring the State to take action against interference by private parties in the private lives of individuals.²⁴⁶

192. Article 8 does not create a standalone right to a healthy environment. According to the Court, other international and national sources are more appropriate for addressing such issues, and Article 8 was not intended to provide general environmental protection.²⁴⁷

193. Nevertheless, environmental cases may fall within the scope of Article 8 if two cumulative criteria are met, as established in *López Ostra v. Spain*, a case before the ECtHR in which Mrs. López Ostra brought Spain before the Court due to environmental pollution from a nearby waste treatment plant. There must be a causal link between the harmful activity and the negative impact on the individual, and the adverse effects must

²⁴¹ ECtHR, *Cannavacciuolo and Others v. Italy*, 30 January 2025, App. No. 51567/14, ECLI:CE:ECHR:2025:0130JUD005156714, §377.

²⁴² ECtHR, *Cannavacciuolo and Others v. Italy*, 30 January 2025, App. No. 51567/14, ECLI:CE:ECHR:2025:0130JUD005156714/.

²⁴³ Sommardal, 'A landmark judgment: Three crucial aspects of Cannavacciuolo and Others v Italy', *ECHR Blog* 11 February 2025, <https://www.echrblog.com/2025/02/by-dr.html>.

²⁴⁴ K. Hamann, 'Cannavacciuolo and Others v Italy: Towards Applying a Precautionary Approach to the Right to Life', *EJIL: Talk!* 5 February 2025, <https://www.ejiltalk.org/cannavacciuolo-and-others-v-italy-towards-applying-a-precautionary-approach-to-the-right-to-life/>.

²⁴⁵ Art. 8 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), 4 November 1950, *ETS* 5.

²⁴⁶ ECtHR, *Hatton and Others v. the United Kingdom*, 8 July 2003, App. No. 36022/97, ECLI:CE:ECHR:2003:0708JUD003602297, §98.

²⁴⁷ ECtHR, *Kyrtatos v. Greece*, 22 May 2003, App. No. 41666/98, §52.

meet a certain threshold of severity.²⁴⁸ The Court considers various factors here, such as the intensity and duration of the nuisance and its physical or mental effects.²⁴⁹

194. States can thus be held liable for failing to regulate properly: “A *State’s responsibility in cases relating to the environment may arise from a failure to regulate [the] private industry.*”.²⁵⁰⁻²⁵¹ That said, individuals still face a heavy burden of proof, as they must demonstrate that they have been directly affected by the environmental harm caused by businesses.²⁵²

195. For organisations, it wasn’t easy to bring cases before the Court on behalf of others, as they, too, had to show they were directly harmed. This changed with the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*. Brought by four women and a Swiss organisation of older women concerned about the health impacts of climate change, the case was deemed admissible by the Court.²⁵³ As a result, organisations may, under certain conditions, initiate legal proceedings in the interest of individuals and potentially even future generations.²⁵⁴

196. It also remains difficult to hold companies indirectly accountable for extraterritorial environmental harm. For example, in *Duarte Agostinho and Others v. Portugal and 33 Other Member States*, decided on 9 April 2024, the Court declared the case inadmissible due to its extraterritorial nature and the failure to exhaust domestic remedies. In this case, Portuguese nationals aged between 10 and 23 brought proceedings against more than 33 Convention states, arguing that these countries had failed to regulate companies contributing to environmental degradation and global warming and that this had negative consequences for their health.²⁵⁵

²⁴⁸ ECtHR, *López Ostra v. Spain*, 9 December 1994, App. No. 16798/90, *Series A 303-C*, § 51.

²⁴⁹ ECtHR, *Fadeyeva v. Russia*, 9 June 2005, App. No. 55723/00, ECLI:CE:ECHR:2005:0609JUD005572300, §69.

²⁵⁰ Council of Europe, *Manual on Human Rights and the Environment* (3rd ed.), February 2022, p. 42.

²⁵¹ ECtHR, *Ledyayeva, Dobrokhotova, Zolotareva and Romashina v. Russia*, 26 October 2006, Apps. Nos. 53157/99, 53247/99, 53695/00, 56850/00.

²⁵² ENNHRI, statement ‘ENNHRI calls on Council of Europe member States to adopt a binding instrument on the right to a healthy environment’, 28 June 2024, p. 3.

²⁵³ ECtHR (Grand Chamber), *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 9 April 2024, App. No. 53600/20.

²⁵⁴ Council of Europe, Steering Committee for Human Rights (CDDH), *Study on the Need for and Feasibility of a Further Instrument or Instruments in the Field of Human Rights and the Environment*, 29 November 2024, p. 9.

²⁵⁵ Council of Europe, ‘Factsheet – Climate change’, April 2024, 2, https://www.echr.coe.int/documents/fs_environment_climate_change_eng.pdf, p2.

197. However, the Court did note that if the case had concerned a more imminent environmental threat, an extraterritorial approach might have been possible.²⁵⁶ This suggests that case law may develop so that states could potentially be held responsible for environmental harm caused by companies operating under the jurisdiction of another state.²⁵⁷

4.3 Does Greening Human Rights Provide Sufficient Access to Justice for Victims of Environmental Harm?

198. Although the greening of specific human rights within the European human rights system has led to notable developments, this approach still does not provide sufficient support for individuals who suffer environmental harm caused by corporate activities.

199. First and foremost, as previously discussed, there is a high burden of proof before a case is declared admissible before the ECtHR. A causal link must always be established between the harm suffered and the state's actions (or inactions), and thus, indirectly, a company's actions (or inactions). In practice, this often means that victims must prove the harm would not have occurred but for the conduct of the responsible actor (the 'but-for' test), a legal standard that is particularly difficult to meet in complex environmental and health-related cases.²⁵⁸ Although the *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* case has somewhat lowered this threshold for non-governmental organisations, the burden remains exceptionally high for individual applicants.²⁵⁹ Moreover, the Court explicitly limited its findings in the *Verein KlimaSeniorinnen* case to climate change issues, not to broader forms of environmental degradation.²⁶⁰ Furthermore, *actio popularis* cases are still not admissible before the Court, even though environmental harm often affects vulnerable communities or entire groups rather than just individuals.²⁶¹

²⁵⁶ ECtHR (Grand Chamber), *Duarte Agostinho and Others v. Portugal and Others*, 9 April 2024, App. No. 39371/20, §167.

²⁵⁷ Council of Europe, Steering Committee for Human Rights (CDDH), *Study on the Need for and Feasibility of a Further Instrument or Instruments in the Field of Human Rights and the Environment*, 29 November 2024, p. 8.

²⁵⁸ V. Stoyanova, 'Causation', in *Positive Obligations under the European Convention on Human Rights: Within and Beyond Boundaries*, Oxford University Press 2023, p. 45.

²⁵⁹ Council of Europe, Steering Committee for Human Rights (CDDH), *Study on the Need for and Feasibility of a Further Instrument or Instruments in the Field of Human Rights and the Environment*, 29 November 2024, p. 9.

²⁶⁰ *Ibid.*, 22.

²⁶¹ *Ibid.*, 9.

200. A second key limitation concerns the territorial scope of the ECtHR. Many companies are multinational, and the environmental damage they cause does not respect state borders. Although the judgment in *Duarte Agostinho and Others v. Portugal and 33 Other Member States* opened the door to potentially holding states accountable beyond their borders for climate-related harm, there is as yet no developed case law to support such claims.²⁶²

201. A third challenge is the requirement that a claim brought before the Court must be based on the violation of a recognised human right. In the *Verein KlimaSeniorinnen* case, the Court clearly stated that the right to a healthy environment is not a standalone right under the Convention.²⁶³ As a result, a case can only be brought before the ECtHR if the environmental harm in question also infringes on another recognised right, such as the right to life or the right to private life. To date, this means individuals cannot bring a case if the environmental harm they suffer does not directly impact such rights.

202. Finally, the current European human rights system focuses on states rather than companies. Only states can be brought before the Court, and they benefit from a wide 'margin of appreciation' in implementing human rights. This principle was clearly articulated in the Brussels Declaration of 2015 on the implementation of the Convention:

*"...the subsidiary nature of the supervisory mechanism established by the Convention and in particular the primary role played by national authorities, namely governments, courts and parliaments, and their margin of appreciation in guaranteeing and protecting human rights at national level."*²⁶⁴

203. Depending on the human right in question, this margin of appreciation can be less or more extensive, meaning states retain considerable discretion in interpreting and applying some rights based on their capacities (such as their legal remedies and financial means).²⁶⁵ Since the right to a healthy environment is not recognised as a standalone

²⁶² ECtHR (Grand Chamber), *Duarte Agostinho and Others v. Portugal and Others*, 9 April 2024, App. No. 39371/20, §167.

²⁶³ ECtHR (Grand Chamber), *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 9 April 2024, App. No. 53600/20, §445.

²⁶⁴ High-level Conference, *Brussels Declaration: Implementation of the ECHR — Our Shared Responsibility* 27 Mar 2015, p. 1.

²⁶⁵ Gerards, 'Margin of Appreciation and Incrementalism in the Case Law of the European Court of Human Rights', *Human Rights Law Review* 18(3) 2018, p. 499.

human right under the Convention, and only occasionally falls under the scope of other rights, the responsibility for its implementation is left entirely to the state.

204. This does not mean, however, that environmental protection is absent from the national legal systems of Council of Europe member states. Many member states have enshrined the right to a healthy environment in their national constitutions, with varying wording and legal effect.²⁶⁶

205. In Belgium, for example, the right to a healthy environment was incorporated into Article 23 of the Constitution.²⁶⁷ Nevertheless, Article 23 does not give individuals the right to a healthy environment. Individuals cannot go to court solely because they feel they are not enjoying a sufficiently healthy environment. Instead, Article 23 functions as a policy norm, meaning it only applies when new legislation is drafted, which must consider environmental protection. It also introduces the standstill principle, which prevents existing environmental standards from significantly weakening.²⁶⁸

206. Similar limitations exist in other countries. In Hungary, the constitutional right to a healthy environment only protects against 'backsliding', that is, the dismantling of existing environmental standards.²⁶⁹ In Norway, the right to a healthy environment is also enshrined in the Constitution. Still, a high threshold of gross negligence must be met before a parliamentary decision that breaches this right can be overturned.²⁷⁰

207. Thus, while greening human rights by the ECtHR has created new pathways to legal remedies for victims of environmental harm, it ultimately falls short in holding corporations indirectly accountable. Introducing an explicit right to a healthy environment within the

²⁶⁶ ENNHRI, statement 'ENNHRI calls on Council of Europe member States to adopt a binding instrument on the right to a healthy environment', 28 June 2024, p. 8.

²⁶⁷ Art. 23 Grondwet, BS 17 February 1994.; "Everyone has the right to lead a life in keeping with human dignity. To this end, the laws, federate laws and rules referred to in Article 134 guarantee economic, social and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them. These rights include among others: 1° the right to employment and to the free choice of an occupation within the context of a general employment policy, aimed among others at ensuring a level of employment that is as stable and high as possible, the right to fair terms of employment and to fair remuneration, as well as the right to information, consultation and collective negotiation; 2° the right to social security, to health care and to social, medical and legal aid; 3° the right to decent accommodation; 4° the right to the protection of a healthy environment; 5° the right to cultural and social fulfilment; 6° the right to family allowances."

²⁶⁸ ENNHRI, statement 'ENNHRI calls on Council of Europe member States to adopt a binding instrument on the right to a healthy environment', 28 June 2024, p. 8.

²⁶⁹ K. Debisso, M. Szabó, 'An Institution for a Sustainable Future', in *Hungarian Yearbook of International Law and European Law 2021*, Eleven International Publishing 2021.

²⁷⁰ ENNHRI, statement 'ENNHRI calls on Council of Europe member States to adopt a binding instrument on the right to a healthy environment', 28 June 2024, p. 11.

European human rights system could significantly improve victims' access to justice. By recognising this right directly, rather than relying on the reinterpretation of existing rights, the framework could reduce legal barriers for vulnerable groups and impose clearer obligations on states and businesses. The next chapter will explore why establishing an explicit right to a healthy environment is necessary to improve protection against corporate environmental harm and why it is a better approach than greening human rights.

CHAPTER 5: DEBATING A NEW HUMAN RIGHT TO A HEALTHY ENVIRONMENT

208. The introduction of a new human right to a healthy environment offers a possible solution to the gaps identified in the analysis of both the soft law approach and the greening of existing human rights by the European Court of Human Rights. It also offers a stronger basis to hold businesses directly accountable for their environmental harm (for example in cases like the Shell case (*infra* sec. 3.2.2)). The recognition of this right is, however, not a novel concept. It has already been recognised in numerous national constitutions and various regional human rights systems and was recently affirmed internationally by the United Nations.

209. This chapter begins by examining existing international, regional, and national recognitions of the right to a healthy environment, concluding that this recognition is still absent within the European human rights system. It then proceeds to explain why establishing an autonomous human right to a healthy environment is necessary, paying particular attention to its advantages over the current fragmented framework, which relies on non-binding norms or the indirect interpretation of environmental protection through existing human rights.

210. This chapter then examines the right's constituent elements, discussing its substantive elements, such as the right to clean air, safe water, and a non-toxic environment, and its procedural elements, including access to information, public participation, and access to justice. Finally, this chapter explores how this right could be introduced into the European human rights framework. It also considers the potential limitations and disadvantages of introducing the right, as raised by critics.

211. This chapter is a plea for Europe not to fall behind. In a world where environmental and climate crises are intensifying and the damage to individuals is growing, particularly to vulnerable populations such as women, Indigenous peoples, and children, it is no longer sufficient to approach environmental protection indirectly. Only by introducing and recognising the right to a healthy environment can the European Union adapt to the ecological realities of the twenty-first century.

5.1 Existing Recognition of the Right to a Healthy Environment

212. Although the human right to a healthy environment is not explicitly recognised in all legal systems, it has gained widespread recognition across various international, regional, and national instruments. Numerous constitutions and resolutions reflect the

growing global consensus on the importance of environmental protection as a fundamental human right.

5.1.1 The United Nations

213. In 2021, the United Nations Human Rights Council formally recognized the right to a clean, healthy, and sustainable environment.²⁷¹ The United Nations General Assembly reaffirmed this recognition in 2022 through Resolution A/RES/76/300.²⁷² This landmark resolution was the result of years of advocacy and collaboration among Indigenous Peoples, civil society organisations, states, and private actors.²⁷³

214. The resolution was adopted with overwhelming support: 161 votes in favour, zero against, and only eight abstentions.²⁷⁴ While General Assembly resolutions are non-binding and merely recommendatory, they reflect the international community's collective will.²⁷⁵ The enthusiastic support from member states highlights the urgent need for stronger environmental protection.

215. According to the United Nations' Information Note on the content and implications of this right, its recognition is expected to lead to a better understanding of the link between environmental degradation and human rights, increased national and regional acknowledgment of the right, and the strengthening of remedies for victims seeking to hold states and private actors accountable for violations.²⁷⁶ A similar trend followed the recognition of the right to clean water and sanitation in 2010, which led to new legislation in several states, a rise in litigation, and the establishment of new regulatory bodies.²⁷⁷

²⁷¹ UN Human Rights Council Res 48/13, *Human right to a clean, healthy and sustainable environment*, 8 October 2021, *UN Doc. A/HRC/RES/48/13*.

²⁷² UN General Assembly Res 76/300, *The human right to a clean, healthy and sustainable environment*, 28 July 2022, *UN Doc. A/RES/76/300*.

²⁷³ United Nations, 'Joint statement of United Nations entities on the right to healthy environment', *UN Environment Programme* 2021.

²⁷⁴ United Nations Environment Programme & United Nations Office of the High Commissioner for Human Rights, *Information Note: What Is the Right to a Healthy Environment?*, 2023, p. 7.

²⁷⁵ B. D. Lepard, 'The Role of United Nations General Assembly Resolutions as Evidence of *Opinio Juris*', in B. D. Lepard (ed.), *Customary International Law: A New Theory with Practical Applications*, Cambridge University Press 2010, p. 208.

²⁷⁶ United Nations Environment Programme & United Nations Office of the High Commissioner for Human Rights, *Information Note: What Is the Right to a Healthy Environment?*, 2023, p. 10–11.

²⁷⁷ *Ibid.*, 10.

5.1.2 The Recognition of the Right to a Healthy Environment on a Regional and National Level

216. The right to a healthy environment has also gained increased recognition at the regional level since the 1980s. The African human rights system was a pioneer in this regard. The right was first recognised in 1986 in the African Charter on Human and Peoples' Rights, specifically in Article 24, which states: "*All peoples shall have the right to a general satisfactory environment favourable to their development.*".²⁷⁸ This right was further reinforced in 2003 by the Protocol to the African Charter on the Rights of Women, which stipulates that "*Women shall have the right to live in a healthy and sustainable environment.*".²⁷⁹

217. The African human rights system has gone beyond mere recognition by providing remedies for victims of environmental harm. One of the most well-known and impactful cases is Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria, commonly referred to as the Ogoni case. The Ogoni, an ethnic minority living in the Niger Delta, saw their land and livelihoods devastated by oil exploitation conducted by multinational corporations, such as Shell, in collaboration with the Nigerian government.²⁸⁰ This led to widespread environmental degradation, which destroyed local agriculture and fishing, the Ogoni's primary sources of sustenance. In 1996, representatives of the Ogoni brought the case before the African Commission on Human and Peoples' Rights, citing various human rights violations, including breaches of the right to a healthy environment.²⁸¹ The Commission ruled that Nigeria violated several human rights and called for environmental remediation and reparations.²⁸²

218. The Inter-American human rights system recognises the right to a healthy environment through the Protocol of San Salvador, an additional protocol to the American Convention on Human Rights. It states, "*Everyone shall have the right to a healthy*

²⁷⁸ Art. 24 African Charter on Human and Peoples' Rights, 27 June 1981 (in force 21 October 1986), 1520 UNTS 217.

²⁷⁹ Art. XVIII Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 11 July 2003 (in force 25 November 2005), 1 Afr. Hum. Rts. L.J. 40.

²⁸⁰ Oyinlade, J. Vincent, 'The Ogoni of Nigeria', University of Nebraska Publications 1 Jan 2002.

²⁸¹ F. Coomans, 'The Ogoni Case before the African Commission on Human and Peoples' Rights', *International and Comparative Law Quarterly* 57(3) 2008, p. 1-3.

²⁸² ACHPR, *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Communication No. 155/96, 27 October 2001.

environment.".²⁸³ The Arab Charter on Human Rights, adopted by the Council of the League of Arab States in 2004, also embraces this right. Article 38 of the Charter states, "*Everyone shall have the right to an adequate standard of living for himself and his family, ensuring well-being and a decent life, including adequate food, clothing, housing, services and a right to a safe environment.*".²⁸⁴

219. In Asia, the right is articulated in paragraph 28 of the ASEAN Human Rights Declaration.²⁸⁵ Similarly, in Latin America and the Caribbean, the right to a healthy environment is protected by the 2018 Escazú Agreement, which states that parties "*shall guarantee the right of every person to live in a healthy environment and any other universally recognised human right related to the present Agreement.*".²⁸⁶

220. Within the European human rights system is more fragmented. Although the Aarhus Convention confirms several environmental rights, especially in the procedural domain, there is still no standalone, substantive right to a healthy environment within the European Convention on Human Rights framework.²⁸⁷ Through developments in the case law of the European Court of Human Rights, the right is protected when it falls within the scope of other human rights. Still, the ECHR does not, to date, contain a specific right to a healthy environment.

221. Since 1970, the Parliamentary Assembly of the Council of Europe has issued multiple calls urging the Council to recognise the right to a healthy environment. In 2021, the Assembly adopted a recommendation that included a proposed text for an additional protocol to the ECHR.²⁸⁸ The Parliamentary Assembly argued that recognition of this right would lead to stronger national regulation and improved access to justice for victims of

²⁸³ N. Robinson, R. L. Ottinger, V. Tafur, 'Additional Protocol to the American Convention on Human Rights "Protocol of San Salvador"', in N. Robinson, R. L. Ottinger, V. Tafur (eds.), *Compendium of Sustainable Energy Laws*, Cambridge University Press 2010, p. 223.

²⁸⁴ Art. 38 Arab Charter on Human Rights, 22 May 2004, reprinted in *12 Int'l Hum. Rts. Rep.* 893 (2005).

²⁸⁵ Art. 28 ASEAN Human Rights Declaration, Phnom Penh, 18 November 2012.

²⁸⁶ Art. 4 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, 4 March 2018, *2221 UNTS* 3.

²⁸⁷ Art. 1 Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, *OJ L* 264 25.9.2006, p. 13.

²⁸⁸ Parliamentary Assembly of the Council of Europe, Recommendation 2211 (2021) 'Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe', 29 September 2021.

environmental harm.²⁸⁹ In 2024, the Assembly reiterated this call, emphasising the importance of enshrining the right at the European level.²⁹⁰

222. In light of this, the CDDH Drafting Group on Human Rights and the Environment (CDDH-ENV) was established by the Council of Europe's Steering Committee for Human Rights in 2022. This group was tasked with examining the need for and the feasibility of further instruments on human rights and the environment.²⁹¹ In 2024, it published its first study, which will serve as a foundation for the rest of this chapter.²⁹² In parallel, the Reykjavík Declaration, adopted during the 4th Summit of Heads of State and Government of the Council of Europe in 2023, confirmed the member states' strong commitment to integrating environmental protection within the broader human rights framework.²⁹³

223. Several organisations have also called on the Council of Europe to recognise the right. The Coalition for the Right to a Clean, Healthy, and Sustainable Environment at the Council of Europe has issued a "*Call for the adoption of an additional Protocol to the European Convention on Human Rights on the right to a clean, healthy, and sustainable environment*".²⁹⁴ Similarly, the European Network of National Human Rights Institutions (ENNHRI), representing over 40 National Human Rights institutions, has also called for a binding human right to a healthy environment.²⁹⁵

224. Nevertheless, the European human rights system still lacks an autonomous right to a healthy environment. This gap is concerning. A recent European study revealed that only 16% of companies consider their environmental and human rights impacts across their entire value chain. This suggests that voluntary guidelines are insufficient to ensure adequate environmental protection or corporate accountability (*supra* Chapter 3).²⁹⁶

²⁸⁹ Art. 8 Parliamentary Assembly of the Council of Europe, Resolution 2396 (2021) 'Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe', 29 September 2021.

²⁹⁰ Parliamentary Assembly of the Council of Europe, Recommendation 2272 (2024) 'Mainstreaming the human right to a safe, clean, healthy and sustainable environment with the Reykjavik process', 25 January 2024.

²⁹¹ Council of Europe, Steering Committee for Human Rights (CDDH), *Study on the Need for and Feasibility of a Further Instrument or Instruments in the Field of Human Rights and the Environment*, 29 November 2024, p. 34.

²⁹² *Ibid.*

²⁹³ Council of Europe, *United around our values — Reykjavík declaration*, 2023, Doc. 089123GBR.

²⁹⁴ Healthy Environment Europe, 'Campaign for the Right to a Clean, Healthy, and Sustainable Environment at the Council of Europe', *Healthy Environment Europe* 2024, <https://healthyenvironmenteurope.com/>.

²⁹⁵ ENNHRI, statement 'ENNHRI calls on Council of Europe member States to adopt a binding instrument on the right to a healthy environment', 28 June 2024.

²⁹⁶ Special Rapporteur on Human Rights and the Environment (United Nations), *Report on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 2 January 2024, UN Doc A/HRC/55/43, p. 5.

225. As discussed in Chapter 4, the right to a healthy environment is recognised nationally in many countries. In some countries, including Belgium, the constitution protects this right.²⁹⁷ However, in many jurisdictions, individuals still cannot directly invoke this right before a court on the basis of personal harm resulting from environmental degradation.

5.2 Advantages of Establishing a Standalone Right

226. The current international legal framework for environmental protection is based primarily on two approaches: the soft law method, which includes non-binding principles and guidelines, and the greening of existing human rights, through which environmental issues are addressed via the interpretation of other human rights such as the right to life or the right to privacy (*supra* Chapter 3 and Chapter 4). However, both approaches have proven insufficient to ensure access to justice and effective remedies for victims of corporate environmental harm. Introducing an autonomous and explicitly recognised human right to a healthy environment could fill many critical gaps in the legal landscape. This chapter outlines the key advantages of establishing this right.

5.2.1 Legal Clarity and Stronger National Legal Systems

227. Recognising the right to a healthy environment within the European human rights framework is essential to create greater legal clarity. Under the current system, environmental protection is derived from other human rights, resulting in legal uncertainty and inconsistencies. An explicit right would define and embed environmental protection's substantive and procedural dimensions directly within European human rights law.

228. Because no explicit human right to a healthy environment exists at the European level, its implementation currently differs significantly between member states. In many of these states, including Belgium, France, and Hungary, the right to a healthy environment functions primarily as a policy norm rather than an enforceable right (*supra* sec. 4.3). In practice, this means the right must be taken into account during legislative processes, but individuals cannot invoke it before national or international courts when they believe their right has been violated, for instance, by corporate activities.²⁹⁸

²⁹⁷ Art. 23 Grondwet, BS 17 February 1994.

²⁹⁸ ENNHRI, statement 'ENNHRI calls on Council of Europe member States to adopt a binding instrument on the right to a healthy environment', 28 June 2024, p. 8–9.

229. Enshrining the right at the European level would therefore clarify the responsibilities of member states. Member states would be obliged to adopt new legislation or revise their existing frameworks in light of their commitments under the European Convention on Human Rights.²⁹⁹ This legal reinforcement at the domestic level is also highlighted in the study conducted by the CDDH-ENV, which stresses that a new environmental right would provide judges and policymakers with a firm foundation and offer clear guidance to private actors about the scope of their obligations.³⁰⁰

230. The procedural dimension of the right would also strengthen public participation.³⁰¹ To ensure that states respect the right to a healthy environment, citizens and civil society groups, especially those from vulnerable communities, must be able to participate fairly, inclusively, and effectively in environmental decision-making. Furthermore, the explicit recognition of a right to a healthy environment could strengthen existing obligations under instruments such as the CSRD and CSDDD by reinforcing mandatory transparency in companies' environmental performance, which would further enhance public oversight and accountability.³⁰²

231. In monist legal systems, where international law takes precedence over national law and is directly applicable, recognising a right to a healthy environment at the European level could possibly allow individuals to invoke the right directly before national courts, thereby significantly improving legal protection for citizens. In countries with a monist legal system, international treaties automatically become part of the domestic legal order. In dualist systems, however, international law must first be transposed into national legislation before it becomes enforceable.³⁰³

²⁹⁹ *Ibid.*

³⁰⁰ Council of Europe, Steering Committee for Human Rights (CDDH), *Study on the Need for and Feasibility of a Further Instrument or Instruments in the Field of Human Rights and the Environment*, 29 November 2024, p. 19–20.

³⁰¹ UN Special Rapporteur on Human Rights and the Environment, *Report on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 19 July 2018, UN Doc A/73/188, p. 15.

³⁰² Special Rapporteur on Human Rights and the Environment (United Nations), *Report on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 2 January 2024, UN Doc A/HRC/55/43, p. 12–13

³⁰³ M. Chiam, 'Monism and Dualism in International Law', *Oxford Bibliographies in International Law* 27 June 2018, DOI 10.1093/obo/9780199796953-0168.

5.2.2 Better Access to Justice and Effective Remedies

232. One of the biggest shortcomings of both the soft law approach and the greening approach is the limited and often inaccessible pathways to justice for victims of corporate environmental harm. This limitation is partly rooted in the structure of the greening approach, which requires victims to prove that one of their other human rights has been violated as a result of environmental damage. This imposes a high burden of proof, requiring evidence of environmental harm and a clear causal link to the violation of a different human right.

233. Establishing a new, autonomous human right to a healthy environment would significantly lower these barriers. Environmental degradation would in itself constitute a violation of human rights, providing victims with a direct legal hook without the need to demonstrate harm to another right. This would greatly simplify admissibility requirements for cases, not only before the European Court of Human Rights but also in domestic courts.³⁰⁴

234. This is particularly significant for national courts in monist systems, where European human rights can be invoked directly. With an explicit environmental right, individuals would no longer need to rely exclusively on reinterpreting other human rights. A standalone right to a healthy environment could provide for a clear legal basis, making it more straightforward to provide access to justice for victims' cases such as the Shell case.

235. Moreover, a clearly defined right to a healthy environment would enable more effective remedies for victims.³⁰⁵ When a human right is established, states must take preventive measures and provide effective remedy, including compensation, restoration, and guarantees of non-repetition, when violations occur.³⁰⁶ Codifying the right to a healthy environment would create binding obligations for states to integrate such remedies into domestic law.

³⁰⁴ ENNHRI, statement 'ENNHRI calls on Council of Europe member States to adopt a binding instrument on the right to a healthy environment', 28 June 2024, p. 3.

³⁰⁵ *Ibid.*, 4.

³⁰⁶ Special Rapporteur on Human Rights and the Environment (United Nations), *Report on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 2 January 2024, UN Doc A/HRC/55/43, p. 7.

236. The right to a healthy environment would also strengthen access to justice for vulnerable groups, including women and Indigenous communities, who often face additional barriers such as linguistic discrimination, lack of legal assistance, and structural inequality.³⁰⁷ Because the right to a healthy environment also includes procedural guarantees, such as the right to information and participation, states must adopt special protective measures to ensure meaningful access for these groups.³⁰⁸

237. Finally, a legally binding environmental right could also promote the development of alternative dispute resolution mechanisms by states and businesses in environmental matters, to address disputes early and prevent litigation. These systems, often more accessible, faster, and less adversarial than traditional court proceedings, would become more viable as the ecological rights legal framework becomes more precise and comprehensive.³⁰⁹

238. It is important to emphasise, however, that the recognition of the right alone is not sufficient to address all instances of corporate environmental harm. As UN Special Rapporteur David R. Boyd argues, broader transformations are also needed in economic systems, corporate governance, and the societal priorities that currently place profits over planetary and human well-being. Environmental rights are a critical step, but not the endpoint.³¹⁰

5.2.3 Extraterritorial Liability and Enforcement

239. Another major weakness of the greening approach lies in its limited extraterritorial scope. Under Article 1 of the European Convention on Human Rights, states are generally only held accountable for human rights violations within their territory or jurisdiction.

³⁰⁷ UN Special Rapporteur on Human Rights and the Environment, *Report on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 19 July 2018, UN Doc A/73/188, p. 19.

³⁰⁸ Special Rapporteur on Human Rights and the Environment (United Nations), *Report on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 2 January 2024, UN Doc A/HRC/55/43, p. 6.

³⁰⁹ Council of Europe, Steering Committee for Human Rights (CDDH), *Study on the Need for and Feasibility of a Further Instrument or Instruments in the Field of Human Rights and the Environment*, 29 November 2024, p. 23.

³¹⁰ Special Rapporteur on Human Rights and the Environment (United Nations), *Report on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 2 January 2024, UN Doc A/HRC/55/43, p. 11.

However, environmental harm frequently transcends borders, and nearly all cases involving the right to a healthy environment carry extraterritorial dimensions.³¹¹

240. An autonomous environmental right could offer a solution to this jurisdictional gap. Because it would no longer depend on other rights, each with their jurisdictional limitations, states would be free to formulate cross-border obligations, including duties to regulate companies under their jurisdiction, even when those companies cause environmental harm abroad.³¹²⁻³¹³

241. This is especially relevant considering that many multinational corporations are headquartered in Europe but operate in the Global South, where environmental regulations are weaker, and enforcement mechanisms are often lacking.³¹⁴ Communities in these regions are frequently left without meaningful recourse. A standalone right could compel European states to create legal frameworks for corporate accountability in cases of transboundary environmental harm.³¹⁵

242. The recognition of extraterritorial obligations could also have a preventive effect. If states are aware that they may be held responsible for failing to regulate corporate actors under their jurisdiction, even when harm occurs outside their borders, they would be incentivised to adopt stricter monitoring and oversight policies, thereby reducing the likelihood of damage in the first place.

5.2.4 Shifting Focus from States to Businesses

243. As discussed in Chapters 3 and 4, the current human rights system primarily views states as duty-bearers. This state-centric model is particularly evident in the European Court of Human Rights jurisprudence, where private actors cannot be held directly accountable and are only indirectly held responsible to the extent that states fail in their regulatory duties.

³¹¹ H. Keller, C. Heri, 'The Future Is Now: Climate Cases Before the ECtHR', *Nordic Journal of Human Rights* 40(2) 2022, p. 159.

³¹² CESCR, General Comment 24, UN Doc E/C.12/GC/24 (10 Aug 2017), par. 30.

³¹³ G. E. Türkelli, 'Extraterritorial human rights obligations and responsibility under international law', in *The Routledge Handbook on Extraterritorial Human Rights Obligations*, Routledge 2021, p. 44-45.

³¹⁴ Special Rapporteur on Human Rights and the Environment (United Nations), *Report on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 2 January 2024, UN Doc A/HRC/55/43, p. 2-3.

³¹⁵ *Ibid.*, 12.

244. While creating a right to a healthy environment would not alter this state-focused approach, it would generate stronger positive obligations for states to regulate, monitor, and sanction corporate actors and could strengthen the legal basis for regulations like the CSRD and the CSDDD. Establishing new legal frameworks, greater access to judicial remedies, and enhanced due diligence requirements would significantly increase pressure on corporations, far more than the voluntary soft law frameworks currently in place.³¹⁶⁻³¹⁷

5.3 The Constituents of the Right to a Healthy Environment

245. Before discussing possible pathways for implementing a human right to a healthy environment, it is essential to address a foundational question: what does this right entail? A precise understanding of the components that make up the right is crucial not only for its legal enforceability but also for guiding states, courts, corporations, and individuals in interpreting and applying it in practice.

246. While there is no universally accepted definition of the right to a healthy environment, the United Nations, particularly through the work of Special Rapporteurs and expert bodies, has gradually articulated its substance over the years. The right consists of two elements: substantive rights, which relate to environmental conditions necessary for human dignity and well-being, and procedural rights, which concern access to information, public participation, and access to justice in environmental matters.³¹⁸

5.3.1 Substantive Rights

5.3.1.1 Clean Air

247. Clean air is fundamental for a healthy environment, yet it remains a luxury for many worldwide. According to the World Health Organisation, over 99% of the global population breathes air that does not meet the organisation's recommended quality standards.³¹⁹ This form of pollution has severe public health consequences, including increased rates of cardiovascular disease, stroke, and lung cancer. Every year,

³¹⁶ Council of Europe, Steering Committee for Human Rights (CDDH), *Study on the Need for and Feasibility of a Further Instrument or Instruments in the Field of Human Rights and the Environment*, 29 November 2024, p. 23.

³¹⁷ ENNHRI, statement 'ENNHRI calls on Council of Europe member States to adopt a binding instrument on the right to a healthy environment', 28 June 2024, p. 4.

³¹⁸ Special Rapporteur on Human Rights and the Environment (United Nations), 'Right to a healthy environment: good practices', 30 December 2019, UN Doc A/HRC/43/53, p. 1.

³¹⁹ World Health Organization, 'Ambient (outdoor) air pollution', *WHO Fact-sheet* 24 October 2024, [https://www.who.int/news-room/fact-sheets/detail/ambient-\(outdoor\)-air-quality-and-health](https://www.who.int/news-room/fact-sheets/detail/ambient-(outdoor)-air-quality-and-health).

approximately 4.9 million premature deaths are attributed to air pollution, 89% of which occur in low- and middle-income countries.³²⁰

248. Businesses play a disproportionately large role in this issue. According to the UN Special Rapporteur, companies must be required to reduce emissions, accelerate the transition away from fossil fuels, and invest in renewable energy.³²¹ By formally including the right to clean air within the broader right to a healthy environment, states would be legally obligated to implement these measures and to hold companies accountable.

5.3.1.2 Safe Climate

249. Climate change is arguably the most pressing global challenge of our time. Despite international efforts, most notably the Paris Agreement, states have failed to keep the rise in global temperatures below the 1.5°C threshold (*supra* sec. 2.1.1.1). Recognising a European right to a healthy environment would require states to adopt stricter environmental legislation, thereby narrowing the extent of businesses' polluting activities.

5.3.1.3 Healthy ecosystems and biodiversity

250. A broad range of human rights, including not only the right to a healthy environment, the right to life, and the right to health, depend on the services provided by healthy ecosystems. Food, clean water, clothing, medicine, and countless other essentials rely on biodiversity. However, ecosystems around the world are collapsing due to unsustainable corporate practices.³²²

251. As demonstrated in Chapter 3, soft-law initiatives such as the United Nations Guiding Principles on Business and Human Rights are insufficient to halt biodiversity loss. A legally binding environmental right would impose direct obligations on states to regulate corporate actors, require sustainable land and resource use, and mandate restoration of degraded natural areas.

³²⁰ M. Guzman, 'Ambient (outdoor) air quality and health', *WHO Fact-sheet* 5 February 2018, p. 3.

³²¹ UN Special Rapporteur on Human Rights and the Environment, *Report on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 8 January 2019, UN Doc A/HRC/40/55, p. 20.

³²² Special Rapporteur on Human Rights and the Environment (United Nations), *Report on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 19 January 2017, UN Doc A/HRC/34/49, p. 3-4.

5.3.1.4 Safe and Sufficient Water

252. In 2022, over 1.7 billion people lived without access to safe drinking water, often due to industrial discharge and poor waste management. Additionally, more than 2 billion people live in areas experiencing water scarcity.³²³

253. A right to a healthy environment would compel states to effectively monitor and regulate companies that discharge pollutants, and to strengthen rules concerning wastewater treatment. In doing so, water would be transformed from a privilege into an enforceable right.³²⁴

5.3.1.5 Healthy and Sustainable Food

254. According to the World Health Organisation's 2024 fact sheet, malnutrition in all its forms, including obesity, undernutrition, and micronutrient deficiencies, remains a widespread and growing problem. Climate change, land degradation, and pollution exacerbate these issues, all of which undermine food security and nutrition.³²⁵

255. Stronger regulation by states is urgently needed. A binding environmental right would require them to promote agroecological methods, enhance food safety standards, and adopt sustainable farming practices to ensure the availability of healthy and sustainable food.

5.3.1.6 A Non-Toxic Environment

256. Exposure to toxic substances must be eliminated to fully enjoy a healthy environment.³²⁶ This includes persistent organic pollutants, asbestos, hazardous waste, and other industrial contaminants. An explicit human right to a healthy environment, encompassing the right to a non-toxic environment, would pressure companies to replace harmful substances, invest in cleaner technologies, and finance the cleanup of polluted industrial sites.

³²³ World Health Organization, 'Drinking-water', *WHO Fact-sheet* 13 September 2023, <https://www.who.int/news-room/fact-sheets/detail/drinking-water>.

³²⁴ C. Carlson, 'The Responsibility of Corporations to Mitigate Water Pollution', *Markkula Center for Applied Ethics Blog* 2023, <https://www.scu.edu/environmental-ethics/resources/the-responsibility-of-corporations-to-mitigate-water-pollution/>.

³²⁵ World Health Organization, 'Malnutrition', *WHO Fact-sheet* 1 March 2024, <https://www.who.int/news-room/fact-sheets/detail/malnutrition>.

³²⁶ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment - Special Rapporteur on Human Rights and the Environment (United Nations), 'Right to a healthy environment: good practices', 30 December 2019, UN Doc A/HRC/43/53, p. 15.

5.3.2 Procedural Rights

257. The three procedural rights that form part of the right to a healthy environment, access to information, public participation, and access to justice, are already reflected in Principle 10 of the Rio Declaration on Environment and Development and further elaborated in the Bali Guidelines.

258. In Europe, these rights are protected by the Aarhus Convention (*supra* sec. 2.2.1). However, the Aarhus Convention has proven insufficient. The Aarhus Convention Compliance Committee has repeatedly found that the European Union fails to comply with its obligations under the Convention. This long history of non-compliance weakens the Convention's authority and its institutions' credibility.³²⁷ Moreover, the Aarhus Convention generally does not provide adequate remedies against private polluters: national courts can avoid enforcement due to poor implementation, and the Aarhus Convention Compliance Committee can issue only non-binding recommendations, without any enforceable sanctions.³²⁸ A codified human right to a healthy environment could address these shortcomings.

5.3.2.1 Access to Information

259. Everyone has the right to seek, receive, and impart information.³²⁹ Accordingly, states must provide affordable, effective, timely, and accessible information to individuals concerning environmental decisions and the consequences of climate change.³³⁰

260. To fulfil this obligation, legal frameworks must be adopted requiring companies to disclose their environmental performance, political activities, donations, and lobbying practices. Exceptions to disclosure should be narrowly construed, as the right to a healthy environment should prevail over purely commercial considerations.³³¹

³²⁷ Samvel, 'Non-Judicial, Advisory, Yet Impactful? The Aarhus Convention Compliance Committee as a Gateway to Environmental Justice', *Transnational Environmental Law* 9(2) 2020, p. 235.

³²⁸ A. Ali, 'The EU and the compliance mechanisms of multilateral environmental agreements: the case of the Aarhus Convention', in E. Morgera (ed.), *The External Environmental Policy of the European Union: EU and International Law Perspectives*, Cambridge University Press 2012, p. 290-291.

³²⁹ Art. 19 Universal Declaration of Human Rights, UN General Assembly Res 217 A (III), 10 December 1948, *UN Doc. A/RES/217(III)*.

³³⁰ Special Rapporteur on Human Rights and the Environment (United Nations), 'Overview of the implementation of the human right to a clean, healthy and sustainable environment', 2 August 2024, *UN Doc A/79/270*, p. 10.

³³¹ Special Rapporteur on Human Rights and the Environment (United Nations), *Report on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 2 January 2024, *UN Doc A/HRC/55/43*, p. 12.

261. Recognition of the human right to a healthy environment would grant each individual direct legal protection for their right to information and create a basis for liability when companies fail to provide adequate transparency.

5.3.2.2 Public Participation

262. According to Article 21 of the Universal Declaration of Human Rights, everyone has the right to effectively and meaningfully participate in government and public affairs. States must, therefore, ensure that everyone can engage in environmental decision-making and inform vulnerable groups of their participatory rights. Additionally, they must ensure that individuals are not subject to retaliation for exercising those rights.³³² This requires creating safe spaces for human rights defenders and guaranteeing their freedom of expression.³³³

263. An environmental human right would establish uniform standards for public participation across member states and would provide better participatory rights to citizens and civil society organisations.

5.3.2.3 Access to Justice

264. States must ensure that every victim has access to affordable, adequate, and timely justice. This includes informing individuals about their rights, eliminating procedural barriers, sanctioning environmental law violations, establishing independent national human rights institutions, and protecting judicial processes from political interference.³³⁴

265. A standalone right to a healthy environment would enable victims to bring claims directly before national courts or the European Court of Human Rights without having to navigate the procedural complexities of the Aarhus Convention. Courts would also be obligated to impose effective sanctions on violators, including both restorative measures and compensation for harm suffered.

³³² *Ibid.*

³³³ Special Rapporteur on Human Rights and the Environment (United Nations), 'Overview of the implementation of the human right to a clean, healthy and sustainable environment', 2 August 2024, UN Doc A/79/270, p. 11.

³³⁴ Special Rapporteur on Human Rights and the Environment (United Nations), *Report on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 2 January 2024, UN Doc A/HRC/55/43, p. 13.

5.4 Practical Pathways to Implementation

266. Once the constituent elements of a standalone right to a healthy environment have been established, the next crucial question is how such a right could be effectively implemented within the European human rights framework. Recognition without enforceability risks remaining symbolic. Therefore, it is essential to consider how the right can be legally anchored to ensure concrete protection, particularly in cases of corporate environmental harm.³³⁵

267. In recent years, both the CDDH-ENV and the European Network of National Human Rights Institutions have outlined various possible mechanisms to achieve this goal. These include integrating the right into existing human rights treaties, creating new instruments, or combining multiple approaches. While several options have been suggested, such as adding a protocol to the European Social Charter, amending the preamble of the ECHR, or adopting a non-binding declaration, only two approaches provide the institutional and legal robustness required to ensure meaningful corporate accountability: the adoption of an additional protocol to the European Convention on Human Rights, or the creation of a separate, standalone convention on human rights and the environment.³³⁶

5.4.1 Additional Protocol to the European Charter of Human Rights

268. The most direct and widely supported approach for incorporating the right to a healthy environment into the European human rights system would be to adopt an additional protocol to the ECHR. According to ENNHRI, this option enjoys the strongest legal and political preference.

269. Such a protocol would allow victims of environmental harm to access the existing complaints mechanism before the European Court of Human Rights, thereby ensuring access to effective remedies. On the other hand, it would provide the Court with an opportunity to build upon its existing environmental jurisprudence, which, until now, has only recognised environmental harm when it falls within the scope of other rights. As a result, the Court's current environmental case law is fragmented and inconsistent.³³⁷

³³⁵ Council of Europe, Steering Committee for Human Rights (CDDH), *Study on the Need for and Feasibility of a Further Instrument or Instruments in the Field of Human Rights and the Environment*, 29 November 2024, p. 25.

³³⁶ ENNHRI, statement 'ENNHRI calls on Council of Europe member States to adopt a binding instrument on the right to a healthy environment', 28 June 2024, p. 12.

³³⁷ *Ibid.*

270. The CDDH-ENV outlines three possible models that could guide the development of such a protocol:

5.4.1.1 Model I

271. The first model recognises the right to a healthy environment without defining its substantive or procedural elements. In other words, the protocol contains only a general affirmation of the right. While this approach offers greater interpretive flexibility, it also introduces legal uncertainty. It would neither impose clear due diligence obligations on companies nor enable individuals to invoke specific environmental rights directly against private actors.³³⁸

5.4.1.2 Model II

272. The second model would go one step further by recognising the right and specifying its constituent elements. Substantive elements (e.g. clean air, safe water) and procedural elements (e.g. access to information, public participation) would be a part of the protocol. This model provides greater clarity to legislators, judges, and duty-bearers while allowing the European Court to further interpret and expand upon the right through case law.³³⁹

5.4.1.3 Model III

273. The third model is the most detailed and ambitious. It would include the recognition of the right, its substantive and procedural components, and a set of additional provisions. These could address a wide range of critical issues, such as the legal standing of NGOs, the standard of proof in environmental cases, or the extraterritorial scope of the right. Compared to Models I and II, which merely recognise the new right into the existing legal framework, Model III would create new legal rules better suited to protecting environmental rights.

274. While Model III would offer stronger legal protection, it would also require greater institutional effort and might face resistance from member states unwilling to accept far-reaching obligations.³⁴⁰ Recent political developments, such as the Omnibus package, the 'Stop-the-Clock' proposal and criticism from political leaders such as Macron underscore the growing resistance against ambitious environmental legislation (*infra* sec. 2.2.3.).

³³⁸ Council of Europe, Steering Committee for Human Rights (CDDH), *Study on the Need for and Feasibility of a Further Instrument or Instruments in the Field of Human Rights and the Environment*, 29 November 2024, p. 27.

³³⁹ *Ibid.*

³⁴⁰ *Ibid.*, 27–28.

5.4.2 A Standalone Convention on Human Rights and the Environment

275. An alternative route for establishing the right would be to adopt a fully independent convention within the Council of Europe. According to ENNHRI, this option should be pursued only if adopting an additional protocol to the ECHR proves unfeasible.³⁴¹

276. A standalone convention would need to include a monitoring mechanism to ensure that victims of environmental harm can effectively access justice. The CDDH-ENV identifies two possible models for such a convention.

277. Under the first model, the new convention recognises the right to a healthy environment and defines its constituent elements without setting up its own monitoring or enforcement body. While this would be helpful in legitimising environmental human rights defenders, it would fall short of providing victims with a concrete means to hold states or businesses accountable.

278. The second model is more comprehensive. It would include both the recognition and definition of the right, and establish a reporting mechanism, a monitoring body, and potentially even an alternative dispute resolution mechanism. These mechanisms could facilitate corporate accountability by strengthening and elaborating on due diligence obligations for companies and allowing victims to seek remedies outside of traditional litigation.³⁴²

279. A standalone convention would also allow for greater tailoring of obligations. It could emphasise the role of private actors, incorporate extraterritorial obligations, and promote innovative enforcement models. However, this approach would require lengthy negotiations, ratification by member states, and a high level of political will.

³⁴¹ ENNHRI, statement 'ENNHRI calls on Council of Europe member States to adopt a binding instrument on the right to a healthy environment', 28 June 2024, p. 13.

³⁴² Council of Europe, Steering Committee for Human Rights (CDDH), *Study on the Need for and Feasibility of a Further Instrument or Instruments in the Field of Human Rights and the Environment*, 29 November 2024, p. 30.

5.5 The Possible Downsides of the Recognition of the Right to a Healthy Environment

280. Although recognising a human right to a healthy environment offers significant global benefits, it is essential to consider some of the main objections critics raise.³⁴³⁻³⁴⁴

281. The first argument is that recognition could lead to a flood of environmental litigation, which may overburden judicial systems that are already under pressure. However, this concern is contradicted by studies from the CDDH and ENNHRI, which suggest that a new right would actually streamline environmental case law by offering judges clearer legal guidelines.³⁴⁵ Moreover, victims would still need to meet the usual admissibility criteria before their cases can be heard.³⁴⁶

282. A second objection is the supposed lack of clarity surrounding the right's content, which could lead to legal uncertainty and conflicting interpretations.³⁴⁷ This criticism, however, applies to many human rights, particularly at the time of their initial recognition. The strength of human rights lies precisely in their capacity to evolve. The formal recognition of the right to a healthy environment would allow for a set of core elements to be defined, which could then be expanded through jurisprudence in line with scientific evidence and social developments.

283. A third objection is that the recognition of a right to a healthy environment may not, in practice, lead to the desired improvements in environmental protection or corporate behaviour. While it is true that many different countries have recognised this right in some form, enforcement often remains weak. Environmental degradation by corporations continues.³⁴⁸ The mere existence of the right is insufficient. Without strong institutions, access to justice, and public awareness, it risks remaining largely symbolic. This raises the

³⁴³ E. Eacott, 'A Clean & Healthy Environment: The Barriers & Limitations of This Emerging Human Right', *Dalhousie Journal of Legal Studies* 10 2001.

³⁴⁴ S. Borràs, 'New Transitions from Human Rights to the Environment to the Rights of Nature', *Transnational Environmental Law* 5(1) 2016.

³⁴⁵ Council of Europe, Steering Committee for Human Rights (CDDH), *Study on the Need for and Feasibility of a Further Instrument or Instruments in the Field of Human Rights and the Environment*, 29 November 2024, p. 24.

³⁴⁶ ENNHRI, statement 'ENNHRI calls on Council of Europe member States to adopt a binding instrument on the right to a healthy environment', 28 June 2024, p. 9.

³⁴⁷ *Ibid.*, 7.

³⁴⁸ A. Giang, D. R. Boyd, 'Big corporations are getting away with catastrophic air pollution – putting Canadians at risk', *The Conversation* 26 February 2025, <https://theconversation.com/big-corporations-are-getting-away-with-catastrophic-air-pollution-putting-canadians-at-risk-250013>.

question of whether the recognition within the European human rights framework would lead to improved access to justice for victims of corporate environmental harm.

284. A final concern voiced by critics is that recognising this right would allow judges to interfere in democratic policymaking concerning environmental or climate regulation.³⁴⁹ One prominent voice in this debate is Hans De Wulf, who argues that subjective rights entitle individuals to demand action without requiring a balancing of competing interests. That balancing is a political task reserved for legislators, not for courts.³⁵⁰ Courts should not require private actors to realise abstract rights through specific actions, when such obligations have not been laid down by law, because this goes against the *trias politica*.

285. However, it is important to remember that the purpose of court supervision is not to replace policymakers, but to intervene when states fail to uphold fundamental human rights. Furthermore, the European Court of Human Rights continues to grant states a margin of appreciation, thereby respecting the democratic process while still safeguarding human dignity.³⁵¹

5.6 Towards a Rights-Based Future

286. In many respects, Europe has been a pioneer in recognising the importance of environmental protection, as illustrated by the launch of the European Green Deal. However, Europe falls behind when it comes to formally recognising the human right to a healthy environment. International, regional, and national systems worldwide have already taken this step, yet this fundamental right remains absent within the European human rights framework (*supra* sec. 5.1).

287. As long as this right is not explicitly recognised, victims of corporate environmental harm will continue to face obstacles in accessing justice, and environmental damage caused by corporate actors will continue to go unpunished. Although several recent initiatives, such as the Reykjavik Declaration and the establishment of the CDDH-ENV, reflect a broad and growing consensus on the importance of this right, Europe has so far failed to translate this momentum into a binding legal instrument (*supra* sec. 5.1.2).

³⁴⁹ ENNHRI, statement 'ENNHRI calls on Council of Europe member States to adopt a binding instrument on the right to a healthy environment', 28 June 2024, p. 7.

³⁵⁰ H. De Wulf, L. Van Marcke, 'Duurzaamheid en vennootschapsrecht: ESG-aansprakelijkheid en de invloed van institutionele aandeelhouders', *Financial Law Institute Working Paper Series* 2022/01 2022, p. 75.

³⁵¹ Council of Europe, Steering Committee for Human Rights (CDDH), *Study on the Need for and Feasibility of a Further Instrument or Instruments in the Field of Human Rights and the Environment*, 29 November 2024, p. 26.

288. Formal recognition would do more than strengthen legal protections for victims. It would also send a strong and clear message to private actors and the international community: environmental harm can no longer go unanswered. The extensive analyses conducted by ENNHRI and the CDDH-ENV offer clear and practical guidance for how the right can be effectively implemented, and the recurring criticisms against recognising the right have been refuted. As such, there are no valid reasons left to postpone action. Rhetorical commitment is no longer enough; Europe must take action.

CHAPTER 6: THE HUMAN RIGHTS-BASED APPROACH AND THE GLOBAL SOUTH: A CASE STUDY ON CUBA

289. The previous chapters of this thesis focused on recognising and implementing the human right to a healthy environment within the European human rights framework. While this recognition is necessary to improve access to justice for victims within the European Union and safeguard the health and safety of European citizens, it is equally important to look beyond European borders and consider the Global South.

290. This is because most of the consequences of environmental degradation, such as rising sea levels, air and water pollution, deforestation, and biodiversity loss, are often felt the most in developing countries. These countries are usually also the ones with the least access to legal remedies and institutional support. It is also important to note that the root of environmental harm differs across regions. While environmental harm caused by the Global North often stems from overconsumption, environmental harm caused by the Global South is more likely to result from poverty and insufficient infrastructure.³⁵²

291. The term 'Global South' is generally used to refer to a diverse group of developing countries. However, it is important to note that this term has sparked controversy during the last decade. The term lumps a large number of countries under one label despite their distinct histories, geographies, and political systems. For instance, India is geographically located in the north yet is considered part of the Global South, while some countries in the southern hemisphere (such as Australia) belong to the Global North. Moreover, the term finds its roots in colonial history. Many of the countries in the Global South were exploited by the North.³⁵³ Nonetheless, the term remains widely used, including by the countries it refers to themselves, and will therefore be used here, albeit with caution and without any intent to generalise.³⁵⁴

292. Although the human rights-based approach to environmental protection has become increasingly popular on an international and regional level, its application in the Global South often faces structural and conceptual limitations.

³⁵² R. Anand, *International Environmental Justice: A North–South Dimension*, Routledge 2004, DOI 10.4324/9781315252049, p. 6.

³⁵³ S. Patrick, A. Huggins, 'The term "Global South" is surging. It should be retired.', *Carnegie Endowment for International Peace* 15 August 2023, <https://carnegieendowment.org/posts/2023/08/the-term-global-south-is-surging-it-should-be-retired?lang=en>.

³⁵⁴ E. D. Gras, 'The Global South: What's in a name?', *BIG-Europe* 3 October 2024, <https://big-europe.eu/publications/2024-10-03-the-global-south-what-s-in-a-name>.

293. This chapter will begin by analysing these limitations, before conducting a case study on Cuba. As a country that has constitutionally recognised the right to a healthy environment, yet struggles with its implementation, Cuba illustrates the divide between the North and the South. The case study draws on an interview with Professor Pascual Felipe Correa Alvarez of the Universidad Central "Marta Abreu" de Las Villas (to be found in the appendix at the end of this thesis).

6.1 Limitations of the Human Rights-Based Approach

6.1.1 Structural Constraints

294. Several elements of the human rights-based approach encounter structural constraints in the Global South. The first is that environmental legal frameworks (whether human rights-based or not) created in the North presuppose the existence of administrative and legal institutions that can ensure compliance and implementation. Mechanisms like access to justice, public participation and environmental impact assessment all depend on these institutional capacities.

295. In many countries of the Global South, these institutional capacities are not guaranteed, often as a result of financial constraints, underdeveloped infrastructure and political instability.³⁵⁵ This undermines these countries' ability to adopt, enforce, and monitor environmental legislation. A lack of financial means also results in less scientific expertise and fewer institutions to monitor environmental harm.³⁵⁶

296. Furthermore, the environmental damage suffered in these countries is often linked to the activities of multinational corporations, which aim to serve Northern markets.³⁵⁷ This dynamic fuels a sense of historical and structural injustice: While the North has contributed the most to environmental degradation and climate change, it is the South that bears the consequences. Many countries of the Global South believe that the North should take more responsibility when addressing environmental degradation, precisely because they have historically been the biggest polluters.³⁵⁸

³⁵⁵ M. G. Faure, R. A. Partain, 'The Role of Environmental Law in Developing Countries', in M. G. Faure, R. A. Partain (eds.), *Environmental Law and Economics: Theory and Practice*, Cambridge University Press 2019, p. 303.

³⁵⁶ V. P. Nanda, 'Global Environmental Governance and the South', in C. G. Gonzalez, J. Razzaque, S. Alam (eds.), *International Environmental Law and the Global South*, Cambridge University Press 2015, p. 146.

³⁵⁷ C. G. Gonzalez, 'The Right to a Healthy Environment and the Global South', *AJIL Unbound* 117 2023, p. 174.

³⁵⁸ R. Anand, *International Environmental Justice: A North-South Dimension*, Routledge, 2004, 5, DOI: 10.4324/9781315252049.

297. The Northern approach to the right to a healthy environment is also characterised by its reactive nature, often only resulting in effective remedies after the damage has already occurred. The Global South demands a more preventive, forward-looking approach. Finally, enforcement of the right to a healthy environment still heavily relies on soft law instruments, which limit their legal impact and make it harder for victims to hold corporations accountable.³⁵⁹

6.1.2 Conceptual Critiques

298. When looking at the human rights-based approach from the perspective of the Global South, structural issues aren't the only ones that present themselves. The HRBA also faces conceptual criticism, particularly when framed in an individualistic and Eurocentric manner.³⁶⁰

299. This highlights the need to look at the right to a healthy environment in relation to collective rights, such as the right to cultural integrity and self-determination.³⁶¹ Decisions such as the Ogoni case before the African Commission on Human and Peoples' Rights have taken these rights into account (*supra* par. 217). However, a more individualistic approach remains within the European human rights framework.

300. A second conceptual critique concerns the HRBA's anthropocentric nature. The right to a healthy environment is often justified because humans need the environment to survive (clothes, medication, food, etc.).³⁶² However, many countries of the Global South adopt a more ecocentric approach to the right to a healthy environment. An ecocentric approach protects the environment because of the inherent value of nature, regardless of its utility for humans.³⁶³ In some countries, this has led to the recognition of legal personhood of nature (for example, the Whanganui River in New Zealand³⁶⁴).³⁶⁵

³⁵⁹ C. G. Gonzalez, 'The Right to a Healthy Environment and the Global South', *AJIL Unbound* 117 2023, p. 176–177.

³⁶⁰ *Ibid.*

³⁶¹ *Ibid.*, 176.

³⁶² U. Habiba, 'Protecting the Environment with Human Rights: Mechanism Rooted in Anthropocentric Approach', *Human Rights in the Global South* 10 2023, p. 109–110.

³⁶³ S. C. G. Thompson, M. A. Barton, 'Ecocentric and Anthropocentric Attitudes toward the Environment', *Journal of Environmental Psychology* 14(2) 1994, p. 149.

³⁶⁴ He Tohu (National Library of New Zealand), 'Change-maker — the Whanganui River', *He Tohu* 2023, <https://natlib.govt.nz/he-tohu/learning/social-inquiry-resources/cultural-interaction/cultural-interaction-supporting-activities-and-resources/change-maker-whanganui-river>.

³⁶⁵ M. Tănăsescu, 'Rights of Nature, Legal Personality, and Indigenous Philosophies', *Transnational Environmental Law* 9(3) 2020, p. 429–453.

6.2 The Cuban Case Study

6.2.1 Why Cuba?

301. Cuba offers a particularly interesting case study in the context of this thesis. As a country of the Global South that constitutionally protects the right to a healthy environment, it illustrates the difficulties many developing countries face when trying to move from formal recognition to effective implementation.

302. Cuba's political structure, which is marked by a strong centralisation of power and limited access to independent courts, differs substantially from the legal systems on which the HRBA is based. This contrast allows for a critical reflection on how environmental rights are protected in some Southern countries and why the HRBA is not a one-size-fits-all approach.

303. This case study aims to give a short overview of how Cuba protects the right to a healthy environment and the obstacles it faces when trying to implement this right. This overview will then be used to examine what lessons the European Union could learn from Cuba and consider what impact the European recognition of a right to a healthy environment could have.

6.2.2 From Principle to Practice: Environmental Rights under Cuba's 2019 Constitution

304. Cuba is currently being confronted with a broad range of environmental challenges. On the one hand, Cuba faces climate change's effects, such as more frequent hurricanes and rising temperatures. On the other hand, Cuba is confronted with environmental degradation consequences, such as deforestation, soil degradation (60% of soil is reportedly degraded), water scarcity and pollution, inefficient waste management, and biodiversity loss.³⁶⁶ Ongoing economic constraints, including the U.S. blockade, intensify these problems.³⁶⁷

305. In 2019, Cuba adopted a constitutional reform in which Article 75 explicitly recognised the right to a healthy and stable environment. It states:

³⁶⁶ D. Whittle, O. Rey Santos, 'Protecting Cuba's Environment', *Cuban Studies* 37 (2006) 73, p. 74.

³⁶⁷ Interview with Pascual Felipe Correa Alvarez (Professor of Law at Central University of Cuba in Santa Clara), 'Businesses and the Right to a Healthy Environment: A Case Study on Cuba', 10 April 2025, p. 1.

"All persons have the right to enjoy a natural environment that is healthy and stable.

*The State protects the environment and the country's natural resources. It recognizes their close linkage with the sustainable development of the economy and society to make human life more rational and to ensure the security of current and future generations."*³⁶⁸

306. The recognition of this right was not entirely novel. Cuba has been seen as a leader in sustainable development for a long time.³⁶⁹ In 2015, the Sustainable Development Index ranked Cuba as the world's most sustainable country. Today, Cuba still ranks in the top ten, far ahead of countries such as Belgium or the United States (respectively ranking 150th and 156th).³⁷⁰

307. The 2019 Constitution amendment had several aims: to align Cuba with international obligations under the Paris Agreement and the Sustainable Development Goals; to follow the broader Latin American trend of recognising the rights of nature; and to strengthen domestic efforts such as *Tarea Vida*.³⁷¹ *Tarea Vida*, launched in 2017, is a comprehensive state-led climate adaptation strategy that aims to integrate environmental protection into all sectors of the economy. It focuses on coastal protection, reforestation, community building, and sustainable agriculture.³⁷²

308. The amendment to the Constitution was also a response to the growing public awareness of environmental harm. Environmental awareness among Cubans is high, mainly due to state-led education campaigns. Since the amendment, several developments have followed, including the revision of existing environmental laws, the expansion of reforestation and renewable energy projects and the streamlining of environmental policies.³⁷³

³⁶⁸ Art. 75 Constitution of the Republic of Cuba, 2019, https://www.constituteproject.org/constitution/Cuba_2019.

³⁶⁹ M. Ginsburg, 'Constituting Socialism for the Twenty-First Century: Examining Cuba's 2019 Constitution', *International Journal of Cuban Studies* 13 (2021), p. 319.

³⁷⁰ Sustainable Development Index, 'Sustainable Development Index', *Sustainable Development Index* 2025, <https://www.sustainabledevelopmentindex.org>.

³⁷¹ Interview with Pascual Felipe Correa Alvarez (Professor of Law at Central University of Cuba in Santa Clara), "Businesses and the Right to a Healthy Environment: A Case Study on Cuba", p. 2.

³⁷² Republic of Cuba, CITMA, *Cuba "Tarea Vida": An Ambitious Plan to Address Climate Change* 23 Sept 2019, <https://www.undp.org/>, p. 3-6.

³⁷³ Interview with Pascual Felipe Correa Alvarez (Professor of Law at Central University of Cuba in Santa Clara), "Businesses and the Right to a Healthy Environment: A Case Study on Cuba", p. 3.

309. Nonetheless, many obstacles remain in effectively implementing the right to a healthy environment. According to Professor Alvarez, this can be attributed to Cuba's economic constraints, gaps in legal enforcement, challenges in energy transition, and technological limitations. Environmental protection is often deprioritised because of more urgent priorities. State-owned enterprises, which comprise most of the economy, are under pressure to comply with environmental norms but often lack the financial means to do so. Foreign companies are typically subject to stricter regulations. However, the need to attract investments often overrides environmental concerns. Small private businesses face minimal oversight.

310. Access to justice for (corporate) environmental harm victims is also limited. Although the Constitution protects the right to a healthy environment, environmental litigation is rare in Cuba. Most disputes are handled administratively, and no landmark constitutional cases have held the state accountable for environmental harm, unlike in other Latin American countries such as Colombia or Ecuador. According to Professor Alvarez, this is due to bureaucratic barriers, a lack of specialised courts, and limited public knowledge of legal procedures.³⁷⁴

311. Despite the many obstacles it still must overcome, Cuba's approach to achieving a healthy environment has several strengths. Local communities, citizens, and civil society organisations actively participate in environmental initiatives, primarily through state-led programs.

312. The Cuban government encourages citizen participation in environmental projects, such as reforestation and sustainable agriculture. In addition, some grassroots initiatives promote sustainability at the local level, including renewable energy projects. Independent activism is limited, but approved organisations such as Cubasolar and the Pro-Nature Society focus on public education and policy dialogue. These groups frequently collaborate with state institutions. Other mass organisations organize environmental campaigns within Cuban communities, such as coastal clean-ups. Cuban civil society groups also work with international institutions like the United Nations Development Programme and the Food and Agriculture Organisation of the United Nations on conservation and biodiversity projects.³⁷⁵

³⁷⁴ Ibid., 4.

³⁷⁵ Interview with Pascual Felipe Correa Alvarez (Professor of Law at Central University of Cuba in Santa Clara), "Businesses and the Right to a Healthy Environment: A Case Study on Cuba", p. 6–7.

313. Environmental education is also deeply integrated into Cuba's national policy, fostering a long-term commitment to sustainability and creating widespread awareness of the importance of the environment.

314. The European Union and Cuba face many obstacles in ensuring environmental protection and achieving access to justice for victims of (corporate) environmental harm. However, the origins of these obstacles differ. In Cuba, the problem stems from a lack of financial resources and institutional infrastructure. In Europe, the issue arises from legal fragmentation and the dominance of soft-law instruments. Nevertheless, the same conclusion can be drawn from both contexts: merely recognising the right to a healthy environment is insufficient; effective implementation is vital.

6.2.3 How European Recognition and Enforcement Can Benefit Countries Like Cuba

315. Cuba's challenges in achieving a healthy environment for its citizens highlight the necessity for stronger institutions, financial assistance, and international collaboration. Recognising and effectively implementing the human right to a healthy environment in the European human rights system would mark a significant step in this direction.

316. The European recognition of the right to a healthy environment would strengthen the legitimacy of this right. It would affirm the universal importance of the right to a healthy environment, which affects everyone around the world, not just one region. Recognising this right could also create a new standard for transnational corporate accountability and provide an opportunity for the North to take its environmental and human rights obligations seriously.

317. It could create new legal pathways for holding multinational European companies accountable for the environmental harm they caused abroad and could offer victims in countries of the Global South a new way to seek accountability. Furthermore, European recognition of the right might lead to more international cooperation. This could take the form of financial support, technical support, or academic exchanges.

318. Finally, the European recognition would allow for a more inclusive and globally representative human rights discourse. Countries of the Global South are often framed as recipients of human rights development, while in reality, many of them are at the forefront of these efforts. Recognising the right is a way for the European Union to acknowledge the

role these countries have and signal a commitment to solidarity and shared responsibility in confronting the global environmental crisis.

CHAPTER 7: CONCLUSION

319. The aim of this thesis was to examine the extent to which a human rights-based approach to environmental protection can strengthen access to justice for victims of corporate environmental harm. By using both a descriptive and evaluative methodology, this thesis analysed international and European legislation, case law, soft law instruments, and legal doctrine.

The current regulatory framework, although highly ambitious on paper such as the, remains fragmented and insufficiently enforced. Victims of corporate environmental harm, particularly those in vulnerable communities, face considerable legal, financial, and procedural barriers. Moreover, the current political landscape threatens to water down existing regulations, making it clear that the current framework needs further reinforcement.

320. One promising method to achieve this reinforcement is the HRBA to environmental protection. Traditionally, human rights law has operated vertically between individuals and the state. However, a shift is emerging, most notably illustrated by the Shell case, in which courts begin to recognise that businesses can also carry human rights responsibilities through indirect horizontal effects. Courts have framed environmental harm as a human rights violation by interpreting duties of care through the lens of Articles 2 and 8 of the European Convention on Human Rights.

321. Nevertheless, the Shell case also has limitations by depending entirely on creative judicial interpretation. Courts are forced to take legal detours and reinterpret existing norms, which has provoked criticism regarding the blurring of boundaries between law and politics. A top-down approach is necessary to ensure more legal certainty and expand this potential beyond exceptional cases.

322. One way to do this is through the greening of existing human rights by the European Court of Human Rights. This approach reinterprets existing rights to include environmental protection. While greening human rights is promising in improving access to justice, it also has limitations, such as a high burden of proof, fragmented jurisprudence, and the need for state involvement.

323. This leads to a second option: the recognition of a human right to a healthy environment. This right is already recognised in numerous national, regional, and international systems and could increase legal certainty, create more effective remedies for victims, and reaffirm the link between human rights and environmental protection. It

would not only symbolically strengthen the HRBA but also provide a clearer legal basis for future jurisprudence.

324. The recognition of the right to a healthy environment is especially critical in the Global South, which suffers the most from the consequences of climate change and environmental harm. The Cuban case study confirmed the need for the recognition of the right to a healthy environment to support vulnerable populations and legal systems that often lack the means to combat corporate environmental harm.

325. Ultimately, the HRBA should not be seen as a replacement for existing instruments such as the CSRD and CSDDD, but as a tool to reinforce these norms. By placing the rights of individuals and communities at its centre, the HRBA allows for better access to justice for victims and stricter corporate accountability.

326. Climate change and environmental degradation are the biggest problem of this generation. Yet, the current political and geopolitical landscape threatens to push these issues to the background, just as they had begun to gain traction. It is therefore essential that Europe reclaims its role as a pioneer in environmental protection, as it has done before with the introduction of the Green Deal. The pathway towards recognising a human right to a healthy environment has been laid and is gaining widespread international support. What is needed now is not hesitation, but solidarity, courage, and determination.

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JOINT WORKSHOP VUB-UCLV: LEGAL ASPECTS OF CUBAN ECONOMY,
POINTS OF VIEW FROM BELGIUM AND CUBA

THE PRESENT CERTIFICATE IS GRANTED TO: ***Justien Van Strydonck***

for his presentation in the Workshop and the contribution to strengthen the relations between our two universities.

Given at the Faculty of Social Sciences,
Universidad Central «Marta Abreu» de Las Villas on April 10, 2025

A blue ink signature of MSc. Dargel Gonzalez Gonzalez, written in a cursive style.

MSc. Dargel Gonzalez Gonzalez
Coordinator

Yulier Campos Perez, PhD.
Dean

Question list interview Cuba (SP/ENG)

1. ¿Podrías describir brevemente los desafíos ambientales más significativos que enfrenta Cuba en la actualidad?
2. ¿Cómo describirías la actitud general de la población cubana hacia la protección ambiental?
3. En 2019, Cuba reformó su Constitución para fortalecer el derecho a un medio ambiente saludable y estable. ¿Podrías explicar el razonamiento detrás de esta decisión?
4. ¿Cómo ha influido la inclusión del derecho a un medio ambiente saludable en la Constitución en las políticas y la legislación ambiental en Cuba?
5. ¿Hasta qué punto crees que este reconocimiento constitucional ha mejorado la protección ambiental en la práctica? ¿Ha obligado a las empresas a ser más conscientes de su impacto ambiental? ¿Ha facilitado el acceso a la justicia para las víctimas del cambio climático y los daños ambientales?
6. ¿Existen instituciones o organismos gubernamentales específicos responsables de hacer cumplir las leyes ambientales y garantizar el derecho constitucional a un medio ambiente saludable?
7. ¿Cuáles son los principales desafíos que se encuentran en la implementación y aplicación de estos derechos ambientales?
8. ¿Cómo están involucradas las comunidades locales y la sociedad civil en la promoción y protección de los derechos ambientales en Cuba?
9. ¿Existen canales legales establecidos para que individuos o comunidades aborden violaciones de sus derechos ambientales?
10. ¿Podrías compartir ejemplos de casos en los que los derechos ambientales constitucionales hayan sido defendidos o impugnados en los tribunales cubanos?
11. ¿Qué tan accesible es el sistema de justicia cuando se trata de presentar quejas o buscar reparación en relación con daños ambientales?
12. ¿Qué lecciones podrían aprender otros países del enfoque de Cuba sobre los derechos ambientales constitucionales?

1. Could you briefly describe the most significant environmental challenges that Cuba faces today?
2. How would you describe the general attitude of the Cuban population toward environmental protection?
3. In 2019, Cuba reformed its Constitution to strengthen the right to a healthy and stable environment. Could you explain the reasoning behind this decision?
4. How has the inclusion of the right to a healthy environment in the Constitution influenced environmental policies and legislation in Cuba?
5. To what extent do you think this constitutional recognition has improved environmental protection in practice? Has it compelled companies to become more aware of their environmental impact? Has it made it easier for victims of climate change and environmental damage to access justice?
6. Are there specific institutions or government agencies responsible for enforcing environmental laws and ensuring the constitutional right to a healthy environment?
7. What are the main challenges encountered in the implementation and enforcement of these environmental rights?
8. How are local communities and civil society involved in the promotion and protection of environmental rights in Cuba?
9. Are there established legal channels for individuals or communities to address violations of their environmental rights?
10. Could you share examples of cases in which constitutional environmental rights have been defended or challenged in Cuban courts?

11. How accessible is the justice system when it comes to filing complaints or seeking redress for environmental damage?
12. What lessons could other countries learn from Cuba's approach to constitutional environmental rights?

1. Cuba currently faces several significant environmental challenges, including:
 - Climate Change Impacts: Rising sea levels, increased temperatures, and more frequent extreme weather events (e.g., hurricanes) threaten coastal communities, agriculture, and biodiversity.
 - Deforestation and Soil Degradation: Historical deforestation and unsustainable farming practices have led to soil erosion, reducing agricultural productivity. The 60 % of Cuban soils are degraded.
 - Water Scarcity and Pollution: Uneven water distribution, droughts, and contamination from agricultural runoff and inadequate sanitation systems strain freshwater resources.
 - Coastal & Marine Ecosystem Decline: Coral reef bleaching, overfishing, and pollution (especially plastic waste) endanger marine biodiversity and fisheries.
 - Waste Management Issues: Limited recycling infrastructure and improper disposal of solid waste contribute to pollution in urban and natural areas. (You could see with your own eyes).
 - Energy Dependence on Fossil Fuels: Despite growing renewable energy efforts, Cuba still relies heavily on imported oil, leading to pollution and economic vulnerability. The thermoelectric plans are very old and not efficiently.
 - These challenges are exacerbated by economic constraints (e.g., the U.S. blockade). However, Cuba has made progress in reforestation, organic farming, and renewable energy initiatives.
2. The general attitude of the Cuban population toward environmental protection is largely positive but shaped by economic realities. Here's a breakdown:
 - High Awareness but Practical Constraints.
 - Cubans are generally "well-informed" about environmental issues due to state-led education campaigns and media coverage of climate change, deforestation, and sustainability.
 - However, daily economic struggles (e.g., shortages, low wages) often take priority over eco-friendly practices, making sustainability a luxury for some.
 - The Cuban government promotes environmentalism through policies like reforestation programs, organic farming ("agroecología"), and renewable energy projects.
 - Many Cubans participate passively in state-organized efforts (e.g., recycling drives, coastal cleanups) but may lack personal initiative due to limited infrastructure (e.g., inconsistent waste collection).
 - In rural areas, traditional knowledge of sustainable farming and resource conservation remains strong.

- Urban youth and academics show growing interest in environmental activism, though NGOs, as the CDR and FMC, UJC, and students organizations.
 - The "resolver" mentality (making do with scarce resources) leads to informal recycling and reuse (e.g., repurposing materials) but not always for ecological reasons and for the necessity of "solving the problem". (Remember the Motonetas)
 - Pro-environmental: Many Cubans conserve energy/water due to necessity (e.g., blackouts, rationing) and support conservation efforts like protecting endangered species.
 - Challenges: Illegal logging, littering, and pollution persist in some areas, often due to lack of alternatives (e.g., no reliable waste disposal).
3. Cuba's 2019 constitutional reform, which strengthened the right to a healthy and sustainable environment (Article 75), was driven by a combination of political, economic, and environmental factors. Here's the reasoning behind this decision:
- Alignment with Global and Regional Environmental Commitments.
 - Cuba sought to formalize its adherence to international agreements like the Paris Climate Accord and the UN Sustainable Development Goals (SDGs).
 - The reform reflected Latin America's trend of recognizing "rights of nature" (e.g., Ecuador's 2008 Constitution) and environmental protections in legal frameworks.
 - The constitutional change aimed to legally mandate climate adaptation policies, reinforcing state-led initiatives like "Tarea Vida" (Life Task), Cuba's national climate resilience plan.
 - Cuba's economy depends heavily on tourism and agriculture, both vulnerable to environmental degradation.
 - By enshrining environmental rights, the government signaled a commitment to long-term sustainability, hoping to attract green investment and mitigate crises like soil erosion or water scarcity.
 - It also responded to "growing public awareness" of ecological issues, particularly among younger Cubans and academics.
 - The constitution provided a foundation for stricter environmental laws, though enforcement remains weak due to economic constraints.
 - It empowered citizens to demand accountability.
 - The 2019 reform was both pragmatic and symbolic, addressing real environmental risks. However, its effectiveness depends on implementation, which faces hurdles like limited funding and competing economic priorities.
4. The inclusion of the "right to a healthy environment" in Cuba's 2019 Constitution (Article 75) has had a moderate but uneven influence on environmental policies and legislation. While it provided a legal foundation for stronger protections,

implementation has been slow due to economic constraints, bureaucratic hurdles. Here's how it has shaped Cuba's environmental governance:

Strengthened Legal Framework as:

- **New Laws and Update:** The constitutional reform prompted updates to Cuba's Environmental Law (Law 81 of 1997), with proposals for stricter regulations on pollution, deforestation, and climate adaptation.
 - **Tarea Vida (Life Task):** The constitutional backing reinforced Cuba's "national climate change plan", prioritizing coastal protection, reforestation, and water management.
 - **Citizens and organizations** can now invoke constitutional rights to challenge environmentally harmful projects (e.g., unsustainable tourism developments).
 - However, legal enforcement remains weak—environmental lawsuits are rare, and state projects (e.g., mining, infrastructure) often override ecological concerns.
 - The constitution helped "mainstream climate policies", such as: Renewable energy expansion (e.g., solar farms, though progress is slow due to funding shortages), agroecology promotion (organic farming to reduce chemical dependence), coastal resilience projects (e.g., mangrove restoration to combat sea-level rise).
5. The constitutional recognition of environmental protection in Cuba (as outlined in Article 16 of the 2019 Constitution) is a significant step forward in principle, but its practical impact remains limited by systemic challenges.
- **Progress:** The constitutional amendment reinforces the state's commitment to sustainable development and environmental rights, providing a legal foundation for stronger policies. It has encouraged initiatives like reforestation programs, sustainable agricultural plans and renewable energy projects.
 - **Limitations:** Implementation is hindered by Cuba's economic crisis, lack of resources, and weak enforcement mechanisms. Environmental regulations often take a backseat to urgent economic priorities (e.g., tourism, agriculture).
 - **State-Owned Enterprises (SOEs):** Most large industries in Cuba are state-run, and while some (like tourism) face pressure to adopt greener practices, compliance is inconsistent due to financial constraints.
 - **- Foreign and Joint Ventures:** International companies (e.g., in mining or energy) may face stricter scrutiny, but Cuba's need for foreign investment sometimes outweighs environmental concerns.
 - **- Private Sector:** Small private businesses have minimal oversight, and environmental accountability is low.

Access to Justice for Climate and Environmental Victims

- **-** While the constitution recognizes the right to a healthy environment, in Cuba's judicial system, environmental litigation is rare. Victims (e.g., communities affected by pollution or climate disasters) lack clear avenues to challenge government or corporate actions. Cases like coastal erosion or

industrial pollution are typically addressed through state channels rather than judicial recourse.

6. Yes, in Cuba, there are specific governmental institutions and bodies responsible for enforcing environmental laws and ensuring the constitutional right to a healthy environment. The key entities include:

- Ministry of Science, Technology, and Environment (CITMA) – This is the primary government body overseeing environmental policy, regulations, and compliance. It develops and implements strategies for environmental protection and sustainable development.
- Environmental Units within CITMA – These include:
 - Environmental Agency (Agencia de Medio Ambiente, AMA) – Focuses on scientific research, monitoring, and environmental management.
 - Inspectorate for Environment and Natural Resources – Conducts inspections and enforces environmental laws.
- National Assembly's Commission for Energy and Environment – Works on legislative and policy frameworks related to environmental protection.
- Ministry of Agriculture (MINAG) – Manages natural resources, forestry, and soil conservation.
- Ministry of Tourism (MINTUR) – Ensures sustainable tourism practices to minimize environmental impact.
- Local Governments (Provincial and Municipal Administrations) – Implement and supervise environmental regulations at regional levels. (now I am managing a project in Villa Clara to propone some local legislation on mitigation of climate change)
- Additionally, Cuba has a National Environmental Strategy to promote sustainability.

7. The implementation and enforcement of environmental rights in Cuba face several key challenges, despite the country's progressive legal framework and policies promoting sustainability. Here are the main challenges:

- Economic Constraints
 - Cuba's economic difficulties, exacerbated by the U.S. embargo and internal inefficiencies, limit funding for environmental protection programs.
 - Lack of resources affects monitoring, enforcement, and investment in green technologies.
- Limited Public Awareness and Participation
 - While Cuba has strong environmental education programs, grassroots participation in decision-making remains limited.
 - Many citizens prioritize economic survival over environmental concerns, reducing pressure for enforcement.
- Climate Change Vulnerabilities
 - Cuba is highly exposed to hurricanes, rising sea levels, and droughts, straining its capacity to adapt while maintaining environmental protections.
 - Climate resilience efforts are hindered by financial and technological limitations.
- Energy Transition Challenges

- Cuba still relies on fossil fuels, and while renewable energy projects are expanding, progress is slow due to financial and infrastructural constraints.
 - Legal Enforcement Gaps
 - Environmental laws exist, but enforcement is inconsistent, with weak penalties for violations.
 - Limited access to justice for citizens seeking to challenge environmental harms
 - Cuba has a strong legal foundation for environmental rights, but economic hardships, institutional weaknesses, and external pressures hinder effective implementation. Strengthening enforcement, increasing public engagement, and securing international cooperation could help address these challenges.
8. In Cuba, the involvement of local communities and civil society in promoting and protecting environmental rights is primarily channeled through state-led initiatives, as the government plays a dominant role in environmental governance. However, there are some ways in which communities and civil society contribute:
- Government-Organized Participation: Cuba has a centralized environmental policy, but local communities participate through Popular Councils (Consejos Populares) and mass organizations (e.g., the Federation of Cuban Women, Committees for the Defense of the Revolution). These groups help implement environmental projects, such as reforestation, waste management, and sustainable agriculture.
 - Scientific and Academic Institutions : Universities and research centers (like the Antonio Núñez Jiménez Foundation) engage in environmental advocacy, often collaborating with communities on conservation projects.
 - Community-Based Environmental Projects: Some grassroots initiatives, particularly in agroecology and permaculture (e.g., the Campesino-a-Campesino movement), promote sustainable practices with local participation.
 - International Collaboration: Cuban civil society occasionally partners with foreign NGOs and UN programs (e.g., UNDP) on climate resilience and biodiversity projects, indirectly amplifying local voices.
9. In Cuba, local communities, individuals and civil society play a significant role in promoting and protecting environmental rights, though within the framework of the country's socialist system and state-led policies. Here are some key ways they are involved:
- Community Participation in Environmental Projects
 - The Cuban government encourages grassroots involvement in sustainability initiatives, such as urban agriculture, reforestation, and renewable energy projects.
 - Local Committees for Defense of the Revolution (CDRs) and other mass organizations often mobilize communities for environmental campaigns like recycling drives and coastal cleanups.
 - Scientific and Environmental NGOs

- While independent activism is limited, government-approved organizations like Cubasolar (Renewable Energy Association) and the Pro-Nature Society (ProNaturaleza) work on environmental education and advocacy.
 - These groups collaborate with state institutions to raise awareness about climate change, biodiversity, and sustainable development.
- State-Led Environmental Policies with Public Input
 - Cuba's National Environmental Strategy includes mechanisms for public consultation, though decision-making remains centralized.
 - Universities and research centers (e.g., the Antonio Núñez Jiménez Foundation) engage citizens in environmental studies and policy discussions.
- International Partnerships
 - Cuban civil society groups often work with international organizations (e.g., UNDP, FAO) on conservation projects, such as protecting coral reefs or managing protected areas.
- Legal Framework and Grievance Mechanisms
 - The 2019 Constitution recognizes the right to a healthy environment, and citizens can report violations to local authorities or the Ministry of Science, Technology, and Environment (CITMA).
 - However, independent environmental activism is rare, and most advocacy occurs through state-sanctioned channels.

In summary, local communities and civil society in Cuba contribute to environmental protection primarily through state-coordinated efforts, but there is limited autonomous activism. The government integrates public participation into its sustainability agenda.

10. In Cuba, constitutional environmental rights are grounded in Article 75 of the 2019 Constitution, which recognizes the right to a healthy and balanced environment but there is limited judicial enforcement.

Cuba's legal system does not have a strong tradition of public interest litigation or judicial review in environmental matters. Most environmental disputes are handled administratively rather than through courts. Unlike in some Latin American countries (e.g., Colombia or Ecuador), there are no landmark constitutional cases where citizens or NGOs have successfully sued the state for environmental violations.

- Cases of environmental harm (e.g., pollution from state-run industries) are usually resolved internally without public judicial processes.
- During the last years there have been some cases of environmental disputes with complaints about industrial pollution (e.g., sugar mills or mining) but are typically addressed through state channels rather than courts.
- Coastal Development: Tourism-related construction sometimes faces environmental scrutiny, but legal challenges are rare.
- Cuba has not seen significant judicial activism on environmental rights.

- Most environmental protection efforts come from state policies rather than court rulings. If reforms increase judicial independence and public participation, future cases could emerge, but currently, there are no prominent examples of constitutional environmental litigation in Cuban courts.

11. In Cuba, access to the justice system for filing complaints or seeking redress for environmental damages is theoretically guaranteed by the Constitution and legal framework, but in practice, there are significant challenges.

- Bureaucratic Barriers – Filing complaints often requires navigating complex administrative processes, discouraging many citizens.
- Lack of Specialized Courts – No dedicated environmental courts exist, meaning cases are handled by general courts with limited expertise.
- Limited Public Awareness – Many Cubans are unaware of their legal rights regarding environmental claims.
- Alternative Avenues
- Complaints can be filed with the Ministry of Science, Technology, and Environment (CITMA), but responses are often slow or ineffective.
- Some cases are resolved through community mediation rather than formal legal channels.
- As you can see we need in Cuba stronger enforcement and civic participation in environmental matters.

12. Cuba's approach to constitutional environmental rights offers several valuable lessons for other countries:

- Strong Constitutional Recognition: Cuba explicitly recognizes environmental rights in its constitution, emphasizing the right to a healthy environment. This provides a legal foundation for environmental protection and can inspire other nations to enshrine similar rights in their constitutions.
- Integration of Sustainability: Cuba's constitution links environmental protection with sustainable development, highlighting the need to balance economic growth with ecological preservation. This holistic approach can guide other countries in aligning their development policies with environmental goals.
- State Responsibility: The Cuban model places clear obligations on the state to protect the environment, including preventing harm and promoting conservation. This sets a precedent for governments to take proactive, legally mandated roles in environmental stewardship.
- Public Participation: Cuba encourages citizen involvement in environmental decision-making, fostering a sense of shared responsibility. Other countries could adopt similar mechanisms to enhance community engagement and accountability.
- Climate Resilience: Cuba's focus on mitigating climate change impacts, such as through reforestation and disaster preparedness, offers practical strategies for building resilience, especially for vulnerable nations.

- Education and Awareness: Cuba integrates environmental education into its national policies, raising public awareness. This underscores the importance of education in fostering long-term environmental commitment.
- While Cuba faces issues like limited resources and enforcement gaps, its experiences highlight the need for strong institutions, funding, and international cooperation to realize constitutional environmental rights effectively.
- Cuba's approach demonstrates how constitutional recognition, state accountability, and public engagement can collectively advance environmental justice—though practical implementation remains a universal challenge.