

**A Tale of Two Courts:
The Right to a Healthy Environment, Climate Change, and Human Rights**

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Abstract: We are at the dawn of a new age for climate and environmental justice. In the face of systemic and intergenerational threats to humanity, a clean, healthy, and sustainable environment is a necessary prerequisite for the comprehensive and effective protection of all human rights. In this context, this paper conducts a comparative analysis of the development of rights-based environmental protection and the right to a healthy environment that has taken place in the Inter-American and European systems of human rights, and, more specifically, recent pronouncements in both systems dealing with systemic and intergenerational environmental threats and the climate emergency. While the Inter-American Court of Human Rights has advanced an ecocentric and intergenerational approach to human rights protection through its 32nd advisory opinion and the landmark judgment of *La Oroya*, the European Court of Human Rights has continued to insist on an individualistic and anthropocentric approach. Though Strasbourg’s developments in the *Climate cases* opened the door for more expansive forms of standing, recent pronouncements in environmental and climate cases and admissibility decisions show the novel roadblocks an anthropocentric approach creates. This paper canters its discussion on what the authors consider one of the key differentiators that may explain the varied approaches of the systems: the recognition, or lack thereof, of the right to a healthy environment. In all, we argue that Strasbourg must learn from San José so that the future of climate change in these regional systems does not become a tale of two courts: one that protects (IACtHR) and one that regrets (ECtHR).

I. Introduction

There is no doubt that one of the biggest threats to humanity today stems from human interference with the environmental equilibrium – a carefully balanced ecological system that forms the basis for life on Earth. The environmental crisis – including climate change, environmental degradation, biodiversity loss, and pollution² – is adversely affecting all human rights of present and future generations. We are, today, a far cry from achieving “a world in which humanity lives in harmony with nature”.³ The adverse effects of these widespread environmental catastrophes are characterized by being diffuse, transboundary, long-term, intergenerational, and cumulative in nature, thus posing significant challenges to the traditional understanding of a number of axiomatic elements of international law. It is in this context that the right to a clean, healthy, and sustainable environment (‘right to a healthy environment’/‘R2HE’) positions itself as a transformative tool for human rights protection and a focal point for discussions on climate and

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² UNGA Res 76/300 (2022) *The Human Right to a clean, healthy and sustainable environment*, Preamble.

³ UNGA Res 79/1 (2024) *The Pact for the Future*, Action 10(a); also see Annex II, Guiding Principle 5.

environmental State obligations.

This paper focuses on the Inter-American Court of Human Rights' ('IACtHR'/'Court of San José') and the European Court of Human Rights' ('ECtHR'/'Strasbourg') landmark rulings regarding environmental and climate protection which have become novel points of inflection for the R2HE. In 2024, the IACtHR issued its vanguardist judgment in *La Oroya Population v. Peru*,⁴ followed by the July 2025 notification of the Court's 32nd Advisory Opinion on *the Climate Emergency and Human Rights* ('AO32').⁵ The ECtHR, for its part, significantly built upon its case law with its landmark decision in *KlimaSeniorinnen and Others v. Switzerland*,⁶ and other recent environmental cases, such as *Cannavacciuolo and Others v. Italy*.⁷ While other courts have similarly issued transformative rulings, the scope of this paper is predominantly confined to the recent developments in the Inter-American and European systems – regional approaches soon to be complimented by the pending advisory opinion before the African Court of Human and Peoples' Rights.⁸

Fundamentally, we maintain that through these recent developments on opposite sites of the Atlantic, the once latent differences between the two Courts have become more accentuated. While the IACtHR builds upon the R2HE, endowing it with effective content that ensures an ecocentric, holistic, and forward-looking protection of rights in the context of the climate emergency, the ECtHR lingers at an individualistic yet undifferentiated, fragmented, and anthropocentric approach to environmental rights, plagued with procedural roadblocks, which creates an arbitrary, confusing, and unclear set of case law – the protectiveness of which is yet to be seen. We find that the key for the difference in approach is the recognition, or lack thereof, of the R2HE: with the new world leaning into the future, and the old lingering, as it were, in the past.

II. Hope and Disappointment: *Greening and Going Beyond*

First and foremost, it is important to understand the frameworks in which recent jurisprudence has developed. Neither the European Convention on Human Rights ('ECHR') nor the American Conventions on Human Rights ('ACHR') contain any provisions expressly recognizing the R2HE in their foundational texts – unlike, it should be noted, article 24 of the Banjul Charter. This reality has, however, not stopped either Court from addressing human rights violations derived from environmental phenomena.

Strasbourg, for its part, inaugurated the practice of '*greening*' rights in the *López Ostra*⁹ case.

⁴ *La Oroya Population v Peru*, Judgment on Preliminary Objections, Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No 511 (27 November 2023).

⁵ *The Climate Emergency and Human Rights*, Advisory Opinion AO-32/25, Inter-American Court of Human Rights Series A No 32 (29 May 2025).

⁶ *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC] App no 53600/20 (ECtHR, 9 April 2024).

⁷ *Cannavacciuolo and Others v. Italy*, App nos 51567/14 *et al* (ECtHR, 27 February 2025).

⁸ Advisory Opinion 001/2025, Introduced by the Pan African Lawyers Union (PALU) [2025] <<https://www.african-court.org/cpmt/details-advisory/0012025>>.

⁹ *López Ostra v Spain* App no 16798/90 (ECtHR, 9 December 1994).

This approach refers to the use of several rights explicitly recognized in the ECHR – most prominently Articles 2, 6, 8, and 10 – to extract obligations that, for all practical purposes, are in alignment with the R2HE.¹⁰ The Court has applied this approach to cases involving, *inter alia*, toxic emissions,¹¹ industrial hazardous activities,¹² natural disasters,¹³ and waste treatment.¹⁴ This practice has led to what some,¹⁵ including the European Union,¹⁶ have termed a *de facto recognition* of the R2HE in light of the Strasbourg’s considerably large body of case law addressing environmental harms and, importantly, the fact that the Court has established extensive State obligations to protect individuals from a wide array of harms that may impact their “life, health, well-being and quality of life”.¹⁷

Indeed, strong arguments can be made in favour of inferring the existence of the right from the Convention, including arguments based the Court’s doctrines of *living instrument*¹⁸ and dynamic interpretation,¹⁹ developments in international law,²⁰ and an emerging *European consensus*.²¹ While academics have suggested that the right either already formed part of the Convention system ‘all but in name’²² or that the ECtHR could derive the same from its case law,²³ the ECtHR has been vehement in its rejection of adopting a more expansive interpretative approach which would fully integrate the R2HE into the European *corpus iuris*. The Court has repeatedly insisted that the

¹⁰ Francesco Francioni, ‘International Human Rights in an Environmental Horizon’ (2010) 12 *The European Journal of International Law*, 49.

¹¹ *Cordella and Others v. Italy* App nos 54414/13, 54264/15 (ECtHR, 24 January 2019).

¹² *Öneryıldız v. Turkey* [GC] App no 48939/99 (ECtHR, 30 November 2004).

¹³ *Budayeva and Others v. Russia* App nos 15339/02 *et al* (ECtHR, 20 March 2008).

¹⁴ *López Ostra* (n 8).

¹⁵ Irmina Kotiuk, Adam Weiss, and Ugo Taddei, ‘Does the European Convention on Human Rights guarantee a human right to clean and healthy air? Litigating at the nexus between human rights and the environment – the practitioners’ perspective’ (2022)13 *Journal of Human Rights and Environment* 122, 131-134. Also see *Cannavacciuolo* (n 6), concurring opinion of Judge Krenč, para 14, and Judge Serghides (n 6), paras 5-7.

¹⁶ Written Reply of the European Union to the Judges’ questions at the end of the hearing, <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-23-00-en.pdf>>.

¹⁷ *KlimaSeniorinnen* (n 5), para 519; *Pavlov and Others v. Russia* App no 31612/09 (ECtHR, 11 October 2022) para 69.

¹⁸ *Tyrer v United Kingdom* App no 5856/72 (ECtHR, 25 April 1978) para 31.

¹⁹ *Cannavacciuolo* (n 6), concurring opinion of Judge Krenč, paras 5-7; Irmina Kotiuk, Adam Weiss and Ugo Taddei (n 14) 131-134; Jeremy McBride, ‘The Doctrines and Methodology of Interpretation of the European Convention on Human Rights by the European Court of Human Rights’ (2021) 34-47.

²⁰ The right can arguably be considered a norm of customary international law (see, e.g. *La Oroya* (n 3), Concurring Opinion of the Judges Pérez Manrique, Ferrer Mac-Gregor, and Mudrovitsch, paras 85-93. This is also exemplified by the 2022 UNGA Resolution (n 1) and *Obligations of States in Respect of Climate Change* (Advisory Opinion No. 187) 2025 <<https://www.icj-cij.org/case/187>>, Declaration of Judge Tladi, para 29, Separate Opinion of Judge Aurescu, paras 28, 46, and Separate Opinion of Judge Bhandari, para 3.

²¹ See recognition by 47 Member States in David R. Boyd UN Doc A/HRC/43/53 (2019) *Right to a healthy environment: good practices. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*.

²² OW Pederson, ‘The European Court of Human Rights and International Environmental Law’ in JH Knox and R Pejan (eds), *The Human Right to a Healthy Environment* (CUP 2018) 91.

²³ Natalia Kobylarz, ‘Balancing its way out of strong anthropocentrism: Integration of ‘ecological minimum standard’ in the European Court of Human Rights ‘fair balance’ review’ (2022) 13 *Journal of Human Rights and the Environment*, 4; Corina Heri, ‘Justice in the Liminal: The Council of Europe and the Right to a Healthy Environment’ (2024) 73 *International and Comparative Law Quarterly*, 333, 337.

Convention “does not guarantee a substantive right to a healthy environment” and that no articles of the Convention provide for a “general protection of the environment as such”.²⁴ And while some consider the Convention to *de facto* recognise the right, this ECtHR’s approach has been criticised for its inherent limitations,²⁵ some of which will be highlighted throughout this paper.

San Jose finds itself in a similar, though not identical, starting point but has, in contrast to the ECtHR, taken a bold interpretative approach. It should be noted that only Article 11 of the Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (‘Protocol of San Salvador’ and ‘ESCER’ respectively) foresees the R2HE and, importantly, that instrument contains a clause (Art. 19.6) that explicitly limits the direct justiciability of the ESCER contained therein to the rights to education (Art. 13) and to strike (Art. 8). In spite of this limitation, the contours of the R2HE first emerged in cases relating to the communal rights of Indigenous communities to fully enjoy and make use of the resources located in their territories;²⁶ the Court, progressively recognizing the irrefutable relationship between the protection of the environment and the realization of a myriad of rights protected by the Convention.²⁷ At this point, however, the Court adopted a practice of “indirect justiciability by connectivity”²⁸ through a ‘greening’ of rights²⁹ very much akin to that of its European corollary:³⁰ a standard San José eventually outgrew.³¹

It is worth highlighting some distinguishing normative features which separate the systems and may explain the difference in approach: the inclusion of a “general provision dedicated to economic, social and cultural rights”³² (Article 26 ACHR) and the ever important Article 29 ACHR, which crystallizes the *pro persona* principle. Indeed, the explicit recognition of the R2HE

²⁴ *Kyrtatos v. Greece* App no 41666/98 (ECtHR, 22 May 2003) para. 52; *Hamer v. Belgium* App no 21861/03 (ECtHR, 27 November 2007) para 79; *Dubetska and Others v. Ukraine* App no 30499/03 (ECtHR, 10 February 2011) para 105; *Cordella* (n 10) para 100; *KlimaSeniorinnen* (n 5) para 445.

²⁵ See, e.g. Corina Heri, ‘Justice in the Liminal’ (n 22) 322; Natalia Kobylarz, ‘Why Recognizing the Right to a Healthy Environment Would Strengthen the Environmental Human Rights Framework under the European Convention on Human Rights’ (2025, *VerfBlog*) Available at: <https://verfassungsblog.de/ip-hr2he-recognizing-right-would-strengthen-echr/>.

²⁶ Henry Jiménez Guanipa and María Barranco, ‘The Interamerican Human Rights System’s impact on the Protection of the Right to a Healthy Environment’ in Armin von Bogdandy *et al.* (eds), *The Impact of the Inter-American Human Rights System* (Oxford University Press, 2024) 237-253.

²⁷ *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-American Court of Human Rights Series A No 23 (15 November 2017) para. 47; *Case of Kawas Fernández v. Honduras*, Judgment on Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No. 196 (3 April 2009) para 148.

²⁸ Eduardo Ferrer Mac-Gregor, ‘Impact of the Inter-American Jurisprudence on Economic, Social, Cultural and Environmental Rights’, in Armin von Bogdandy *et al.* (eds), *The Impact of the Inter-American Human Rights System* (Oxford University Press, 2024) 217-236, 219.

²⁹ Importantly Articles 4, 5, 13, 21, 23 ACHR.

³⁰ Carmen Plaza Martín, ‘De los Niños de los Andes a las Ancianas de los Alpes: Nuevos Hitos en la protección del medio ambiente y Frente al Cambio Climático a través de los Derechos Humanos’ (2024), 91 *Revista Española de Derecho Europeo*, 25, 31.

³¹ *Ibid.*, 34-35.

³² Eduardo Ferrer Mac-Gregor (n 27) 218.

in the Inter-American system was the product of a tectonic shift in the case of *Lagos del Campo*³³ where San José, for the first time, established the direct justiciability of Article 26 rights (ESCR).³⁴ This shift was the basis for the IACtHR’s findings in its 23rd advisory opinion (‘AO23’) just a few months later, where the IACtHR recognized that the R2HE was included in the rights protected by Article 26, emphasising that this resulted from an interpretation of the Convention pursuant to Article 29 and from the “interdependence and indivisibility” of rights.³⁵

There was reason to hope that Strasbourg’s approach would change in the *climate cases* in light of its pronouncements on the protection of the *quality of life* of the applicants in the previously-decided cases of *Di Sarno*³⁶ and *Pavlov*.³⁷ In these cases the Court clarified that it does not require environmental pollution to directly affect the applicants’ health, life, or house, but that severe environmental pollution of one’s surrounding environment is sufficient to be an affront to someone’s well-being and quality of life.³⁸ This was an important step towards recognising that a healthy environment is, in and of itself, a value deserving of protection: an affectation of the natural world, de facto adversely affecting our well-being and quality of life. This seemed to be the path forward since, in *Di Sarno*, the Court noted that States had to take reasonable steps “to protect the right of the people [...] to live in a safe and healthy environment”.³⁹ These developments could have laid the groundwork for the recognition of a comprehensive R2HE or, at the very least, a general protection of the environment inherent in the Convention: a change that, in this paper’s estimation, would be an important towards resolving fundamental issues which often lead to unpredictable, controversial, or even normatively unjustified results.⁴⁰

This said, the European Court’s reasoning in *KlimaSeniorinnen* quashed, perhaps for good, any hopes of the R2HE entering the European System absent explicit recognition through an additional protocol to the Convention. Indeed, making explicit reference to the verbiage *supra*, Strasbourg indicated that the language used in the aforementioned cases was not meant to refer to the existence of the R2HE under the Convention, but instead formed part of the Court’s analysis that took environmental concerns into consideration.⁴¹ Further, Strasbourg argued that it was not its place to assess whether the UNGA’s recognition of the R2HE formed the basis of concurring obligations under the Convention⁴² and, consequently, once again, “preferred to show judicial

³³ *Lagos del Campo v. Peru*, Judgment on Preliminary Objections, Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No. 340 (31 August 2017).

³⁴ Eduardo Ferrer Mac-Gregor (n 27) 227.

³⁵ *The Environment and Human Rights* (n 26) paras 56-57. It is important to note that this does not fully encapsulate the methodology of deriving Article 26 rights, but an elaboration of this methodology exceeds the scope of this paper: one which interrogates whether there is a normative basis in the OAS charter through which an article 26 could be incorporated.

³⁶ *Di Sarno and Others v. Italy* App no 30765/08 (ECtHR, 10 January 2012) paras 109-110.

³⁷ *Pavlov* (n 17), para 69.

³⁸ *Ibidem*.

³⁹ *Di Sarno* (n 36), para 110, also see *Tătar v. Romania* App no 67021/01 (ECtHR, 5 July 2007) para 107.

⁴⁰ Natalia Kobylarz, ‘Why Recognizing the Right’ (n 25).

⁴¹ *KlimaSeniorinnen* (n 6) para 447.

⁴² *Ibid.*, para 448.

self-restraint rather than activism”:⁴³ this last element despite no Council of Europe Member State voting against the resolution. This cautious reasoning does beg an important question: would the ECtHR have decided the *Klima* differently in a world where the Advisory Opinion of the International Court of Justice, which recognized the R2HE as a “precondition for the enjoyment of many human rights, was notified before the *climate cases*?⁴⁴

Heri has highlighted that the European Court may be constrained by concerns over its own legitimacy, effectively preventing Strasbourg from recognising or applying the R2HE. In light of such concerns, it has been argued that the only way to effectively overcome the Convention's inherent limitations would be the adoption of an additional protocol expressly incorporating the right.⁴⁵ While a proposal to adopt such a binding instrument from the Committee of Ministers currently under review,⁴⁶ the process has been seemingly interrupted by the *Klimaseniorinnen* decision and affirmation of the indirect protection of environmental rights.⁴⁷

III. Integration vs Fragmentation

San Jose and Strasbourg, thus, had radically different tools at their disposal to address the world's most pressing problem. San José counted with a specialised, *sui generis* regime for environmental protection, which allowed it to dimension the complexity of environmental degradation, establish standards in consequence, and, ultimately, create “an important source of standards for States regarding their obligations to ensure equitable conditions for development in the face of climate change.”⁴⁸ While, Strasbourg came into the *climate cases* with its *tensed*⁴⁹ and *fragmented* approach to environmental protection⁵⁰ which – though undoubtedly paving the way for important developments – interrogates whether the ECHR provides a comprehensive protection for complex and widespread environmental harm.

a. The Inter-American Sui Generis Regime

⁴³ Natalia Kobylarz, ‘Balancing its way’ (n 23) 16, 20.

⁴⁴ *Ibid.*, paras 392-393.

⁴⁵ E.g. Corina Heri, ‘Justice in the Liminal’ (n 22), 334; Natalia Kobylarz, ‘Why Recognizing the Right’ (n 25); Pavlov (n 17), Concurring Opinion by Judge Serghides, para 18.

⁴⁶ Recommendation CM/Rec(2022)20 of the Committee of Ministers to member States on human rights and the protection of the environment

<[⁴⁷ Natalia Kobylarz, ‘Why Recognizing the Right’ \(n 25\).](https://rm.coe.int/0900001680a83df1#:~:text=Member%20States%20should%20encourage%20or.and%20international%2C%20mandatory%20and%20voluntary.>.</p></div><div data-bbox=)

⁴⁸ *La Oroya* (n 4), concurring opinion of Judges Eduardo Ferrer Macgregor, Rodrigo Mudrovitsch, and Ricardo C. Pérez Manrique, para 70.

⁴⁹ Natalia Kobylarz, ‘Anchoring The Right to a Healthy Environment in the European Convention on Human Rights: What Concretized Normative Consequences can be Anticipated for the Strasbourg Court in the Field of Admissibility Criteria,’ (2023) 1 Available at SSRN: <https://ssrn.com/abstract=4398112>.

⁵⁰ Corina Heri, Linnea Nordlander, and Annalisa Savaresi, ‘Recognizing the Right to a Healthy Environment at the Council of Europe: Why does it Matter’ (2023) 1 *Environmental Rights Review*, 2.

It is important to note that from its first recognition in AO23, the R2HE has been conceptualized as concretising a *sui generis* legal regime for environmental protection⁵¹ in the sense that the right's configuration breaks with the classical concept of subjective individual rights and is instead composed of two distinct dimensions: in its collective dimension, "the right to a healthy environment constitutes a universal value that is owed to both present and future generations"; it also has an "individual dimension insofar as its violation may have a direct and an indirect impact on the individual owing to its connectivity to other rights, such as the rights to health, personal integrity, and life."⁵²

The collective dimension centres the analysis on the harm that is endured by the environment *per se* and does so from an *intergenerational* perspective;⁵³ it explicitly recognizes the environment as forming part of the common patrimony of all living beings on the planet and is a key feature of the R2HE as an autonomous right. In this regard the R2HE "protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals."⁵⁴ This is to say that, understood as a self-standing right, the finding of a violation of the R2HE does not require the concurrent finding of a violation of another right protected by the Convention – though these *are* duly accounted for via the individual dimension.⁵⁵

San José's findings in the case of *La Oroya*⁵⁶ deepened the understanding of the implications of this dual approach by concretising that the R2HE involves a series of procedural and substantive elements.⁵⁷ The former had already been touched on in AO23 and *Lhaka Honhat*⁵⁸ and were understood to imply a series of sub obligations connected to access to information, political participation, and access to justice – all of which are coherently consolidated into a single right whose express aim is addressing environmentally derived human rights violations⁵⁹ and not treated in a fragmented manner under the banner of multiple other rights (life, private life, access to justice,

⁵¹ Natalia Kobylarz, 'Anchoring The Right' (n 49) 16-17,

⁵² *The Environment and Human Rights* (n 27) para 59.

⁵³ Maria Antonia Tigre and Natalia Urzola, 'The 2017 Inter-American Court's Advisory Opinion: changing the paradigm for international environmental protection in the Anthropocene' (2021) 12 *Journal of Human Rights and The Environment* 24, 43.

⁵⁴ *The Environment and Human Rights* (n 30) para 62.

⁵⁵ *Ibid.*, para 63.

⁵⁶ The case concerned the decades of pollution that affected the air, water, and soil[#] of the 33,000 inhabitants of the community – pollution which emanated from the La Oroya Metallurgical Complex (CMLO) and turned the locality into a "sacrifice zone". Given the widespread and pervasive environmental degradation that the CMLO created, the case provided fertile ground for the Court to consolidate its standards set out in AO23 and *Lhaka Honhat* and to cement them by, for the first time, applying them outside the indigenous context. *La Oroya* (n 3), para 180; *Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina*, Judgment on Merits, Reparations and Costs, Reparations and Costs, Inter-American Court of Human Rights Series C No. 420 (6 February 2020).

⁵⁷ *La Oroya* (n 4) para 118.

⁵⁸ *The Environment and Human Rights* (n 27) paras 59, 62, 64; *Lhaka Honhat* (n 56) para 203.

⁵⁹ David R. Boyd, *The Right to a Healthy Environment: a user's guide*, United Nations Human Rights Special Procedures (2024), 7.

speech etc.) as is the case in the European system. Importantly, however, it was not until *La Oroya* that the Court concretised the exact sphere of protection offered by the substantive guarantees.⁶⁰

Focusing on pollution, the Court noted that individuals have the rights to air and water free from pollution levels that pose a significant risk to the enjoyment of their human rights, particularly the R2HE.⁶¹ San Jose detailed a series of tailored obligations to regulate, monitor, make action plans, and implement relevant measures – all aimed at ensuring safe air and water quality standards:⁶² notably, the Court specified that water quality standards should be “compatible with human and ecosystem health”,⁶³ thereby recognising the systemic nature of environmental degradation. This concretization allows for precise and tailored obligations which duly account for the element of the environment they are seeking to protect, rather than a blanket set of parameters equally applicable to *the environment* as a whole in an undifferentiated manner, as occurs through indirect protection: the *greening* approach where environmental harm is incidental to human harm.

This difference is doubly emphasized when considering San José’s clarification of the R2HE’s protective scope. When distinguishing the right to clean water as a substantive element of the R2HE from the right to water as an autonomous right, the Court noted that while the first “protects bodies of water as elements of the environment that have a value in themselves, as a universal resource, and because of their importance for other living organisms, *including* human beings”, the second “recognizes the essential role that water plays in the survival of human beings, and therefore protects their access to, use and enjoyment of water.”⁶⁴ The protection offered by the R2HE is, thus, ‘eco-centric’ protecting the elements of nature in a manner that is tailored to account for their essence and the specific harm that is endured. In the words of David R. Boyd, “[w]hile many human rights are linked to the quality of the environment (e.g. life, health and water), the right to a healthy environment is unique because it provides comprehensive protection against the full range of environmental harms, including damage to nature”.⁶⁵

True to the bold trajectory described prior, the IACtHR certainly used AO-32 on *the Climate Emergency and Human Rights* (‘AO32’) as a historic opportunity to take bold steps in the protection of the R2HE: contextualizing State obligations in the normative, scientific and jurisprudential reality of the climate emergency through an approach where San Jose does not force focus back on the individual, does not insist in transforming these types of harms into purely private or proprietary matters, and moves against a purported human superiority over the natural world.⁶⁶ The Court dedicates the first substantive chapter of the opinion to the causes, impacts, and regulation of the climate phenomenon, concluding that the *climate emergency* is a severe threat

⁶⁰ Verena Kahl and José Daniel Rodríguez-Orúe: ‘Upgrading Environmental Rights: La Oroya and its Significance for a Safer Climate’ (*VerfBlog*, May 16, 2024) <DOI: [10.59704/338b9747711a34e6](https://doi.org/10.59704/338b9747711a34e6)>.

⁶¹ *La Oroya* (n 4) para 120.

⁶² *Ibid.*, paras 120-121.

⁶³ *Ibidem*.

⁶⁴ *Ibid.*, para 124.

⁶⁵ David R. Boyd, *The Right to a Healthy Environment* (n 58) 7.

⁶⁶ *The Climate Emergency and Human Rights* (n 4).

to humanity.⁶⁷ The *climate emergency* – characterised by the confluence and interaction of three related factors of urgency,⁶⁸ severity,⁶⁹ and complexity⁷⁰ – is considered a *decisive element* for interpreting State obligations under the Inter-American *corpus iuris*.⁷¹ While significantly more expansive, this approach is not unlike its European counterpart, which similarly considered that the *nature* of climate change as a scientific reality warranted a special approach to its interpretation of Convention standards.⁷²

This said, AO32 undoubtedly marked the moment when the IACtHR fully integrated an ecocentric approach to human rights protection into their human rights system, with the R2HE at the heart of this shift. Building upon prior developments, the Court took the next step in the development of the right and cemented its role as a “fundamental right to the existence of humanity”⁷³ through, *inter alia*, three important means: reaffirming an ecocentric understanding of the right and the natural environment through a change in denomination; the recognition of Nature as a subject of rights; and the derivation of the right to a healthy climate from the R2HE.

To the first of these points, the change of the right’s name in Spanish from ‘*el derecho a un medio ambiente sano*’ to ‘*el derecho a un ambiente sano*’ is particularly notable: seeking to be a more accurate reflection of the conjunction of the individual and collective dimension of the right⁷⁴ as well as the fact that “the environment is not a means (‘*un medio*’) for the fulfilment of human aims, but is an end in and of itself worthy of distinct and autonomous protection”.⁷⁵ The Court, henceforth, defines the “environment” as “a series of elements and systems that are inextricably related and that enable present and future life”.⁷⁶ This seemingly ephemeral shift, however, forms part of a broader meta argument the Court brings to bear throughout AO32: the R2HE protects nature *both* because of its vital importance for the protection of human rights, as well as its

⁶⁷ *Ibid.*, para 183.

⁶⁸ *Ibid.*, paras 186-189.

⁶⁹ *Ibid.*, paras 195-203.

⁷⁰ *Ibid.*, paras 204-215.

⁷¹ *Ibid.* para. 184. Emphasis added. For more elaboration on the implications of the *climate emergency* vid. Eduardo Ferrer Mac-Gregor and Ecab Amor Vázquez, ‘Solidaridad Global y Equidad Intre e Intergeneracional: Hacia un Derecho Planetario ante la Emergencia Climática’ in *Opiniones sobre Opiniones* (Instituto de Investigaciones Jurídicas UNAM, Publication Pending); Eduardo Ferrer Mac-Gregor and Ecab Amor Vázquez, ‘The Advent of Global Solidarity: The law in the face of the Climate Emergency’ in Justin Lim, Theresa Amor-Jürgenssen and David Boyd (eds) *The ICJ Advisory Opinion on Climate Change: Legal Strategy, Movement Collaboration and Future directions* (Heart Publishing, publication pending).

⁷² *Infra*.

⁷³ *The Climate Emergency and Human Rights* (n 5) para 272.

⁷⁴ *Ibid.*, para 271. This nuance may be lost on English readers given the odd translation in the english version of the Opinion: “Although these and other international sources refer to the right to a “healthy environment,” hereinafter the Court will refer to the right to enjoy a “healthy environment” to better reflect the conjunction between the individual and collective dimensions of the right. In fact, the Court finds that the “environment” can be understood as a series of elements and systems that are inextricably related and that enable present and future life.”

⁷⁵ Ecab Amor Vázquez and Theresa Amor-Jürgenssen, ‘The Bloom of Nature’s Rights on the IACtHR’s Recognition on Nature’s Legal Personality in AO-32/25’ (*Verfblog*, 2025) <<https://verfassungsblog.de/the-bloom-of-natures-rights/>>.

⁷⁶ *The Climate Emergency and Human Rights* (n 4) para 271.

“interdependence with other living organisms that make life on this planet possible” –⁷⁷ individual *and* collective. The protection of Nature itself is, thus, vital for all species, including human beings, which form a part of the natural environment.⁷⁸ Indeed, the Court repeatedly makes it a point to highlight that Nature must be protected not just for the benefit of human beings but for the “life of all species – *including*[, but not exclusively,] ours”;⁷⁹ humanity, after all, must “be recognized as just one more manifestation of Nature’s interdependent network”.⁸⁰

The Court is, as can be seen, truly championing an ecocentric approach to human rights protection, which recognises the natural environment as deserving protection, not because it serves us, but because we are a part of it: an approach that comes to full realization through San Jose’s recognition of Nature as a subject of rights. To arrive at this conclusion the IACtHR Court stressed that ecosystems are complex and interdependent systems in which each component plays an essential role for the stability and continuity of the whole. In a context where adaptation and mitigation are fundamental to our continued survival, the IACtHR heavily backs the rights of nature approach as one which “allows us to transcend inherited legal concepts that conceived Nature exclusively as an object of ownership or an exploitable resource”.⁸¹ For this reason, the Court considered that the “[r]ecognition of Nature’s right to conserve its essential ecological processes contributes to strengthening a truly sustainable development model that respects planetary limits and ensures the availability of crucial resources for present and future generations” further noting that the incorporation of this paradigm “is fundamental for the protection of their long-term integrity and functionality, and it provides coherent and effective legal tools in relation to the triple planetary crisis to prevent existential harm before the latter becomes irreversible.”⁸²

Based on this understanding, the Court underscored that “States must not only refrain from acting in a way that causes significant environmental damage, but have the positive obligation to adopt measures to guarantee the protection, restoration and regeneration of ecosystems”.⁸³ In this vein, the Court heavily implied that States must progressively incorporate the rights of Nature framework into their domestic legal systems noting, in particular, that “the protection of Nature, as a collective subject of general interest, provides an appropriate framework for States – and other relevant stakeholders – to advance towards building a global legal system for sustainable development.”⁸⁴ This interpretation is reinforced if we consider that, under the general obligations of the ACHR, the IACtHR was clear that it was “essential to adapt the law to address the climate emergency”⁸⁵ and later stressed that “[t]he effective defense of [the right to a healthy climate] imposes the need to advance decisively towards a model of development which is truly sustainable,

⁷⁷ *Ibid.*, para 273.

⁷⁸ *Ibid.*, para 279.

⁷⁹ *Ibid.*, para 293. Emphasis added.

⁸⁰ *Ibid.*, para 314.

⁸¹ *Ibid.*, paras 279-280.

⁸² *Ibid.*, para 279.

⁸³ *Ibid.*, para 283.

⁸⁴ *Ibid.*, para 281.

⁸⁵ *Ibid.*, paras 244-246.

and aligned with human activity with the ecological thresholds of the planet. To this end, it is necessary to adopt a systemic and integrated perspective that will be significantly strengthened when Nature is recognized as a subject of rights.”⁸⁶ In short, the Court pushes States to fully incorporate ecocentrism into their domestic legal systems and facilitate the protection of the climate system as a collective good through a framework designed to do so: positioning the rights of nature approach as a viable option.⁸⁷

At this point in time the Court did not specify *what* rights Nature was a subject of but seems to have concretized an inextricable link with the R2HE and its derivatives. The Court bases this development on various factors, including the growing tendency of Nature as a subject of rights in regional constitutions and judgments,⁸⁸ the increasing recognition thereof at the international level,⁸⁹ and various principles found in the ACHR.⁹⁰ Indeed, roots of the recognition of Nature as a subject of rights was firmly grounded in the Court’s collective dimension of the R2HE as a “universal value” but also in the Court’s preceding case law of the *special relationship* that Indigenous communities maintain with their land. In this sense, the Court seems to have employed the interpretative ambiguity surrounding the collective dimension of the R2HE as well as a seemingly growing regional consensus on nature’s protection, to maintain that Nature’s recognition as a subject of rights was not ‘alien’ to the Inter-American *corpus iuris* but was instead a crystallisation of the interdependence of human rights and the environment and fell plainly in line with Articles 2, 26, and 29 ACHR and Article 2 of San Salvador.⁹¹

Though there are still questions regarding the exact implications of this recognition, particularly in the light of AO-22 on the entitlement of legal entities to hold rights under the ACHR,⁹² the rights of nature paradigm is an important example of the manner in which the *sui generis* regime set forth by the R2HE allows for a systemic transformation of varied areas of the State because of its confessedly collective character: the framework of the R2HE allowing judges in particular to go beyond the individualistic logic of rights championed by the ECtHR to address systemic challenges to the natural world caused by the way we produce, consume and, indeed, live.

The Court continued evidencing the dynamism of the R2HE through the direct recognition that the global climate system is “an essential part of the environment” given that the “harmonious development of the many processes that are essential for the conservation of life at the global level depend on it”.⁹³ Following the methodology employed in *La Oroya*, the Court derived a right to a

⁸⁶ *Ibid.*, para 316.

⁸⁷ *Ecab Amor Vázquez and Theresa Amor-Jürgenssen* (n 75).

⁸⁸ *The Environment and Human Rights* (n 27), para 62. *The Climate Emergency and Human Rights* (n 5) para 286.

⁸⁹ *The Climate Emergency and Human Rights* (n 5) para 285.

⁹⁰ *Ibid.*, paras 281-282.

⁹¹ *Ibidem.*

⁹² *Entitlement of legal entities to hold rights under the Inter-American Human Rights System*, Advisory Opinion, IACtHR Ser A no 22 (2016).

⁹³ *The Climate Emergency and Human Rights* (n 5) para 295.

healthy climate from the R2HE which “protects the component of the environment that is directly affected in the context of the climate emergency, that is, the global climate system.”⁹⁴ The recognition of a human right to a healthy climate, it argued, “responds to the need to endow the Inter-American legal order with a base, within its own entity, on which the specific State obligations in relation to the climate crisis can be clearly delimited and compliance with them required independently of other duties related to environmental protection.”⁹⁵ A healthy climate is understood as one which comes about from a “climate system free of anthropogenic interferences that are dangerous for human beings and Nature as a whole.”⁹⁶

It is important to note that the right to a healthy climate is a substantive element of the R2HE⁹⁷ for which reason it too has collective and individual dimensions: in its collective dimension the “right protects the collective interest of present and future generations of human beings and other species in preserving a climate system that is suitable for ensuring their well-being”, noting that “[t]he entitlement to this dimension of the right to a healthy climate belongs indivisibly and non-exclusively to the groups composed of those who share in this collective interest;⁹⁸ and in its individual dimension it “protects the possibility of each individual being able to live in a climate system free of dangerous anthropogenic interference”.⁹⁹ Importantly, the Court extensively links the right to a healthy climate with the principle of intergenerational equity and the protection of humanity as a whole,¹⁰⁰ effectively guaranteeing a long-term vision of climate protection that can “ensure equity in both the effective enjoyment of rights by present generations, and in their transmission to future generations”.¹⁰¹ Indeed, the purpose of climate-obligations is to “protect the global climate system for the benefit of humanity as a whole, and both present and future generations are part of this”.¹⁰² Once again, championing a truly holistic approach, the Court further links the protection of the climate system with the protection of the whole natural environment, considering that protection of one requires protection of the other.¹⁰³

The Court specified that the right to a healthy climate implies that States are obliged to mitigate their GHG emissions, which, *inter alia*, includes limiting emissions originating from human activities in their jurisdiction.¹⁰⁴ In this regard, States have three important obligations: to regulate, which implies defining a mitigation goal, defining and maintaining a human rights based strategy

⁹⁴ *Ibid.*, para 297.

⁹⁵ *Ibid.*, para 300.

⁹⁶ *Ibidem.*

⁹⁷ UNGA Res 74/161(2019), *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, paras 52-61.

⁹⁸ *The Climate Emergency and Human Rights* (n 5) para 302.

⁹⁹ *Ibid.*, para 303.

¹⁰⁰ Theresa Amor-Jürgenssen ‘Por un Medio Ambiente y una Democracia sana: La Protección de los derechos de las Generaciones futuras’ in *Memorias del Primer Foro Iberoamericano sobre Justicia Climática: Democracia Climática y Estado de Derecho* (Publication pending).

¹⁰¹ *The Climate Emergency and Human Rights* (n 5) para 312.

¹⁰² *Ibid.*, para 311.

¹⁰³ *Ibid.*, para 315.

¹⁰⁴ *Ibid.*, para 321.

to achieve that goal, and regulating the behaviour of private enterprise;¹⁰⁵ to supervise and audit to achieve mitigation goals;¹⁰⁶ and to undertake environmental impact assessments with a climate perspective.¹⁰⁷ Again, these are obligations of a systemic nature which are difficult to compatibilize with a system of piecemeal protection that focuses on the one (individual), and not the whole.

This final point connects directly to one of the most important advances made by the IACtHR and links to the defects of the European system: individual and collective legal standing rules which must be adapted to the reality of the climate emergency. When expanding on the obligations derived from the right to access to justice, San José emphasised the necessary application of the *pro actione* principle: at its core the principle requires that judges show greater flexibility in the interpretation of procedural rules to ensure that “the interpretation most favorable to access to justice must always prevail.”¹⁰⁸ Doubling down, the Court noted that “in light of the urgency, gravity, and complexity of the climate emergency”,¹⁰⁹ States must apply the *pro actione* principle and facilitate access to justice to both individual and collective claims. Indeed the Court noted that “States should move forward with the creation of procedural mechanisms within their domestic regulations that allow for broad forms of standing [...] which may be used to request measures to protect the environment and the climate system, without the need to demonstrate an individual interest or impact”,¹¹⁰ and noted that it is necessary to flexibilize standing requirements to account for “the exposure and vulnerability of the individuals, communities and ecosystems affected or threatened by climate change, based on their geographical location, adaptation capabilities, and the structural inequalities that may exacerbate vulnerability to climate impacts.”¹¹¹ Once again, the *context* informs the *content*.

The Court’s comments on collective standing are of particular note, not only because evidencing a direct and causal harm is a frequent problem in climate litigation at the international level, but because they operationalise the profoundly collective obligations developed in the opinion under the auspices of the R2HE and its derived right to a safe climate: carving out paths for collective and individual standing irrespective of whether direct, serious and individualized harm is suffered.¹¹² In particular, and unlike its European corollary, the Court emphasised “that guaranteeing access to justice in collective claims implies ensuring that civil society and State institutions empowered to seek justice have real possibilities for action”¹¹³ because of the inherently “collective nature of climate issues”,¹¹⁴ while also making clear that “even when legal

¹⁰⁵ *Ibid.*, paras 322-351.

¹⁰⁶ *Ibid.*, paras 352-357.

¹⁰⁷ *Ibid.*, paras 258-263.

¹⁰⁸ *Ibid.*, 543.

¹⁰⁹ *Ibid.*, para 546.

¹¹⁰ *Ibid.*, para 549.

¹¹¹ *Ibid.*, para 550.

¹¹² Natalia Kobylarz, ‘Anchoring The Right’ (n 48) para 17.

¹¹³ *The Climate Emergency and Human Rights* (n 4) para 548,

¹¹⁴ *Ibid.*, para 549.

systems establish forms of direct or personal legal standing, the evaluation of the interests to be examined must be flexible and take into account factors such as the exposure and vulnerability of the individuals, communities and ecosystems affected or threatened by climate change, based on their geographical location, adaptation capabilities, and the structural inequalities that may exacerbate vulnerability to climate impacts.”¹¹⁵ In other words, the Court urges States to facilitate access to justice *both* on a collective and individual basis: not expanding one, and limiting the other as is the case with Strasbourg.

In sum, the Court has managed to strike a delicate balance between a humanity-centered vision and an Earth-centered approach: one that sees humanity as part of, not master of, a broader whole and duly accounts for both present and future generations. At the same time, the Court did not discuss the climate system as an isolated phenomenon, but instead understood that it forms part of the whole environment, which “is composed of inextricably interrelated elements and systems”.¹¹⁶ At present, the IACtHR has not yet ruled on a contentious climate case, meaning that the *strength* or lack thereof of these standards is yet to be seen. Even so, the stage seems to be set for the holistic analysis of the full range of climate affectations, driven, in our estimation, by the *sui generis* regime of the R2HE which primes the system to adapt to the realities of the emergency. At its core, AO32 has one theme: humanity, all life on Earth, and Nature as such, are all one. We cannot exist without the other and must protect and preserve one another. As seen in the next section, this holistic, ecocentric, and systemic understanding of the R2HE stands in stark opposition to its European counterpart where, through the contentious rulings of the ECtHR, the cracks are starting to show.

b. European Fragmentation and Anthropocentrism

The cracks in the European approach extend in two directions that connect at the root: the absence of the R2HE. First, the approach is inherently anthropocentric and individualistic denying the reverberating effects of environmental harm *per se* on individuals and collectives;¹¹⁷ and, second, the absence of a coherent framework, through the insistence on ‘greening’, leads to fragmentation and an inconsistent application of the Convention in climate and environmental matters. Indeed, the ECtHR does not see environmental integrity “as a value *per se* for the community affected or society as a whole, but only as a criterion to measure the negative impact on a given individual’s life, property, private and family life”.¹¹⁸ Damage to the environment is “secondary”, and only emphasised insofar as said degradation produces an interference with

¹¹⁵ *Ibid.*, para 550.

¹¹⁶ *Ibid.*, para 298.

¹¹⁷ Corina Heri, ‘Mattering in the Anthropocene: the ECtHR’s domesticating framing of climate change’ (2025) *The International Journal of Human Rights* 1, 14.

¹¹⁸ Francesco Francioni (n 10) 50-51.

individual rights – an approach which ignores the “intrinsic linkage between the individual and the collective interests of society.”¹¹⁹

Currently, only certain environmental harms come within the purview of the Court: a reality which heavily depends on victims being able to prove that the harm suffered is connected to a Convention protected right *and* that that harm reaches a minimum threshold of severity.¹²⁰ What kind of environmental harm reaches the minimum threshold and is considered to “personally” affect an individual can differ drastically and often arbitrarily as demonstrated in the *Kyrtatos*¹²¹ case. The ruling was heavily criticized by Judge Zagrebelsky for its failure to recognise that, in line with a dynamic and evolutionary interpretation of the Convention, the general deterioration of the environment leads to a “corresponding deterioration in the quality of the applicant’s life”.¹²²

This said, it should also be noted that there are several ongoing efforts to incorporate a right to a healthy environment through the adoption of an additional protocol into the ECHR, though none of them have so far yielded any results.¹²³ This may be due to several reasons, including a hesitancy on the side of States to accept new binding obligations, and/or uncertainties surrounding the application, effectiveness, and purpose of introducing a new autonomous right into the Convention system.¹²⁴ Another reason may be that some consider that the system “already indirectly contributes to the protection of the environment through existing convention rights and their interpretation in the evolving case law of the European Court of Human Rights”.¹²⁵ While the Court’s greening approach has led to nearly 400 environmental judgements and decisions, this approach “provides only limited environmental protection”.¹²⁶ Heri, for instance, has stressed the temporal, geographical, and substantive (i.e. no recognition of a right to a healthy environment) limitations within the ECHR system, such as the necessity to link environmental protection with other affected rights of the individual.¹²⁷

The Court’s findings in the highly anticipated *KlimaSeniorinnen* case and its subsequent case law demonstrate the problem, and speak to the need of, at least, recognizing a generalized protection of the environment as protected under Article 8 ECHR through, for instance, an expansive interpretation of *home* (Art. 8) or *property* (Art. 1 protocol 1). The *KlimaSeniorinnen* case was advanced by an association committed to promoting and implementing effective climate protection on behalf of its members, and four individual applicants, who were all elderly women

¹¹⁹ *Ibid.*, 44.

¹²⁰ Natalia Kobylarz, ‘Anchoring The Right’ (n 49) 11.

¹²¹ *Kyrtatos v. Greece* (n 21), partly dissenting opinion of Judge Zagrebelsky. Also see Kobylarz, Natalia, “Anchoring The Right,” 18.

¹²² *Kyrtatos v. Greece* (n 21), partly dissenting opinion of Judge Zagrebelsky.

¹²³ Corina Heri, ‘Justice in the Liminal’ (n 23) 325.

¹²⁴ *Ibidem*.

¹²⁵ Committee of Ministers, ‘Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment: Reply to Recommendation’ (2010) Doc 12298, para 9.

¹²⁶ Corina Heri, ‘Justice in the Liminal’, 322, 326.

¹²⁷ *Ibid.*, 322.

and members of the association.¹²⁸ The applicants alleged that Switzerland had violated their Articles 2, 6, 8, and 13 rights under the ECHR as a result of climate change-induced exacerbated temperatures and heatwaves and the Swiss authorities' various omissions to mitigate climate change.

Klimaseniorinnen was in many ways groundbreaking – being the first case where the Court found a violation of the Convention in relation to the climate emergency. Most notably, Strasbourg extended its existing case law on associations: in light of a wide range of considerations – importantly the prescience of “intergenerational burden-sharing”¹²⁹ and the harmful, widespread, polycentric, transboundary, and long-term impacts of climate change¹³⁰ – the Court argued that the “special” features of climate change required a special approach to associations, but **only** in that specific context. Importantly, this novel track of protection means that the associations will “not be subject to a separate requirement of showing that those on whose behalf the case has been brought would themselves have met the victim-status requirements for individuals in the climate-change.”¹³¹

This development is particularly notable since it gave the impression that Strasbourg was more attuned to the collective nature of climate impacts and the direct linkages these maintain with individual victims. However, simultaneously, the victim status requirements of individual victims were made incredibly stringent; creating a more restrictive approach which severely limits individual access to climate justice. Indeed, the novel *KlimaSeniorinnen* criteria for individuals requires that each individual show: a) that they are subject to a high intensity of exposure to the adverse effects of climate change; and b) that there is a pressing need to ensure the applicants' individual protection.¹³² This conclusion is based on the Convention's prohibition of an *actio popularis* and the lack of protection for damage to the environment per se.¹³³ It further seems to have been based on concerns that opening the floodgates of climate action would essentially create an *actio popularis*, overload Strasbourg's case docket, and legitimacy concerns especially in light of its subsidiary role:¹³⁴ all of these concerns being made considering that the potential number of victims suffering from climate-induced harm is “indefinite”.¹³⁵

This was an explicit trade off: the limitation of individual victim status being another reason the Court used to justify expanding the standing requirements for associations to avoid a lacunae of human rights protection¹³⁶ – a concerning circular line of reasoning that reads more like a

¹²⁸ *KlimaSeniorinnen* (n 6) paras 10-21.

¹²⁹ *Ibid.*, para 489.

¹³⁰ *Ibid.*, paras 416-420, 479.

¹³¹ *Ibid.*, para 502.

¹³² *Ibid.*, para 487.

¹³³ *Ibid.*, paras 446, 472, 500, 511, 515.

¹³⁴ *Ibid.*, paras 457, 481-484; Also see *Duarte Agostinho and Others v. Portugal and 32 Others* [GC] App no 39371/20 (ECtHR, 9 April 2024) para 206. Corina Heri, “Mattering in the Anthropocene” (n 117).

¹³⁵ *Ibid.*, para. 479.

¹³⁶ *Ibid.*, para 484.

policy choice than legal reasoning. Circular logic is doubly emphasized by the argument that to avoid the *actio popularis* dilemma, association must represent “individuals whose rights are or will allegedly be affected”, which supposedly would prevent complaints “about a general deterioration of the living conditions of people without considering its impact on a particular person or group of persons”.¹³⁷ What makes this particularly perplexing, however, is that the Court not only specified that the individuals represented by the organisation do not need to demonstrate they they would have met the victim-status requirements,¹³⁸ but also rejected the victim status on behalf of the individual members of the organisation.¹³⁹

To this last point, the Court granted victim status to the claimant association but not the four individual victims¹⁴⁰ even when Strasbourg itself recognized that the applicants formed a part of “a group which is particularly susceptible to the effects of climate change” and cited relevant findings by the best available science to confirm their particularly vulnerable state: vulnerability in itself, was not enough for Strasbourg to recognize victim status in line with the new criteria.¹⁴¹ This paper echoes the concerns that this approach is “problematic and reductive”,¹⁴² rendering the individual victims and their personal suffering invisible to the system by essentially merging the victims into a melting pot and turning them into a “universalised, undifferentiated domestic subject”:¹⁴³ indeed, the European approach ignores the victims’ differentiated vulnerabilities and fails to provide adequate, intersectional, and differentiated protections.

Moreover, the Court also continued to insist on a particularly stringent minimum threshold of harm required for Articles 2 and 8¹⁴⁴ ECHR: only finding a violation of Article 8 in regard to the association and dismissing the Article 2 and individual complaints in their entirety. Regarding Article 8, Strasbourg emphasised that in order to fall within this right’s scope of application it is necessary to show a “direct and immediate link between the alleged environmental harm and the applicant’s private or family life or home”, whereby the Court stressed that “the general deterioration of the environment is not sufficient” absent “a negative effect on an individual’s private or family sphere”.¹⁴⁵ In addition, the environmental pollution must attain a minimum level of severity to fall within the ambit of Article 8, which is assessed on the basis of “intensity and duration of the nuisance and its physical or mental impact on the applicant’s health or quality of life”.¹⁴⁶ Article 2 ECHR requires an even higher threshold in the context of climate change, requiring a “serious, genuine and sufficiently ascertainable threat to life, containing an element of

¹³⁷ *Ibid.*, paras 498-500.

¹³⁸ *Ibid.*, para 502.

¹³⁹ *Ibid.*, para 535.

¹⁴⁰ *Ibid.*, paras 526, 535,

¹⁴¹ *Ibid.*, paras 530-533.

¹⁴² Corina Heri, ‘Mattering in the Anthropocene’ (n 116) 7; Also see Dina Lupin *et al.* ‘KlimaSeniorinnen and Gender’ (*VerfBlog*, 9 May 2024) <<https://verfassungsblog.de/klimasenioreninnen-and-gender/>>.

¹⁴³ Corina Heri, ‘Mattering in the Anthropocene’ (n 117) 7.

¹⁴⁴ *KlimaSeniorinnen* (n 6) paras 513, 520.

¹⁴⁵ *Ibid.*, para 515.

¹⁴⁶ *Ibid.*, para 516.

material and temporal proximity”.¹⁴⁷

The attempt at explaining the circular and convoluted reasoning by the Court above makes the following evident: the Court is struggling to adapt its ‘greening’ approach to ensure comprehensive human rights protection in the climate context. The Court did attempt to expand parts of its case law, especially in light of the existential threat of the climate emergency, but was at the same time restricted by its pre-established *corpus iuris* which requires the individual, direct, and personal, affection of an individual’s Convention rights – which do not include the R2HE and are not buttressed by a general protection of the environment. This coupled with concerns for docket control and legitimacy,¹⁴⁸ made it particularly difficult for the Court to address climate change, while keeping the scope of the Convention limited in its application. Not wanting to recognize that everyone’s rights can be violated because of climate change and refusing to apply the Convention to the “general degradation of the environment” without “a negative affect on an individual’s private or family sphere”,¹⁴⁹ created this outcome, reinforcing its anthropogenic and individualist approach.

The Court’s use of ‘special features’ and insistence on differentiating climate change from other environmental problems is particularly problematic: creating a two-track framework for environmental protection, where essential procedural matters, including victim status, standing, and *ratione materiae* requirements, drastically differ depending on whether the case is discussing climate change or another environmental problem.

The foregoing is particularly visible in the case of *Cannavacciuolo and Others v. Italy*. On a positive note, this was the first case in which the Court found an Article 2 violation addressing the decade-long and large-scale pollution caused by the illegal dumping, burying, and burning of toxic and hazardous waste in part of the Campania region in Southern Italy – the facts being exceedingly similar to those of *La Oroya*. Similarly to *KlimaSeniorinnen*, the case was brought by an applicant association as well as several individual applicants, but much to the “bewilderment”¹⁵⁰ of Judge Krenč, the Court did not recognize the standing of the applicant association noting that the “special considerations relating to climate change”¹⁵¹ were simply not present in the case, since it was “plainly not concerned with the issue of climate change”¹⁵² and, thus, was not subject to the “necessity of promoting intergenerational burden sharing”.¹⁵³ Thus, the Court only analysed the Article 2 complaints of the individual applicants but did not mention the *Klimaseniorinnen* criteria

¹⁴⁷ *Ibid.*, para 513.

¹⁴⁸ *Supra*. Indeed, the legitimacy concerns stemming from the lacking R2HE within the ECHR have led to judicial self-limitation in previous environmental cases (see Corina Heri, ‘Justice in the Liminal’ (n 23) 324). Also see Corina Heri, ‘Too Big to Remedy? What Climate Cases Tell Us About the Remedial Role of Human Rights’ (2024) 5 *European Convention On Human Rights Law Review*, 326.

¹⁴⁹ *KlimaSeniorinnen* (n 6) para 515.

¹⁵⁰ *Cannavacciuolo* (n 7), concurring opinion of Judge Krenč, para 6.

¹⁵¹ *Cannavacciuolo* (n 7), para 220.

¹⁵² *Ibid.*, paras 220-221.

¹⁵³ *Ibidem*.

and, in contrast to that case, did make use of a precautionary approach.¹⁵⁴

Judges Krenc and Serghides issued strong separate opinions criticizing the Court’s “pragmatism”¹⁵⁵ and the artificial, or “very technical and not substantive”,¹⁵⁶ differentiation between cases concerning climate change and other environmental cases, especially where those relate to widespread, long-term, and diffuse adverse effects like in *Cannavacciuolo*. According to Krenc, “[i]n both cases, it is the right to a healthy environment that is at stake”, whereby all forms of environmental harm, local, transnational, or global, deserve equal attention when evaluating their impact on Convention rights.¹⁵⁷ Echoing Plaza Martín’s concerns, the distinction between ‘environmental’ and ‘climate’ cases is, in this paper’s estimation, arguable and artificial:¹⁵⁸ every component of the environment is intrinsically linked in a complex web, creating a carefully balanced and harmonious equilibrium which forms the basis of all life. As outlined by Boyd, “[a]ll human rights ultimately depend on a healthy biosphere”, which requires healthy, functioning ecosystems, further requiring biodiversity.¹⁵⁹ These ecosystems are indispensable for a healthy climate system, which, in turn, is indispensable for healthy ecosystems.¹⁶⁰ One cannot be sustained without the other. Academia has also pointed out that even in light of the Court’s pre-climate environmental jurisprudence, the adopted approach is “relatively strict and arguably inconsistent” and that wide-spread environmental pollution, just like climate change, is one of the elements of the triple planetary crisis: making the distinction employed by the Court lacking a proper explanation.¹⁶¹

In applying the *Klimaseniorinnen* criteria, the Court has already found five climate cases completely inadmissible¹⁶² and also dismissed the individual applications in a sixth case.¹⁶³ Strasbourg has repeatedly thrown out arguments from young people who alleged that they are particularly vulnerable to climate change on the basis of their youth, due to the prolonged period of time in which they will be exposed to climate harm, and/or the particular severity of climate harm to which they will be exposed to: this vulnerability, in the Court’s estimation, not constituting

¹⁵⁴ *Ibid.*, para 391.

¹⁵⁵ *Cannavacciuolo* (n 6) concurring opinion of Judge Krenc, para 15.

¹⁵⁶ *Cannavacciuolo* (n 6) partly concurring, partly dissenting opinion of Judge Serghides, para 2.

¹⁵⁷ *Cannavacciuolo* (n 6) concurring opinion of Judge Krenc, para 6.

¹⁵⁸ Carmen Plaza Martín, ‘De los Niños’ (n 30) 58.

¹⁵⁹ David R. Boyd UN Doc A/75/161 *Human rights depend on a healthy biosphere: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (15 July 2020), para 3.

¹⁶⁰ *Ibid.*, paras 4, 15.

¹⁶¹ Eniko Krajnyák, ‘Up in Smoke? Victim Status in Environmental Litigation before the ECtHR’ (*EJIL:Talk!*, 2025) <<https://www.ejiltalk.org/up-in-smoke-victim-status-in-environmental-litigation-before-the-ecthr/>>.

¹⁶² *Careme v France* App no 7189/21 (ECtHR 9 April 2024); *De Conto v Italy and 32 other States* App no. 14620/21 (ECtHR, 07 May 2025), *Uricchio v Italy and 31 Others* App no 14615/21 (ECtHR 7 May 2026); *Engels and Others v Germany* App no 46906/22 (ECtHR, 1 July 2025); and *Fliengenschee and Others v Austria* App no 40054/23 (ECtHR 18 November 2025).

¹⁶³ *Greenpeace Nordic and Others v Norway* App no 34068/21 (ECtHR 28 October 2025).

a pressing need to ensure individual protection.¹⁶⁴ Similarly, the Court dismissed the claim of a farmer arguing that they were particularly vulnerable¹⁶⁵ and the claims of three members of the Sámi people, which had argued that their way of life, culture, and traditional means of subsistence are especially dependent on a healthy climate.¹⁶⁶

This final point is, frankly, concerning, since the Court appreciated the particular threat climate change posed to the Sámi way of life and culture, and *still* did not consider their situation to meet the “high intensity” threshold required under Article 8 ECHR.¹⁶⁷ While in this case, the association was granted standing, the complaints from all the individual applicants were dismissed.¹⁶⁸ This approach, from an interamerican perspective, is anathema to holistic protection: invisibilizing communal, spiritual and cultural linkages which connect the individual to the whole, the person to the community, the people to the planet. This paper fails to see how the individuals of one of the last indigenous peoples of Europe do not find themselves in a situation of *pressing social need* which would require the international protection of their way of life and cosmivision.

Thus, while it has become abundantly clear that belonging to a group particularly vulnerable to climate change will not grant individual standing, what exactly is required to meet the threshold remains to be seen. From these cases, however, the Court’s repeated discussions of lack of medical documentation proving that the applicant has a physical or mental, condition inextricably linked to climate change¹⁶⁹ suggests that *only* people who have already suffered will have their claims heard before the ECtHR. In all cases, the Court also swiftly dismissed any Article 2 claims, with the only indication of what could potentially meet the exceedingly high threshold being someone who has evidence of having been directly and individually harmed by a severe weather event. However, living in the vicinity of such events, and thus being exposed to risks to their lives, does not suffice.¹⁷⁰ It has been argued that in light of the backlash demonstrated by Switzerland in their response to *Klimaseniorinnen*, the Court could have been tempted to further narrow the threshold for climate cases.¹⁷¹

These cases can be compared to non-climate environmental cases. In the recent case of *L.F. and Others* the applicants complained that their health had deteriorated as a result of living near a plant that was polluting their surroundings. Applying its environmental case standards, the Court considered that it was sufficient to show evidence that the general population in the vicinity was

¹⁶⁴ *Fliegenschee* (n 162), paras 4, 31. Also see *Uricchio* (n 161), paras 6, 15-17; *De Conto* (n 161), paras 6, 15-17; *Greenpeace Nordic* (n 163), para 305.

¹⁶⁵ *Fliegenschee* (n 162), paras 4, 31.

¹⁶⁶ *Greenpeace Nordic* (n 163), para 303.

¹⁶⁷ *Ibid.*, para 303.

¹⁶⁸ *Ibid.*, paras 306, 312.

¹⁶⁹ E.g. *Greenpeace Nordic* (n 163), para. 305; *Uricchio* (n 162), para. 14; *Engels* (n 162), para. 10; *De Conto* (n 162), para. 14; *Fliegenschee* (n 162), para. 31.

¹⁷⁰ Compare with *Uricchio* (n 162), para. 16; *De Conto* (n 162), para. 16.

¹⁷¹ Corina Heria and Hazhar Jamali, ‘Fossil Fuel Litigation Goes to Strasbourg: Making Sense of Greenpeace Nordic’ (2025) *Strasbourg Observers* <<https://strasbourgobservers.com/2025/11/07/fossil-fuel-litigation-goes-to-strasbourg-making-sense-of-greenpeace-nordic/>>.

affected, thus exposing the applicants to risk and making them more vulnerable to diseases induced by the plants' activities.¹⁷² Similar arguments on vulnerability, general exposure, and harm, had been raised in the aforementioned climate cases but without any success. Thus, while in environmental cases severe environmental pollution of one's surroundings is sufficient to be an affront to someone's well-being and quality of life, the same logic does not apply to climate cases.

As can be understood, the European approach stands in stark contrast to its Inter-American counterpart. Through the two commented judgments Strasbourg has evidently concretized two tracks of environmental protection and, ironically, denaturalized both: one focused exclusively on climate change, where a *more* collective approach is adopted which makes the real individual consequences of climate change invisible; and one that continues the *green* and hyper individualistic approach the Court has taken thus far, and which ignores collective affectations. Additionally, the European Court fails to understand the intrinsic linkage between the climate system and other parts of the environment, including humans, as one carefully balanced, interconnected whole. The lack of recognition of the R2HE accentuates this fragmentation, forcing Strasbourg to undertake interpretative gymnastics to maintain a degree of coherence in their pronouncements. In this regard, the incorporation of the R2HE into the ECHR would serve to expand the European Court competence *ratione materiae* such that “[t]he Court would be called to rule under the sui generis right that inherently combines subjective and objective functions of the environment”,¹⁷³ thereby eliminating the necessity to push legitimate environmental claims into the *anthropogenically limited* scope of the existing rights and standing requirements of the Convention. Strasbourg's case law makes it clear that it will not integrate the right jurisprudentially; until the corresponding protocol is approved however, it would be worth considering an expansive interpretation of *home* under Article 8 ECHR: the planet being our common home and a *conditio sine qua non* for the continuity of life itself.

In a similar vein Orellana argues that the “normative *acquis*, as derived from the environmental dimensions of existing protected rights and fundamental human rights principles, would be brought together under the umbrella of the right to a healthy environment. The normative content of human rights in respect of the environment would thus no longer be dispersed or fragmented across a range of rights, but would come together under a single normative frame.”¹⁷⁴ Heri, for her part, argues that the right could counteract existing limitations in the system; achieve consolidation and clarification of the applicable legal standards; de-fragment the ‘greened’ human rights, close gaps within the Court's jurisprudence and overcome conceptual limitations of the existing rights; and resolve any legitimacy concerns and strengthen procedural rights among other benefits.¹⁷⁵ Heri also highlighted the potential implications of recognising the R2HE for

¹⁷² *L.F. and Others v Italy* App no 52854/18 (ECtHR, 6 May 2025) paras 118-124.

¹⁷³ Natalia Kobylarz, ‘Anchoring The Right’ (n 49) 19.

¹⁷⁴ Marcos Orellana, ‘Quality control of the right to a healthy environment,’ In *The Human Right to a Healthy Environment*, ed. J. Knox and R. Pejan (Cambridge Univ. Press, 2018) 169, 176.

¹⁷⁵ Corina Heri, ‘Justice in the Liminal’ (n 23) 334-335.

extraterritoriality and forward-looking obligations in relation to future generations.¹⁷⁶

In this sense, the R2HE serves to integrate existing norms: serving a hermeneutic floor¹⁷⁷ that enables tailored implementation, promotion, and allows for a more “holistic approach to environmental protection, as opposed to the piecemeal one [the ECtHR] has used to date.”¹⁷⁸ A holistic approach which is essential to face the challenges posed by the triple planetary crisis, including but not limited to the climate emergency.

IV. Conclusion: A Tale of Two Courts

Strasbourg has a lot to learn from San José. The IACtHR’s recent contentious and advisory pronouncements show the strength of the R2HE by demonstrating its transformative potential: it reaffirmed the right as an autonomous source of protection which does not require the concurrent violation of another connected right, despite black letter law limitations to its justiciability; the Court further deepened the protection of the substantive and procedural elements of environment; and adopted an ecocentric approach to human rights protection, which properly dimensions the systemic and interconnected nature of the natural environment. In contrast, though the ECtHR did make some important strides in opening itself to the challenges the world faces, the Court’s continued formalism and refusal to recognize a R2HE or, at least, a generalized protection of the environment showed its inherent limitations: the Court was forced to undertake interpretative gymnastics to adapt the problem to the system, failing to recognize that it was the system that needed to be adapted to the problem. In so doing the Court created two tracks of protection predicated on an artificial distinction between environmental and climate matters.

The difference, at its core, is what harm is deemed to be relevant: the R2HE is capable of encapsulating the full spectrum of possible affectations emerging from climate/environmental degradations by duly understanding the individual and collective effects stemming from harm to the environment *per se*. When the balance of the natural world is affected, as a precondition for all human rights, this has reverberating effects on both individuals and collectives (collective and individual dimensions of both the R2HE and right to climate). But without an R2HE there *is* no protection of the environment *per se*, meaning that the harm at issue is always human centered and only incidentally focused on the environment. This leads to a profoundly disjointed scenario where we have to compatibilize possible individual affectations and collective affectations without the unifying conditioner or environmental harm: something that, ironically, invisibilizes the specificities of both individuals and collectives.

It is time for the R2HE to be integrated into the European Convention. The world has moved

¹⁷⁶ Ibidem.

¹⁷⁷ John Knox, ‘Constructing the Right to a Healthy Environment’ (2020) 16 *Annual Review of Law and Social Science* 79, 87.

¹⁷⁸ Corina Heri, Linnea Nordlander, and Annalisa Savaresi (n 50) 5.

on from the greening approach to a more holistic, integrated, and progressive framework of protection capable of addressing the existential crisis climate change and other widespread environmental catastrophes pose. Strasbourg must learn from San José, taking bold steps to tackle the challenge ahead such that the future of rights-based climate litigation does not become a tale of two courts: one that protects and one that regrets.