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Universality Through Subsidiarity? A Comparative Analysis of the Right to a Healthy Environment in the Jurisprudence of the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights

¿Universalidad a través de subsidiariedad? Un análisis comparativo del derecho a un medioambiente sano en la jurisprudencia de la Corte Interamericana de Derechos Humanos y la Comisión Africana de Derechos Humanos y de los Pueblos

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Abstract

In the context of a global ecological crisis, there is an increasing tendency by actors to recast environmental concerns as legal issues within the framework of international human rights. This article explores whether and how differences in interpretation and enforcement of the right to a healthy or satisfactory environment, as reflected in the jurisprudence of the IACtHR and the ACmHPR, may illustrate a form of flexible universality when operationalized through the principle of subsidiarity. This article argues that subsidiarity functions not as a solution to the universalism-pluralism tension, but as an operational framework for articulating the universality of human rights, self-determination, and pluralism in the international system. It ultimately suggests that the analysis of the right to a healthy environment in the Inter-American and African systems indicates that universality does not entail uniformity; rather, subsidiarity helps structure the recognition of contextual particularities across diverse systems, supporting their legitimacy while remaining compatible with the universality of human rights.
Key words: right to a healthy environment, Inter-American Court of Human Rights, African Commission on Human and Peoples' Rights, subsidiarity.

Resumen

En el contexto de una crisis ecológica global, existe una creciente tendencia de replantear preocupaciones ambientales como cuestiones legales dentro del marco de los derechos humanos. Este trabajo explora si —y cómo— las diferencias en la interpretación y aplicación del derecho a un medioambiente sano reflejadas en la jurisprudencia de la Corte Interamericana de Derechos Humanos y la Comisión Africana de Derechos Humanos y de los Pueblos pueden iluminar una forma de universalidad flexible cuando se operativiza mediante el principio de subsidiariedad. Se sostiene que la subsidiariedad no funciona como una solución a la tensión entre universalismo y pluralismo, sino como un marco operativo para articular la universalidad de los derechos humanos, la autodeterminación y el pluralismo en el sistema internacional. En última instancia, se sugiere que el análisis del derecho a un medioambiente sano en el Sistema Interamericano y Africano indica que la universalidad no implica uniformidad; antes bien, la subsidiariedad ayuda a estructurar el reconocimiento de particularidades contextuales, reforzando su legitimidad y manteniéndose compatible con la universalidad de los derechos humanos.
Palabras clave: derecho a un medioambiente sano, Corte Interamericana de Derechos Humanos, Comisión Africana de Derechos Humanos y de los Pueblos, subsidiariedad.

Summary

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1. Introduction

Human rights have been steadily considered the most fundamental norms, often regarded as trumps that receive priority over other legal norms and political interests (Dworkin, 1977, p. 37). In this sense, there is a growing inclination among various actors to frame their concerns in the language of rights, often as a strategy to elevate their legitimacy and prioritize them within public discourse (Glendon, 2008). In this sense, in the context of a global ecological crisis, there is an increasing tendency by actors to recast environmental concerns as legal issues within the framework of international human rights (Savaresi, 2023, p. 2). This has led to the acceptance of the right to a healthy environment across different regional human rights systems as an autonomous right through diverse mechanisms (p. 6).

The establishment of the right to a healthy environment has been notable in the Inter-American Human Rights System, where the Inter-American Court of Human Rights (IACtHR), the leading institution in the region to interpret and develop this right, recognized the right as directly justiciable and enforceable, through its Advisory Opinion OC-23/17 and *Lhaka Honhat* judgment (Mardikian, 2023, pp. 945-946). Furthermore, the IACtHR has recently continued to develop its jurisprudence on the matter through its Advisory Opinion OC-32/25 on Climate Change and Human Rights. This has also been the case in the African Human Rights System, where the African Charter on Human and Peoples' Rights (the Banjul Charter) established in its Article 24 the right to a satisfactory environment favorable to the development of all peoples.[2] In this context, the African Commission on Human and Peoples' Rights (ACmHPR) has been the central institution to generate jurisprudence that interprets and enforces this

2 African Charter on Human and Peoples' Rights, 1981.

right, mainly through its developments in the *SERAC* case and *Endorois* case, among other instruments (Chenwi, 2018, pp. 73-77; Lugard, 2022, p. 405). In this regard, both the African and Inter-American systems have been pioneers in promoting the right to a healthy environment as an independent and enforceable right under international human rights law.

This brings forth one of the fundamental discussions in international human rights law: the aspiration toward universality in the realization of human rights and how this is harmonized with cultural diversity in the global system (Brems, 2004, pp. 213-214). The relationship between cultural relativism and the universality of human rights persists as one of the most contested issues in human rights literature (Donnelly, 2007, p. 282). In this sense, the challenge of mediating contextual particularities with universal human rights continues to shape discussions about the boundaries, applicability, and evolving dynamics within human rights law (p. 282). However, although an inherent tension exists between the universality of human rights and cultural pluralism, part of the literature on the subject has promoted subsidiarity as a principle that can resolve this polarity, emphasizing how universal human rights can be interpreted, specified, and enforced in diverse ways across different cultures (Carozza, 2003, pp. 70-73).

This article asks how differences in the interpretation and enforcement of the right to a healthy or satisfactory environment, as reflected in the jurisprudence of the IACtHR and the ACmHPR, may illustrate and articulate flexible universality through the principle of subsidiarity. In this sense, this article will explore the evolution of the right to a healthy environment in the IACtHR's jurisprudence and the right to a satisfactory environment in the ACmHPR's jurisprudence. By analyzing key decisions and case law, this article will study the institutional, procedural, substantial, and interpretative differences between these two approaches. Ultimately, the analysis aims to show, without claiming to resolve the underlying theoretical debate, that these differing developments can be read as evidence of universality without uniformity, with subsidiarity operating as a framework for allocating responsibilities in a multi-layered system, rather than a definitive solution.

Regarding the structure of this article, Part II will provide an overview of the inherent tension between universality and pluralism in international human rights law, and recent perspectives that advance pluralistic or flexible conceptions of universality. Part III will focus on the principle of subsidiarity, and how it contributes to the universality-pluralism debate, particularly regarding the role of regional human rights bodies. Part IV examines the development of the right to a healthy environment within the Inter-American Human Rights System by analyzing the IACtHR's jurisprudence. Part V explores the evolution of the right to a satisfactory environment in the African Human Rights System by

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studying the ACmHPR's jurisprudence. Part VI will discuss how convergences and differences in these developments can illustrate the role of subsidiarity in achieving flexible universality regarding the right to a healthy or satisfactory environment. Finally, Part VII offers concluding remarks.

2. Flexible Universality in International Human Rights Law: Reconciling Common Commitments and Contextual Specification

The concept of universality is inherent in human rights, as these are, by definition, the rights of all human beings in the world (Brems, 2004, p. 213). In this sense, human rights have increasingly been considered the most fundamental norms, often regarded as trumps, which should receive priority over other norms and interests (Dworkin, 1977, p. 37). However, defending the universality of human rights could lead to a fundamental tension with the reality of enormous cultural diversity in the world and international system (Brems, 2004, p. 213). In this sense, cultural relativism and its challenges to universality persists as one of the most discussed issues in human rights theory (Donnelly, 2007, p. 282). Ultimately, this dispute has been recognized in the literature as an inherent tension in international human rights law between affirming a universal substantive notion of human dignity and respecting cultural diversity and self-determination in the international system (Carozza, 2003, p. 43).

In this context, some critics of the notion of absolute universality have argued that using uniform criteria for judging human behavior across diverse cultural contexts is not possible, which ultimately entails recognizing that universal norms are not desirable (Brems, 2004, p. 214). Nevertheless, in response to these claims, part of the literature has held that the universality of human rights is not based on the notion of universal values, but rather, it constitutes a deliberate choice made by actors in the international system as a consequence of a worldwide consensus on the universal validity of human rights (p. 216). In this sense, the foundation for the universality of human rights does not need to be universal itself. Moreover, different actors in the international system, such as states, international organizations, non-governmental organizations, civil society, and individuals, often support the universality of human rights for a wide range of ethical, political, religious, and practical reasons that can even contradict one another.

However, a fundamentalist notion of the universality of international human rights can ignore particularist critiques that hold that human rights are often framed around Western and occidental understandings and values, dismissing non-Western contributions to human rights (Brems, 2004, p. 223). In this re-

gard, some critics have argued that the current definition of universal human rights is part of the ideological patrimony of Western liberal civilization, inherently interfering in non-Western nations' internal affairs (Cerna, 1994, p. 740).

Building on this debate, several scholars advance pluralistic or flexible conceptions of universality, that preserve universally shared human rights commitments while allowing cultural and contextual specification. García Escobar (2023, pp. 184-187) reconstructs how a "pluralistic universality", already conceptualized in the drafting of the Universal Declaration of Human Rights, can reconcile global rights with cultural diversity by combining a common core with space for reasonable disagreement and intercultural dialogue. In a similar vein, Kaplan (2017, pp. 3-6) locates flexible universalism near the middle of the universalism-relativism spectrum and argues that rights are most legitimate and sustainable when culturally embedded in "thick" societies, where community, institutions and duties shape realization in practice. In this context, various authors in the literature advance pluralist notions of universality by emphasizing cross-cultural consensus building, promoting "receptor" style engagement with local normative orders, interrogating hegemonic standard setting, and underscoring institutional modesty and democratic legitimacy (An-Na'im, 1992; Mutua, 2007; Sajó, 2004; Zwart, 2012).

This discussion has led authors, such as Eva Brems, to promote a reframing of the concept towards "inclusive universality", where the universality of human rights is interpreted as the inclusion of all human beings in the human rights protection system (Brems, 2004, p. 223). Therefore, this understanding of universality holds that if human rights are valid for all societies, no matter their cultural differences, they must accept cultural expressions of all contexts in an equal manner. For inclusive universality to have a material impact, contextual flexibility of human rights is fundamental. It is already incorporated in most formulations of human rights standards, evidenced by how the same rights are often expressed in different formulations in different international, multilateral, and regional instruments (p. 225). Nevertheless, even with the acceptance of inclusive universality, there is yet to be a theoretical framework that resolves the tension between cultural diversity and the universality of human rights comprehensively and materially.

The relationship between universal human rights, cultural diversity, and self-determination has long been fraught with tension in international law and practice. These contradictions persist today, reflecting deep-seated conceptual and practical challenges. During the 1980s, authoritarian regimes frequently invoked self-determination and cultural relativism to justify human rights violations, undermining the legitimacy of international human rights norms (Donnelly, 2007, p. 282). In response, some scholars and advocates adopted an

uncompromising universalist stance, dismissing cultural diversity and self-determination as threats to human rights enforcement (p. 282). Critics, however, argued that this rigid universalism reflected Western hegemony, infringing on state sovereignty and the right to self-determination (Cerna, 1994, p. 740). Instead, they proposed a dynamic approach to universal rights that accommodates contextual particularities and historical backgrounds in an evolving process of international norm-setting, while maintaining core principles (p. 743).

Furthermore, these tensions manifest clearly in practice. Authoritarian regimes continue to weaponize self-determination rhetoric to justify abuses (Donnelly, 2007, p. 282), while overly rigid universalist approaches risk erasing cultural diversity. For example, regarding indigenous rights, the clash between a decolonial paradigm (emphasizing self-determination) and a traditional human rights paradigm often resulted in the suppression of local traditions and the imposition of human rights frameworks (Alvez & Becker Lorca, 2020, pp. 101-105). In addition, the right to prior consultation for indigenous peoples exemplifies how attempting to reconcile contradicting paradigms without a clear approach resulted in hybrid texts that erode the right's content, limits, and enforcement (p. 91). Ultimately, the tension between universal human rights and self-determination remains unresolved, reflecting a complex and historically contested relationship in international human rights law.

3. The Pursuit of Flexible Universality Through the Principle of Subsidiarity

Amid the enduring tension between universality and pluralism in theory and practice, the principle of subsidiarity could be pivotal. If understood as the notion that each social and political group should help more local or lower-level groups accomplish their respective ends without arrogating those tasks to itself, this principle can be a fundamental conceptual tool to mediate the polarity of pluralism and universality in the international system (Carozza, 2003, p. 43). In this sense, the literature, politicians, and judges often use conceptions of subsidiarity as a framework for assessing how to allocate and exercise authority within a multilevel institutional order, such as the international human rights structure (Føllesdal, 2016, p. 147). In this regard, the principle of subsidiarity does not demand any forms of institutional or normative frameworks for the realization of human rights, allowing for the possibility of pluralism at a lower or local level, acknowledging that every form of association will instantiate its ends in unique ways depending on their particular historical and local circumstances (Carozza, 2003, p. 45).

Subsidiarity recognizes that every community is singular in its identity and dynamics and that higher-level structures should not supplant such expressions of diversity. Instead, these expressions should be tolerated and even assisted in flourishing freely (Carozza, 2003, p. 45). Regarding the field of international human rights, subsidiarity entails that lower-level structures be left to regulate, protect, and respect human rights whenever they can achieve these goals on their own, resulting in a degree of discretion over the interpretation and implementation of these universal rights according to their own cultural and societal values (p. 58). In this sense, in an international human rights system that inherently promotes a degree of decentralization in the determination of the content of human rights norms and their implementation in specific circumstances, subsidiarity can have explanatory value in justifying the discretion given to lower-level structures in the interpretation and implementation of human rights (p. 63). In this way, subsidiarity functions not only as a theoretical framework that promotes the autonomy of lower-level communities but also provides an explanatory hypothesis that elucidates the structure of the international human rights system (Føllesdal, 2016, p. 150).

Ultimately, in the context of the existing tension between the universality of human rights and cultural diversity, subsidiarity affirms a universal notion of human rights while still granting a margin of discretion for pluralism in the determination, interpretation, and application of human rights norms (Carozza, 2003, p. 64). In this sense, subsidiarity promotes universality by establishing that human rights are universal as they express the fundamental requirements of justice and human dignity. However, it recognizes that essential differences in language, history, institutions, and culture between communities in the international system have a notable impact in materializing these universal aspirations. Given this framework, a difference in the materialization and specification of a given human right would not contradict the universal character of said right (p. 65).

Beyond a deferential reading, recent literature frames subsidiarity as a cooperative division of labor within complex multilayered human rights regimes that strengthens the system's legitimacy by calibrating local and national autonomy with international supervision, sequencing protection through incrementalism, and articulating a rationalized margin of appreciation rather than blanket deference (Iglesias Vila, 2017, pp. 203-207). This perspective views subsidiarity not as a license to retreat from universal commitments, but rather a framework for allocating responsibilities in international human rights: primary action lies with the institutions closest to those affected, while robust international review secures common cores and corrects failures (p. 206). Complementing this, a structural account of subsidiarity shows its capacity to mediate between universal human rights and self-determination: it respects sovereignty for con-

textual specification of rights, yet conditions that margin of appreciation on the stringency of international regulation and duties flowing from human dignity (González Dominguez, 2017, pp. 719-721).

Nevertheless, the principle of subsidiarity is traditionally used in the literature as a normative framework that justifies a more significant margin of appreciation for local communities in the realization of human rights, arguing for states to have subsidiary roles and promoting the autonomy of smaller groups if they can achieve these ends on their own (Carozza, 2003, p. 44). In a multilateral context, subsidiarity is used in the literature to encourage state discretion and sovereignty in interpreting, specifying, and implementing human rights norms against the excessive intervention of international human rights bodies (Carozza, 2003, pp. 57-58; Føllesdal, 2016, p. 147). In this sense, although the existing international human rights system consists of a multi-level structure that incorporates global, regional, national, and local jurisdictions and bodies, subsidiarity is generally only used in the ways described previously.

In this regard, during the past decades, the international human rights system has developed at both global and regional levels, where, in addition to the pertinent UN instruments, bodies, and procedures, Europe, Latin America, and Africa have devised robust regional human rights systems (Schreuer, 1995, p. 484). The system has specially developed at a regional level regarding substantive rights, reflected in the creation of regional human rights instruments that establish human rights and promote regional interpretations, and institutional frameworks by the constitution of regional human rights bodies that monitor compliance, interpret human rights instruments, and resolve contentious matters in their respective regions (pp. 484-486). The constitution of regional human rights systems, with their own substantive rights and institutional structures, reflect specific needs and preferences that arise from cultural diversity in the international system (p. 487). In this sense, due to their shared history and common values, regional human rights arrangements have been more successful in securing compliance with international human rights norms, providing for their participants an accelerated acceptance of human rights (Cerna, 1994, pp. 749-752). This has caused universal human rights procedures to lose relevance in regions where regional human rights systems have been created (Schreuer, 1995, p. 487).

The emergence of regional human rights systems, which interact with national jurisdictions and universal mechanisms, raises the question of how subsidiarity can strengthen and delineate responsibilities within a multi-level international human rights framework. In this context, subsidiarity serves as a critical principle in delineating and allocating responsibilities between regional and universal human rights systems. With the increasing prevalence of region-

al systems, subsidiarity advocates for granting these systems a degree of discretion and a margin of appreciation in the interpretation, specification, and implementation of human rights, as they can be conceptualized as functionally differentiated instances within the subsidiarity framework. By applying this principle, regional systems (being more closely aligned with their respective regions' traditions, culture, history, institutions, and values) can play a pivotal role in contextualizing and operationalizing universal human rights. While subsidiarity operates primarily by allocating responsibilities between national and international instances, regional systems can act as interpretive arbiters close to the context, with no hierarchical relationship to the universal system. This approach enables the effective realization of universal human rights in ways that are both contextually relevant and reflective of regional particularities.

In line with this literature, this paper adopts a flexible universality notion compatible with subsidiarity. In this sense, this paper does not claim that subsidiarity resolves the theoretical and practical tension between universality and pluralism; but rather, that subsidiarity operationalizes the translation of universal commitments by recognizing primary responsibilities and justificatory burdens at the most context-proximate level and coordinating international and regional review to preserve enforceable cores, while permitting context specific specification. In this sense, flexible universality provides a normative horizon, while subsidiarity supplies the allocation of responsibilities that makes that horizon usable in practice.

While this article recognizes concerns about the proliferation of rights and judicial activism (by relying on soft-law instruments, transformative constitutionalism, or regional recognition of a right to a healthy environment not expressly entrenched in universal treaties), the purpose of this paper is not to resolve the ultimate status of the right to a healthy environment. Rather, this article examines how regional affirmation of environmental protection generates functionally enforceable convergences (such as due diligence, access to information, participation, impact assessment, and precaution) that are compatible with flexible universality and operationalized through subsidiarity. In this sense, this paper does not seek to settle the universal status of the right to a healthy environment; it shows how regional jurisprudence can translate shared commitments into context-responsive obligations without relinquishing enforceable common cores.

The discussion that follows applies this flexible universality (operationalized by subsidiarity) to a structured comparison of the Inter-American and African systems along the following dimensions: institutional design and review pathways (who acts first and how international oversight is triggered); codification and sources (treaty texts, constitutional provisions, soft-law instruments, and

their interplay); jurisprudential development (doctrinal trajectories, standards of review, and remedial practice); substantive interpretation; state obligations (with emphasis on procedural due-diligence duties such as access to information, participation, impact assessment, and precaution); and rights-bearers and subjects (individuals, communities and collective interests). By tracking convergence and divergence across these dimensions in Sections IV and V, the article assesses how subsidiarity translates universal commitments into contextual specifications without relinquishing enforceable common cores.

4. The Right to a Healthy Environment in the Inter-American Human Rights System: The Inter-American Court of Human Rights

The Inter-American Human Rights System is the institutional and normative structure dedicated to the protection of human rights in the American region (Orrego, 2015, p. 108). In this sense, the system is composed of the Inter-American Commission on Human Rights (IACmHR), a quasi-judicial organ responsible for monitoring state compliance with the international human rights instruments in the region, and the Inter-American Court of Human Rights (IACtHR), a judicial body that hears cases regarding human rights violations in the region, issuing authoritative decisions that are binding for signatory states (p. 109). In addition to the judicial review of human rights disputes, the IACtHR has developed its advisory jurisdiction, in which the Court can give its opinion and develop jurisprudence by the request of any of the members of the Organization of American States concerning the interpretation of any international human rights instrument in the region (Borges, 2019, p. 27). Regarding the normative framework in the system, the most important treaties are the 1948 American Declaration of the Rights and Duties of Man (the American Declaration) and the 1969 American Convention on Human Rights (the American Convention).[3]

Since the American Convention does not contain economic, social, cultural, and environmental rights (ESCER) in its writing, no explicit article mentions the right to a healthy environment in the instrument (Borges, 2019, p. 29). There is only one article that indirectly refers to ESCER aspects, specifically Article 26, which states:

> The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or

3 American Declaration of the Rights and Duties of Man, 1948; American Convention on Human Rights, 1969.

> other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.[4]

Although the American Convention did not contain explicit economic, social, and cultural rights, many socioeconomic, political, cultural, and environmental issues were recast as human rights issues within the framework of the Inter-American System (Mardikian, 2023, p. 951). This led to the IACtHR, which hears legal disputes in a binding matter, to interpret the existing normative structure in a way that could address the issues that confronted the Court. In this sense, early IACtHR jurisprudence framed issues relating to ESCER within the scope of the civil and political rights protected under Articles 3-15 of the American Convention, based on an expansive approach to these rights and their contours inspired by notions of interdependence and interconnectedness of rights in international human rights law (Mardikian, 2023, p. 948). This, in essence, rendered ESCER indirectly justiciable under early IACtHR jurisprudence. Together with this, the Inter-American System underwent a process of progressive development regarding ESCER, particularly regarding the right to a healthy environment, with the 1988 Additional Protocol to the American Convention on Human Rights on the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) coming into force (Borges, 2019, p. 30). The Protocol of San Salvador established, in its Article 11, the right to a healthy environment in its scope of protection, stating the right to live in a healthy environment, the access to basic public services, and states' obligation to promote, protect, preserve and improve the environment.[5]

However, a landmark ruling by the IACtHR in *Lagos del Campo v. Peru* laid the grounds for determining ESCER directly justiciable under the Inter-American Human Rights framework, stating that ESCER violations can be determined autonomously under Article 26 of the American Convention (Mardikian, 2023, pp. 948-949).[6] In interpreting these rights, their scope, and limits, the IACtHR refers to a diverse set of regional and international human rights law instruments, including the Protocol of San Salvador and the American Declaration, among others (p. 949). In particular, the *Lagos del Campo* judgment set a precedent for the IACtHR that it could draw from the content regarding ESCER es-

4 American Convention on Human Rights, 1969.

5 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, 1988.

6 Inter-American Court of Human Rights, *Case of Lagos del Campo v. Peru*, judgment, August 31, 2017.

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tablished in the 1948 American Declaration when determining the direct justiciability of these rights. This approach from the IACtHR aligns with what part of the literature has termed "transformative constitutionalism," in which the Court approaches the application of treaties and human rights to produce an interpretation that corresponds and is responsive to structural, social, economic, and cultural issues (Von Bogdandy & Ureña, 2020, pp. 403-407). This advancement will inspire the later Advisory Opinion OC-23/17 in the direct justiciability of the right to a healthy environment.

Regarding the right to a healthy environment, one of the most critical developments in the Inter-American Human Rights System is the establishment of this right as an autonomous right under the American Convention by the IACtHR (Mardikian, 2023, p. 945). The Court achieved this by issuing its Advisory Opinion OC-23/17 (Advisory Opinion), where it declared the right to a healthy environment as an independent right and interpreted its limits and contours, and by ruling on the *Lhaka Honhat* case, where the Court applied the right, identified violations regarding it, and issued reparations (p. 946).[7] Together, these two rulings made by the IACtHR signified a fundamental shift in the approach of the Court regarding the right to a healthy environment and established it as an autonomous, directly justiciable right under the American Convention and the Inter-American System framework.

In addition, the IACtHR has recently continued to develop its body of jurisprudence on the right to a healthy environment through its Advisory Opinion OC-32/25 on Climate Emergency and Human Rights. In this landmark opinion, the Court not only reaffirmed its established jurisprudence concerning the right to a healthy environment, but also substantially broadened both the right's scope and the corresponding state obligations it entails in the context of climate emergency.[8] In this context, a more in-depth examination of the Court's decisions is necessary to thoroughly understand how the Court interprets and applies the right to a healthy environment.

4.1 The Advisory Opinion OC-23/17

The Advisory Opinion is the first pronouncement made by the IACtHR regarding state obligations concerning environmental protection under the Inter-Ameri-

7 Inter-American Court of Human Rights, *Advisory Opinion OC-23/17*, November 15, 2017; Inter-American Court of Human Rights, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, judgment, February 6, 2020.

8 Inter-American Court of Human Rights, *Advisory Opinion OC-32/25*, May 29, 2025.

can Human Rights System framework (Feria-Tinta & Milnes, 2016, p. 65). In the same regard, part of the literature deems it to be the first legal decision by an international human rights court that focused on environmental law and environmental human rights (p. 65).

Concerning its context, the Advisory Opinion responded to a request by the Republic of Colombia, asking three main questions: (i) If an individual is subject to an environmental human rights violation originating from a different country where he lives, can that individual petition to hold that country accountable under the American Convention? (ii) Would a country violate the American Convention, by direct action or omission, if it causes transboundary environmental damage that affects the rights to personal integrity and life of people living in that different nation? (iii) Does the American Convention require countries that cause transboundary environmental damage to follow international environmental law norms, and would that include the obligation to promote an environmental impact assessment of private and public projects with potential transboundary impacts? (Feria-Tinta & Milnes, 2016, pp. 48-49).[9] In this sense, the request made by Colombia was made in the context of major infrastructure projects promoted by Nicaragua with funding from China that would potentially cause widespread irreversible transboundary environmental damage across the region (p. 67).

In response, the IACtHR, in a landmark decision, interpreted and delineated the right to a healthy environment for the first time. In its ruling, the Court defined the nature, scope, and limitations of the right to a healthy environment, establishing it as directly justiciable under the American Convention. Regarding the most relevant advances of the Advisory Opinion, Feria-Tinta and Milnes distinguish some salient aspects of the decision in their work (Feria-Tinta & Milnes, 2016, p. 69, 2019, p. 52).[10]

From an interpretative perspective, the IACtHR highlighted interdependence and indivisibility as key elements (Feria-Tinta & Milnes, 2016, p. 70). On this matter, the Court underwent a detailed account of the interrelationship between the environment and the rights the American Convention protects. In doing so, the IACtHR explores the indivisibility and interdependence between civil and political rights and ESCER, recognizing this as a longstanding feature in the IACtHR jurisprudence and establishing that environmental damage can have a significant impact on the realization of other rights protected by the American Convention.[11]

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9 Inter-American Court of Human Rights, *Request for an Advisory Opinion presented by the Republic of Colombia, concerning the Interpretation of Article 1(1), 4(1), and 5(1) of the American Convention on Human Rights*, March 14, 2016.

10 Inter-American Court of Human Rights, *Advisory Opinion OC-23/17*, November 15, 2017.

11 *Ibidem*, paras. 46-47.

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From a substantive standpoint, the Court recognized the right to a healthy environment under the American Convention (Feria-Tinta & Milnes, 2019, pp. 52-53). In this sense, the IACtHR established the right to a healthy environment as an individual and collective right fundamental for the existence of humanity.[12] Although the American Convention does not recognize this right in an explicit matter, the Court interpreted the American Convention as a living instrument, defending a systemic and evolutive interpretative approach and using Article 26 of the Convention as a leeway to incorporate this right into the protection of this instrument.[13]

Regarding the jurisdictional aspect, the IACtHR gave way to the possibility of diagonal human rights obligations (Feria-Tinta & Milnes, 2019, pp. 54-55). These obligations entail the possibility for human rights claims to be brought by subjects that are not under the jurisdiction of the state whose international responsibility for environmental harm is invoked (p. 54). In this sense, the IACtHR establishes that this type of jurisdiction is admissible under the American Convention regarding environmental damage, not only relating to the states' direct actions, but also activities where such state exercises effective control.[14]

From an obligational standpoint, the Court gave a central role to due diligence and procedural obligations concerning this right (Feria-Tinta & Milnes, 2019, pp. 55-56). The IACtHR establishes that regarding the right to a healthy environment, states' obligation to use due diligence is crucial, as both an obligation of conduct and an obligation of result.[15] Regarding this, the Court draws from a diverse set of non-binding legal instruments and elaborates several procedural obligations, such as the duty to prevent significant environmental damage, the obligation to regulate, oversee, and control activities that could give rise to significant environmental damage, the responsibility to act following the precautionary principle even in the absence of scientific certainty, the duty to guarantee the right of access to information relating to the possible impact on the environment, among many others.[16]

Lastly, concerning the subjects of this right, the IACtHR potentially gave rise to establishing the environment as a rights-bearer itself (Feria-Tinta & Milnes, 2019, pp. 57-58). While previous instruments and decisions focus on an anthropocentric approach, the Advisory Opinion postulates granting legal protection to components of the environment as true subjects of rights (2019, p. 57). This

12 *Ibidem*, para. 59.

13 *Ibidem*, paras. 43-47.

14 *Ibidem*, para. 104.

15 *Ibidem*, paras. 123-124.

16 *Ibidem*, para. 242.

could prove effective in confronting the struggles of indigenous communities across the region and protecting natural resources from extractive activities. In this sense, from a procedural standpoint, the IACtHR established that, because of this reasoning, violations of the right to a healthy environment could be found even in the absence of certainty or evidence of a risk to individuals.[17]

4.2 The *Lhaka Honhat* Case

The *Lhaka Honhat* decision was delivered in the context of a claim made by Lhaka Honhat, an association of Indigenous communities, that the state of Argentina did not grant effective property titles to Indigenous people over their ancestral territory and had failed to prevent foreign farmers from settling into said land (Mardikian, 2023, p. 955). Regarding the right to a healthy environment, Lhaka Honhat claimed Argentina, in allowing activities such as illegal logging, grazing, and fencing by foreign settlers, had failed to take the necessary measures to prevent environmental degradation in the territory and to protect access to basic services and natural resources (p. 955).

In its decision, the IACtHR found Argentina internationally responsible for violations of the rights to cultural identity, community property, adequate food and water, and a healthy environment for the Indigenous communities that lived in said land.[18] The IACtHR ruling expands and clarifies the content of State obligations to protect ESCER under Article 26 of the American Convention, analyzing the scope of this right and mandating specific reparation measures to be adopted by the state of Argentina (Carstens, 2020, p. 493). In this sense, the *Lhaka Honhat* judgment was the first ruling made by the IACtHR, which interpreted and applied the right to a healthy environment as an autonomous right in a contentious case.

Concerning the history of the case, the Lhaka Honhat Association initially brought the case before the IACmHR, with the intent to protect their ancestral lands from non-indigenous settlers who engaged in cattle herding, logging, and other activities that caused deforestation and contaminated water sources (Carstens, 2020, p. 493).[19] The IACmHR declared the petition admissible in 2006, though the Commission's mediation and recommendation enforcement efforts were relatively unsuccessful (p. 494). The IACmHR, in its 2012 report, found Ar-

17 *Ibidem*, para. 62.

18 Inter-American Court of Human Rights, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, judgment, February 6, 2020.

19 Ídem.

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gentina responsible for violating victims' right to property, judicial protection, and access to information, thus recommending reparation measures.[20] Ultimately, the Commission referred the case to the IACtHR in 2018, where the Lhaka Honhat Association claimed violations of their right to cultural identity, adequate food, and a healthy environment caused by Argentina's knowledge and inaction upon deforestation, cattle raising, wire installments, land occupation by foreign settlers, and the construction of an international bridge without prior consultation.[21]

In its ruling, the IACtHR specifically regarded violations of victims' right to a healthy environment, food and water, and cultural identity.[22] These developments can be mainly analyzed from substantive and obligational standpoints.

Concerning the substantive aspects of the *Lhaka Honhat* decision, the Court continued with the precedent established in the Advisory Opinion in recognizing the right to a healthy environment under the American Convention by finding Argentina responsible for violations of the right to a healthy environment, adequate food, water, and cultural identity. This reasoning was achieved using a systemic interpretative approach based on Article 26 of the American Convention, which states that states must carry out progressive developments towards the full realization of the rights implicit in the economic, social, and cultural standards recognized in the OAS Charter.[23] In this sense, the IACtHR declares that the right to a healthy environment must be considered among the rights protected by Article 26 of the American Convention and recognizes that some aspects of this right merit immediate justiciability concerning the duties to respect and guarantee ESCER (Carstens, 2020, p. 499).[24] In addition, the IACtHR ultimately regarded this right as autonomous, emphasizing that this right should not only be considered a component of other substantive human rights (p. 501).

With respect to the ruling's obligational dimensions, the IACtHR analyzes state obligations, particularly those relating to the precautionary principle and due diligence obligations prior to the occurrence of environmental damage, which may prevent the restoration of the previous conditions (Carstens, 2020, p. 499). Among such obligations, the Court establishes the duties to regulate, supervise, require, and approve environmental assessments, develop contingency plans, and mitigate when environmental damage has occurred.[25] In this

20 Ídem.

21 *Ibidem*, paras. 23, 186.

22 Inter-American Court of Human Rights, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, judgment, February 6, 2020.

23 *Ibidem*, para. 196.

24 *Ibidem*, para. 272.

25 *Ibidem*, para. 208.

sense, the IACtHR found Argentina responsible due to the state not taking effective measures to stop harmful activities to the environment that ultimately affected the victims' way of life. The Court uses environmental law elements, such as the precautionary principle, procedural obligations, and due diligence, in the assessment of state conduct in the performance of the duty to guarantee the protection of the right to a healthy environment, which ultimately expands upon the precedent set in the IACtHR's Advisory Opinion (p. 502).

4.3 Further Developments

More recently, the jurisprudence of the IACtHR has continued to evolve the scope and content of the right to a healthy environment. One of the latest developments is its Advisory Opinion OC-32/25, where the Court addresses a joint request by the Republics of Chile and Colombia concerning the interpretation of the general obligations derived from the American Convention and the Protocol of San Salvador, particularly regarding how procedural and substantive human rights may be potentially affected by the climate emergency.[26] In its decision, the IACtHR not only reaffirmed its previous decisions regarding the interpretation of the right to a healthy environment, but also expanded its scope: addressing nature as a subject of rights and its protection, establishing the *jus cogens* nature of the obligation not to cause irreversible damage to the climate and the environment, recognizing the right to a healthy climate as an autonomous right, and developing states' obligations arising from the right to a healthy environment in the context of climate emergency.[27]

Regarding the subjects of this right, the IACtHR further expands the notion of nature as a rights-bearer itself. The Court asserts that acknowledging nature's intrinsic right to maintain its ecological integrity fosters sustainable development within planetary boundaries; safeguards vital resources for current and future generations; and challenges traditional anthropocentric legal frameworks that treat nature merely as property or an exploitable commodity.[28] Crucially, this strengthens the framework proposed in the IACtHR's Advisory Opinion OC-23/17, which permits legal claims before the Court even without conclusive evidence of direct harm to specific individuals.[29]

From a substantive standpoint, the Court breaks new ground by recognizing

26 Inter-American Court of Human Rights, *Advisory Opinion OC-32/25*, May 29, 2025, para. 27.

27 Inter-American Court of Human Rights, *Advisory Opinion OC-32/25*, May 29, 2025.

28 *Ibidem*, para. 279-280.

29 *Ibidem*, para. 273.

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the *jus cogens* character of the obligation to prevent irreversible damage to the climate and environment. The IACtHR reasons that the progressive consolidation of these obligations reflects the emergence of a non-derogable legal framework, particularly concerning threats to life-sustaining ecosystems.[30] Crucially, the Court underscores that maintaining ecological balance constitutes a prerequisite for planetary habitability, making its protection indispensable for safeguarding existing non-derogable rights under international law.[31] Consequently, degrading these environmental conditions would erode the very foundation for enforcing fundamental human rights protected by peremptory norms. On this basis, the IACtHR conclusively established environmental preservation as a *jus cogens* obligation.[32] In addition, the Court recognizes the human right to a healthy climate as an autonomous right stemming from the broader right to a healthy environment. This doctrinal innovation responds to the necessity of clarifying distinct state obligations specific to the climate crisis and differentiating these from general environmental protection duties.[33] The IACtHR defines this right as requiring a climate system unimpaired by dangerous anthropogenic interference: a standard protecting both human welfare and ecological integrity.[34]

Regarding the decision's interpretative approach, the Court reaffirmed its previous body of jurisprudence by indicating that the right to a healthy environment is one of the rights protected by Article 26 of the American Convention, under the obligation of states to achieve the integral development of their people.[35] In addition, the IACtHR reiterates that interdependence and indivisibility are key aspects in the interpretation of this right, stressing that environmental damage may affect all human rights, and the protection of the right to a healthy environment necessarily results in the protection of substantive human rights.[36]

On jurisdictional matters, the Court highlights its established jurisprudence concerning human rights obligations. It ruled that victims of transboundary environmental harm may seek redress against the responsible state, even when they reside under another state's jurisdiction.[37] This decision significantly strengthens the IACtHR's doctrine regarding diagonal obligations between

30 *Ibidem*, para. 287.

31 *Ibidem*, para. 290.

32 Ídem.

33 *Ibidem*, para. 300.

34 Ídem.

35 *Ibidem*, para. 270.

36 *Ibidem*, para. 274.

37 *Ibidem*, para. 277.

states and non-nationals, and states' duty to prevent significant environmental damage within or outside their territory.

Lastly, from an obligational perspective, the IACtHR significantly expands upon states' obligations regarding the right to a healthy environment, particularly in the context of climate emergency. On the one hand, the Court establishes that States must not only refrain from causing significant environmental harm, but also have the obligation to adopt measures to ensure the protection, restoration, and regeneration of ecosystems.[38] On the other hand, the Court further determined that the right to a healthy climate generates distinct state obligations in climate emergency contexts, specifically requiring comprehensive measures to combat climate change (particularly the regulation, supervision, and monitoring of GHG emissions).[39] Moreover, the IACtHR establishes that the right to a healthy environment entails specific obligations to protect natural ecosystems and their constituent elements, and ensure the progressive realization of sustainable development.[40]

In sum, the Inter-American Human Rights System has progressively developed a substantial body of normative structures regarding the right to a healthy environment, mainly reflected in the evolving jurisprudence of the IACtHR on this issue. Initially, the Court emphasized the interdependence and indivisibility of human rights, focusing on how environmental damage could affect the realization of civil and political rights. Over time, it advanced this notion by declaring the right to a healthy environment as an autonomous right safeguarded by the American Convention. Lately, the IACtHR has established the *jus cogens* nature of the obligation to prevent irreversible environmental damage, developed the right to a healthy climate as an independent human right, and expanded on states' obligations regarding the protection of nature and sustainable development. The Court's jurisprudence highlights key elements, including interdependence and indivisibility, the autonomy of the right through a systemic interpretative approach, the potential for diagonal human rights obligations, the protection of nature, due diligence and sustainable development as duties, the obligation to prevent irreversible environmental damage as a *jus cogens* norm, and the environment as a subject of rights.

38 *Ibidem*, para. 283.

39 *Ibidem*, para. 321.

40 *Ibidem*, para. 320.

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5. The Right to a Satisfactory Environment in the African Human Rights System: The African Commission on Human and Peoples' Rights

On the other hand, the African System of Human Rights is the institutional and normative framework dedicated to protecting human rights in the African region. The system's structure originates from the Organization of African Unity (OAU), a multilateral organization composed of various nations from the continent, later replaced by the African Union (AU) (Sanzana Pavez, 2019, p. 22). The human rights system itself was born with the adoption of the African Charter on Human and Peoples' Rights (the Banjul Charter) in 1981, which was a pioneering instrument in the establishment of human rights in the region, recognizing economic, social and cultural rights on the same footing as civil and political rights (p. 23). Furthermore, the Banjul Charter is reputed to be the first and only binding international instrument to recognize third-generation rights relating to equality, self-determination, sovereignty, peace, development, and especially the environment (Lugard, 2022, p. 402).

From an institutional perspective, the Banjul Charter established in its Article 30 the African Commission on Human and Peoples' Rights (ACmHPR), a quasi-judicial body with a mandate to promote and protect human rights in the region, using the Charter's provisions (Ojiaka, 2019, pp. 177-178). In this sense, the ACmHPR has a promotional, protective, and interpretative mandate, which allows the Commission to examine interstate and non-state communications, enforce the Banjul Charter's provisions, and interpret the Charter's provisions at any state party's request (Abioye, 2020, pp. 90-91). Regarding its mechanisms, the ACmHPR can receive and decide on communications from state parties, examine state reports, and issue recommendations and guidelines referencing the interpretation of the Banjul Charter's dispositions (Sanzana Pavez, 2019, p. 23). This institutional framework was later strengthened by establishing the African Court on Human and Peoples' Rights (ACtHPR), which has jurisdiction over contentious cases and disputes concerning the interpretation and application of the Banjul Charter and other relevant human rights instruments in the region (Chenwi, 2018, p. 62). The ACtHPR was granted the power to establish remedies when a right is violated, to take provisional measures in cases of urgency, and to have binding decisions for state parties (Sanzana Pavez, 2019, pp. 23-24).

As opposed to other regional human rights systems, such as the Inter-American Human Rights System or the European Human Rights System, the Banjul Charter is the first binding regional human rights instrument to explicitly codify and guarantee a stand-alone right to a satisfactory environment in the context of the African Human Rights System (Lumina, 2020, p. 34). This is achieved

through Article 24, which states that "all peoples shall have the right to a general satisfactory environment favorable to their development".[41] Although this was a fundamental achievement regarding the right to a satisfactory environment, the substantive content of the right under the Banjul Charter is challenging to define, as the right is phrased in a notably vague and ambiguous manner (Polycarp, 2009, p. 63). This is evidenced by the fact that there is no indication of what is meant by the phrase 'general satisfactory environment favorable to development' or guidelines for the range of issues that arise from the interpretation of the article (p. 63). This has led to different doctrinal interpretations that attempt to clarify the meaning and substantive content of the right under the Banjul Charter (Andargie, 2015, pp. 215-218; Omorovie, 2022, pp. 142-150). However, due to the intrinsic nature of the African Human Rights System and its institutional framework, the region's institutions would develop their own interpretations, and as they have done for many other human rights, they would ultimately guide and settle some disputes concerning the discussion (Polycarp, 2009, p. 64).

In this sense, regarding the institutional framework of the African System of Human Rights, the ACtHPR jurisdiction has not been activated concerning a substantial environmental rights issue but rather on interconnected matters that have implications for the environment or the realization of the right to a satisfactory environment (Lugard, 2022, p. 405). Because of this, the jurisprudence of the Court concerning the interpretation of article 24 of the Banjul Charter is not substantial to this day. On the other hand, the central institution that has interpreted and applied the right to a satisfactory environment under the Banjul Charter to this date is the ACmHPR, which has delineated the nature and scope of this right through its resolutions and communications (Chenwi, 2018, p. 69). The most notable jurisprudential advancements made by the Commission regarding the interpretation of the right to a satisfactory environment are achieved in the context of the *SERAC* case, decided in 2001, the *Endorois* case, decided in 2009, and several further developments. In this context, a more detailed account of these decisions is necessary to conceptualize how the ACmHPR interprets and understands the right to a satisfactory environment.

5.1 The *SERAC* Case

The first case in which the ACmHPR had the opportunity to interpret and apply Article 24 of the Banjul Charter was in the Social and Economic Rights Action Centre (SERAC) and the Center for Economic and Social Rights (CESR) v

41 African Charter on Human and Peoples' Rights, 1981.

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Federal Republic of Nigeria communication (the *SERAC* case) (Chenwi, 2018, p. 74). The case itself concerned allegations of human rights violations against the government of Nigeria regarding its participation in regulating multilateral corporations engaged in oil exploitation in the native land of the Ogoni population (Abioye, 2020, p. 92). It was argued that the Nigerian government participated, directly or indirectly, in the contamination of air, water, and soil, harming and failing to protect the Ogoni population from multinational corporations who engaged in exploitation activities in their land.[42] The allegations also stated that Nigeria had failed to provide or promote studies of potential or actual environmental and health risks caused by the oil operations.[43]

In its decision, the Commission found that the Nigerian government violated several dispositions of the Banjul Charter, mainly Article 24, which establishes the right to a satisfactory environment.[44] This reasoning was achieved after analyzing Nigeria's failure to take measures to prevent pollution, promote conservation, secure ecologically sustainable development and use of natural resources, and permit independent monitoring of threatened environments and environmental impact studies.[45] In addition, the *SERAC* case was a fundamental decision in delimiting the nature and scope of the right to a satisfactory environment under the Banjul Charter, where the ACmHPR elaborated for the first time on the interpretation and application of this right.

From an interpretative standpoint, the Commission recognized that the right to a satisfactory environment is provided as a composite right, referring to the protection of the environment as well as the promotion of development in Africa (Chenwi, 2018, p. 66). In this sense, it stated that this right is vital in improving individuals' quality of life and safety, together with promoting development.[46] This highlights the principles of indivisibility and interdependence in the realization of human rights, reinforcing the normative unity between the right to a satisfactory environment and development (Chenwi, 2018, p. 66). These principles can also be inferred from the Commission's recognition that the right to a satisfactory environment, the right to life, and the right to health are interlinked regarding the effects of environmental degradation, reflecting the unity between the right to a satisfactory environment, the right to life, and the right to health (p. 67).

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42 African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Centre (SERAC) and the Center for Economic and Social Rights (CESR) v Federal Republic of Nigeria*, October 27, 2001, para. 50.

43 Ídem.

44 *Ibidem*, para. 68.

45 *Ibidem*, paras. 52-54.

46 *Ibidem*, para. 51.

From an obligational aspect, the ACmHPR establishes that states must respect, protect, promote, and fulfill the right to a healthy environment (Chenwi, 2018, p. 70).[47] Firstly, the obligation to respect entails states must refrain from interfering with the enjoyment of the right. Secondly, the obligation to protect requires the protection of people from the violation of their rights by other parties and the provision of effective remedies. Thirdly, the obligation to promote implies that states must promote the right and ensure its enjoyment. Lastly, the obligation to fulfill entails that states must comply with this right in their actions. These obligations imply substantial components (promotion and conservation, mitigation of environmental impact, and environmental assessment, among other obligations), as well as procedural duties (access to information, judicial processes, and remedies) (Lumina, 2020, p. 38). The standard to which these obligations are held is that states must take reasonable and other measures to prevent pollution and ecological degradation, promote conservation, and secure ecologically sustainable development and use of natural resources.[48]

5.2 The *Endorois* Case

The next notable case in which the ACmHPR elaborated on the nature and scope of the right to a satisfactory environment was in Centre for Minority Rights Development and Minority Rights Group (on behalf of the Endorois Welfare Council) v Kenya (the *Endorois* case) (Abioye, 2020, pp. 93-94). Although this ruling did not deal directly with Article 24 of the Banjul Charter, instead focusing on Article 22 regarding the right to development, the decision established fundamental aspects concerning the interpretation of the right to a satisfactory environment and reinforced the indivisibility and interdependence of human rights (p. 94). The case involved the Endorois people being forcefully evicted from their natural environment and ancestral lands, alleging, among other things, violations of their right to development under the Banjul Charter.[49]

The Commission's decision ultimately found Kenya responsible for breaching the right to development of the Endorois people. It emphasized better processes, empowerment, and improving people's capabilities and choices in the realization of rights and respecting their agency (Chenwi, 2018, p. 76). Further-

47 *Ibidem*, para. 44.

48 *Ibidem,* para. 52.

49 African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development and Minority Rights Group (on behalf of the Endorois Welfare Council) v Kenya*, November 25, 2009, para. 22.

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more, the *Endorois* case establishes key elements concerning the interpretation of the right to a satisfactory environment.

Concerning the subjects of the right to a satisfactory environment, Article 24 of the Banjul Charter is notably vague in not establishing what is meant by the term 'peoples'.[50] In this sense, the Commission held that concerning collective rights guaranteed under Articles 19 to 24 of the Banjul Charter, the term 'peoples' refers to a collective of individuals that should manifest a common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinities, territorial connection, and a common economic life or other bonds, identities, and affinities they collectively enjoy.[51] In addition, the term 'peoples' can also refer to a group of individuals who suffer collectively from the deprivation of such rights.[52] This advancement is fundamental in establishing the right to a satisfactory environment as a collective right and the subjects of this right.

From an obligational perspective, the ACmHPR focuses on procedural state obligations regarding community and civil society participation and consultation in matters that involve their land and environment (Abioye, 2020, p. 95). The Commission establishes that any development of the land or environment must be aimed at the empowerment of people and the improvement of their capabilities and choices.[53] Together with this, the ACmHPR held that the community has a right to reasonably share in the benefits made as a result of a restriction or deprivation of their right to the use and enjoyment of their traditional lands and those natural resources necessary for their survival, and should be consulted before any action or development is materialized.[54]

5.3 Further Developments

The ACmHPR has also elaborated on the interpretation of the right to a satisfactory environment through soft law instruments that do not involve contentious matters. In this sense, the Commission establishes in its General Comment No. 3 on the African Charter on Human and Peoples' Rights the normative indivisibility and interdependence between the right to life and the right to a satisfactory

50 African Charter on Human and Peoples' Rights, 1981.

51 African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development and Minority Rights Group (on behalf of the Endorois Welfare Council) v Kenya*, November 25, 2009, para. 151.

52 Ídem.

53 *Ibidem*, paras. 282-283.

54 *Ibidem*, para. 295.

environment, which entails that the responsibility of states to protect life also includes taking preventive steps to preserve and protect the environment.[55]

In its Principles and Guidelines on the Implementation of Economic, Social, and Cultural Rights in the African Charter on Human and Peoples' Rights, the Commission established that development plans related to land and water resource management must be designed to create a healthy environment conducive to the realization of the right to health, highlighting the interdependence between the right to development, the right to health, and the right to a satisfactory environment.[56] In addition, the ACmHPR holds that the right to education has a vital role in environmental protection, stating that education systems should be directed at developing respect for the environment, deepening the indivisibility and interdependence aspects in interpreting this right.[57] Furthermore, regarding the obligations arising from the right to a satisfactory environment, the Commission established that states should ensure informed consent by indigenous communities before any exploitation activities on their lands, emphasizing procedural obligations.[58] On the same aspect, the ACmHPR recognized that non-state actors must respect peoples' rights to a satisfactory environment, advancing the notion that not only states have obligations concerning this right.[59]

In sum, the African Human Rights System has had a distinct normative development regarding the right to a satisfactory environment because its constitutive instrument explicitly recognizes this right in its dispositions. Consequently, the main jurisprudential developments were made delineating the nature and scope of the right to a satisfactory environment and how to interpret and apply Article 24 of the Banjul Charter. In this matter, the advancements made by the ACmHPR were fundamental in various aspects. The Commission's jurisprudence highlights the composite nature of the right to a satisfactory environment and the interdependence of this right with other civil, economic, cultural, and collective rights, such as the right to life, the right to health, the right to education, and the right to development. Additionally, it recognizes substantial and procedural obligations for states and non-state actors. Finally, it further delineates the collective nature of this right by developing the term 'peoples' and emphasizing the importance of civil society participation in matters that affect this right.

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55 African Commission on Human and Peoples' Rights, *General Comment No. 3 On the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)*, December 12, 2015, paras. 3 and 41.

56 African Commission on Human and Peoples' Rights, *Guidelines and Principles on Economic, Social, and Cultural Rights in the African Charter on Human and Peoples' Rights*, October 24, 2011, para. 67.

57 *Ibidem*, paras. 69-71.

58 *Ibidem*, para. 44.

59 Ídem.

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6. Jurisprudential Dialogue: Universality and Subsidiarity in the Right to a Healthy Environment in the IACtHR and the ACHPR

Although the Inter-American and African human rights systems share the common protection of the right to a healthy or satisfactory environment in their respective regions, both systems differ substantially in their development of this right. In this sense, there appears to be a fundamental tension in affirming the universality of the right to a healthy or satisfactory environment and the diversity of its implementation, specification, and interpretation in these regional systems.

However, as previously noted, subsidiarity can function as a crucial principle for addressing and reconciling the tension between universality and pluralism regarding human rights. This applies not only to human rights broadly, but also specifically to the right to a healthy or satisfactory environment within the Inter-American and African systems. As subsidiarity does not demand any normative or institutional designs for the realization of human rights, it allows the possibility of diversity at functionally differentiated instances, as it recognizes that different communities and regions will materialize human rights in particular ways depending on historical, cultural, and institutional circumstances. Rather than promoting the supervision and control of pluralism in human rights, subsidiarity can conceptualize a framework where functionally differentiated instances (such as regional human rights systems, as opposed to universal mechanisms) can be left to interpret, specify, and implement human rights whenever they can achieve these ends independently. This ultimately implies a degree of discretion in the realization of human rights by functionally differentiated instances, such as regional human rights systems. By applying the principle of subsidiarity to the right to a healthy or satisfactory environment and the regional developments made by the Inter-American and African systems, it is possible to reconcile the tension between the universality of this right and the differences in its realization across these regions.

Firstly, the realization of the right to a healthy environment in the Inter-American System and African System differs from an institutional aspect. As previously noted, in the Inter-American Human Rights System, the central institution to interpret and realize the right to a healthy environment is the IACtHR, a judicial body with binding authority on member states, that can issue binding reparations and interpretations, monitor state compliance, and has jurisdiction on both contentious and advisory matters. This contrasts with the developments of the African Human Rights System, where the primary institution to interpret and apply the right to a satisfactory environment is the ACmHPR, a quasi-judicial body with advisory authority over states, that can only issue

non-binding recommendations, monitoring compliance, and having non-binding jurisdiction over both contentious and advisory matters.

Secondly, the materialization of the right to a healthy environment in the Inter-American and African systems differs from a codification standpoint. As mentioned earlier, the Banjul Charter explicitly codifies the right to a satisfactory environment as a stand-alone right in Article 24.[60] This establishment ultimately determined and facilitated the discussion around the autonomy of the right to a satisfactory environment in the African system. On the other hand, the American Convention does not mention the right to a healthy environment in any explicit matter. Because of this, the autonomy of this right was a jurisprudential development made by the IACtHR based on a systemic and evolutive interpretation of Article 26 of the American Convention, indirectly recognizing the justiciability and autonomy of the right to a healthy environment, as opposed to the direct recognition made in the Banjul Charter.

Thirdly, the realization of the right to a healthy environment in the African and Inter-American systems differs in their jurisprudential development. Because the American Convention did not codify this right, its nature, scope, aspects, and direct justiciability were developed through systemic and evolutive interpretations and a transformative constitutionalism notion practiced by the IACtHR. This contrasts with the experience of the African system, where jurisprudential development did not have to argue for the right's direct justiciability and autonomy but instead focused on the nature, scope, and obligations that the right entails, therefore not incorporating notions of transformative constitutionalism.

Fourthly, the interpretation of the right to a healthy environment in the African and Inter-American systems differs substantially. On the one hand, the interpretation of the right in the Inter-American system highlighted autonomy, interdependence, and indivisibility as key aspects, focusing on the normative unity between civil and political rights with ESCER and how environmental damage can impact the realization of other human rights. Moreover, the Inter-American system has developed the right to a healthy climate as an independent right stemming from the broader right to a healthy environment. On the other hand, while the interpretation of the right in the African system also developed notions of indivisibility and interdependence, it recognized the right to a satisfactory environment as a composite right that referred to the protection of the environment as well as the promotion of development in the region (Chenwi, 2018, p. 66). Together with this, the interpretation of this right in Africa focused on the normative unity between civil and political rights and ESCER but also incorporated solidarity rights into this framework, including the right to development, which contrasts with the experience of the Inter-American System.

60 African Charter on Human and Peoples' Rights, 1981.

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Fifthly, the realization of the right to a healthy environment in the African and Inter-American systems differs regarding obligational aspects. Initial jurisprudence from the IACtHR mainly focuses on member states' due diligence and procedural obligations, such as the duty to prevent environmental damage, the precautionary principle, access to information and remedies, and community consultation and participation (including, where applicable, free, prior and informed consent). More recently, IACtHR jurisprudence has proposed the obligation to prevent irreversible damage to the climate and environment as a *jus cogens* norm and has developed distinct state obligations regarding the right to a healthy climate and the right to a healthy environment. Additionally, the IACtHR contemplates the possibility of diagonal human rights obligations for states regarding this right. In contrast, while the ACmHPR's jurisprudence highlights procedural obligations such as those mentioned above, it develops a comprehensive set of substantive and procedural obligations for states that entail the respect, protection, promotion, and fulfillment of the right to a satisfactory environment. Together with this, the ACmHPR also recognized that non-state actors must respect this right, advancing the notion that not only states have obligations concerning this right.

Lastly, regarding the subjects of the right to a healthy environment, the developments of the African and Inter-American systems differ fundamentally. A key advancement made in the jurisprudence of the IACtHR was the acknowledgment of the environment itself as a rights-bearer, enabling the establishment of violations of this right even in the absence of risk to individuals. This marked an essential departure from the traditionally anthropocentric foundation of human rights. On the other hand, the jurisprudence of the ACmHPR has centered on the concept of 'peoples' as the subjects of the collective right to a satisfactory environment. In the Commission's view, 'peoples' refers to communities sharing common identities or groups collectively affected by rights deprivations. While this approach remains within an anthropocentric framework, it highlights the collective dimension of the right to a satisfactory environment.

In sum, there are fundamental differences in how the African and the Inter-American human rights systems interpret, specify, and implement the right to a healthy environment. These differences mainly concern their institutions, codification, jurisprudential developments, interpretations, obligations, and right-bearers. These differences reflect cultural pluralism within the international system, demonstrating how the same universal right is realized in distinct ways across diverse settings. However, the principle of subsidiarity is essential in recognizing that these differences do not undermine the universality of the right to a healthy environment. Instead, they demonstrate how a universal human right can be specified and materialized across dissimilar regions through

distinct institutions, interpretations, obligational frameworks, rights-bearers, and duty-bearers.

While divergences in sources, interpretation, framing, and remedial pathways might be read as fragmentation, the record instead reveals functional convergence along at least two criteria that align with the framework defended in this article. First, indivisibility and interdependence of rights: both systems treat environmental harms as inseparable from life, health, and participation (evident in the African jurisprudence linking environment to life, health, and community and, in the Inter-American system, in consistent cross-references between civil-political and socio-economic guarantees that make effective protection contingent on their interdependence). Second, due diligence and procedural obligations: despite different doctrinal routes, both systems crystallize duties of information, participation, and impact assessment (and, where appropriate, precaution) as enforceable conditions of state conduct, channeling prevention, accountability, and structural compliance through procedure-anchored standards.

At the same time, disagreements persist. For example, debates over a climate jus cogens norm or the recognition of nature as a subject of rights versus a more anthropocentric, community-centered account (e.g., "peoples," vulnerable groups) are notable when contrasting both regional systems. Properly understood, these are not denials of universality, but rather variations of specification that reflect distinct constitutional traditions, evidentiary thresholds, and remedial toolkits across fora. These divergences do not negate the protected universal right to a healthy environment; rather, they reflect specification trajectories driven by distinct normative and remedial contexts, consistent with a plural universality.

7. Conclusion

In conclusion, the right to a healthy environment has been established across regional human rights systems as an autonomous right through diverse mechanisms. Particularly, the recognition of this right has been notable in the Inter-American and African human rights systems through the respective jurisprudential developments of the IACtHR and the ACmHPR. In this sense, this article has analyzed the differences between these regional approaches, highlighting their institutional, procedural, jurisprudential, and interpretative differences. These differences ultimately reflect how cultural pluralism and diversity are embedded in the international system.

This brings forth one of the fundamental tensions in international human

rights law: how the aspiration toward the universality of human rights engages with embedded cultural diversity across communities. In this context, subsidiarity should not be understood as resolving this theoretical tension, but as providing an operational framework (that allocates primary responsibilities to context-proximate institutions while structuring international review) to translate shared commitments into practice. On this account, diversity in specification and interpretation does not negate universality; it exemplifies universality without uniformity.

This article's contribution is expressly limited: it does not claim that subsidiarity settles the universalism-pluralism debate. Rather, it documents how subsidiarity already operates in regional practice, offering an analytic template for comparing other rights across fora. By focusing on the right to a healthy environment as a case study, it provides concrete evidence of how subsidiarity operates in practice, offering a model for analyzing other human rights across different regional and national systems. Future research could explore how other rights -such as the right to education, the right to health, the right to freedom of expression, or the right to self-determination- are materialized and interpreted differently across regional systems. Such studies would further strengthen the notion that subsidiarity is embedded in the international human rights system, transforming it from an abstract principle into an operational reality. Additionally, this article opens avenues for further research into the role of subsidiarity in addressing emerging global challenges, such as climate change, digital rights, and migration, providing valuable insights into how universal rights can adapt to evolving global realities while respecting regional and local particularities.

Ultimately, the comparative analysis here supports the view that achieving universality does not require uniformity. Subsidiarity, as advanced in this article, helps coordinate context-sensitive realization and safeguards common cores, not by resolving the theoretical dilemma, but by operationalizing its management across different levels in a multi-layered international human rights system.

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