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### Commentary on Strasbourg Principles nos. 6-8: right to a healthy environment

Principles 6, 7 and 8 of the [Strasbourg Principles](#) reflect the evolution of international law in recognizing the right to the environment as an autonomous human right, based on the indivisibility and interdependence of human rights. For its proper protection, depending on the specific mechanism, this right must be ensured either indirectly through other established rights or, as it ideally should be, through its direct recognition as an autonomous right, acknowledging its full scope and protection.

In this regard, at the United Nations System level, it was only in 2021 that consensus was reached at the UN Human Rights Council to [recognize](#) the right to a clean, healthy, and sustainable environment, urging states to implement this right and respect biodiversity and ecosystems. The Human Rights Council [noted](#) that more than 155 states have recognized some form of the right to a healthy environment in international agreements or their national laws. In a significant step, in 2022, the United Nations General Assembly recognized this right for the first time with a vote of 161 states in favor, eight abstentions, and no votes against.

The Inter-American System for the Protection of Human Rights has not been an exception. Indeed, it has been one of the pioneers in providing protection for the environment through its various mechanisms, particularly the Inter-American Court of Human Rights through its jurisprudence.

The [American Convention on Human Rights](#) (ACHR), the principal treaty of the Inter-American human rights system, does not explicitly mention the right to a healthy environment. This right *is* explicitly included in Article 11 of the [Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights](#) (Protocol of San Salvador). However, Article 19.6 of the Protocol limits the Inter-American Court's jurisdiction so that it cannot rule on alleged violations of the right to a healthy environment under the protocol.

Despite these limitations, the Inter-American Court has sought to protect the right to a healthy environment through different avenues of judicial interpretation. Based on the *pro personae* principle, as well as on an evolutive approach to its interpretation of the ACHR, the Court first protected this right *indirectly*, through its interpretation of

procedural rights and an expansive reading of several civil and political rights contained in the treaty, particularly the right to life protected under Article 4. This phase lasted from 2001 to 2016 ([Calderón-Gamboa, Recinos](#))

Through that indirect approach, the Inter-American Court has been able to develop standards that contribute to the protection of environmental rights, as well as to issue orders of reparation for the rehabilitation of territories affected by environmental degradation. However, this indirect approach has remained largely anthropocentric, as it has been driven primarily by the need to protect the rights of a specific person or group of persons, such as the cultural identity and way of life of Indigenous Peoples, as well as the procedural rights of defenders of the environment. The protection of the environment and of environmental rights has thus been secondary and incidental to the protection of the human person.

However, in 2017, the Inter-American Court took an important first step toward a much more ecocentric approach. In a revolutionary moment in that year, the Court cleared the way for *direct* litigation of Economic, Social, Cultural and Environmental Rights (ESCER) in the Inter-American system in the case of [Lagos del Campo v Perú](#). In that case, it declared, for the first time in its history, that the State had violated Article 26 of the treaty, which guarantees ESCER. As a consequence, later that same year, the Court issued its [Advisory Opinion No 23 on the Environment and Human Rights](#) (*Advisory Opinion No 23*), where it acknowledged that the right to a healthy environment is an autonomous right under Article 26 ACHR. The Court also stated that this right protects Nature as a legal interest in itself, and noted that, worldwide, high court judgments and the Constitutions of certain countries recognized the rights of Nature (see commentary on Strasbourg Principles nos. 9 and 10).

Jorge Calderón Gamboa, October 2023