

**The HELP Course on the Environment and Human Rights:  
Understanding Modern-Day Environmental Human Rights**

Natalia Kobylarz, Senior Lawyer at the Registry of the European Court of Human Rights<sup>1</sup>  
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First of all, thank you for inviting me to co-author your course on the Environment and Human Rights. It was a pleasure to work with the course's main author, Grazia Scocca and with HELP's wonderful team, Eva Pastrana, Ana Medarska and Douglass Maxwell.

I also thank you for inviting me to speak to you today about this course and about the broader context in which it is placed: the present-day environmental human rights law.

The course is a learning tool primarily addressed to legal professionals (judges, prosecutors, lawyers), but we know that it has also been very popular with civil servants, policy makers, members of civil society, as well as with academic students. In fact, since its launch two months ago, the course has been taken by almost a thousand participants.

The course is available for free, online, in a self-learning format. The overall length of the course is approximately six hours and those who complete it can obtain an electronic 'Statement of accomplishment'. The course can be accessed by visiting the HELP e-learning platform (at <http://help.elearning.ext.coe.int/>).

The course explains legal frameworks and practical approaches in the area of green human rights, which is also referred to as a human rights-based approach to environmental protection.

Green human rights is the place where human rights law meets environmental law. It is currently a very busy "meeting point": of legal claims made by citizens who are concerned about their health and well-being, or about the state of nature; of judicial responses to such claims; of political or business reactions to ensuing court rulings; and last but not least, of science - the science of climate, Earth's systems, biology, ecology, chemistry, physics, medicine and of many other disciplines.

The practice of environmental human rights law will only be successful if it is based on a good understanding of these dynamic and multifaceted connections between the law, the society, and the planet. The HELP course is an excellent starting point for developing such an understanding.

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<sup>1</sup> Any views that may be expressed in this speech are those of the author and do not represent the official position of the European Court of Human Rights or the Council of Europe. The Registry gives support to the Court and cannot in any way influence the Court's decisions on the admissibility and/or the merits of any case.

The course defines all the key concepts of human rights and environmental law. It provides a historical and legal overview of the human rights-based approach to environmental protection. It then, very thoroughly, covers the relevant substantive and procedural human rights, including their implementation in the three regional human rights systems. The course also contains an important section on the right to a clean, healthy, safe and sustainable environment. It ends with a chapter on corporate environmental accountability. All these topics are explored in a practical way, using presentations, interactive screens, knowledge tests and reflective exercises.



The course is a gateway into the study and into the practice of environmental human rights. It is a very timely offer on the part of HELP, because environmental human rights are at this moment of time, more important, more tricky, and more fascinating than ever before.

To start with, we now have, not one, but two channels of environmental protection through human rights law. In some systems, they operate side by side.<sup>2</sup>

In the first place, there is **PROXY PROTECTION** through traditional human rights. This approach was developed and is continuously taken by the ECtHR.



Despite the absence of any reference to the environment in the ECHR or its Protocols, the Strasbourg Court is undeniably the single greatest maker of green human rights. The environmental dimension of traditional human rights imposed itself naturally in the Strasbourg case-law, because it is a simple fact of life that human rights and the environment are linked in many ways.

<sup>2</sup> For example, in the Inter-American and African systems of international human rights protection.

Firstly, environmental conditions of a certain quality are imperative to people's life, dignity and wellbeing, as well as to the full enjoyment of other basic human rights. Secondly, human rights can be negatively affected by measures taken for the purposes of environmental protection or climate action. Thirdly, human rights are a procedural tool for environmental defenders or simply, for concerned citizens.

The ECtHR has ruled in an impressive number of cases concerning situations where various environmental harms or risks - such as, air or water pollution, as well as noise, smell or dust nuisance, have directly affected individual human rights.

The Court has broadened the scope of civil and political rights, for example, by devising a general principle according to which severe environmental harm that adversely affects individuals' well-being, to a sufficiently serious degree, can be considered as an interference with the right to respect for private and family life or for home. The Court has also found States responsible for man-made and natural environmental disasters under the right to life and the right to property. The Court has frequently been called on to balance the measures of sustainable use of natural resources or the protection of endangered ecosystems or species, with the right to a peaceful enjoyment of property of business or homeowners. In the context of ecological activism, the Court has strengthened participatory rights, namely the rights to information, public participation in a decision-making process and to access to justice, often relying on rights to freedom of expression and assembly, the right to a fair trial, or procedural limbs of the right to life or the right to respect for home and private life.<sup>3</sup>

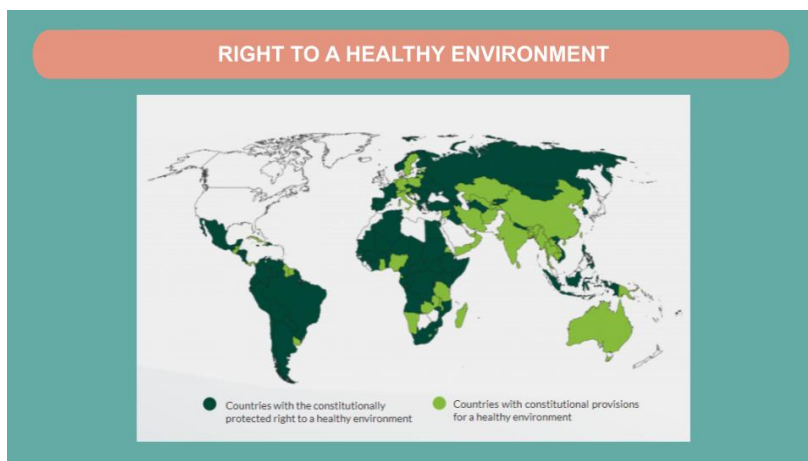
We then have DIRECT PROTECTION through a self-standing right to a safe, clean, healthy and sustainable environment.

This approach is in the making, mainly in non-European jurisdictions. The term "in the making" reflects the fact that the right to a healthy environment is nowadays becoming increasingly operative in the practice of human rights or fundamental rights.

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<sup>3</sup> N Kobylarz, 'The European Court of Human Rights, an Underrated Forum for Environmental Litigation' in H Tegner Anker and B Egelund Olsen (eds), *Sustainable Management of Natural Resources, Legal Instruments and Approaches* (Intersentia 2018); and *Guide sur la jurisprudence de la Convention européenne des droits de l'homme Environnement* (Première édition – 1<sup>er</sup> juillet 2021), [https://echr.coe.int/Documents/Guide\\_Environment\\_FRA.pdf](https://echr.coe.int/Documents/Guide_Environment_FRA.pdf)

At least 155 nations across the world have recognised various formulations of the right to a healthy environment in a legally binding manner.<sup>4</sup> In particular, the right is explicitly inscribed in constitutions in 100 countries world-wide. This includes the majority of Member States of the Council of Europe.<sup>5</sup> In addition, superior courts of Estonia and Italy, and of many countries on other continents, have ruled that the right to a healthy environment is implicit in constitutional provisions protecting the right to life.<sup>6</sup> The right to a healthy environment is not without controversy, however. The Irish Supreme Court, in a recent judgment concerning climate change, firmly refused to derive it from existing constitutional provisions.<sup>7</sup>



On the international level, the right to a healthy environment is inscribed in the 1981 African Charter on Human and Peoples' Rights.<sup>8</sup> The Inter-American system of human rights protection has incorporated the right in 1988 by means of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador").<sup>9</sup> The relevant provision, however, stayed inoperative in practice, because it was not accompanied by the right to bring an individual petition to the Inter-American Commission on

<sup>4</sup> United Nations Human Rights Council, Declaration Human rights and the environment, 17 March 2021A/HRC/46/L.6/Rev.1.

<sup>5</sup> By the count of the UN Special Rapporteur on Human Rights and the Environment, the number is 31 with 16 Member States of the Council of Europe have not recognised a right to a healthy environment in their constitutions. These are: Austria, Bosnia and Herzegovina, Cyprus, Denmark, Germany, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, San Marino, Sweden, Switzerland, and the United Kingdom. D Boyd, 'Catalyst for Change' in J Knox and R Pejan (eds), *Human Right to a Healthy Environment* (Cambridge University Press 2018) 17, 18. By the count of the Council of Europe's Human Rights Commissioner, the number of MS with the constitutional right to a healthy environment is "over 25", see Human Rights Comment, 'Living in a clean environment: A neglected human rights concern for all of us', issued by D Mijatović, Commissioner for Human Rights on 4 June 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, 30 December 2019, A/HRC/43/53.

<sup>6</sup> D Boyd, 'The Implicit Constitutional Right to a Healthy Environment' (2011) 20 (2) *Review of European Community and International Environmental Law*, 171, 172 and D Boyd, 'Catalyst for Change' in J Knox and R Pejan (eds), *Human Right to a Healthy Environment* (Cambridge University Press 2018) 17, 18.

<sup>7</sup> Friends of the Irish Environment CLG v. the Government of Ireland [2020] IESC 49, 31 July 2020, Section 8.

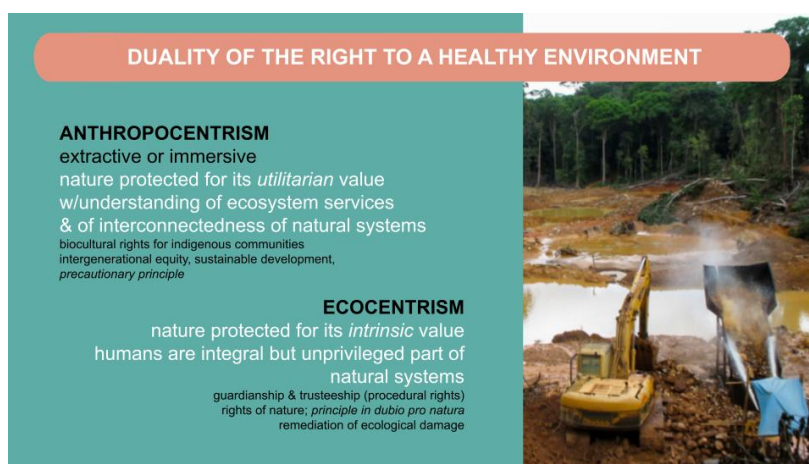
<sup>8</sup> African Charter on Human and Peoples' Rights, Article 24: All peoples shall have the right to a general satisfactory environment favourable to their development.

<sup>9</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Article 11: Right to a Healthy Environment 1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation, and improvement of the environment.

Human Rights.<sup>10</sup> Ultimately, the right to a healthy environment has been given teeth by the judges of the Inter-American Court of Human Rights. They held, first in 2017 in an Advisory Opinion, and then, last year, in a contentious case, that the right to a healthy environment was an autonomous right, stemming from economic, social and cultural rights,<sup>11</sup> and that it was indivisible from civil and political rights ‘based on the recognition of the dignity of the human being.’<sup>12</sup> The right to a healthy environment, whether in its explicit or implicit form, has often served as a basis for environmental and climate litigation that has skyrocketed in the recent years.<sup>13</sup> These legal actions and ensuing rulings of national superior courts, international human rights tribunals or the United Nations human rights committees, are gradually delineating the contents and the functions of the right to a healthy environment.

The right’s present-day making process is tricky and fascinating because the right’s contents and functions are dynamic and far from singular. To understand modern-day environmental human rights is to be aware of the duality of the right to a healthy environment.<sup>14</sup>

In its subjective anthropocentric dimension, the right protects the environment because of its more or less direct utility for humans.



The ECtHR’s environment-related case-law is based on strong/extractive anthropocentrism. Pursuant to this traditional approach to human rights, humans are the sole bearers of intrinsic worth. The natural environment has only an instrumental value, insofar as it guarantees conditions or resources that are necessary for human life and well-being. In terms of legal interests, humans are viewed as superior to other members of the natural community. As a result, animals, ecosys-

<sup>10</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Article 19.6.

<sup>11</sup> Namely, the right to progressive development of economic, social and cultural rights, guaranteed by Article 26 of the 1969 American Convention on Human Rights.

<sup>12</sup> Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of 15 November 2017, §§ 47, 57, 59, 62 and 63; and Case of the Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina, judgment of 6 February 2020, § 243.

<sup>13</sup> P de Vilchez and A Savaresi, The Right to a Healthy Environment and Climate Litigation: A Mutually Supportive Relation?, unpublished in print [https://www.researchgate.net/publication/351183919\\_The\\_Right\\_to\\_a\\_Healthy\\_Environment\\_and\\_Climate\\_Litigation\\_A\\_Mutually\\_Supportive\\_Relation](https://www.researchgate.net/publication/351183919_The_Right_to_a_Healthy_Environment_and_Climate_Litigation_A_Mutually_Supportive_Relation)

<sup>14</sup> N Kobylarz, Balancing its way out of anthropocentrism: Integrating ecological human rights in the European Court of Human Rights ‘fair balance’ review, forthcoming in the Special Issue of the Journal of Human Rights and the Environment (Elgar 2021).

tems and other elements of nature that cannot provide an obvious and immediate benefit to humans, do not enjoy any particularly meaningful protection under green human rights. It is true that many of the ECtHR's environment-related judgments have had a general positive effect on the natural environment. But this does not undermine their anthropocentric character insofar as any such effect is only incidental and necessarily limited. It is so because the Strasbourg system aims at redressing and, to some extent, at preventing, harm to humans and not harm to the environment as such.

But the right to a healthy environment has also developed an objective ecocentric or ecological dimension.<sup>15</sup> In this sense, it acknowledges and protects an intrinsic value of the environment, as such, that is to say, regardless of nature's utility to humans. Humanity is considered an integral, but unprivileged, part of nature.

Ecocentrism and ecological rights are based on environmental ethics. As philosophical concepts they may stem from the animal rights movement or from the cosmologies of indigenous populations. The uttermost expression of ecocentrism in law has been the attribution of legal personality to nature or to its elements.

The European legal systems view such far-reaching interpretations of ecocentrism with some difficulty. It is therefore important to stress that **the ecocentric dimension of the right to a healthy environment does not entail the abandonment of the 'human perspective' that has always been at the core of international human rights and fundamental rights. Ecocentrism merely requires that the human agent no longer be a unique concern of human rights, or that it no longer be viewed as central or privileged vis-à-vis non-human elements of nature.**

**The right to a healthy environment is therefore convergently, anthropocentric-and-ecocentric. It protects both humans - as recipients of ecosystem services - and nature for its inherent value, regardless of its utility to humans.**

A comparative study of recent international jurisprudence shows that, in practice, given the inherent links between human rights and the environment, and given the indivisibility of human rights,<sup>16</sup> an interference with the right to a healthy environment more often than not, generates a collateral interference with a conventional human right of an affected individual.<sup>17</sup>

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<sup>15</sup> El nuevo paradigma ecológico en el derecho ambiental. Perspectivas desde Costa Rica y El Salvador (Fundación Heinrich Böll – Oficina San Salvador) 2019; Cuadernos de jurisprudencia núm. 3, Contenido y alcance del derecho humano a un medio ambiente sano, Centro de Estudios Constitucionales de la Suprema Corte de Justicia de la Nación (2020).

<sup>16</sup> The 1993 Vienna Declaration of the World Conference on Human Rights; United Nations Human Rights Council, Declaration Human rights and the environment, 17 March 2021A/HRC/46/L.6/Rev.1; and E Daly and JR May, 'Indivisibility of human and environmental rights' in E Daly and JR May (eds) Human Rights and the Environment, Legality, Indivisibility, Dignity and Geography (Elgar 2019) VII 171, 175.

<sup>17</sup> N Kobylarz, Balancing its way out of anthropocentrism: Integrating ecological human rights in the European Court of Human Rights 'fair balance' review, forthcoming in the Special Issue of the Journal of Human Rights and the Environment (Elgar 2021); M Peña Chacón, Envejecimiento de las cortes latinoamericanas, últimos avances jurisprudenciales

**What changes is that the right to a healthy environment engenders a new “pluricentric approach” to the assessment of protected interests.** This, in some fundamental rights jurisdictions, brought about adjustments to the doctrine of legal standing and to participatory rights. By doing so, some legal systems offered a guardianship-type of legal remedies, allowing concerned citizens to seek either prevention of injury to the environment or relief for such injury, the latter, in the form of the remediation of the actual ecological damage.<sup>18</sup>

The dualism of the right to a healthy environment was not obvious back in the day when the previous attempts to inscribe the right into a new protocol to the ECHR were made.<sup>19</sup> Nowadays, however, it is acknowledged, by the doctrine<sup>20</sup> and by the current UN Special Rapporteur on Human Rights and the Environment.<sup>21</sup> More authoritatively, the Inter-American Court of Human

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<sup>18</sup> For example, in France, certain types of environmental associations, local authorities and other designated bodies have a legal standing to seek reparation of ecological damage by means of *action en réparation du préjudice écologique*, regulated by Articles 1246 - 1252 of the French Civil Code and defined in reference to ecosystem services. In Mexico, legal standing for an *amparo* action is determined through ecosystem services as such, without ecological damage being necessary. The standing “depends on the special position of the person or community within the ecosystem that is allegedly harmed, particularly, with [its ecosystem] services. ... [t]he deprivation or interference with ecosystem services is what qualifies the position of petitioner to seek [legal] protection.” “*Aquifers Case*”, Suprema Corte de Justicia de la Nación [National Supreme Court of Justice, Mexico] no. 649/2019, 11 March 2020, paragraph 32 (page 20); and ‘*Carpintero Lagoon Case*’, Liliana Cristina Cruz Piña y otra c. actos del presidente municipal de Tampico, estado de Tamaulipas, y otras autoridades, Suprema Corte de Justicia de la Nación [National Supreme Court of Justice, Mexico] no. 307/2016, 14 November 2018, paragraphs 147-173. For the United States, D Shelton, Complexities and Uncertainties in matters of Human Rights and the Environment, in Human Right to a Healthy Environment, J Knox and R Pejan (eds), Human Right to a Healthy Environment (Cambridge University Press 2018) 86, 100.

<sup>19</sup> The Parliamentary Assembly of the Council of Europe has in the past made recommendations that an additional protocol to the ECHR be drawn up to recognise an autonomous right to a healthy environment as a basic human right. All of these recommendations were rejected by the Member States, acting *via* the Committee of Ministers. The first such attempt appears to have been made in 1973 at the initiative of Germany with the proposed right’s formulation: “No one should be exposed to intolerable damage or threats to his health or to intolerable impairment of his well-being as a result of adverse changes in the natural conditions of life”. This proposal appears to have been rejected because its provisions were not sufficiently precise, see B Van Dyke, “A Proposal to Introduce the Right to a Healthy Environment into the European Convention Regime” (HeinOnline 1994) 13 (3) Virginia Environmental Law Journal 323, 337 and 344; and M Fitzmaurice, “The European Court of Human Rights and the Right to a Clean Environment: Evolutionary or Illusory Interpretation?” in G Abi-Saab, K Keith, G Marceau and C Marquet (eds), Evolutionary Interpretation and International Law (Hart Publishing 2019), 141, 151. The subsequent recommendations were made in 1999 (no. 1431); 2003 (no. 1614) and 2009 (nos. 1883 and 1885). On these occasions, the Committee of Ministers considered such an additional protocol redundant since, in the Committee of Ministers’ opinion, the ECHR system already indirectly contributed to the protection of the environment through existing Convention rights and their interpretation in the evolving case law of the ECtHR.

<sup>20</sup> E Lambert, The Environment and Human Rights, Introductory Report to the High-Level Conference Environmental Protection and Human Rights, Strasbourg, 27 February 2020; E Daly and J R May, Learning from Constitutional Environmental Rights, in Human Right to a Healthy Environment, J Knox and R Pejan (eds), Human Right to a Healthy Environment (Cambridge University Press 2018) 53 and 54; C Rodriguez-Garavito, A Human Right to a Healthy Environment?, Moral, Legal and Empirical Considerations, J Knox and R Pejan (eds), Human Right to a Healthy Environment (Cambridge University Press 2018) 164; S Ravi Rajan, K Davies and C Iorns Magallanes, Identifying legal claims to human rights and the environment, Human Rights and the Environment, Legality, Indivisibility, Dignity and Geography, E Daly and J R May (eds.), Volume VII, (Elgar, 2019) 187.

<sup>21</sup> Report of the Special Rapporteur on Human Rights and the Environment “A healthy biosphere and the right to a healthy environment”, 2020, A/75/161, paragraphs 33 and 36; D Boyd, Speech, Actes de la Conférence de haut niveau “Protection environnementale et droit de l’homme” Strasbourg, Council of Europe, 27 February 2020, 18, and D Boyd, The Rights of Nature: A Legal Revolution That Could Save the World (Toronto, ECW Press, September 2017); 312

Rights, as well as a growing-number of national superior courts, especially from Latin America, have provided practical examples of how the anthropocentric and ecocentric perspectives of the right to a healthy environment operate side by side.<sup>22</sup>

For example, the IACtHR's 2020 judgment in the *Lhaka Honhat Case*<sup>23</sup>, is clearly grounded in the new legal paradigm of ecocentrism. The San José court reiterated from its landmark Advisory Opinion OC-23/17 that:

“[A]s an autonomous right, the right to a healthy environment ... 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. This means that it protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life or personal integrity, but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right.”<sup>24</sup>

This case arose from the Argentine authorities' failure to recognise land ownership by indigenous communities, as well as from their tolerance of various activities by third parties, such as illegal logging, intensive livestock husbandry and fencing, which ended up decreasing forest resources and biodiversity. On the facts of the case, the IACtHR found a violation of the autonomous right to a healthy environment - as derived from the economic, social and cultural rights -, as well as of the rights to food, water, and to cultural identity.<sup>25</sup>

While the Inter-American Court's judgment is anchored in the indigenous context, the judgment given by the Colombian Supreme Court in the “*Amazon Forest Case*” has a universal backdrop. It demonstrates that ecological human rights can have a rational application for a modern urban society *via* the concept of comprehensive and long-term ecosystem services for current and future generations.<sup>26</sup>

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<sup>22</sup> N Kobylarz, Balancing its way out of anthropocentrism: Integrating ecological human rights in the European Court of Human Rights 'fair balance' review, forthcoming in the Special Issue of the Journal of Human Rights and the Environment (Elgar 2021); and M Peña Chacón, Derechos Humanos y Medio Ambiente (Primera Edición- San José), 2021.

<sup>23</sup> Case of the Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina, Inter-American Court of Human Rights, judgment of 6 February 2020.

<sup>24</sup> Advisory Opinion OC-23/17 of 15 November 2017, requested by the Republic of Colombia, paragraph 62 and Case of the Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina, Inter-American Court of Human Rights, judgment of 6 February 2020, paragraph 203.

<sup>25</sup> Case of the Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina, Inter-American Court of Human Rights, judgment of 6 February 2020, paragraph 289.

<sup>26</sup> Andrea Lozano Barragán, Victoria Alexandra Arenas Sánchez, Jose Daniel y Felix Jeffry Rodríguez Peña y otros v Presidente de la República y otros, STC4360-2018, Corte Suprema de Justicia [Supreme Court, Colombia], 5 April 2018.



That case was brought by young, non-indigenous city dwellers who felt affected in the enjoyment of their fundamental rights by massive logging in the Amazon rainforest insofar as it was contributing to global warming. The Supreme Court, drawing on science, found that the country was facing imminent and serious damage on account of the chain of physical effects beyond the region: increased deforestation produced CO<sub>2</sub> emissions that caused the greenhouse effect and global warming that destroyed biodiversity and disturbed water cycles.<sup>27</sup>

The Supreme Court therefore granted the claimants' guardianship action, recognising interconnectedness between the collective right of having a thriving ecosystem and the claimants' individual rights to life, health, and human dignity. On the facts, the Supreme Court held that the public authorities had not efficiently tackled the problem of deforestation in the Amazon and had failed in their duties firstly, towards the claimants, thus violating their rights to life, health, food and water, and secondly, towards the rainforest as a subject of rights that were distinct from the individual rights of the claimants. These were the rights to protection, conservation, maintenance and restoration. The Colombian Supreme Court ordered that State and local authorities urgently develop an effective action plan to reduce deforestation in the Amazon.

These two and many more judgments that are currently emerging from tribunals across the world, are the examples of what a French lawyer and thinker, Mireille Delmas-Marty calls in French "*les forces imaginantes du droit*." <sup>28</sup>

Let me then end, by expressing a wish that the HELP course on the Environment and Human Rights may provide the practicing and aspiring lawyers with a tool that would not only inform them of the relevant doctrines of environmental human rights but that would also awaken their legal imagination - a force that is necessary for interpreting the regional human rights "living instruments" in light of the present-day conditions of environmental democracy and in harmony with evolving standards of ecological human rights.

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<sup>27</sup> Andrea Lozano Barragán, Victoria Alexandra Arenas Sánchez, Jose Daniel y Felix Jeffry Rodríguez Peña y otros v Presidente de la República y otros, STC4360-2018, Corte Suprema de Justicia [Supreme Court, Colombia], 5 April 2018, Consideraciones 4 (page 15), 5 (page 16) and 11 (pages 33-36).

<sup>28</sup> M Delmas-Marty "Aux quatre vents du monde. Petit guide de navigation sur l'océan de la mondialisation" (Seuil, 2016) and the author's numerous previous publications.