



Deforestation: The Elephant in the Climate Room

A research into the protection of forests through the lens of human rights

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ARTICLE

ABSTRACT

Forests play a key role in the fight against climate change. Despite growing awareness of this role, forests are under threat due to large scale deforestation. The current regime under international environmental law does not yet sufficiently address deforestation, as there are few concrete binding obligations to combat it. This paper therefore explored to what extent international human rights law can be used to protect forests against deforestation, in particular the human rights laid down in the American Convention on Human Rights and the European Convention on Human Rights. This paper reveals that there is much potential in both human rights systems to address deforestation, under the rights of life, private and family life, property and a healthy environment. The Inter-American system has the most potential to address deforestation, as the scope of the protection is wider and more concrete measures are expected from States than in the European system. Despite the potential to address deforestation, important challenges exist.

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KEYWORDS:

American Convention on Human Rights; European Convention on Human Rights; Human Rights and the Environment; Deforestation

TO CITE THIS ARTICLE:

Dewy Pistora, 'Deforestation: The Elephant in the Climate Room' (2024) 20(1) Utrecht Law Review 80–99. DOI: <https://doi.org/10.36633/ulr.960>

Forests cover around 31% of the global land area. However, many forests are in immediate danger, due to widespread deforestation.¹ Although the loss of forest area has decreased since 1990, deforestation continues at an alarming pace, which results in high losses of biodiversity.² One of the most well-known tropical rainforests, the Amazon rainforest, also considered as 'the lungs of the earth', reached its highest level of deforestation in the period 2020–2021.³ Deforestation takes place worldwide, for example in Africa, Asia and Europe.⁴ Only in the last few decades has public and scientific attention been paid to the rapid destruction of the world's forests.⁵ There is growing awareness of the key role forests play in the protection of biological diversity and in the fight against climate change.⁶ In 2006, research showed that some 20% of annual global greenhouse gas emission is caused by land use change – the majority consisting of deforestation in developing countries – which was even higher than the emissions produced by the transport sector all over the world. According to this research, controlling deforestation could provide a useful tool for reducing emissions and therefore for the fight against climate change.⁷ Since then, reducing emissions from deforestation and forest degradation (REDD-plus) has become an important element in national and international mitigation strategies.⁸

Despite the increased attention given to the role of deforestation in climate change, deforestation still takes place on a large scale. This has major consequences for the liveability of the planet, nature, animals and human beings. In the majority of cases deforestation goes hand in hand with human rights violations, such as the killing of indigenous people and environmental activists who want to protect forests and such as large scale pollution.⁹ In addition, deforestation affects the ecosystem of forests with consequences for the surrounding living areas. For example, deforestation can result in changing rainfall patterns and increases of temperature. It is predicted that forests are getting drier and might even cease to exist. Drought causes fires in the long term.¹⁰ In addition, a link has been established between deforestation and floods in surrounding areas due to rainfall. These floods not only impact living conditions of people, but also their agriculture, like crops.¹¹ Hence, deforestation has a negative impact in several areas.¹²

¹ See for an elaborate discussion United Nations, 'The Global Forest Goals Report 2021' (United Nations 2021) <www.un.org/esa/forests/wp-content/uploads/2021/08/Global-Forest-Goals-Report-2021.pdf> (last accessed 21 June 2023).

² FAO and UNEP, 'The State of the World's Forests 2020. Forests, biodiversity and people' (FAO 2021) <www.fao.org/3/ca8642en/ca8642en.pdf> (last accessed 21 June 2023), 9.

³ K Watson, 'Brazil: Amazon sees worst deforestation levels in 15 years' *BBC* (London, 19 November 2021). See also concerning the increased level of deforestation; J Setzer & D Winter de Carvalho, 'Climate litigation to protect the Brazilian Amazon: Establishing a constitutional right to a stable climate' (2021) 30 *RECIEL* 2 <https://doi.org/10.1111/reel.12409>, 197–206; R Pereira & B Garcia, 'Editorial: The legal protection of the Amazon rainforest' (2021) 30 *RECIEL* 2 <https://doi.org/10.1111/reel.12411>, 157–161.

⁴ See e.g. FAO and UNEP, *supra* note 2.

⁵ L Mitten, 'The human cost of deforestation' (1997) 9 *Journal of Social Justice*, <https://doi.org/10.1080/10402659708426107>, 549.

⁶ F Seymour, 'Forests, climate change and human rights: managing risks and trade-offs', in S Humphreys, *Human Rights and Climate Change* (Cambridge University Press 2009) <https://doi.org/10.1017/CBO9780511770722.009>, 207.

⁷ *ibid*; N Stern, *The Economics of Climate Change: The Stern Review* (Cambridge University Press 2007).

⁸ See M Buizer et al., 'Climate change and deforestation: The evolution of an intersecting policy domain' (2014) 35 *Environmental Science & Policy* <https://doi.org/10.1016/j.envsci.2013.06.001>, 1.

⁹ See e.g. Setzer & Winter de Carvalho, *supra* note 3; Pereira & Garcia, *supra* note 3; J Bendel & T Stephens, 'Turning to international litigation to protect the Amazon?' (2021) 30 *RECIEL*, <https://doi.org/10.1111/reel.12387>, 173–183; J Pietras, 'An (indigenous) rights-based approach to deforestation in Papua new guinea' (2014) 22 *Waikato Law Review: Taumauri* 137; C Koyuncu & R Yilmaz, 'Deforestation, corruption, and private ownership in the forest sector' (2013) 47 *Quality & Quantity* <https://doi.org/10.1007/s11135-011-9513-2>, 227. A 2020 report from Global Witness, an international human rights group, documented that 212 environmental and land activists were murdered in 2019. See Global Witness, 'Defending Tomorrow: The climate crisis and threats against land and environmental defenders' (Global Witness 2020) <www.globalwitness.org/en/campaigns/environmental-activists/defending-tomorrow/> (last accessed 21 June 2023).

¹⁰ See e.g. G Jia et al., 'Land–climate interactions', in PR Shukla et al. (eds.), *Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems* (IPCC 2019), doi.org/10.1017/9781009157988.004, 176–180.

¹¹ Seymour, *supra* note 6) and FAO and UNEP, *supra* note 2.

¹² See for more information about the consequences of deforestation Jia et al. *supra* note 10, 176–180.

There are several international political and legal initiatives that have attempted to provide protection to forests. The New York Declaration on Forests was endorsed at the 2014 Climate Summit in New York, which is a declaration calling for global action to protect and restore forests.¹³ The Paris Agreement includes one reference to deforestation and forest degradation.¹⁴ In addition, the 2021 UN Climate Change Conference (COP26) created a new declaration for forests: the Glasgow Climate Pact, which is a very (too?) ambitious instrument including a pledge from 137 countries to stop deforestation by 2030.¹⁵ However, the previously mentioned initiatives do not contain specific, legally binding obligations to address deforestation, which casts doubt on their effectiveness. The inadequacies of current global environmental governance, including forest protection, are also widely recognized.¹⁶

To address these shortcomings, several initiatives have sought to establish a *binding* regime for environmental protection, including forest protection. However, these attempts have not yet been adopted and have also been criticized.¹⁷ The most promising regime with regard to forest protection is the REDD-plus regime.¹⁸ Nevertheless, this system has also been criticized for prioritising calculable and tradable forest values over qualitative, other values.¹⁹ On the EU-level, the most recent new regulation that addresses deforestation by prohibiting the import of products that contribute to deforestation, entered into force in June 2023.²⁰ The effectiveness of this new regulation remains to be seen, but environmental organizations are critical of it.²¹ In the Inter-American region, a Summit was held in August 2023 in Belém (Brazil) in which countries in South America agreed on working together in an alliance to make agreements to save the endangered Amazon rainforest. However, no concrete, legally binding proposals have yet been made.²² Despite the existence of these initiatives, deforestation still takes place on a large scale worldwide.²³ This shows that there are still insufficient (binding) frameworks to address deforestation.

The question arises whether forests can be protected under a different legally binding regime, in particular human rights law. It is a question that has not yet been (fully) explored in academic literature. The relationship between human rights and the environment has been widely recognized.²⁴ There is a growing body of literature on human rights and (aspects of) the environment. For example, legal scholarship has focused on the human right to a healthy

13 The declaration is available at forestdeclaration.org/about/new-york-declaration-on-forests/.

14 Parties are 'encouraged', in short, to take action to set up policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation. See Article 5 (2) of the Paris Agreement 2015.

15 COP26, 'Glasgow Climate Pact', <[webarchive.nationalarchives.gov.uk/ukgwa/20230401054904/https://ukcop26.org/](https://web.archive.nationalarchives.gov.uk/ukgwa/20230401054904/https://ukcop26.org/)>. See also C O'Grady, 'Glasgow pact leaves 1.5°C goal on life support' (2021) 374 *Science*, 920.

16 See e.g. Report of the UN Secretary-General on 'Gaps in international environmental law and environment-related instruments: towards a global pact for the environment' (30 November 2018) UN Doc A/73/419.

17 One of these attempts is a Global Pact for the Environment. See LJ Kotzé & D French, 'A Critique of the Global Pact for the Environment: A Stillborn Initiative or the Foundation for Lex Anthropocenae?' (2018) 18 *International Environmental Agreements: Politics, Law and Economics* <https://doi.org/10.1007/s10784-018-9417-x>, 811.

18 REDD-plus is a regime that reduces emissions from deforestation and forest degradation, including sustainable management of forests and the conservation and enhancement of forest carbon stocks. See concerning this regime and other regimes and the failure to protect, Bendel & Stephens, *supra* note 9.

19 See Buizer et al., *supra* note 8.

20 See European Parliament and Council Regulation (EU) No. 2023/1115 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010.

21 E.g. NOS, 'EU verbiedt invoer producten om ontbossing, milieuclubs kritisch' (6 December 2022) <nos.nl/artikel/2455314-eu-verbiedt-invoer-producten-om-ontbossing-milieuclubs-kritisch>. See also Greenpeace, 'Chainsaws fall silent: EU agrees deforestation law' (6 December 2022) <greenpeace.org/eu-unit/issues/nature-food/46508/chainsaws-fall-silent-eu-agrees-deforestation-law/>.

22 See about the Belém Summit, K Watson, 'Amazon deal lacks concrete measures, say climate activists', (9 August 2023) <bbc.com/news/world-latin-america-66446449>.

23 Global Forest Watch offers extensive data about levels of deforestation worldwide. See globalforestwatch.org.

24 E.g. UNGA 'The Human Right to a Clean, Healthy and Sustainable Environment' UN Doc A/RES/76/300 (28 July 2022); P de Vilchez & A Savaresi, 'The Right to a Healthy Environment and Climate Litigation: A Game Changer?' (2021) 32 *Yearbook of International Environmental Law*, <https://doi.org/10.1093/yiel/yvac064>, 3–19; B Lewis, *Environmental Human Rights and Climate Change* (Springer 2018), <https://doi.org/10.1007/978-981-13-1960-0>, 15–39. See e.g. *Guerra and Others v Italy* App no. 116/1996/735/932 (ECHR, 19 February 1998) and *Fadeyeva v Russia* App no. 55723/00 (ECHR 9 June 2005).

environment,²⁵ human rights and climate change²⁶ and the protection of the environment through human rights in general.²⁷ However, there is still limited attention given to the use of human rights in the context of deforestation, in which the main focus is on indigenous (human) rights and deforestation in the Inter-American region.²⁸

Considering the shortcomings of current international and regional legal and political initiatives and the importance of combating deforestation, this article will build on the existing literature by addressing the question to what extent human rights law can be used to protect the environment, especially forests, against deforestation. In particular, this article will discuss the *challenges and opportunities* of the most relevant human rights of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the American Convention on Human Rights (ACHR). The scope of this article is limited to a discussion of the relevant substantive rights and the jurisprudence of both human rights courts.

The research question will be answered by means of literature and case law analysis. The cases were selected on the basis of their importance, as recognized in legal scholarship. A functional comparative law method will be used to answer the main question.²⁹ Interesting developments are taking place in the field of environmental protection and human rights in the three major regional human rights systems, namely the African, the Inter-American and European system.³⁰ Due to time and space limits, only the Inter-American and European regional systems will be compared. First, both systems have experienced an active development when it comes to the link between human rights and environmental protection.³¹ Second, although the potential rights in both systems are quite similar, the interpretation and application of these rights is different in the two systems, due to the role of indigenous people in the Inter-American system.³² This is far less the case in the European system, where rights are more individualized and indigenous or community rights do not play such a (big) role. Finally, deforestation is a problem in both regional areas.³³ Hence, these systems have similarities, but also important differences. The African system will be excluded, as it is to a certain extent comparable to the Inter-

25 R Bratspies, 'Do We Need a Human Right to a Healthy Environment' (2015) 13 *Santa Clara Journal of International Law* 31; H Knox & R Pejan, *The Human Right to a Healthy Environment* (Cambridge University Press 2018) <https://doi.org/10.1017/9781108367530>; I Kotiuk et al., 'Does the European Convention on Human Rights guarantee a human right to clean and healthy air? Litigating at the nexus between human rights and the environment – the practitioners' perspective' (2022) 13 *Journal of Human Rights and the Environment*, <https://doi.org/10.4337/jhre.2022.00.04>, 112–151.

26 Lewis, supra note 24; C Voigt, 'The climate change dimension of human rights: due diligence and states' positive obligations' (2022) 13 *Journal of Human Rights and the Environment*, <http://dx.doi.org/10.2139/ssrn.3839012>, 152–171.

27 J Calderón-Gamboa & J Recinos, 'Inter-American approaches to the protection of the right to a healthy environment and the Rights of Nature and potential contributions to the European human rights system' (2022) 13 *Journal of Human Rights and the Environment*, <https://doi.org/10.4337/jhre.2022.00.03>, 86–121; D Mejía-Lemos, 'The Protection of the Environment through International Human Rights Litigation: Taking Stock of Challenges and Opportunities in the Inter-American System' (2022) 22 *Human Rights Law Review* 2, <https://doi.org/10.1093/hrlr/ngac015>, 1–16; E Sobenes et al., *The Environment Through the Lens of International Courts and Tribunals* (T.M.C. Asser Press 2022) <https://doi.org/10.1007/978-94-6265-507-2>.

28 E.g. Pietras, supra note 9 and K Baragwanatha & E Bayib, 'Collective property rights reduce deforestation in the Brazilian Amazon' (2020) 117 *Proceedings of the National Academy of Sciences of the United States of America* <https://doi.org/10.1073/pnas.1917874117>, 20495. See also Bendel & Stephens, supra note 9 who see potential for the human rights system to address the issue of deforestation, but the analysis is rather limited and only refers to the Inter-American system of human rights.

29 M Van Hoecke, 'Methodology of comparative legal research' (2015) (1) *Law and Method*, <https://doi.org/10.5553/REM.000010>, 8–11.

30 For example, the IACtHR, the ECtHR and the African Commission on Human and Peoples' Rights (ACHPR) have recognized the interrelationship between human rights and the environment and some even the right to a healthy environment. See *The Environment and Human Rights, Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria* (Communication No. 155/96) and *Tătar v Romania* App no. 67021/01 (ECHR 30 November 2009).

31 See e.g. the recognition of a healthy environment in the American system in *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4 (1) and 5 (1) of the American Convention on Human Rights)* Advisory Opinion OC-23/17 (IACtHR 15 November 2017), and in the European system concerning the case law that implies minimum conditions of the environment, see L Dogaru, 'Preserving the Right to A Healthy Environment: European Jurisprudence' (2014) 141 *Procedia – Social and Behavioral Sciences* <https://doi.org/10.1016/j.sbspro.2014.05.232>, 1346.

32 See e.g. *The Environment and Human Rights*, supra note 31.

33 The Amazon basin is located in South America, where the Inter-American regional system applies. Although Europe does not have tropical forests like the Amazon rainforest, it still has ancient forests which are in danger of being logged. Deforestation therefore also plays a role in Europe, although on a different scale.

American system. For example, both the Inter-American and the African systems recognize a right to a healthy or satisfactory environment in their Charters and indigenous or community rights play a major role in both systems. Comparing the Inter-American and European systems will give sufficient insight into *the potential* and *the difficulties* in the protection of forests in a different context and through several human rights.

This paper sets out the interaction between deforestation, environmental issues and human rights issues in Section 2. Section 3 discusses the European system, provides an overview of how the most relevant rights in the ECHR address environmental issues and it also discusses the challenges and opportunities of these rights for the issue of deforestation. Section 4 does the same for the Inter-American system. Section 5 supplies the conclusion.

2. KEY FEATURES OF DEFORESTATION AS AN ENVIRONMENTAL AND HUMAN RIGHTS ISSUE

Deforestation can be defined as the intended permanence of a *change in land use from the growing of trees to some other purpose*.³⁴ In this definition timber management practices, such as cutting forests with the intention of allowing regeneration of trees or selective harvesting, are excluded.³⁵ The removal of trees needs to be intended, permanent and has to serve a purpose other than forest management. In general, forests are cut down, burned, logged, fragmented and over-hunted on a (very) large scale to make space for agriculture and animal grazing and to obtain, for example, wood for fuel, manufacturing and construction.³⁶ Deforestation has caused huge alterations of landscapes worldwide; however, today the greatest amount of deforestation is happening in tropical rainforests.³⁷

Deforestation has several negative impacts on the environment and human beings. First, it is a major threat to animal and plant biodiversity. Forests sustain approximately over half of the planet's life forms. When (large parts of) forests are cut down, many plant species cease to exist and many animals (species) die, due to insufficient living space or food shortages.³⁸ Second, deforestation threatens the living habitats of people. For example, tropical forests provide vital habitats for indigenous or tribal communities. The high pace of deforestation affects these living habitats in such a way that people or whole communities are forced to leave their territories, or might even cease to exist.³⁹ Third, the loss of tropical forests will impact the potential of forests to provide sources of food, construction materials, medicines and other products for local residents – who are highly dependent on them – and (irreplaceable) medicinal products for people worldwide.⁴⁰ Fourth, a very important impact of forest destruction is the loss of natural ecosystems (services). Forests play a vital role in keeping the planet liveable. Forests are crucial for maintaining a certain level of stability of rivers and watersheds thereby preventing flooding and stability of soils thereby preventing massive erosion.⁴¹ Fifth, forests are of vital importance for regional climates. Deforestation could lead to far less rain, resulting in lower humidity, higher surface temperatures and more severe drought. These kinds of changes also cause frequent and severe wildfires.⁴²

³⁴ D Bromley & E Reis, 'Deforestation – institutional causes and solutions' in M Palo & J Uusivuori (eds.), *World Forests, Society and Environment* (Springer 1999) https://doi.org/10.1007/978-94-011-4746-0_9, 95.

³⁵ *ibid.*, 95.

³⁶ W Flaurance, 'Reflections on the tropical deforestation crisis' (1999) 91 *Biological Conservation* [https://doi.org/10.1016/S0006-3207\(99\)00088-9](https://doi.org/10.1016/S0006-3207(99)00088-9), 109.

³⁷ *ibid.*, 110–111. See also globalforestwatch.org.

³⁸ *ibid.*, 109.

³⁹ *ibid.*, 109–110. See also about the interaction between indigenous communities and the environment M Masaquiza Jerez, UN/DESA Policy Brief #101: Challenges and Opportunities for Indigenous Peoples' Sustainability, (19 April 2021) www.un.org/development/desa/dpad/publication/un-des-a-policy-brief-101-challenges-and-opportunities-for-indigenous-peoples-sustainability/ (last accessed 21 June 2023).

⁴⁰ Flaurance, *supra* note 36, 110.

⁴¹ *ibid.*, 109–110.

⁴² C Michael et al., 'Deforestation and climate feedbacks threaten the ecological integrity of south-southeastern Amazonia' (2013) 368 *Philosophical Transactions of The Royal Society B Biological Sciences* DOI: 10.1098/rstb.2012.0155, 1; See also Jia et al., *supra* note 10, 176–180.

Finally, deforestation has not only consequences for the local environment and human rights, but also globally. The burning, logging and shredding of forests are a major source of greenhouse gases. Moreover, forests influence local and global temperatures and the flow of heat, while absorbing solar radiation and contributing to worldwide rainfall patterns. Deforestation endangers these functions, resulting in changes in these rainfall patterns. Furthermore, forests, at least some of them, function as a major carbon sink.⁴³ According to studies, for example, the Amazon Basin absorbs over a billion tons of extra carbon dioxide every year.⁴⁴ This function will also cease to exist when entire areas of forests are cut down. This means that forests stop absorbing carbon dioxide and even release carbon dioxide when being cut. This in turn creates (new) sources of greenhouse gases contributing (significantly) to climate change.⁴⁵

These effects of deforestation are threats to human rights; direct, indirect, and more indirect in the long term.⁴⁶ *Direct threats* include, for example, the murder and violence associated with deforestation. Large-scale illegal logging activities often involve the murder of or violence against environmental activists, people living in the forests and journalists fighting against or reporting about deforestation.⁴⁷ Moreover, one way to remove forests is to burn (large) areas of forest. Lit wildfires have already taken the lives of many people living in or nearby forests.⁴⁸ These fires cause enormous air pollution, which affects people as well. It can thus be argued that deforestation affects the right to life of these people. These effects are also a threat to the human right of property. Individuals or communities living in forests and who are dependent on forests and its natural resources can be directly affected by large-scale (illegal) logging activities on or nearby their property and by lit wildfires, which can even force these people to leave their territory.⁴⁹

Indirect threats refer to threats that are linked to deforestation, but are often a combination of several factors. For example, forests are able to retain water and to keep the soil firm which can prevent floods and mudslides.⁵⁰ Deforestation threatens this vital function of forests. If there is a lot of rainfall in an area that is deforested, there is an increased risk of flooding and mudslides. Hence, deforestation is an important factor that contributes to an increased risk of flooding. These floods and mudslides have already taken many lives and destroyed properties.⁵¹

More indirect long-term threats affect human life and property. These are mainly slow onset events. Deforestation contributes to (significant) air pollution by the emission of greenhouse gases and has been shown to be a (major) contributor to climate change. Climate change, as recent events have shown, has major consequences for all kinds of human rights.⁵² The same applies to severe droughts, as these affect the minimum living conditions of people and their health.⁵³ Deforestation contributes to the occurrence of these severe droughts. Both issues are

⁴³ Flaurance, supra note 36, 109–110. See also Jia et al., supra note 10, 176–180.

⁴⁴ Flaurance, supra note 36, 110.

⁴⁵ *ibid* See also EEA, *Water-retention potential of Europe's forests* (European Environmental Agency 2015) and Buizer et al., supra note 8.

⁴⁶ This is a theoretical distinction and not as black and white as presented here. It is a simplistic subdivision to link the consequences to human rights and to make it manageable for this article.

⁴⁷ See e.g. 'Last line of defence', (Report 13 September 2021) <www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/> (last accessed 21 June 2023).

⁴⁸ E.g. P Brando et al., 'Abrupt increases in Amazonian tree mortality due to drought–fire interactions' (2014) 111 *PNAS* 17, <https://doi.org/10.1073/pnas.1305499111>, 6347–6352.

⁴⁹ See e.g. G Rannard, 'Deforestation threat to Amazon indigenous areas if protected status changed' (London, 22 February 2022) <www.bbc.com/news/science-environment-60466237> (last accessed 21 June 2023).

⁵⁰ Although the science may be controversial about the precise extent of the link between deforestation and floods/mudslides. See e.g. Seymour, supra notes 6, 5 and 12, Flaurance, supra notes 36, 110; P Lehmann et al., 'Deforestation Effects on Rainfall-Induced Shallow Landslides: Remote Sensing and Physically-Based Modelling' (2019) 55 *Water Resources Research* 11, 9962–9976 and the research mentioned in their introduction.

⁵¹ B Harris & S Cowie, 'Amazon populations under threat from floods, fires and drought', *Financial Times* London, 1 November 2021 <www.ft.com/content/b799ebe8-5eec-4185-ac92-ce9593d4ad12> (last accessed 21 June 2023).

⁵² Such as changing weather patterns, sea level rise and so on. See *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights* (A/HRC/10/61).

⁵³ Harris & Cowie, supra note 51.

3. THE EUROPEAN CONVENTION ON HUMAN RIGHTS

3.1. INTRODUCTION

The ECHR does not yet contain a right to a healthy environment.⁵⁵ However, the European Court of Human Rights (ECtHR) has identified in its case law issues related to the environment which could affect human rights laid down in the ECHR, such as the right to life (Article 2), the right to respect for private and family life as well as the home (Article 8), the right to a fair trial and access to a court (Article 6), the right to receive and impart information and ideas (Article 10) and the right to peaceful enjoyment of one's possessions (Article 1 of Protocol No. 1).⁵⁶ This section, Section 3, deals with the right to life, private and family life and the right to property.⁵⁷ Section 3.2 discusses if and how these three rights address environmental issues.⁵⁸ Subsequently, Section 3.3 discusses to what extent these rights can address the issue of deforestation.

3.2. (HOW) DOES THE EUROPEAN CONVENTION ON HUMAN RIGHTS ADDRESS ENVIRONMENTAL ISSUES?

Right to life

Article 2 states that everyone's right to life shall be protected by law, which includes negative, positive and procedural obligations. Article 2 has been applied in situations where certain activities endangering the environment are so dangerous that they also threaten human life.⁵⁹ The risk has to be *real* and *immediate*, which implies a causal link between the risk and the damage.⁶⁰ The ECtHR has formulated positive obligations in proceedings involving risky activities that result or may result in death. This concerns, for example, serious threats to life as a result of industrial activities, such as nuclear tests, the operation of chemical factories with toxic emissions or waste collection sites, whether carried out by public authorities or by private companies.⁶¹ The ECtHR has also required States to take positive obligations where nature is the primary threat, like natural disasters, even though they are in principle beyond human control.⁶² It is important that States *knew or ought to have known* of the (threatened) violation of the right to life.⁶³ This knowledge can arise from the nature of the activity.⁶⁴ But it can also

⁵⁴ See for more detail Mitten, *supra* note 5 and for the special issue of the importance and legal protection of the Amazon, see e.g. Pereira & Garcia, *supra* note 3.

⁵⁵ The Council of Europe adopted a council recommendation on the right to a healthy environment in September 2022. Although this is not a binding legal document, it is expected that the Council will work towards the adoption of an additional protocol to anchor the right to a healthy environment. This has not yet happened at the time of writing. See Council of Europe, Recommendation CM/Rec(2022)20 of the Committee of Ministers to member States on human rights and the protection of the environment (2022) <https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a83df1> (last accessed 21 June 2023).

⁵⁶ These rights have been recognized in the literature as having the most explicit environmental dimension.

⁵⁷ This article will only address rights that can have potentially the most direct far-reaching environmental implications. This means that (procedural) rights that contribute to better (long-term) environmental policy making are excluded.

⁵⁸ The discussion will be limited to the most relevant aspects of these Articles in light of the research question as there is already a considerable amount of literature available on the interaction of these human rights and the environment. See e.g. Council of Europe, *Manual on Human Rights and the Environment* (CoE February 2022) <www.coe.int/en/web/human-rights-intergovernmental-cooperation/-/manual-on-human-rights-and-the-environment> (last accessed 21 June 2023).

⁵⁹ See e.g. *Öneryildiz v Turkey* App no. 48939/99 (ECHR 30 November 2009); *Budayeva and others v Russia* App nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 (ECHR 20 March 2008). W Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015), DOI: 10.1093/law/9780199594061.001.0001, 147. See also Council of Europe, *supra* notes 58, 22.

⁶⁰ E Gijsselaar & E de Jong, 'Overheidsfalen en het EVRM bij ernstige bedreigingen voor de fysieke veiligheid' (2016) 6 *Nederlands Tijdschrift voor Burgerlijk Recht* 36, 39–40.

⁶¹ E.g. *Öneryildiz v Turkey*, *supra* note 59 and more examples in Council of Europe, *supra* notes 58, 22.

⁶² E.g. *Budayeva and others v Russia*, *supra* note 59.

⁶³ *Öneryildiz v Turkey*, *supra* note 59, para 101; Gijsselaar & De Jong, *supra* notes 60, 39–40.

⁶⁴ *Öneryildiz v Turkey*, *supra* note 59, paras. 65–71.

be deduced from various sources that imply this knowledge, such as the results of scientific research, or from experts, or from complaints and/or reports and documents from international organizations.⁶⁵

On the basis of Article 2, States are obliged to take several measures to prevent infringements of the right to life as a result of dangerous activities or natural disasters. This involves the primary duty to establish a legislative and administrative framework, including: (i) regulation which takes into account the particular characteristics of a situation or activity and the extent of the potential danger to life; (ii) giving particular emphasis to the public's right to information; and (iii) providing appropriate procedures to detect deficiencies in the technical processes involved and faults committed by those responsible.⁶⁶ With regard to dangerous activities, this means that States have to set up regulations that govern the licensing, creation, operation, security and supervision of such activities.⁶⁷ With regard to natural disasters, it means that States have to maintain an adequate defence and warning infrastructure.⁶⁸ States have some margin of appreciation to decide what measures to take, but these have to be reasonable and appropriate to avoid the particular risk.⁶⁹ The fundamental importance of the right to life requires that the scope of the positive obligations includes a duty to do everything within the authorities' power to protect that right. However, an impossible or disproportionate burden should not be imposed; operational choices should be taken into account.⁷⁰

A natural disaster happened, for example, in *Budayeva and Others v Russia*. In this case several people were killed by a mudslide after heavy rainfall. The ECtHR considered that the authorities had received a number of warnings that should have made them aware of the increasing risk of (large-scale) mudslides. The ECtHR held that Russia had failed to warn the local population and to implement evacuation and emergency relief policies. Therefore, Russia had failed in its duty to establish a legislative and administrative framework with sufficient deterrence against threats to the right to life.⁷¹ The ECtHR considered that Russia had a broader margin of appreciation than in cases involving man-made risks, due to the unforeseeable nature which is beyond human control. In addition, the ECtHR considered that the scope of the positive obligation in the specific circumstances depends on the origin of the threat and the extent to which the risk is susceptible to mitigation.⁷² The case of *Kolyadenko and Others v Russia*, concerned a flood created by an urgent release of a large quantity of water from a reservoir.⁷³ The ECtHR noted that the reservoir was a man-made industrial facility and found a violation of Article 2, as the authorities could reasonably be expected to acknowledge the increased risk of grave consequences when releasing the water. The authorities failed to inform and warn people living downstream from the reservoir and also failed to maintain an emergency warning system.⁷⁴

Right to respect for private and family life

Article 8 states that everyone has the right to respect for his private and family life, his home and his correspondence. It has been applied in relation to environmental degradation. Although there is no explicit right to a healthy environment yet, the ECtHR has recognized that the well-being of an individual can be negatively impacted by unsafe and/or disruptive environmental

⁶⁵ Gijsselaar & De Jong, *supra* note 60, 39–40. See e.g. *Brincat and others v Malta* App nos. 60908/11, 62110/11, 62129/11, 62312/11, 62338/11 (ECHR 24 July 2014), para 106.

⁶⁶ *ibid.*, 24–25; *Öneryıldız v Turkey*, *supra* note 59, para 90; *Budayeva and others v Russia*, *supra* note 59, paras. 129–132.

⁶⁷ *Öneryıldız v Turkey*, *supra* note 59, para 90.

⁶⁸ *Budayeva and others v Russia*, *supra* note 59, paras. 129–132.

⁶⁹ *Budayeva and others v Russia*, *supra* note 59, para 175.

⁷⁰ *ibid.*, paras. 134–135; *Vilnes and Others v Norway* App nos. 52806/09 and 22703/10 (ECHR 5 December 2013), para 220.

⁷¹ *Budayeva and others v Russia*, *supra* note 59, paras. 156–160.

⁷² *ibid.*, paras. 134–137.

⁷³ *Kolyadenko and Others v Russia* App no. 17423/05 (ECHR 28 February 2012).

⁷⁴ *ibid.*, paras. 164, 181–186.

conditions.⁷⁵ However, Article 8 does not cover the general deterioration of the environment which is negligible in comparison with environmental hazards inherent to life in every modern city.⁷⁶ It does not involve an express right to general environmental protection or nature conservation.⁷⁷ In order to be an issue under Article 8, the environmental conditions must have a *direct adverse effect on or seriously risk* the enjoyment of this right, which also implies a causal link between the activity and the negative impact.⁷⁸ Article 8 has been applied in cases of risky activities that cause serious health effects. For example, individuals must be protected from long-term health risks caused by scuba diving or exposure to asbestos.⁷⁹ Article 8 is also relevant in situations of environmental pollution and/or nuisance, such as the operation of a steel plant that creates air pollution.⁸⁰

Article 8 contains negative, positive and procedural obligations. The preservation of the environment could be a legitimate aim when justifying restrictions.⁸¹ Positive obligations exist in situations where environmental damage is caused directly by government activities, for example not respecting existing environmental standards, and when it arises from the activities of the private sector, for example from the failure to regulate private sector activities properly.⁸² Here again, States must have *knowledge* about the (threatened) violation.⁸³ With regard to both positive and negative obligations, the ECtHR applies a fair balance between the competing interests of the individual and the community as a whole.⁸⁴ States enjoy a wide margin of appreciation in determining this balance when environmental issues are at stake.⁸⁵

The ECtHR is generally reluctant to dictate precise measures which should be adopted by States.⁸⁶ Relevant factors in the fair balance test are, for example, the presence or absence of a relevant legal and/or administrative framework and whether preventive and effective measures (could) have been taken and are implemented in practice.⁸⁷ The ECtHR has also imposed a duty on public authorities to inform the public about environmental risks and hazards and has ruled that the decision-making process leading to measures of interference, such as the licensing of a steel plant, must be fair, afford due respect to the interests of the individual and has to be accessible to the public.⁸⁸ This includes carrying out an adequate risk assessment of environmental hazards.⁸⁹

Article 8 has been invoked in a wide range of environmental issues, such as industrial pollution, greenhouse gases, noise pollution, soil and water contamination and waste collection,

⁷⁵ Council of Europe, *supra* note 58, 33. *Hatton and Others v the United Kingdom* App No. 36022/97 (ECHR 8 July 2003), para 96 and *Cordella and Others v Italy* App Nos. 54414/13 and 54264/15 (ECHR 24 January 2019), paras. 157–160. See most recently *AA and Others v Italy* App No. 37277/16 (ECHR 5 May 2022).

⁷⁶ *Borysiewicz v Poland* App No. 71146/01 (ECHR 1 July 2008), para 53; *Martínez Martínez and Pino Manzano v Spain* App No. 61654/08 (ECHR 3 July 2012), para 42.

⁷⁷ E.g. *Kyrtatos v Greece* App No. 41666/98 (ECHR 22 May 2003), para 52; *Fadeyeva v Russia*, *supra* note 24, para 68.

⁷⁸ *Hatton and Others v the United Kingdom*, *supra* note 75, para 96; *Cordella and Others v Italy*, *supra* note 75, paras. 157, 172, *Fadeyeva v Russia*, *supra* note 24, para 69.

⁷⁹ E.g. *Vilnes and Others v Norway*, *supra* note 70.

⁸⁰ *Gijselaar & De Jong*, *supra* note 60, 39–41; *Fadeyeva v Russia*, *supra* note 24; *Pavlov and Others v Russia* App No. 31612/09 (ECHR 11 October 2022).

⁸¹ *Hatton and Others v the United Kingdom*, *supra* note 75, para 98 and *Chapman v the United Kingdom* App No. 27238/95 (ECHR 18 January 2001), para 82.

⁸² *Hatton and Others v the United Kingdom*, *supra* note 75, para 98; *Tătar v Romania*, *supra* note 30, para 87. See most recently *AA and Others v Italy*, *supra* note 75.

⁸³ It is the same benchmark as required under Article 2. See *Pavlov and Others v Russia*, *supra* note 80, paras. 75–77.

⁸⁴ E.g. *López Ostra v Spain* App No. 16798/90 (ECHR 9 December 1994), para 51.

⁸⁵ E.g. *Giacomelli v Italy* App No. 59909/00 (ECHR 2 November 2006), para 80; *Hatton and Others v the United Kingdom*, *supra* note 75, paras. 97–100.

⁸⁶ This is different compared with Article 2. See e.g. *Fadeyeva v Russia*, *supra* note 24, paras. 134–135.

⁸⁷ *Fadeyeva v Russia*, *supra* note 24, paras. 134–135. See for a recent example of the weighing of interests with different results in different time zones *Kotov and Others v Russia* App Nos. 6142/18, 51015/18, 51020/18 (ECHR 11 October 2022).

⁸⁸ E.g. *Tătar v Romania*, *supra* note 30, para 88.

⁸⁹ *ibid*, para 97.

management, treatment and disposal.⁹⁰ For example, in *Ledyayeva and Others v Russia*, the applicants lived in the vicinity of Russia's largest steel plant. The ECtHR found that over a significant period of time the concentration of various toxic elements in the air near the houses of the applicants seriously exceeded safe levels and that the applicants' health deteriorated as a result of this prolonged exposure to the industrial emissions. Although the ECtHR was not able to attribute all of the applicants' health problems to the operation of the plant, it held that the applicants had suffered sufficient actual detriment to bring their claims within the scope of Article 8. The ECtHR concluded that the authorities failed to set out and implement an efficient policy to reduce the emissions of the steel plant to safe levels within a reasonable time.⁹¹ The recent case of *Pavlov & Others v Russia* is another affirmation of the environmental dimension of Article 8. This case concerns a violation of Article 8 due to the large concentration of toxic pollutants in the air and drinking water caused by industrial activities. It is interesting here that the ECtHR considered that the fact that applicants did not live in the immediate vicinity of the industry did not exclude the application of Article 8, but that it was just one of the factors to consider.⁹²

Right to property

Article 1 of Protocol No. 1 contains the right to property and says that every natural or legal person is entitled to the peaceful enjoyment of his possessions.⁹³ The ECtHR held that this Article does not necessarily involve a right to continue to enjoy property in a pleasant environment.⁹⁴ However, certain activities which could affect the environment could also negatively affect property, in the sense that it can (seriously) reduce the value, amounting to (partial) expropriation.⁹⁵ The protection of the environment as a general interest can justify certain restrictions by States, such as the protection of the countryside, forests and the coastal areas.⁹⁶ A fair balance must be struck between the interests of the individual and the interests of the community. Environmental considerations play an increasingly important role in the fair balance test.⁹⁷ States enjoy a wide margin of appreciation in deciding the choice of means and whether the consequences of enforcement are justified in the general interest.⁹⁸ The right to property contains negative, positive and procedural rights. The right to property can be limited due to environmental considerations. Alternatively, the protection of this right may require the authorities to safeguard a minimum level of environmental standards.⁹⁹ The effective exercise of this right can require authorities to take positive measures to protect this right, especially when there is a *direct link* between the measures an applicant can legitimately expect from the authorities and the applicant's effective enjoyment of this right.¹⁰⁰ The positive obligation to protect cannot extend further than what is *reasonable* in the circumstances.¹⁰¹ The positive obligations in relation to natural hazards that are beyond human control do not extend as far as the positive obligations in relation to dangerous man-made activities, because the direct link between the damage and the authorities' actions or omissions is often missing.¹⁰²

⁹⁰ See for an overview, Council of Europe, *supra* note 58, 33. See for recent examples *Solyanik v Russia* App No. 47987/15 (ECHR 10 May 2022) and *Kotov and Others v Russia*, *supra* note 87.

⁹¹ *Ledyayeva and Others v Russia* App Nos. 53157/99, 53247/99, 53695/00 and 56850/00 (ECHR 26 October 2006), para 110.

⁹² *Pavlov and Others v Russia*, *supra* note 80.

⁹³ See Council of Europe, *supra* note 58, 51; *Beyeler v Italy* App No. 33202/96 (ECHR 5 January 2000, paras. 108–114).

⁹⁴ Council of Europe, *supra* note 58, 52.

⁹⁵ *ibid*, 52–53.

⁹⁶ E.g. *Pine Valley Developments Ltd and Others v Ireland* App No. 12742/87 (ECHR 29 November 1991), para 57 and *Beinarovič and Others v Lithuania* App No. 70520/10 (ECHR 12 June 2018), paras. 135–137.

⁹⁷ Council of Europe, *supra* note 58, 52–53. See also *Brosset-Triboulet and Others v France* App No. 34078/02 (ECHR 29 March 2010), paras. 94–95.

⁹⁸ E.g. *Brosset-Triboulet and Others v France*, *supra* note 97, para 87.

⁹⁹ *Öneryıldız v Turkey*, *supra* note 59, para 134.

¹⁰⁰ *ibid*.

¹⁰¹ *Budayeva and Others v Russia*, *supra* note 59, para 175.

¹⁰² The positive obligations under Article 2 stretch further, e.g. *Öneryıldız v Turkey*, *supra* note 59, paras. 134–135; *Budayeva and Others v Russia*, *supra* note 59, paras. 172–182.

In *Budayeva and Others v Russia*, the ECtHR assessed to what extent the authorities were expected to take measures to protect property from natural disasters. The ECtHR considered that the State has a wide margin of appreciation in deciding what measures to take to protect the individual's possessions from weather hazards.¹⁰³ Eventually, the ECtHR did not find a breach of the right to property. In *Beinarovič and Others v Lithuania*, the applicants complained that their property rights had been unlawfully annulled on the ground that the land given to them later had been appointed as land of forests of national importance. The ECtHR found that the protection of nature and forests falls within the scope of public interest within the meaning of Article 1. Notwithstanding that, the ECtHR found the interference to be disproportionate, as the applicants had to undertake lengthy restitution processes without their particular situation having been into account.¹⁰⁴

3.3. OPPORTUNITIES AND CHALLENGES FOR THE ISSUE OF DEFORESTATION

The right to life can be invoked with regard to deforestation, when deforestation is so dangerous that it also threatens human life. The protection includes threats from the industries involved in deforestation, as well as from the natural consequences of deforestation. States have a positive obligation to protect people. States must implement an effective legislative and administrative framework that addresses deforestation, including regulations that govern the licensing, operation and supervision of activities related to deforestation and States must have an adequate defense and warning infrastructure. Moreover, States need to take preventative measures. The measures have to be reasonable and appropriate to avoid the risk(s) of deforestation.

There are some important challenges to this right in relation to deforestation. The threshold is high: this right applies to real and immediate risks to life. The severity and directness of the threat can be a challenge with regard to some of the consequences of deforestation. This is not per se the case for the direct consequences of deforestation, such as the murder and violence involved in the (illegal) logging industry. It can be argued that deforestation causes a direct and severe threat to environmental activists who wants to protect forests.¹⁰⁵ The same applies to lit wildfires, when these are also taking place in residential areas.

However, it might be different for the indirect consequences and for the more indirect long-term consequences of deforestation. These consequences will probably meet the severity threshold, as these are serious threats to human life. However, the question is whether these are sufficiently immediate and direct. It may be argued that indirect consequences, such as floods and mudslides, can fulfil this requirement, as the ECtHR in previous case law has accepted this.¹⁰⁶ But, there are some differences that need to be taken into account. The flooding in the case law was, for example, directly caused by a deliberate release of water from the dam. Floods and mudslides caused by deforestation are 'less direct' in the sense that there are several complicating factors contributing to the existence of these consequences, such as heavy rainfall.¹⁰⁷ Nevertheless, there is a strong case for including these impacts in the protection regime, as the link between deforestation and the increased risk of flooding is scientifically recognized, although there still exists uncertainty about the extent of its impact. It is harder to meet these requirements in cases of the other, slow onset effects.¹⁰⁸ The barrier of knowledge by the State is not a high one, as there are many reports that point to the dangers of deforestation for humanity in certain areas.

Another challenge relates to the positive obligations. The measures which States need to take are limited to the protection of life itself. It is therefore questionable to what extent the measures truly address the issue of deforestation, in particular with regard to the indirect effects. For example, the warning systems to protect life in cases of floods do not address the

¹⁰³ This is different under Art. 2, in which the right to life is at stake and States have to do everything within their power to protect that right.

¹⁰⁴ *Beinarovič and Others v Lithuania*, supra note 96, paras. 140–164.

¹⁰⁵ It matters if there is an incidental killing, or that it happens more often. The latter is often the case.

¹⁰⁶ *Kolyadenko and Others v Russia*, supra note 73.

¹⁰⁷ See Section 2.

¹⁰⁸ This might be different in the (near) future, due to the advent of climate change litigation.

core problem of deforestation. Despite these challenges, the right to life has potential to be successfully invoked with regard to (some of the effects of) deforestation, and therefore, to address the issue of deforestation to some extent.

The right to respect for private and family life also protects against deforestation to the extent that deforestation affects the well-being of an individual. Although this right does not include an explicit right to environmental protection or nature conservation, the threshold to protect against deforestation is lower than the right to life. It is not necessary that deforestation is a threat to human life; it must be a threat to human well-being, which includes health risks, pollution, or nuisance. It can be argued, for example, that the logging industry causes nuisance to people living close to the forests, or that the lit wildfires are a threat to the well-being of these people. States have to refrain from involvement in deforestation and have to take measures against deforestation to the extent that it threatens the well-being of people. In general, States have a duty to inform the public about risks of deforestation and have to establish an accessible decision-making process regarding the measures of interreference, such as the licensing of projects which can have an impact on forests, and which should include an adequate risk assessment.¹⁰⁹

This right contains several challenges as well. Deforestation must have a direct adverse effect on or seriously risk the enjoyment of the right. As explained before, the required causal link can be a challenge for some of the effects of deforestation. In addition, States have a ‘due diligence’ obligation and enjoy a wide margin of appreciation in determining the fair balance and the measures to take to address deforestation. It is doubtful to what extent deforestation will truly be addressed under this wide margin of appreciation. Again, the question is, at what target should these measures be aimed with regard to these indirect effects. Despite these challenges, this right has been successfully invoked with regard to disruptive environmental conditions. Hence, this right has some potential to address deforestation, but this might be limited due to the wide margin of appreciation.

The *right to property* may protect forests against deforestation only insofar as deforestation affects people’s property, for example by reducing its value, or alternatively, by restricting the right with the aim of forest conservation. It can be argued that (illegal) logging activities taking place on one’s property or lit fires destroying or damaging property affect this right. However, a direct link between the legitimate expected measures and the threat is necessary. Once again, the direct link is very hard to establish with regard to (natural) indirect and more indirect long-term consequences of deforestation. For example, if mudslides or floods are unpredictable and caused in certain periods of heavy rainfall, what measures can be legitimately expected from the State?

Moreover, the positive obligations do not extend as far as the positive obligations of the other rights. States may only take measures that are *reasonable*.¹¹⁰ It is, again, questionable whether the State needs to take measures to address deforestation itself, or, in particular with regard to the indirect consequences, that it is sufficient to have measures that protect against the indirect effects of deforestation, such as making houses stronger to protect against floods or mudslides. Finally, States have a wide margin of appreciation in deciding, for example, the choice of means, and it may even be that property protection can interfere with forest protection.¹¹¹ Although there is some potential under this right to address deforestation, it is in general highly doubtful to what extent this right truly protects against deforestation.

4. THE AMERICAN CONVENTION ON HUMAN RIGHTS

4.1. INTRODUCTION

The ACHR includes several rights that may be relevant for the environment. The ACHR contains a right to a healthy environment (Article 11 of the Protocol of San Salvador, SSP). In addition, the Inter-American Court of Human Rights (IACtHR) has, through creative interpretation,

¹⁰⁹ This duty stems from the procedural obligations of Article 8 ECHR. See Section 3.2 and more particularly *Tătar v Romania*, supra note 30, para 88.

¹¹⁰ See Section 3.2 under ‘the right to property’.

¹¹¹ See *Beinarovič and Others v Lithuania*, supra note 96.

progressively extended the reach of several ACHR rights to the environment. This includes a broad interpretation of, on the one hand, rights that contribute to better environmental policy making, such as the right to freedom of thought and expression (Article 13). On the other hand, it includes rights whose enjoyment is particularly susceptible to environmental degradation, such as the right to life (Article 4) and the right to property (Article 21).¹¹² This section, Section 4, will address only the second category of rights, in particular: the right to life and personal integrity, the right to property and the right to a healthy environment. Section 4.2 discusses if and how these three rights address environmental issues. Section 4.3 discusses to what extent these rights can address the issue of deforestation.

4.2. (HOW) DOES THE AMERICAN CONVENTION ON HUMAN RIGHTS ADDRESS ENVIRONMENTAL ISSUES?

The right to life and personal integrity

Article 4(1) ACHR states that every person has the right to have his life respected. Article 5(1) states that every person has the right to have his physical, mental and moral integrity respected. The right to life encompasses a decent or dignified life, which must be interpreted in the light of social and economic rights, including access to and the quality of water, food and health.¹¹³ It also encompasses the protection of the environment, as a healthy environment is essential for human well-being and for the enjoyment of human rights.¹¹⁴ With regard to indigenous communities, the IACtHR considered that compliance with the minimum standards necessary for a dignified life requires States to take into account the culture and way of life of the community affected. This includes the close and distinctive relationship with its ancestral territory and the life aspirations of individual members and the entire community.¹¹⁵ These minimum conditions require the maintenance and protection of the environment necessary for their cultural and traditional practices, such as fishing, hunting, gathering and the use of specific places for religious practices.¹¹⁶ The lack of access to conditions that protect a dignified life may include a breach of the right to personal integrity.¹¹⁷

States must refrain from (i) any practice or activity that denies or restricts (equal) access to the requisites of a dignified life, such as adequate food and water and (ii) unlawfully polluting the environment in a way that has a negative impact on (or the conditions of) a dignified life, such as dumping waste from State-owned facilities that negatively affects the quality of potable water. In addition, States must take all appropriate steps to protect and preserve the rights to life and personal integrity, which includes the duty to prevent third parties from violating these rights in the private sphere.¹¹⁸ The positive obligations must not impose an impossible or disproportionate burden on the State. Moreover, the State must or should have known of the existence of a situation of real and imminent danger for life and failed to take the necessary measures that could reasonably be expected to prevent or avoid this danger. There must also be a *causal link* between the impact on life and integrity and the significant damage caused to the environment.¹¹⁹

States must fulfil specific obligations: (i) the obligation to prevent environmental damage; (ii) the obligation to implement the precautionary principle; (iii) the obligation to co-operate with

¹¹² See also S Theriault, 'Environmental Justice and the Inter-American Court of Human Rights', in A Grear & L Kotze (eds.), *Research Handbook on Human Rights and the Environment* (Edward Elgar 2015), <https://doi.org/10.4337/978178254432.00024>, 309–312.

¹¹³ E.g. *Yakye Axa Indigenous Community v Paraguay* Series C No. 125 (IACtHR 29 March 2006) and *Xákmok Kásek Indigenous Community v Paraguay* Series C No. 214 (IACtHR 24 August 2010), para 193 and onwards. See also *The Environment and Human Rights*, supra note 31, para 109.

¹¹⁴ See e.g. *Yakye Axa Indigenous Community v Paraguay*, supra note 113, para 163 and *Kaliña and Lokono Peoples v Suriname* Series C No. 309 (IACtHR 25 November 2015), paras. 172, 125.

¹¹⁵ See e.g. *Yakye Axa Indigenous Community v Paraguay*, supra note 113) para 163.

¹¹⁶ See e.g. *The Environment and Human Rights*, supra note 31, paras. 48, 169 and *Yakye Axa Indigenous Community v Paraguay*, supra note 113, paras. 124, 135–137, 158(d–e).

¹¹⁷ *The Environment and Human Rights*, supra note 31, para 114.

¹¹⁸ *ibid*, paras. 117–118.

¹¹⁹ *ibid*, paras. 120–121.

other States; and (iv) the procedural obligations relating to environmental protection.¹²⁰ The *obligation to prevent* is one of due diligence and limited to significant environmental damage that occurs inside or outside the territory of the State. States are required to take several minimum measures, such as (i) the adoption of regulatory measures relating to activities that could cause significant harm to the environment and relating to reducing the risk to human rights; (ii) to monitor and supervise activities that could produce significant environmental damage and to implement monitoring and accountability mechanisms, including measures of prevention and sanctions and redress; (iii) to carry out an environmental impact assessment where there is a risk of significant environmental harm, regardless of whether the activity or project is carried out by the State or by private persons. The State must also (iv) establish a contingency plan to make safety measures and procedures to minimize the risk of (major) environmental accidents and, finally, (v) mitigate significant environmental damage that has occurred and use the best scientific knowledge and technology available.¹²¹

The right to life in relation to environmental issues has mainly been invoked in the context of indigenous groups and other vulnerable communities. For example, in *Kichwa Indigenous People of Sarayaku v Ecuador*, the IACtHR found a violation of Article 4. Their communal land was subject to oil exploration by a private company, which was authorized by the Ecuadorian government. The company forcibly entered their territories and was guarded by military and private security forces, the company opened roads, deforested land and planted and detonated explosives in their territory, which destroyed forests, water sources, caves, subterranean rivers and sacred sites. The IACtHR found that these actions, especially with regard to the explosives, put the Sarayakus' life in great peril and therefore violated this right.¹²² The IACtHR ruled in the 2017 Advisory Opinion, concerning a request by Colombia in relation to danger to the environment and human habitat caused by new major infrastructure projects, that the environmental standards set out in its case law and its advisory opinion are generally applicable, so it is not only confined to indigenous communities.¹²³

The right to property

Article 21 ACHR states that everyone has the right to the use and enjoyment of his property.¹²⁴ Under this right, specific environmental standards have been developed which are closely related to the recognition of property rights of indigenous and tribal communities. In particular, through the lens of protection of indigenous peoples, the right to property is used as a tool for environmental protection.¹²⁵ In order to fall under the scope of Article 21, indigenous or tribal communities need to have an intrinsic relation to the land.¹²⁶ The protection under Article 21 includes a range of rights associated with the ability of indigenous peoples to freely determine and enjoy their own social, cultural and economic development, such as the right to a healthy environment, health or water. In addition, this right includes the right to control and use the natural resources on and within the land. However, this is limited to resources that are necessary for the survival and development of the culture and way of life of these communities.¹²⁷ These natural resources include, for example, rivers for clean water and forests for timber, medicinal use and hunting.¹²⁸

¹²⁰ *ibid*, paras. 125–126. The precautionary principle refers to protection when there are indications that an activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty.

¹²¹ *ibid*, paras. 127–174. See also S Turner et al., 'Environmental Rights: The Development of Standards' (Cambridge University Press 2019), 82–86.

¹²² *Kichwa Indigenous People of Sarayaku v Ecuador* Series C No. 245 (IACtHR 27 June 2012), paras. 244–254.

¹²³ *The Environment and Human Rights*, *supra* note 31, para 113. See also Turner et al., *supra* note 121, 83.

¹²⁴ *Yakye Axa Indigenous Community v Paraguay*, *supra* note 113, para 137.

¹²⁵ C Pitea, 'Right to Property, Investments, and Environmental Protection: The Perspectives of the European and Inter-American Courts of Human Rights', in T Treves et al., 'Foreign Investment, International Law and Common Concerns' (Routledge 2013). See also N Urbancic, 'How Granting Indigenous Peoples' Land Titles Contributes to Forest Conservation in Latin America' (2020) 7 *Birkbeck L Rev* 26.

¹²⁶ Turner et al., *supra* note 121, 67–68; *Indigenous Community Sawhoyamaya v. Paraguay* Series C No. 146 (IACtHR 29 March 2006), paras. 131–132.

¹²⁷ The IACtHR recognized other groups of individuals as right holders as well. See e.g. *Indigenous Community Sawhoyamaya v. Paraguay*, *supra* note 126, para 118.

¹²⁸ See e.g. *Saramaka People v Suriname* Series C No. 172 (IACtHR 28 November 2007), paras. 118–123.

States must adopt measures that guarantee indigenous or tribal communities full and equal exercise of their right to the territory which they have traditionally used and occupied.¹²⁹ States are required to: (i) delimit the land owned by the community after engaging in consultation with community members; (ii) abstain from carrying out – until that delimitation, demarcation and granting of title – actions, including actions from third parties, that might lead to affecting the property of the community; and (iii) provide the community with a title and not merely a privilege to use the land. In addition the communal right to property must be appropriately balanced against the potential relevant individual right to property.¹³⁰ The protection is not absolute. It could be proportionate if fair compensation is paid. Also, the protection of the environment can be a legitimate objective of imposing a restriction.¹³¹ With regard to indigenous or tribal groups, States must comply with several safeguards when limiting the right to property.¹³² States must ensure effective participation and consultation of the community regarding any development, investment, exploration or extraction plan within their territory.¹³³ Furthermore, States must guarantee that the community receives a reasonable benefit from any such plan within their territory and States must ensure the performance of prior environmental and social impact assessment.¹³⁴

The case law relating to the right to property in the environmental context is mainly focused on indigenous or tribal communities' right to property. For example, *Saramaka People v Suriname* concerns a community's right to their land and their struggle against mining and logging companies carrying out activities on their territory. The Saramaka is a non-indigenous tribal community living in the Upper Suriname River region in a traditional way. Their relationship with the land is of an economic, spiritual and cultural nature. Suriname granted logging and mining concessions to private companies within their territory and without consultation or their consent. The IACTHR considered that the Saramaka people are a tribal community and that the State had failed to adopt special measures to recognize, respect, protect and guarantee their communal property right. Moreover, the IACTHR considered that the natural resources related to the subsistence of the Saramaka people include those needed for agricultural, hunting and fishing activities. The IACTHR acknowledged that clean natural water and forests are essential for the Saramaka people and that exploration and extraction of natural resources, like wood-logging activities, are destructive to the forest and its ecological and cultural functions.¹³⁵ However, Article 21 should not be interpreted in a way that prevents the State from granting any type of concession or exploration. Nonetheless, if the State wants to restrict their property right legitimately, the State must consult with the communities affected by these projects, reasonably share the benefits and complete prior assessments of the environmental and social impact of any project. The State failed to do so in this case and therefore, violated Article 21.¹³⁶

The right to a healthy environment

Article 11 SSP states that everyone has the right to live in a healthy environment, to have access to basic public services and that States must promote the protection, preservation and improvement of the environment.¹³⁷ Environmental degradation can cause irreparable harm to human beings, and therefore, a healthy environment is a fundamental right for the existence of humankind. Moreover, it is also interrelated to other human rights such as the right to health,

¹²⁹ Article 1(1) ACHR.

¹³⁰ *Saramaka People v Suriname*, supra note 128, para 115; *Yakye Axa Indigenous Community v Paraguay*, supra note 113, paras. 147–149. See also *Kaliña and Lokono Peoples v Suriname*, supra note 114, para 107.

¹³¹ *ibid*, paras. 155–160, 169–173.

¹³² *ibid*, paras. 120–125; *Saramaka People v Suriname*, supra note 128, paras. 85–91, 125–128.

¹³³ *Saramaka People v Suriname*, supra note 128, paras. 129–130.

¹³⁴ *ibid*, para 129.

¹³⁵ *ibid*, para 126.

¹³⁶ *ibid*, paras. 127–128, 154–158. See also *Mayagna (Sumo) Awas Tingni Community v Nicaragua* Series C No. 79 (IACTHR 31 August 2001) in which Nicaragua granted a forestry concession in the community's ancestral lands in violation of their property rights.

¹³⁷ The right to a healthy environment is protected under Article 11 SSP. However, this right is an oddity, as its implementation is dependent on the interpretation of civil and political rights, such as the right to life and personal integrity or property, and on Article 26 which refers to the progressive and full realization of economic and social rights. *The Environment and Human Rights*, supra note 31, para 57.

personal integrity and life.¹³⁸ The right to a healthy environment protects the components of the environment like forests, rivers and seas. These are considered as legal interests in themselves, even in the absence of evidence of a risk to individuals. Nature must be protected because of its importance for the living organisms with which we share the planet. The IACtHR emphasizes that this right as an autonomous right differs from the environmental content that arises from the protection of other rights, like the right to life.¹³⁹

States have the obligation to respect the right to a healthy environment, but also the obligation to ensure it, to prevent any violation from happening.¹⁴⁰ This obligation is an obligation of means or conduct and applies in the public as well as the private sphere, including third parties' violations. States have the obligation to establish adequate mechanisms to monitor and supervise certain activities in order to ensure this right.¹⁴¹ The principle of prevention applies, which means that States must use all of the means at their disposal to avoid activities causing significant harm to the environment. This obligation, to be fulfilled, has to conform to the standard of due diligence. In particular, with regard to activities that could potentially cause harm, States must (at least) regulate, supervise and monitor, require and approve environmental impact assessments, create contingency plans and mitigate when environmental damage has occurred. States are obliged to take the vulnerable positions of certain groups, such as indigenous peoples, into account.¹⁴²

The right to a healthy environment has only recently been acknowledged as an autonomous right. For years, it has been applied when interpreting existing civil rights and political rights, such as the right to life and personal integrity.¹⁴³ Recently, the right to a healthy environment has been recognized as an autonomous, binding right through Article 26 ACHR. *Lhaka Honhat v Argentina* is the first contentious case in which the IACtHR ruled based on the right to a healthy environment.¹⁴⁴ The case concerns a claim for recognition of land ownership by several indigenous communities within the Argentinian province of Salta. The lands have also been occupied by other residents, like the non-indigenous settlers (the Criollo population). The Criollo population have been involved in illegal logging activities, developed livestock and installed fencing. Furthermore, a bridge was built by Argentina without prior consultation with the indigenous communities. These activities have decreased forests resources and biodiversity and affected the way in which these indigenous communities traditionally accessed food and water. The IACtHR considered that the illegal logging and the activities by the Criollo population affected environmental rights and had an impact on the traditional way of life of the indigenous communities. The State was aware of the harmful activities and took different actions that failed to stop them. The IACtHR concluded that this lack of effectiveness in the context of the State failing to guarantee the indigenous communities the possibility of determining the activities on their territory resulted in a violation of Article 26 ACHR.¹⁴⁵

4.3. CHALLENGES AND OPPORTUNITIES FOR THE ISSUE OF DEFORESTATION

The *right to a healthy environment* has the greatest potential to address deforestation. This right can be invoked to protect forests, even when there is no evidence of any risk to human beings, as it protects components of the environment itself. Deforestation directly endangers forests and their ecosystems, animals and plants. Therefore, it falls under the protective scope. States have to refrain from any harm to forests, but also have to protect against deforestation in the private and public sphere, taking measures to prevent any damage as well. States are thus responsible for legal and illegal large-scale logging. This means that States have to take regulatory measures

¹³⁸ *The Environment and Human Rights*, supra note 31, para 59.

¹³⁹ *ibid*, paras. 62–63.

¹⁴⁰ Article 1(1) ACHR.

¹⁴¹ *Indigenous Communities of the Lhaka Honhat Association v Argentina* Series C No. 400 (IACtHR 6 February 2020), para 207.

¹⁴² *ibid*, para 208.

¹⁴³ *Yakye Axa Indigenous Community v Paraguay*, supra note 113), paras. 167–176.

¹⁴⁴ The Court has previously recognized its autonomy in *The Environment and Human Rights*, supra note 31, para 63.

¹⁴⁵ And Article 1(1), see *Indigenous Communities of the Lhaka Honhat Association v Argentina*, supra note 141, paras. 255–289.

against deforestation, to supervise and monitor these measures, to carry out environmental impact assessments with regard to, for example, licensing projects in forests that can result in deforestation, create contingency plans and to mitigate damage where deforestation has already happened, such as replanting projects. However, there are specific downsides to this right. Although this right protects elements of nature as legal interests themselves, a healthy environment is protected in the sense that an ‘unhealthy’ environment affects other human rights as well.¹⁴⁶ Moreover, humans have the right to a healthy environment, not a right to nature itself. In addition, this right to a healthy environment suffers from limited justiciability in the sense that the required obligations are obligations of means, and not results.¹⁴⁷ Despite these challenges, the right to a healthy environment has been successfully invoked in relation to environmental issues, including deforestation.¹⁴⁸

The right to life and personal integrity has been interpreted broadly, encompassing the right of accessing conditions that guarantee a decent or dignified life, such as a healthy environment. It has the potential to address deforestation to the extent that deforestation implies a direct threat to human life or that forests and their natural resources are necessary (as conditions) for a decent life. With regard to indigenous or tribal communities, the forests and their natural resources are protected to the extent that these are important for the communities’ traditional and cultural practices.¹⁴⁹ States have to refrain from causing harm to forests that fall under their protection, but also have to take measures to address deforestation with due diligence.¹⁵⁰ These measures include the obligation to prevent damage to forests, including taking regulatory measures, to monitor and supervise, to carry out an environmental impact assessment, to create a contingency plan and to mitigate damage. States must also implement the precautionary principle, co-operate with other States and take other procedural obligations relating to the protection of forests.¹⁵¹

There are, however, some important challenges. This right requires, in the first place, knowledge on the part of the State. However, this is not a (very) high barrier, as there is a lot of documentation about deforestation and its risks. In the second place, this right requires real and imminent danger to life and causality between the danger and the damage. This might be harder to establish. The effects of deforestation are wide-ranging with direct, indirect and more indirect long-term consequences. The direct consequences, such as lit wildfires or the murders of environmental activists or members of the indigenous communities have the potential to directly threaten (the conditions of) life. It can be argued that the indirect consequences, such as floods or mudslides, also meet the threshold. It is highly questionable if the more, indirect long-term consequences fall under its protection. These effects, such as droughts, for example, are often the result of years of large-scale deforestation. It will be harder to establish any causality. Another challenge relates to the obligations of States. These obligations are a matter of ‘due diligence’, of means and not of results. States have to take several minimum measures, but if States have fulfilled these measures and deforestation is still taking place, it is hard to establish any violation. Moreover, the measures are mainly focused on and limited to the protection of forests necessary for the protection of human life. It is therefore questionable to what extent these measures are aimed at combating deforestation per se. Nonetheless, these rights have been successfully invoked in cases in which the use and enjoyment by indigenous or tribal communities of natural resources, including forests, are endangered by private companies.¹⁵² Although these challenges must be taken into account, the right to life and personal integrity certainly has potential to address deforestation.

¹⁴⁶ See Section 4.2 under ‘the right to a healthy environment’. See also Theriault, *supra* note 112, 309–314.

¹⁴⁷ See Theriault, *supra* note 112, 312–314.

¹⁴⁸ See Section 4.2 under ‘the right to a healthy environment’ in which the case of *Indigenous Communities of the Lhaka Honhat Association v Argentina*, *supra* note 141 has been discussed briefly.

¹⁴⁹ See Section 4.2 under ‘the right to life and personal integrity’ and e.g. *Yakye Axa Indigenous Community v Paraguay*, *supra* note 113, paras. 124, 135–137, 158(d–e).

¹⁵⁰ See Section 4.2 under ‘the right to life and personal integrity’.

¹⁵¹ As explained in more detail in Section 4.2 under ‘the right to life and personal integrity’.

¹⁵² See Section 4.2 under ‘the right to life and personal integrity’. See for successful examples, *Kichwa Indigenous People of Sarayaku v Ecuador*, *supra* note 122, paras. 244–254, *Yakye Axa Indigenous Community v Paraguay*, *supra* note 113, paras. 158(d)–(e) and 160–178. See also *Xákmok Kásek Indigenous Community v Paraguay*, *supra* note 113, para 187.

The right to property has a broad protective scope as well. Forests and their natural resources can be protected to the extent that these are necessary for the economic and social survival of indigenous or tribal groups.¹⁵³ This means that only forests and their natural resources that are on (or nearby) the property of indigenous or tribal groups and that are necessary for their habits and survival fall under the protection. In particular, States must delimit, demark and provide a title to their territory and refrain from any actions that harm their territory and natural resources, including deforestation on the territory.¹⁵⁴ States are allowed to restrict the right to property, and therefore the protection of forests, as long as these restrictions do not endanger the survival of the group. States have to conform with several safeguards when restricting the right to property of communities, which may prevent large-scale deforestation projects from being carried out, as these might endanger the territory and cultural and economic survival of several communities. However, this is not necessarily the case. States can be required to recover damage to property and, for example, to replant or recover forests.¹⁵⁵ A main challenge is that this right has, so far, only been used in relation to communal property of indigenous or tribal groups, in which the protection against deforestation is limited to the needs of these groups. Moreover, the safeguards that States need to take into account include no guarantee of prohibition of deforestation. Deforestation is even allowed if compensation of the community is sufficient in the particular circumstances.¹⁵⁶ Nonetheless, this right has been successfully invoked in cases where environmental degradation, including deforestation, in the territory of indigenous or tribal communities has affected their social, cultural and economic survival. Therefore, the right can address deforestation to a certain extent.

5. CONCLUSION

Climate change is one of the biggest environmental problems of current and future generations. The issue is gradually getting more and more attention. However, a very important contributor to climate change, and by itself an important environmental issue that can have major negative consequences for humanity, has been neglected for many years, namely deforestation. The current regime under international environmental law does not yet sufficiently address deforestation, as there are few concrete binding obligations to combat it. This article, therefore, addressed the question '*to what extent can human rights law address the environmental issue of deforestation in the European and Inter-American system of human rights?*'. This article looked at how the most relevant substantive rights address environmental issues and, subsequently, explored what challenges and opportunities these provide for the issue of deforestation.

The analysis reveals that there is much potential in both human rights systems to address deforestation, taking into account the challenges as well. The Inter-American system has the most potential to address deforestation, as the scope of protection is wider and more concrete measures are expected from States than in the European system. The ACHR contains an explicit right for the State to protect a healthy environment, which includes 'healthy' forests. The right to life and personal integrity and the (communal) right to property both imply possibilities to protect forests from deforestation. The right to life and personal integrity requires a 'decent' life, which includes the conditions to have access to clean water and food and a healthy environment. Forests and their natural resources can be categorized under these conditions. The right to property protects forests and their natural resources from deforestation in or nearby the territory of indigenous or tribal communities and only insofar as it is necessary for the social, cultural and economic survival of these communities.

The right to life, to respect for private and family life and the right to property in the ECHR also have potential to protect against deforestation. The ECHR does not contain a right to a healthy environment yet, but other rights have been interpreted in such a way that these rights require minimum environmental standards. The protective scope of the right to life and to respect for private and family life is more limited than that of the ACHR, in the sense that deforestation

¹⁵³ See Section 4.2 under 'the right to property' and e.g. *Saramaka People v Suriname*, supra note 128, paras. 118–123.

¹⁵⁴ See Section 4.2 under 'the right to property' in which the precise obligations have been discussed.

¹⁵⁵ As a way to compensate; see Section 4.2 under 'the right to property'.

¹⁵⁶ See Section 4.2 under 'the right to property' and e.g. *Kaliña and Lokono Peoples v Suriname*, supra note 114, para 158.

must be a serious and imminent risk to life or human well-being. The protective scope of the right to property is also limited in the sense that deforestation can affect (the value of) property. In both systems, States may be required to actively protect against deforestation and to take several measures, including establishing effective regulatory frameworks, monitoring and supervising and mitigating damage, including by reforestation.

There are, however, several challenges to these rights in both the European and Inter-American system. One shared challenge is the requirement of causality. This requirement limits the protective scope in the sense that, arguably, only direct and indirect consequences of deforestation are covered. Another shared challenge relates to the measures which States must take to actively protect the rights at stake. States have 'due diligence' obligations, which implies some freedom to decide which measures to take and which results to achieve. The question also remains whether the measures need to be aimed at addressing deforestation or only the effects of deforestation. This also limits the potential to address deforestation. The rights in the ECHR grant more freedom to States as the ECtHR explicitly refers to a wide margin of appreciation in relation to environmental matters. The measures required on the bases of the ACHR are more concrete and comprehensive. It may be expected that an explicit right to a healthy environment will be included in the ECHR in the near future.¹⁵⁷ Although it is not clear yet what this right precisely involves, inspiration can and probably will be drawn from the jurisprudence of the IACtHR on this right. Hence, this will mean a stronger legal protection of forests in the European system than is currently the case.

Altogether, both systems are able to address deforestation to the extent that deforestation directly or indirectly affects the right to a healthy environment, the right to life (and personal integrity), the right to respect for private and family life and the right to property. The Inter-American system has a wider scope of protection and more options to address deforestation than the European one.

Based on this article, it can be concluded that several human rights from the European and Inter-American human rights system do have the potential to fill – to a certain extent – the current gap in protection against deforestation.¹⁵⁸ States already have several obligations under the current human rights regime to combat deforestation. At present, this appears to be an underexplored opportunity. However, it is to be expected that human rights will increasingly be used to enforce environmental protection, given recent developments in the area of a right to a healthy environment and climate change litigation.¹⁵⁹ There are several (practical) disadvantages to the human rights system, and it should not be considered as a conclusive solution to address the issue of deforestation. Notwithstanding, the potential of human rights may be approached as a means of pressure, or even as a last resort, as long as no effective measures have been taken at the international or national level to combat deforestation, and consequently climate change, at the expense of current and future generations of life on planet Earth.

ACKNOWLEDGEMENTS

This article is an edited version of my thesis in the Master's degree in Public International Law at Utrecht University. I would like to thank the reviewers for their valuable comments on this

¹⁵⁷ Council of Europe, Recommendation CM/Rec(2022)20 of the Committee of Ministers to member States on human rights and the protection of the environment (2022) <https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a83df1>.

¹⁵⁸ See for similar reasoning in the Inter-American system, Bendel & Stephens, *supra* note 9 and on environmental protection in both systems see Calderón-Gamboa & Recinos, *supra* note 27.

¹⁵⁹ Both courts have the opportunity to set out the scope of human rights and obligations in the context of climate change, as important climate change cases are pending. See in the Inter-American system the Advisory Opinion, IACtHR, Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile of 9 January 2023 <https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf> (last accessed on 8 October 2023). See in the European System three pending cases: *Duarte Agostinho et al v Austria et al.* App No. 39371/20, *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* App No. 53600/20 and *Carême v France* App No. 7189/21. See also e.g. H Arling & H Taghavi, 'KlimaSeniorinnen v. Switzerland – A New Era for Climate Change Protection or Proceeding with the Status Quo?' (2023) *EJIL:TALK* <https://www.ejiltalk.org/klimasenioren-v-switzerland-a-new-era-for-climate-change-protection-or-proceeding-with-the-status-quo/> (accessed on 8 October 2023).

version, and I would like to thank Laura Henderson for her valuable comments on the original thesis.

COMPETING INTERESTS

The author has no competing interests to declare.

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TO CITE THIS ARTICLE:

Dewy Pistora, 'Deforestation: The Elephant in the Climate Room' (2024) 20(1) *Utrecht Law Review* 80–99. DOI: <https://doi.org/10.36633/ulr.960>

Published: 31 May 2024

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