

COP28 in the Light of the Right to a Healthy Environment: Destructive Creation or Creative Destruction?

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“The recognition of the right to a healthy environment is a message to one billion children at extremely high risk of the impacts of a changed climate: a healthy environment is your right.”

Inger Andersen, Executive Director, UNEP

Abstract

Climate change poses one of the most significant threats to human survival, demanding an urgent reaction. It seems that, more than ever, we need a global response to this issue. Therefore, it is not surprising that the international community had high expectations from the 28th United Nations Climate Change Conference (COP28), held in Dubai, United Arab Emirates, from November 30 to December 12, 2023, with the participation of representatives from over 160 countries. The paper will contribute to the ongoing discussion on whether this conference was a success or failure by analysing its outcomes with respect to the protection of the right to a healthy environment in accordance with the universal and regional human rights instruments. The scope of the paper is to clarify whether COP28 recognised the basic postulates of the concept of the right to a healthy environment, or, in other words, should we consider the COP28 agreement as a destructive creation or creative destruction?

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1. Introduction

On April 9, 2024, the European Court of Human Rights (ECtHR) delivered its first judgment that explicitly acknowledged the link between human rights and the positive obligation of the state concerning climate change under the European Convention on Human Rights (ECHR).² It strongly indicated that the climate change

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² ECtHR, Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Application no. 53600/20, judgment (Grand Chamber) of 9 April 2024.

battle has been placed in the human rights arena. Within the human rights framework, the responsibility of protecting individuals from the negative consequences of climate change has been transferred to the state.³

Without a doubt, climate change poses a significant risk to the existence of humanity, requiring an immediate response.⁴ It seems that, more than ever, we need a global response to this issue. Therefore, it is not surprising that the international community had high expectations from the 28th United Nations Climate Change Conference (COP28), which took place in Dubai, United Arab Emirates, from November 30 to December 12, 2023, with the attendance of delegates from more than 160 nations. Nevertheless, it appears that following the recent ruling of the ECtHR in the case of *Verein Klima Seniorinnen Schweiz and others v. Switzerland*, the expectations of the global community in this area will increase even further.

The paper will contribute to the ongoing discussion on whether this conference was a success or failure by analysing its outcomes with respect to the protection of the right to a healthy environment in accordance with the universal and regional human rights instruments. The first section will analyse the main aspects of the COP28 decisions. The following part will discuss the concept of the right to a healthy environment under the universal and regional human rights instruments. Furthermore, the author will examine the COP28 findings in relation to the concept of the right to a healthy environment. The scope of the paper is to clarify whether COP28 recognised the basic postulates of the concept of the right to a healthy environment, or, in other words, should we consider the COP28 agreement as a destructive creation or creative destruction?

2. COP28

The Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) has emerged as the primary platform for international climate governance, specifically focusing on the formulation of strategies to mitigate and adapt to climate change, as well as secure financial resources for a future characterised by reduced greenhouse gas emissions.⁵ The urgency for countries to take action is escalating as we approach the objectives established by the 2015 Paris Agreement.⁶

³ Jungfleisch, Julia. 2024. "Verein KlimaSeniorinnen Schweiz and Others v. Switzerland – Starting Point for the Future Climate Protection in Europe." Saar Briefs. Saar Briefs. <https://doi.org/10.17176/20240418-183401-0>.

⁴ Mladenov, Marijana, Prelević Plavšić, Snežana, and Stapski, Tamara. 2022. "Climate change from the perspective of the European Court of Human Rights." *International Review*, no. 3-4: 118. <https://doi.org/10.5937/intrev2204125M>.

⁵ Fakhoury, Amer, and Mladenov, Marijana. 2022. "Climate justice after COP26: hope or disappointment." *Proceeding of the 19th International Conference "Legal Days Prof. dr Slavko Carić" organized by the Faculty of Law for Commerce and Judiciary in Novi Sad*: 32.

⁶ The Paris Agreement, which was adopted at COP21, is an internationally recognized convention that has been legally binding and accepted by 196 countries. Its main objective is to restrict the increase in global average temperatures to below 2°C above pre-industrial levels, with further efforts made to limit it

In light of the fact that it marked the culmination of the first ‘global stocktake’ of the world's efforts to address climate change in accordance with the Paris Agreement, COP28 was particularly significant. It was concluded by signing an agreement, titled ‘Decision of the First Global Stocktake’.⁷ Demonstrating the inadequacy of progress in all aspects of climate action, including the reduction of greenhouse gas emissions, the enhancement of resilience to a changing climate, and the provision of financial and technological assistance to vulnerable nations, countries have decided to expedite action in all these areas by 2030. In their upcoming climate agreements, this entails urging governments to speed up the transition from fossil fuels to renewable energy sources like wind and solar power.

The COP28 agreement marked a significant milestone in the history of COP summits by explicitly acknowledging the imperative to transition away from all forms of fossil fuels. COP28 explicitly emphasises the need for Parties to implement measures that will result in a threefold increase in global renewable energy capacity and a twofold increase in energy efficiency improvements by 2030. The list also encompasses expediting actions to reduce the use of coal power without carbon capture, eliminating ineffective financial support for fossil fuels, and implementing additional strategies that facilitate the shift away from fossil fuels in energy systems.⁸ However, it faced extensive criticism for its failure to provide a definitive commitment to either phasing out or reducing the use of fossil fuels. The primary wording of the document urges Parties to initiate: “*Transitioning away from fossil fuels in energy systems in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science.*”⁹

According to the decision, the transition from fossil fuels will be just and equitable. However, what does this precisely entail? The agreement does not provide clear definitions for the terms, allowing states to interpret these important expressions and act accordingly. The manner in which each nation will implement its commitments and interpret the terminology about a just and equal transition is still not clear.¹⁰

Furthermore, the loss and damage fund was approved during the initial session of the first day of COP28. The fund was established during the 27th Conference of the Parties (COP27) and was specifically designed to provide financial support for the adaptation and mitigation of the impacts of human-caused climate change on extremely vulnerable poor, developing, and small island nations. A total of

to below 1.5°C. Paris agreement. 2015. In Report of the Conference of the Parties to the United Nations Framework Convention on Climate Change (21st Session, 2015: Paris). Retrived December (Vol. 4, p. 2017).

⁷ Dolan, Tom. 2024. "COP28 and The First Global Stocktake: Personal Reflections on an Affirmational, Inspirational and Disappointing Experience and an Opportunity Missed". UKCIRC, Available at: <https://discovery.ucl.ac.uk/id/eprint/10186998/1/UKCRIC%20Whitepaperthought%20piece%20A4.pdf>.

⁸ United Nations Climate Change. 2024. “COP 28: What Was Achieved and What Happens Next?” Accessed May 12, 2024. <https://unfccc.int/cop28/5-key-takeaways>.

⁹ Nevitt, Mark. 2023. "Assessing COP28: The New Global Climate Deal in Dubai". Just Security, Available at: <https://ssrn.com/abstract=4667941>.

¹⁰ Ibid.

USD 792 million was committed to the fund by nineteen countries. While the decision was significant for the vulnerable regions of the world, the level of contribution has been underwhelming, leading to disappointment. Research conducted by Newman and Noy in 2023 estimated that the economic impact of severe weather events worldwide amounted to around USD 140 billion from 2000 to 2019.¹¹ In 2023, the global average temperature reached unprecedented levels, making it the hottest year on record. This extreme heat had detrimental effects on several aspects of life, including infrastructure, human activities such as food production, and caused devastation across all continents. As a result, the allocation of resources through the loss and damage fund is critical in addressing climate change's negative effects.

In addition, the Parties have reached a consensus on the targets for the Global Goal on Adaptation (GGA) and its framework. These targets define the preferred level of resilience that the world should achieve in order to effectively deal with the consequences of climate change. They also serve as a means to evaluate the efforts made by different countries in this regard. The Global Goal on Adaptation and Mitigation Transition Programmes, adopted at COP28, represent a universal consensus for adapting to and mitigating the effects of climate change. It encompasses various areas such as water and food, health, ecosystems, infrastructure, poverty eradication and nature.¹²

While COP28 is a positive addition to the existing COP documents, it does not signify a greater sense of urgency or a faster response to the climate emergency. The September publication of the UNFCCC Report showed that global efforts to mitigate climate change are not currently on track to achieve global Net Zero emissions by 2050.¹³ This finding is not surprising and at the same time, it reflects the real success of COP.

¹¹ Newman, Rebecca, and Ilan Noy. 2023. "The global costs of extreme weather that are attributable to climate change." *Nature Communications* 14.1: 6103 <https://doi.org/10.1038/s41467-023-41888-1> according to Arora, Pranay. 2024. "COP28: ambitions, realities, and future. *Environmental Sustainability*": 107–113. <https://doi.org/10.1007/s42398-024-00304-0>.

¹² Food security was treated as a topic of high priority at COP28. According to the Status of the Food Security and Nutrition in the World 2023 report published by the Food and Agriculture Organisation (FAO) of the United Nations, approximately 735 million people suffered from food insecurity in 2022, 122 million more than in 2019 numbers.³² Several factors including the Covid-19 pandemic, the Russia-Ukraine war, and climate disasters have been the major reasons behind this rise. The situation in Africa is worst with 20% of its population suffering from hunger. With the increase in global population levels as well as 68% of the population projected to live in urban set-up by 2050, pressure is going to increase on the agrifood systems to perform under a changing climate. FAO, IFAD, UNICEF, WFP and WHO. 2023. *The State of Food Security and Nutrition in the World 2023. Urbanization, agrifood systems transformation and healthy diets across the rural-urban continuum*. Rome, FAO. <https://doi.org/10.4060/cc3017en>.

¹³ Technical dialogue of the first global stocktake. Synthesis report by the co-facilitators on the technical dialogue. 2023. FCCC/SB/2023/9. According to Arora, Pranay. 2024. "COP28: ambitions, realities, and future. *Environmental Sustainability*", *op. cit.*

3. The right to a healthy environment in the light of universal and regional human rights instruments

The recognition of the international community that environmental harm can interfere with the full enjoyment of human rights, as stated by the provisions of the Stockholm Declaration, has caused an academic discussion on whether to proclaim a new substantive right to a healthy environment or incorporate environmental dimensions into existing recognised human rights.¹⁴ On July 28 2022, the UN General Assembly made a significant decision by issuing a resolution that acknowledges a clean, healthy, and sustainable environment as a fundamental human right. The resolution received majority support from participating states.¹⁵ One year prior to that, the UN Human Rights Council issued a comparable resolution acknowledging the right to the environment.¹⁶ Although there have been notable initiatives that signify an important change in the development of environmental human rights law, there is “*no consensus on whether we should treat the right to a healthy environment as an autonomous right, or is it, on the contrary, considered through the prism of a more general human rights narrative*”.¹⁷ The author supports the theoretical approach according to which the right to a healthy environment includes both, the substantial entitlement to environmental quality and overlap with other recognised human rights.¹⁸

The right to a healthy environment is not specifically stated in any of the universal human rights treaties. However, a number of treaties, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC) include an indirect reference to this right within the scope of the rights to life, health, food, water, private life, housing, culture, and development.¹⁹

Although the ICCPR does not explicitly acknowledge the right to a healthy environment, the Human Rights Committee (HRC) has stated that a state party can

¹⁴ Mladenov, Marijana, and Igor Serotila. 2022. “Human Rights’ Approach to Environmental Protection – Practice of the Human Rights Committee”. *Pravo - Teorija I Praksa* 39 (2):53. <https://doi.org/10.5937/ptp2202052M>.

¹⁵ UN General Assembly Resolution. 28 July 2022. *The human right to a clean, healthy, and sustainable environment*, A/76/L.75.

¹⁶ UNHRC Resolution. 18 October 2021. *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*. A/HRC/RES/48/13.

¹⁷ Mladenov, Marijana, Nenad Stefanović, and Svetlana Marković. 2023. “Locus Standi of the Right to an Adequate Environment – Universal and Regional Human Rights Mechanisms”. *Kultura Polisa* 20 (2):3. <https://doi.org/10.51738/Kpolisa2023.20.2r.1msm>.

¹⁸ Collins, Lynda Margaret. 2007. “Are We There Yet? The Right to Environment in International and European Law”. *McGill International Journal Sustainable Development Law & Policy*, Vol. 3, No. 2: 126-127.

¹⁹ Shelton, Dinah. 2021. *International Environmental Law*. Vol. 4. Brill; Mladenov, Marijana. 2017. “Pravo na odgovarajuću životnu sredinu kao osnovno ljudsko pravo” [*The right to an adequate environment as fundamental human right*]. Doctoral dissertation, University in Novi Sad: Faculty of Law in Novi Sad.

potentially violate various civil and political rights through its actions in the domain of environmental protection. The remarks made by the HRC about the influence of environmental factors on human rights have primarily focused on the rights of minority groups, including indigenous peoples, as outlined in Article 27 of the ICCPR.²⁰ Additional rights that are addressed in the same manner include the right to life, the right to privacy and family life, the right to a home and private communication, the right of self-determination, and the right to equal treatment and protection under the law.²¹

The Committee for Economic, Social and Cultural Rights (CESCR) recognised that the fulfilment of different human rights guaranteed by the ICESCR is determined by numerous environmental factors.²² The CESCR's practice indicates that the following human rights are most impacted by environmental harm: the right to an adequate standard of living, including adequate housing, food, and access to safe and clean drinking water and sanitation, as well as the right to the highest possible level of physical and mental health.²³

Furthermore, the CRC stipulates that member states must implement effective strategies to address diseases and malnutrition by ensuring access to sufficient and nutritious food as well as safe drinking water. This should be done while considering the potential risks associated with environmental pollution.²⁴

At the European level, the right to a healthy environment could be considered within the legal framework of the Council of Europe and the European Union. The ECHR does not expressly guarantee the right to a healthy environment. However, the ECtHR has accepted an indirect recognition of this right while protecting various human rights, including the right to life, the right to protection of private and family life, home and correspondence, the right to free enjoyment of the property and the prohibition of torture.²⁵ Furthermore, Article 37 of the Charter of Fundamental Rights of the European Union outlines the obligations of public authorities to incorporate environmental considerations into policy-making and implementation. However, it does not acknowledge or declare any specific individual entitlement to environmental protection or a healthy environment. This is in contrast to the approach taken in the constitutions of several Member States, which not only assign responsibility for protecting the environment to government authorities but also acknowledge an

²⁰ International Covenant on Civil and Political Rights. 1966. UNTS 999, I-14668.

²¹ Office of the United Nations, High Commissioner for Human Rights. 2013. *Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, Individual Report on the International Covenant on Civil and Political Rights, Report No. 2 Prepared for the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment. Special Procedures of the United Nations Human Rights Council.

²² International Covenant on Economic, Social and Cultural Rights. 1966. UNTS 993, I-1453.

²³ Mladenov, Marijana. 2017. "Pravo na odgovarajuću životnu sredinu kao osnovno ljudsko pravo" [*The right to an adequate environment as fundamental human right*]. *op.cit.*: 104.

²⁴ UN Convention on the Rights of the Child. 1989. UNTS1577.3: 1-23.

²⁵ Dogaru, Lucretia. 2014. "Preserving the right to a healthy environment: European jurisprudence." *Procedia-Social and Behavioral Sciences* 141: 1349-1351. <https://doi.org/10.1016/j.sbspro.2014.05.232>.

independent right to the environment.²⁶

According to Article 24 of the African Charter on Human and Peoples' Rights, "all peoples shall have the right to a general satisfactory environment favourable to their development".²⁷ The African Charter specifies this right as a collective right. Furthermore, the African Commission on Human and Peoples', has determined that environmental damage has the potential to endanger the following human rights: the right to life, the right to property, the right to health, the protection of the family, and the right to control natural resources.²⁸

The San Salvador Protocol, an additional protocol to the 1969 American Convention on Human Rights, explicitly guarantees the right to a healthy environment in Article 11.²⁹ The true impact of Article 11 on the establishment of this right as an autonomous human right has been significantly reduced due to the fact that individuals and organizations are unable to submit complaints with the Inter-American Commission on Human Rights on alleged violations of this article. Indirect protection of the right to a healthy environment is provided within the Inter-American human rights system in relation to the right to life, property, health, and frequently in the context of the rights of indigenous peoples.³⁰

Despite the fact that there is no universally accepted definition of the right to a healthy environment, it is generally supported approach that this right involves both substantive and procedural aspects. The substantive components refer to clean air; a safe and stable climate; access to safe and clean water and adequate sanitation, healthy food, a non-polluted environment for living, working, studying, and leisure activities, as well as healthy biodiversity and ecosystems. The procedural elements include access to environmental information, the right to participate in environmental decision-making processes, and access to justice.³¹

²⁶ Scissa, Chiara. 2021. "The Right to a Healthy Environment as an EU Normative Response to COVID-19: A Theoretical Framework." Chapter. In *European Yearbook on Human Rights 2021*, edited by Philip Czech, Lisa Heschl, Karin Lukas, Manfred Nowak, and Gerd Oberleitner, 159–86. *European Yearbook on Human Rights*.

²⁷ African Charter on Human and Peoples' Rights. (1981, June 27). OAU Doc.CAB/LEG/76/3 rev.5, 21 I.L.M.

²⁸ Mladenov, Marijana. 2017. "Pravo na odgovarajuću životnu sredinu kao osnovno ljudsko pravo" [The right to an adequate environment as fundamental human right]. *op. cit.*: 186.

²⁹ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. 1988. OAS Treaty Series No. 69.

³⁰ Bratspies, Rebecca. 2015. "Do we need a human right to a healthy environment?" *Santa Clara J. Int'l L.* 13: 52.

³¹ The most significant international treaty that establishes the procedural components of the right to a healthy environment is the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention). Aarhus Convention protects every person's right to live in a healthy environment through the provisions that regulate three procedural rights. See Počuča, Milan, Marijana Mladenov, and Predrag Mirković. 2018. "The analysis of the Aarhus convention in the context of good environmental governance." *Economics of agriculture.* 65.4: 1615-1625. Mladenov, Marijana, and Sanja Skoric. 2023. "Public Participation in Environmental Decision Making: Interaction between Aarhus Convention and EU Law." *Conf. Proc. Int'l Conf. Dev. Pub. Admin:* 254-262.

4. COP28 agreement and the right to a healthy environment

The Paris Climate Agreement is the first binding multilateral environmental treaty that involves an explicit reference to human rights. Its preamble recognises that states “should, when taking action to address climate change, respect, promote, and consider their respective obligations on human rights.” These obligations were reaffirmed at COP28. Parties must fulfil their human rights obligation to address climate change by guaranteeing a just and equitable shift towards renewable energy and providing assistance to individuals in adapting to the consequences of the climate crisis.

UN General Assembly resolution that specifically recognised the right to a healthy environment also established a clear link between this right and climate change. Even though this is not a binding international instrument, it reflects a consensus among states concerning this issue. Moreover, the Resolution states that the right to a healthy environment should be considered in the light of the implementation of environmental agreements. Therefore, all outcomes of COP28 should be seen through the prism of this right. What is even more important is that implementation of these outcomes will have a direct effect on the enjoyment of the right to a healthy environment, especially in light of the fact that across the world, the link between this human right and climate change is increasingly being invoked before the courts.

The Urgenda case establishes significant milestones with respect to emissions reduction obligations, and the interpretation of human rights norms consistently with international environmental law. In 2013, Urgenda, an environmental non-governmental organisation, initiated proceedings on behalf of 886 individuals and in the overall interest of the Dutch community. The argument stated that the state was obligated to decrease carbon emissions by 25% - 40% by 2020, based on constitutional norms, specifically ECHR articles 2, 8, and 13, as well as tortious duties in order to limit the increase in average global temperatures to below 1.5–2°C. The Supreme Court determined that the state is responsible for emitting an excessive amount of pollution, which in turn activates the state's obligation to reduce emissions as stated in Articles 2 and 8 ECHR.³²

After the Urgenda case, climate change litigation reached the ECtHR. The ECtHR has just delivered rulings in three climate change cases. These cases were referring to several violations of the ECHR over the allegedly inadequate steps taken by nations to reduce emissions. The ECtHR was examining the application made by the former mayor of Grande-Synthe in the *Carême v. France* case. The applicant argued that the respondent state failed to implement sufficient measures to mitigate climate change and therefore constituted a violation of Article 2 and Article 8 of the ECHR. The Court found the application inadmissible since the applicant did not have the status of a victim under the requirements established by Article 34 of the ECHR due to the fact that he moved away from France.³³

³² Benoit Mayer. 2023. “The Contribution of Urgenda to the Mitigation of Climate Change”, *Journal of Environmental Law*, Vol. 35, Issue 2: 167–184, <https://doi.org/10.1093/jel/eqac016>.

³³ ECtHR, *Carême v. France*. Application no. 7189/21, Judgment (Grand Chamber) of 9 April 2024.

In the case *Duarte Agostinho and Others v. Portugal and 32 Others*, the ECtHR received a complaint from six young individuals from Portugal, who claimed that the 33 respondent states had collectively violated their rights to life, privacy, and protection from discrimination by failing to enforce emissions reductions in line with the 1.5°C objective set by the Paris Agreement. Regarding the extraterritorial jurisdiction of the respondent States, excluding Portugal, ECtHR determined that there were no legal reasons in the ECHR to grant the applicant's request for an extension of their extraterritorial jurisdiction. Since the applicants did not pursue any legal process in Portugal regarding their complaints, ECtHR stated that their application against Portugal was also inadmissible due to failure to exhaust domestic remedies.³⁴

In the previously mentioned *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* case, the applicants were a group of four elderly women and a Swiss association who claimed that they had health concerns related to heatwaves as the result of the fact that the Swiss authorities did not take adequate action to limit global warming and mitigate the effects of climate change. The applicants argue that the respondent state failed to act according to the positive obligation standards outlined in Article 2 and Article 8 of the ECHR. The ECtHR decided that the ECHR includes a right to effective protection from the serious negative impacts of climate change on lives, health, well-being, and quality of life, as provided by the State authorities. Nevertheless, it determined that the four individual applicants did not meet the victim-status criteria outlined in Article 34 of the ECHR and ruled their complaints inadmissible. In contrast, the applicant association was entitled to submit the complaint. The ECtHR determined that the right to respect for private and family life under the ECHR and the right to access the court had been violated. The ECtHR determined that the respondent state failed to fulfil its obligations under the ECHR with respect to climate change.³⁵ This ruling is of great importance in aligning climate legislation and policy with the principles of human rights. It establishes a standard for the 46 member states of the Council of Europe and will serve as a reference point for climate-change litigation globally as well as for implementation of the COP28 decisions. Regarding the COP28 agreement, it is important to emphasise the approach of the ECtHR according to which the open-ended formulation of human rights can ensure the protection of fundamental rights in the face of new threats such as climate change. In addition, the ECtHR concluded that states need to “adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible future effects of climate change”.³⁶

According to the practice of the Inter-American Commission on Human Rights, the link between the concept of the right to a healthy environment and climate change has been considered mostly in the context of the petitions submitted by organizations from various Latin American nations regarding the consequences of

³⁴ ECtHR, *Duarte Agostinho and Others v. Portugal and Others*. Application no. 39371/20, Judgment (Grand Chamber) of 9 April 2024.

³⁵ ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, *op. cit.*

³⁶ *Ibid.* See: Blattner, Charlotte E. "European ruling linking climate change to human rights could be a game changer—here's how." *Nature* 628.8009 (2024): 691-691.

climate change on indigenous populations and their rights to health, property, and culture.³⁷ In addition, regarding the African human rights framework, climate litigation has not yet been brought before this human rights system.³⁸

The UN human rights treaty bodies have addressed climate change and the right to a healthy environment in numerous decisions, General Comments and concluding observations. Some illustrative examples are provided below:

- HRC decision in the case *Teitiota v. New Zealand* involving a climate refugee from Kiribati who is requesting asylum in New Zealand;³⁹

- HRC General Comment No. 36 on Article 6 of the ICCPR on the right to life;⁴⁰

- CRC General Comment No. 26 (2023) on children's rights and the environment with a special focus on climate change;⁴¹

- CESCR General Comment No. 15 (2002) on the right to water.⁴²

These decisions and general comments offer guidelines for understanding and implementing the obligations of State parties that arise from the Covenants and Conventions in relation to climate action. They are a part of the developing framework of international human rights law that is increasingly focused on addressing climate change. According to the practice of the UN human rights treaty bodies, human rights obligations of states related to climate change and therefore important for the implementation of the COP28 agreement, are the following: *“mitigate climate change and prevent its negative human rights impacts ensure that all persons have the necessary capacity to adapt to climate change; ensure accountability and effective remedy for human rights harms caused by climate change; mobilize maximum available resources for sustainable, human rights-based development; cooperate with other States; ensure equity in climate action; guarantee that everyone enjoys the benefits of science and its applications; protect human rights from business harms; guarantee equality and non-discrimination; ensure meaningful and informed participation”*.⁴³

The conducted analysis has shown that the implementation of the COP28 agreement in the context of the concept of the right to a healthy environment requires states to establish a greenhouse-gas budget and emissions pathways with timetables

³⁷ Setzer, Joana and Higham, Catherine. 2022. Global trends in climate change litigation: 2022 snapshot. Grantham Research Institute on Climate Change and the Environment, London, UK.

³⁸ Yusra Suedi, Marie Fall. 2024. “Climate Change Litigation before the African Human Rights System: Prospects and Pitfalls”, *Journal of Human Rights Practice*, Vol. 16, Issue 1: 146–159, <https://doi.org/10.1093/jhuman/huad024>.

³⁹ Human Rights Committee. *Teitiota v. New Zealand*. 2019, CCPR/C/127/D/2728/2016.

⁴⁰ Human Rights Committee. 2018. General comment No. 36. on article 6 of the International Covenant on Civil and Political Rights, on the right to life. CCPR/C/GC/36.

⁴¹ Committee on the Rights of the Child. 2023. General comment No. 26 (2023) on children's rights and the environment with a special focus on climate change. CRC/C/GC/26.

⁴² The Committee on Economic, Social and Cultural Rights 2002. General Comment No. 15 (2002) on the right to water. E/C.12/2002/11.

⁴³ Office of the United Nations High Commissioner for Human Rights. 2021. Frequently Asked Questions on Human Rights and Climate Change Fact Sheet No. 38. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf.

that are scientifically valid, legally binding, and capable of achieving the requisite reductions. It is imperative that authorities prioritise the requirements of those most impacted by climate change and devise strategies to address their concerns.

5. Conclusion

Climate change has placed us on the edge, beyond which objective or material conditions are neither safe, stable, nor reversible. We now understand that environmental conditions on a global scale can be conceptualised as a secure operating space for humanity. We are on the point of crossing the limits of climate safety. There is no doubt that climate change poses a significant threat to the fulfilment of certain human rights, including those to life, food, water and sanitation, health, housing, culture and development. However, without a specific and autonomous right to a healthy environment, an individual affected by the consequences of climate change would need to depend on existing fundamental rights to make a claim.

COP28 agreement should be interpreted in the light of the fact that according to human rights treaties and the concept of the right to a healthy environment, Parties are obliged to protect human rights by taking measures to prevent the foreseeable negative consequences of climate change. They must also guarantee that people affected by climate change, especially those in vulnerable situations, have access to effective solutions and resources to adapt and maintain a life of human dignity.

On the other hand, the idea that climate change challenges will be fixed if we establish precise and autonomous right to a healthy environment, while the economic reality in the countries is untouched, leaves the elephant in the room. In light of this fact, should we consider the COP28 agreement as creative destruction or destructive creation? Both scenarios result in COP28 being a muted success, provided that we overlook the crucial aspect that the majority of its implementation relies on securing funds for technology development and energy transition. Until countries take action and make the elephant leave the room, individuals who experience the greatest difficulties with respect to climate change must strongly demand the protection of their fundamental rights. The human rights framework allows us not to stay silent.

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