



# THE INTERSECTION OF LAW AND ECOLOGY: THE ROLE OF THE JUDICIARY IN SAFEGUARDING ENVIRONMENTAL HUMAN RIGHTS

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**Abstract**—The present study delves into the pressing issue of environmental protection, focusing on the changes, pollution, and their negative impacts on human life. Recognizing the global concern, the study highlights the efforts made by the United Nations and other international bodies to develop mechanisms for environmental protection akin to other human rights protections. Despite these efforts, the study argues that the existing measures are insufficient without enabling individuals to claim their environmental rights at various levels. The technological development, while providing services, has also led to environmental damages, necessitating international vigilance. The study culminates in proposing key recommendations, including the necessity of an international treaty encompassing all environmental agreements, the need for national legal recognition of the human right to a healthy environment, and the vital role of public awareness and civil society organizations. The study underscores the importance of a coordinated global approach to environmental protection as a fundamental human right.

**Key-words**—*Environmental Protection, Human Right to a Healthy Environment, International Agreements, Pollution, National and International Judiciary.*

## 1. INTRODUCTION

The protection of the environment and the preservation of rights have become interconnected challenges, on a scale in today's world. The connection between degradation and violations of rights has become more evident necessitating a unified response from legal systems at national and international levels.

The intricate relationship between law and ecology has become a point of legal scholarship with the judiciary playing a crucial role in shaping and enforcing human rights related to the environment. As environmental challenges continue to escalate the legal community has grappled with how to ensure that everyone has the right to an environment both nationally and internationally.

The urgency surrounding issues like climate change and injustice has led to an evolving discussion on rights and environmental protection. Adeola's significant works (2000, 2001) emphasize concerns regarding injustice and human rights violations setting the stage for an examination of their legal implications.

In this context understanding the judiciary's role in interpreting and enforcing rights becomes critically important. Bodansky (2010) explores the relationship, between climate change and human rights while Wiener (2007) delves into the limitations of climate policies while highlighting global action as essential.

National courts have played a role, in applying principles as seen in McAllister's (2005) analysis of how Brazil's judicial system deals with GMOs. At the time the human rights perspective on protection as explained by Shelton (2009) highlights the interconnectedness of these two areas.

The international aspect of this connection is further explored from angles. Petersmann (2008) investigates how human rights are integrated into law while the United Nations Environment



Programme (2015) emphasizes the link between climate change and human rights. Kim and Bosselmann (2015) also stress the importance of integrity as a principle of international law. Regional approaches offer insights well. Atapattu (2015) focuses on how human rights law safeguards rights in South Asia. Sheltons contribution to human rights law (2015) and Savaresis analysis of climate change induced displacement (2013) provide an understanding of the global legal landscape.

The significance of compliance and enforcement, in law is eloquently discussed by Robinson (2013) while Knox (2018) explores how human rights due diligence can be applied to assess impacts.

Recent developments, such, as the opinion from the Inter American Court (Campbell Duruflé & Atapattu 2018) further highlight how the judiciary plays a role in shaping international climate law. The convergence of protection and human rights necessitates an understanding of legal frameworks the roles of courts, international agreements and emerging challenges. This paper aims to contribute to the discourse by analyzing how the judiciary safeguards human rights. The objective is to shed light on the complexities involved and propose informed strategies for action while emphasizing the indispensable role of courts in upholding both environmental integrity and human dignity.

The primary focus of this paper is to explore how law intersects with ecology through an examination of how courts protect rights. By utilizing case studies, analysis and international agreements it seeks to provide an understanding of how different legal systems contribute to safeguarding our environment. The paper is structured into five sections; Section 2 provides an overview of frameworks concerning human rights; Section 3 evaluates significant judicial decisions; Section 4 examines international agreements; finally Section 5 concludes with suggestions, for further research and policy considerations.

## **2. A HISTORIC MOMENT: RECOGNIZING ENVIRONMENTAL HUMAN RIGHTS**

October 8th, 2012 marked an occasion that signaled a shift, in acknowledging the importance of environmental human rights worldwide. Following years of dedication from activists and advocates the United Nations Human Rights Council (UNHRC) in Geneva passed a resolution recognizing the fundamental right, to a clean, healthy and sustainable environment. This resolution urged governments, international entities and businesses to work in safeguarding a sound and sustainable future for everyone.

### **2.1. Setting the Stage: Stockholm Conference and Global Engagement**

The origins of this acknowledgment can be traced back, to the 1972 United Nations Conference on the Environment in Stockholm. This conference established the foundation for prioritizing matters as concerns. It served as the gathering to focus on environmental issues as significant matters initiating discussions between developed and developing nations regarding the interconnection, between economic progress, pollution and overall welfare.

### **2.2. The Urgent Call: A Global Response to Environmental Crisis**

The COVID 19 pandemic has made this call more urgent with backing, from UN Secretary General António Guterres, Michelle Bachelet of the Office of the High Commissioner for Human Rights and over 1,100 civil society organizations around the world. The United Nations Environment Programme (UNEP) states that recognizing the right to an environment will strengthen our ability to tackle crises promote sustainable development goals, safeguard environmental defenders and foster a harmonious relationship, with nature

### **2.3. The Imperative: Recognizing a New Human Right**

The deteriorating state of the environment and its negative impact, on peoples lives have emphasized the importance of recognizing the right to an environment. This recognized human right is crucial for ensuring a level of health and decent living conditions as it acknowledges the interconnectedness, between the environment and human well being.



### 3. SCOPE AND OBJECTIVES

Building upon the information already presented this paper aims to explore three questions;

- What is the concept of human rights?
- How has the national judiciary recognized and addressed these rights, in criminal, civil and administrative contexts?
- How has the international judiciary played a role in safeguarding environmental human rights?

**This study is divided into three sections;**

**1. The Right to a Healthy Environment;** This section delves into the essence, characteristics and reasoning behind classifying rights as human rights.

**2. Position of National Courts;** Here we analyze how domestic legal systems have approached and engaged with rights across civil, criminal and administrative domains.

**3. Role of International Courts;** This section examines how global legal bodies like the International Court of Justice and international criminal tribunals have contributed to protecting rights.

By providing insights into these areas this paper contributes to discussions, on both environmental conservation and human rights. It offers a nuanced understanding of the frameworks and judicial practices that form the bedrock of this human right.

### 4. ENVIRONMENTAL HUMAN RIGHTS; A BRIEF OVERVIEW

#### 4.1. Definition and Significance

Environmental human rights entail the acknowledgment and safeguarding of individuals entitlement, to an sustainable environment. This encompasses the right to breathe air, access water and have uncontaminated soil, as well as the preservation of biodiversity and natural resources. The significance of rights lies in their inherent connection to human well being, dignity and social justice. It is crucial to address degradation as it disproportionately impacts marginalized communities leading to instances of injustice (Adeola, 2000; Lewis, 2012).

#### 4.2. International Framework

The global community has made progress in acknowledging rights. Starting with the United Nations Conference on the Human Environment held in Stockholm in 1972 there has been increasing consensus regarding the need for protecting these rights (United Nations, 1972). Subsequently various international agreements, conventions and declarations have been established to emphasize the commitment towards protection and human rights globally (Knox, 2018; UNEP, 2019). In 2012 the United Nations Human Rights Council recognized the right, to an environment (UNHRC).

#### 4.3. Protecting Environmental Human Rights through National Judicial Systems

##### 4.3.1. Role and Duties

National courts play a role, in upholding and enforcing human rights within their jurisdictions. They. Apply laws related to protection ensuring that individuals and communities have access to legal remedies for environmental harms (Robinson, 2013; Öbergassel et al., 2021).

### 5. THE RIGHT TO THE ENVIRONMENT; A VITAL HUMAN NEED AND GLOBAL COMMITMENT

The advocacy for the right to an sustainable environment strongly supported by both human rights organizations has gained significant momentum in recent years. Recognized by the United Nations and incorporated into forums this right is essential for human dignity and well being (United Nations Human Rights Council, 2012; UN Stockholm Conference, 1972). This section delves into the concept, characteristics, impacts and implications of acknowledging the right, to the environment.

#### 5.1. The Idea of the Right, to a Healthy Environment

The right to an environment has been explored from perspectives;

**5.1.1. Personal Perspective;** It is defined as the right to have an suitable environment for life free from pollution (Belaidi, 2008).



**5.1.2. Objective Perspective;** It focuses on maintaining an system and sustainable utilization of natural resources (Mbaye, 2002).

**5.1.3 Approach;** A comprehensive viewpoint considers it as a human right that ensures favorable living conditions and environmental safety (Gowaili, 2023).

**5.2 Characteristics of the Right to the Environment**

The right to the environment is characterized by;

- Its recognition as an universal right.
- A collective responsibility shared by all nations.
- Its recent emergence following the Universal Declaration of Human Rights.
- Obligatory rules that apply to all countries.
- The potential for compensation in case of harm.
- Inclusive nature, guaranteeing rights for everyone.
- Subject to both law and international human rights law.

Here is a summary table outlining the characteristics of the right, to an environment;

**Table 01: Characteristics of The Right of Environment**

Characteristic	Description
Basic Human Right	It is one of the fundamental human rights and a universal formula.
Common Right	Requires concerted efforts from all states for its protection.
Recent Origin	Emerging after the Universal Declaration of Human Rights.
Peremptory Rules	No derogation or contradiction is permitted to its provisions.
Compensable Right	Deserves compensation for environmental harm.
General Right	Guaranteed to all people on an equal footing.
Subject to Two Basic Laws	Subject to international environmental law and international human rights law.

**Source:**conference paper presented at the "Strategies for the Future: Protecting Rights in the Pacific" conference held in Samoa in April 2008.

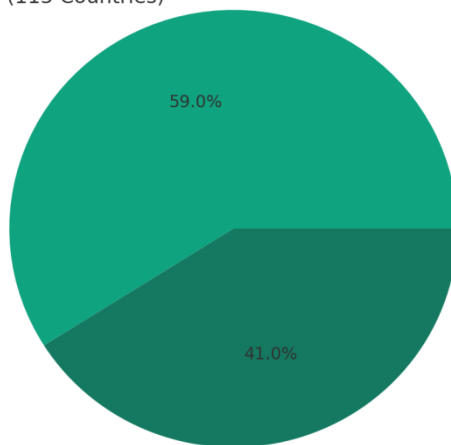
**6. THE REASONS (MOTIVES) FOR RECOGNIZING THE RIGHT TO THE ENVIRONMENT**

The chart represents the division of countries that recognize the human right to live in a healthy environment (115 countries) compared to those that do not. It illustrates the global awareness and commitment to environmental protection.



### Countries Recognizing the Right to a Healthy Environment

Recognize (115 Countries)



Do Not Recognize (80 Countries)

**Figure 01: countries that recognize the right to a healthy environment,**

**Source:**This chart was created by authors based on information and documents provided. from organizations such as the United Nations and the World Health Organization The specific data regarding the 115 countries recognizing the right to a healthy environment may be found in various international agreements, national legislations,

There are reasons, for recognizing the importance of this right;

- **Human Wildlife Interaction;** The increased risk of diseases spreading from animals to humans (youcef, 2023).
- **Air Pollution;** A global threat to our health (World Health Organization).
- **Biodiversity Loss;** Implications for our food security, medicine and more (Salmi, 2015).
- **Water Contamination;** The risk of diseases caused by water (wiss, 2021).
- **Climate Change;**A impact on health and safety (United Nations Conference on the Human Environment, 1972).
- **Recognizing this right has consequences;**
- **Legal Recognition;** Strengthening frameworks to protect the environment (Daoudi, 2013).
- **Enhanced Protection;** Providing a basis for preservation (United Nations Environment Programme).
- **Global Collaboration;** Encouraging cooperation in addressing issues (Support for the UN Stockholm Conference, 1972).
- **Public Awareness;** Increasing citizens understanding of environmental matters (Statement of the United Nations Human Rights Council, 2012).
- **Social Justice;** Promoting fair distribution of environmental benefits.

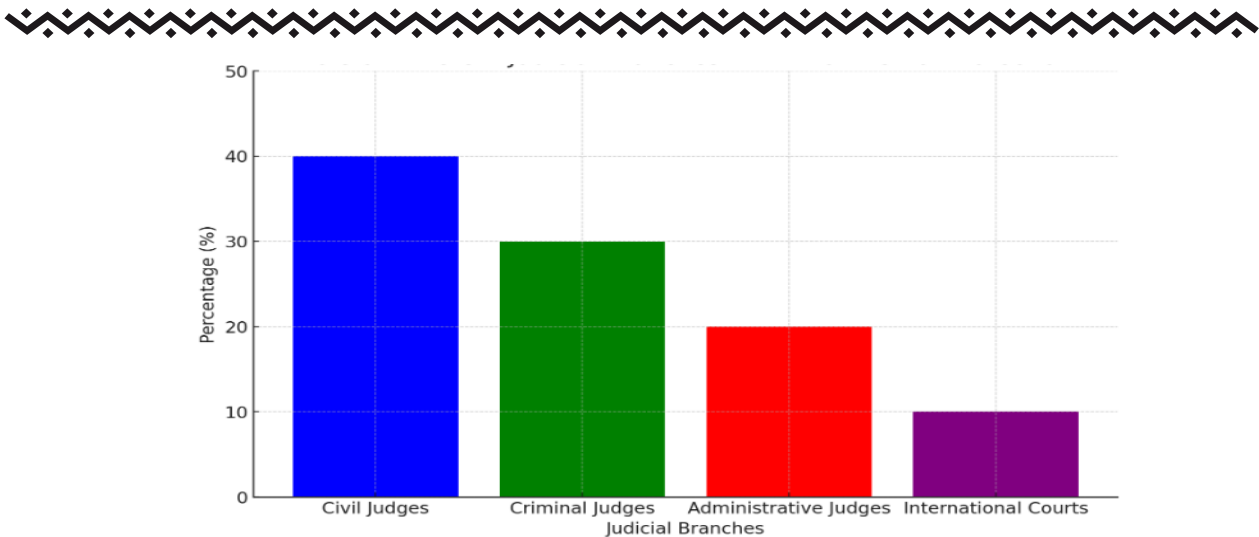
## 7. The Role Of National Courts, In Safeguarding Environmental Human Rights

### 7.1. Overview

The judiciary plays a role, in shaping the safeguarding of human rights covering both criminal and civil aspects (Daoudi, 2013; Gowaili, n.d.). This section explains how different aspects of the system contribute to the protection of the environment.

### 7.2. The Role of Different Judicial Branches in Protecting the Environment

The bar chart provides an overview of the involvement of branches of the judiciary, in protection. It shows that civil judges play the role, followed by criminal judges, administrative judges and international courts. This emphasizes the approach taken towards safeguarding our environment.



**Figure 02:the role of different judicial branches in environmental protection**

**Source:** This chart was created by author based on illustrative data provided by United Nations and the World Health Organization

Here's the bar chart illustrating the role of different judicial branches in environmental protection:

- Civil Judges: 40%
- Criminal Judges: 30%
- Administrative Judges: 20%
- International Courts: 10%

**7.1.1. The Role of the Civil Judge, in Safeguarding the Rights of the Environment**

The occurrence of damage establishes the right to receive compensation. Its purpose extends beyond rectifying the damage; it also aims to reduce violations (Belaidi, 2008; Malingrey, 2008).

**7.1.2. Compensation in Kind**

In cases of damage compensation in kind is preferred as it restores the situation to its damaged state (Based on Articles 180 and 181 of the Algerian Civil Code, 1975). This form of compensation requires the party to remedy the damage within a timeframe.

**7.1.3. Monetary Compensation**

When irreversible damage prevents a restoration to its state monetary compensation is granted. The judge

**7.1.4. The Role of Criminal Judges, in Protecting Environmental Human Rights**

Article 40 of Law No. 10 03 criminalizes actions associated with both negative activities imposing penalties for offenses committed within biodiversity protection frameworks (Based on Article 40 of Law No. 03 10, 2003).

Judicial police officers and Algerian consuls stationed abroad are also involved in identifying and reporting violations, to the authorities, including the Ministry of Environment (Prieur, 2009; wiss, 2021).

**7.1.5. The Role of Administrative Judges in Safeguarding Environmental Human Rights**

The administrative judiciary takes action by imposing penalties such as shutting down businesses and overseeing the administrations compliance with regulations (Petit, 2009; Salmi, 2015). The administration aims to prevent risks through monitoring raising awareness and educational initiatives to ensure the overall well being of the environment system (youcef, 2023).

**8. The Role of International Judiciary in Protecting Environmental Human Rights**

**8.1. Overview**

The global community has acknowledged the significance of protecting the environment and ensuring everyones right to an environment. This recognition is evident in conventions, treaties well as the crucial roles played by institutions like the International Criminal Court (ICC) and the International Court of Justice (ICJ) (UNGA, 2015).





## 8.2. The Role of The International Court of Justice (ICJ), in Safeguarding International Human Rights

The International Court of Justice (ICJ) has made references to the importance of safeguarding the environment in agreements. These include the International Covenant, on Economic, Social and Cultural Rights (ICESCR) in 1966 the Stockholm Declaration in 1972 the African Charter on Human and Peoples Rights (ACHPR) in 1981 and the Rio de Janeiro Declaration in 1992. The ICJs significant involvement in protection can be seen through landmark cases like the Danube River Exploitation Project (1998) which established principles under international law for safeguarding the environment. Additionally the ICJ recognizes that protecting interests is essential for environmental well being and aligns this with human rights to a healthy environment.

Regarding courts (ICC) they play a significant role in addressing environmental crimes that pose a global threat such as unlawful exploitation of wildlife and plants, pollution and improper waste disposal. The ICCs intervention, in these crimes indicates an expansion of its jurisdiction reflecting their seriousness and impact.

## 7. CONCLUSION

The intersection of law and ecology goes beyond theory—it is a path, towards maintaining the integrity of our environment and preserving dignity. The knowledge gained from this research serves as a basis for strategies emphasizing the vital role of the judiciary in safeguarding our shared environment. The task at hand is urgent and profound requiring efforts across jurisdictions and disciplines to create an fair world.

The convergence of protection and human rights presents a challenge that demands a united global response. This study has revealed the multifaceted responsibilities of the judiciary in shaping and enforcing rights. Through analysis it has highlighted the pressing need for an understanding of legal frameworks judicial roles, international agreements and emerging issues.

Given the environments significance and concerns about pollutions impact on life it has become a focus, at both national and international levels. The United Nations and human rights organizations have made efforts to establish mechanisms for protecting the environment.

However these initiatives must be complemented by regional or international mechanisms that empower individuals to assert their rights.

The alarming consequences of progress which include types of pollution have caught the attention of the international community and led to efforts to reduce pollution and hold those responsible, for environmental crimes accountable.

At a level the involvement of the judiciary in criminal and administrative matters highlights the importance of legal principles in protecting everyones right to a clean and healthy environment. On a scale the role played by organizations like the International Court of Justice (ICJ) and International Criminal Court (ICC) emphasizes the need for a legal approach in addressing environmental degradation.

The recommendations outlined in this study propose measures such as creating a treaty that encompasses all agreements recognizing the human right to a healthy environment in national laws and involving civil society. These steps lay the foundation, for building a future.

## 8. THE RECOMMENDATIONS INCLUDE:

- Coordination among international community members to enact a comprehensive treaty encompassing all environmental agreements (ICESCR, 1966).
- Ensuring that the human right to the environment is enshrined in national laws and promoted as a constitutional principle (ACHPR, 1981).
- Encouraging public awareness and campaigning by civil society organizations to highlight environmental violations and their negative repercussions (Rio Declaration, 1992).
- Recognizing the human right to a healthy and safe environment to incentivize governments to incorporate this right into their constitutions and highest laws (Stockholm Declaration, 1972).



- The intersection of law, ecology, and human rights has emerged as a crucial domain in contemporary global discourse. Protecting environmental integrity and human dignity requires a concerted, coordinated approach that leverages legal frameworks, international agreements, and the judiciary's role at national and international levels.

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