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## A Right to a Pollution-free Environment Through the Right to Life

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A RIGHT TO A POLLUTION-FREE ENVIRONMENT THROUGH THE  
RIGHT TO LIFE

by

NATALIE SAAD MOUSA

A thesis submitted in partial fulfillment of the requirements  
for the Honors in the Major Program in Political Science  
in the College of the Sciences  
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## ABSTRACT

Since humans have existed on Earth, the environment has been one of the primary resources contributing to humans' ability to live life adequately. Pollution has not only destroyed natural life, but it has also diminished humans' right to life. The United Nations 1966 International Covenant on Civil and Political Rights (ICCPR) guarantees "every human being has the inherent *right to life*," but how can one exercise this right in an environment that is degrading through pollution? This is the basis of which this thesis is surrounded; the issue of environmental pollution hindering humans' right to life. Thus, this thesis aims to show how legal action can be taken under the substantive right to life when environmental pollution occurs and negatively impacts humans and their surroundings. Specifically, this thesis shows how the right to life has been used in courts around the world through three primary approaches – State Constitution approach, Regional Treaty approach, and Blended approach – when environmental pollution has occurred. The different approaches will show different ways a court can come to the conclusion that there has been a violation of the right to life in the occurrence of environmental pollution. Through a comparative-analysis of the different approaches, this thesis presents yet another way to protect not only the environment, but also the rights of humans who have been negatively affected by environmental pollution.

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## INTRODUCTION

The first modern humans, *homo sapiens*, roamed planet Earth approximately 200,000 to 300,000 years ago.<sup>1</sup> Historically, humans have lived in an environment with clean air, food, and water, allowing for the ability to live life adequately. With the increase in industrialization and the exponential growth in human population over the last century, the exploitation of environmental resources has left the quality of the environment to become increasingly neglected. Pollution, one of the main factors degrading the quality of the environment, has resulted in not only the destruction of natural life, but it has also deprived humans of their right to life.

The 1948 Universal Declaration of Human Rights (UDHR) guarantees that “everyone has the *right to life*, liberty, and the security of person.”<sup>2</sup> All 193 Member States of the United Nations (UN) have signed the UDHR. Yet, many States fail to preserve their citizens right to life by allowing environmental degradation, such as pollution, in their respective territories. This is because, by allowing pollution, citizens ability to obtain natural resources from the environment, such as clean water and air are limited, which in turn decreases their citizens’ quality of life. While the UDHR is not binding, the values and principles within this document are subsequently binding through other international treaties such as the International Covenant on Civil and Political Rights, which addressed the right to life under Article 6, and the International Covenant on Economic, Social, and Cultural Rights. Different human rights treaties, such as the ones listed previously, have provided basic rights that every human is guaranteed. As well, the UN has

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<sup>1</sup> KHAN ACADEMY, *Homo Sapiens and early human migration*, <https://www.khanacademy.org/humanities/world-history/world-history-beginnings/origin-humans-early-societies/a/where-did-humans-come-from> (last visited Feb. 12, 2021).

<sup>2</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

explicitly recognized the human right to a healthy environment in its interpretations of different UN global instruments. One being General Comment No. 36 by the UN Human Rights Committee and the other being the UN Human Rights Council Resolution 38/11 (2018), which will be further discussed below.

Beyond the UN recognizing the right to a healthy environment as a human right in its resolutions and general comments, States must also take the responsibility to ensure threats against the right to life, such as pollution, are deterred. Currently, over 100 State constitutions around the world mention the importance of the environment.<sup>3</sup> This shows that there is an trend of States recognizing the significance of the environment and its preservation. Legal action can be taken by individuals to protect their right to life by using Constitutions, or regional treaties, or international treaties, to hold States accountable for pollution that negatively impacts their quality of life.

### Human Rights Framework

The United Nations Department of Economic and Social Affairs develops 15-year agendas with goals that tackle sustainable development issues. These Sustainable Development Goals (SDGs) provide a “shared blueprint for peace and prosperity for people and the planet, now and into the future.”<sup>4</sup> The SDGs tackle different environmental issues that interfere with basic human rights such as access to water, food, adequate living, transportation, and others. These goals are meant to guide Member States of the UN, as they provide different areas of action that can be taken to overcome these thematic issues. Although the SDGs provide areas of action for States to take to enhance their citizens’ right to life, the goals are not binding on States

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<sup>3</sup> Dinah Shelton, *Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized*, 35 DEN. J. OF INT’L. L. & POL. 129, 131 (2020).

<sup>4</sup> UN Sustainable Development Goals (SDGs), <https://sdgs.un.org/goals> (last visited Feb. 19, 2021).



and, therefore, States do not have to implement the policies outlined. Although, the importance of SDGs cannot go unnoticed. These goals, if implemented by States, help increase the quality of life of their citizens, while taking into consideration the preservation of the environment. This allows for harmonious living between nature and humans, without either deteriorating in quality.

One of the most recent comments made by the United Nations Human Rights Committee (UN HRC) on the interconnectivity between the right to life and a healthy environment is in General Comment No. 36 (GC No. 36) (2018). GC No. 36 was focused on the right to life under Article 6 of the International Covenant on Civil and Political Rights (ICCPR).<sup>5</sup> In paragraph 26 of GC No. 36, the HRC states that “the duty to protect life also implies that States Parties should take appropriate measures to address ... degradation of the environment.”<sup>6</sup> The Committee also comments on the environment in paragraph 62, stating that “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”<sup>7</sup> The HRC obliges States to protect the right to life by taking measures “to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.”<sup>8</sup> GC No. 36 is very significant because the HRC establishes that the degradation of the environment can cause a threat under the right to life. Thus, GC No. 36 brings in a new interpretation of Article 6 of the ICCPR that includes imposing obligations on States to protect citizens right to life by protecting the environment from harm.

In the same year, the UN Human Rights Council put forth Resolution 38/11. This resolution was established as a result of increasing awareness between human rights and the

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<sup>5</sup> UNHRC, General Comment No. 36: The Right to Life, CCPR/C/GC/36 (2018).

<sup>6</sup> *Id.* at ¶ 26.

<sup>7</sup> *Id.* at ¶ 62.

<sup>8</sup> *Id.*

environment. The Human Rights Council appointed David R. Boyd, the Special Rapporteur on human rights and the environment, to draft a report in which he asked “for the United Nations to formally recognize the human right to a safe, clean, healthy and sustainable environment, or, more simply, the human right to a healthy environment.”<sup>9</sup> The Human Rights Council also asked the Special Rapporteur to “continue to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment” and to “promote and report on the realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.”<sup>10</sup> Boyd would have to submit annual reports listing out recommendations to the General Assembly and Human Rights Committee. In doing so, the UN Human Rights Council is hoping to expand its understanding of human rights and how it is impacted by the environment. In turn, this will allow for potential legal advancements in this new and upcoming field of human rights. The resolution even discussed environmental framework, including the Stockholm Declaration and how the first paragraph expresses that “both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights — even the right to life itself.”<sup>11</sup> Lastly, the resolution repeatedly mentioned “how environmental degradation interferes with specific rights, including the rights to life,” emphasizing the need to “green” human rights.<sup>12</sup> “Greening” human rights is the act of including a healthy environment as a “fundamental importance to the full enjoyment of a vast range of human rights.”

Regional human rights instruments also discuss the right to life. For example, The European Convention on Human Rights (ECHR) contains two articles addressing the right to

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<sup>9</sup> Human Rights Council Res. 38/11, U.N. Doc. A/73/188, at 37 (July 19, 2018).

<sup>10</sup> *Id.* at ¶ 10.

<sup>11</sup> *Id.* at ¶ 12.

<sup>12</sup> *Id.* at ¶ 13.

life.<sup>13</sup> Article 2, the right to life, states that “everyone’s right to life shall be protected by law.”<sup>14</sup> Article 8, covering the “right to respect for private and family life”, states that “everyone has the right to respect for his private and family life, his home and his correspondence.”<sup>15</sup> This European Court of Human Rights (ECtHR) have used Articles 2 and 8 of the European Convention interchangeably in finding that a violation of the right to life can appear in the occurrence of pollution in the environment.

Another regional human rights instrument is The African Charter on Human and Peoples' Right.<sup>16</sup> This Charter guarantees the right to life under Article 4, which states that “every human being shall be entitled to respect for his life and the integrity of his person.”<sup>17</sup> This Charter was also the first international human rights instrument to guarantee the right to a healthy environment, which is explicitly stated in Article 24, “all peoples shall have the right to a general satisfactory environment favorable to their development.”<sup>18</sup> This thesis will show how the African Commission on Human Rights interprets Article 4 of the African Charter to include the right to a pollution-free environment.

### Environmental Framework

Over the last century, environmental action has become more prominent in the world. The 1972 Stockholm Conference, which produced the Stockholm Declaration, has recognized “environmental protection as a pre-condition for the enjoyment of many human rights.”<sup>19</sup> The

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<sup>13</sup> Member States: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Luxemburg, Lithuania, Malta, Monaco, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom.

<sup>14</sup> European Convention on Human Rights Art. 2, Nov. 4, 1950.

<sup>15</sup> *Id.* at Art. 8.

<sup>16</sup> Members include all states listed (*Id.*) with the exception of Burundi, and Morocco.

<sup>17</sup> African Charter on Human and Peoples' Right Art. 4, Jan. 25, 2005.

<sup>18</sup> *Id.* at Art. 24.

<sup>19</sup> Shelton, *supra* note 3, at 129.

first principle of the Declaration states, “man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”<sup>20</sup> This principle emphasizes that the quality of the environment has an impact on a person’s life, and thus, something like environmental pollution, which would decrease the quality of the environment, would also negatively impact the quality of life. The Stockholm Conference was the first time “efforts were made to explore and attempt to understand the interrelationship between human rights and environmental protection.”<sup>21</sup> The Stockholm Conference left a mark on many nations, following the Conference, “nearly 60 countries have constitutionally entrenched environmental rights.”<sup>22</sup> The Conference also resulted in an increased trend of courts reading “environmental rights into constitutions that do not explicitly mention them... most commonly a “right to life.”<sup>23</sup> This trend will be seen in the State courts of Southern Asia, including India, Nepal, and Pakistan.

Following the Stockholm Conference was the 1992 Rio Conference, which produced the Rio Declaration on Environment and Development.<sup>24</sup> The Rio Declaration reaffirmed the principles set in the Stockholm Declaration. In Principle 1, the Rio Declaration states that human beings “are entitled to a healthy and productive life in harmony with nature.”<sup>25</sup> This principle reiterates the coherence between nature and a healthy life. The Stockholm and Rio Conference are not binding but are still considered influential on the States who have attended these conferences and also hold weight in courts around the world, such as those in Asia. This is

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<sup>20</sup> U.N. Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment*, U.N. Doc. A/CONF.48.14.Rec.1 (June 16, 1972).

<sup>21</sup> Shelton, *supra* note 3, at 129.

<sup>22</sup> James R. May & Erin Daly, *New Directions in Earth Rights, Environmental Rights and Human Rights: Six Facets of Constitutionally Embedded Environmental Rights Worldwide*, 1 IUCN ACAD. OF ENV’T L. E-J. 13, 13 (2011).

<sup>23</sup> *Id.* at 14.

<sup>24</sup> U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), annex I (Aug. 12, 1992).

<sup>25</sup> *Id.*

because these declarations were the first to establish a connection between the environment and the quality of human life, and thus, are considered the building blocks of environmental action.

The Paris Agreement was the first international agreement where countries pledged to take serious action to control carbon emissions to fight climate change, a large aspect of environmental degradation. The treaty was adopted at the Conference of Parties (COP) 21 in 2015 and went into force on November 4, 2016.<sup>26</sup> The Agreement set out a goal “to limit global warming to well below 2, preferably 1.5 degrees Celsius, compared to pre-industrial levels.”<sup>27</sup> Following the Agreement, countries were required to set out plans and individual goals to combat climate change and rising temperatures. These obligations show that States must take action to counter their carbon output as it has adverse effects on the quality of the environment. The Paris Agreement is a landmark multilateral treaty as it was the first to set out obligations on all signing nations. The Agreement also brought together nations around the world and fostered cooperation to find ways to fight environmental degradation.

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<sup>26</sup> Paris Agreement to the United Nations Framework Convention on Climate Change, Nov. 4, 2016.

<sup>27</sup> *Id.*

## QUESTION/HYPOTHESIS

The question this thesis aims to answer is, “can legal action be taken using the substantive right to life regarding environmental pollution?” Human rights law and the environment have been treated as separate topics in international law. However, the problems faced by these topics frequently overlap and impact each other, as shown in the extensive environmental framework and the UN general comments and resolutions. The research on this thesis will show that, around the world, courts have found that environmental pollution has negatively impacted the right to life, a right commonly recognized under human rights law.

The first approach outlined in this thesis will be a State Constitution approach, where the court primarily relies on the State Constitution to find a violation. The second approach is the Regional Treaty approach, where the court relies on a regional document to find a violation. The last approach is the Blended approach, where the court uses either a regional, or international, or State Constitution to find a violation. These versatile approaches show that ‘right to life’ is not limited to one approach, and that there are a variety of different approaches to get to the same answer.

Due to the extensive nature of a comparative-analysis, the case law will be limited to 3-4 cases per approach. The comparative-analysis aims to prove that while each court may take a different approach in coming to their holding, the outcome remains the same. The similarity in outcomes will help prove the hypothesis that ‘legal action can be taken using the substantive right to life when environmental pollution occurs.’

## RESEARCH METHODOLOGY

The methodology will focus on how each of the three different approaches – State Constitution, Regional Treaty, and Blend – can be used to take legal action concerning pollution that has caused negative effects on a humans’ right to life. The methodology undertaken is to look at different courts around the world and how they have addressed the issue of pollution as an aspect of right to life. The State Constitution approach will focus mainly on the region of Asia, where the various State Supreme Courts within Asia have relied on their State Constitution in addressing the right to life vis-à-vis reduction of pollution. For the Regional Treaty approach, the focus will be the region of Europe, where the ECtHR depends on the ECHR in coming to its holding. Lastly, the Blended approach will focus primarily on the regions of Latin America and Africa to show how either international treaties, regional treaties, or State Constitutions can effectively be used to find a violation of the right to life regarding environmental pollution.

## FINDINGS

### State Constitution Approach

The State Constitution approach focused on courts that rely on their State Constitution in addressing the right to a pollution-free environment under the right to life. The cases in this approach come from the region of Asia, where the primary approach of the respective courts is to use the State Constitution in coming to their holding. While the respective courts do look into environmental framework, the legal analysis of each case is based on the right to life outlined in the State's respective Constitution. This approach was most common in the region of Asia because it does not have any regional treaty that the States in Asia can use. As well, the region of Asia does not have a regional court that can hear cases. Thus, the primary approach in Asia is to use the State Constitution to address the right to life and how it encompasses a pollution-free environment.

*Nepal.* The Kingdom of Nepal grants the right to life under Article 12(1) of the 1990 Nepal Constitution.<sup>28</sup> Article 12(1) states that, “No person shall be deprived of his personal liberty save in accordance with law.”<sup>29</sup> In the case of *Suray Prasad Sharma Dhungel v. Godavari Marble Industries and others*, the Nepal Supreme Court faced the legal issue of “whether the Constitution guarantees the right to clean environment as the part of right to life?”<sup>30</sup>

The respondent in the case, Godavari Marble Industries and others, were found engaging in activities that “have caused and have been causing, in violation of the Constitution and law, a very serious environmental degradation to Godawari forest and its surroundings,” including harm to historical, religious areas and the “Godawari Adarsha Village Panchayat.”<sup>31</sup> Godavari Marble

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<sup>28</sup> THE CONSTITUTION OF THE KINGDOM OF NEPAL, 2047 (1990), Nov. 9, 1990, Art. 12(1) (Nepal).

<sup>29</sup> *Id.*

<sup>30</sup> *Suray Prasad Sharma Dhungel v. Godavari Marble Industries and others*, [1995] WP 35/1992 (Nepal).

<sup>31</sup> *Id.*



Industries frequently conducted explosions during their mining operations that produced dust and sand that polluted “the atmosphere and water of the area and caused deforestation.”<sup>32</sup> The Court stated that respondents’ activities “hindered to conserve appropriate natural heritage and protect from the danger... the property, life and health of the people.”<sup>33</sup> The Court found that neither “the industry nor the government” adopted measures “to halt the negative impact and loss on the environment.”<sup>34</sup>

The Court concluded that a “clean and healthy environment is an indispensable part of a human life... undoubtedly, embedded within the Right to Life.”<sup>35</sup> The Court reached this conclusion by evaluating the environmental degradation in Godawari forest and the surrounding areas, finding that “the quality of the drinking water has declined due to the mining operation,” along with the disappearance of various types of animals and birds.<sup>36</sup> Another important reason presented by the Court was that “human being may also be extinct if there is no conducive environment.”<sup>37</sup> This is an important point because it acknowledges how humans depend on the environment for their survival. The Court affirmed that the actions of respondent did not only have negative impacts on the right to life, they were also “against the economic welfare of the nation.”<sup>38</sup> This shows that the Court recognized that pollution does not only negatively impact humans, but the economy as well. The Court also drew to different environmental efforts such as the Stockholm Conference of 1972 and the Rio Conference of 1992 to emphasize the government’s lack of “specific law” to manage “environment related crimes and subsequent punishment,” and urged the government to create effective and appropriate laws that encompass

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

“all aspects of the environment... as soon as possible.”<sup>39</sup> In the judgment, the Court required the mining industry to take remedial measures to conserve the environment, and if those measures fail, the renewal of the mining license will not be permitted.

*Pakistan.* Pakistan grants the right to life under Article 9 of the Pakistani Constitution.<sup>40</sup> Article 9 provides that, “No person shall be deprived of his life or liberty save in accordance with law.”<sup>41</sup> In the case of *Shehla Zia v. WAPDA* (1994),<sup>42</sup> the Supreme Court of Pakistan faced the issue of “whether any Government agency has a right to endanger the life of citizens by its actions without the latter’s consent,” due to the construction of a grid station in a residential area.<sup>43</sup> Dr. Parvez Hasan, on behalf of the Petitioners, alleged that the electromagnetic field posed “a serious health hazard to the residents of the area” due to the “presence of the high voltage transmission lines at the grid station.”<sup>44</sup> These transmission lines would “be highly dangerous to the citizens particularly the children who play outside in the area,” along with damaging “the greenbelt and affect the environment.”<sup>45</sup> Thus, the Petitioners claimed that electromagnetic fields, which caused electromagnetic waves pollution, would negatively impact the right to life by posing health hazards on citizens close to the grid station.

The Court first assessed a number of studies on the impacts of electromagnetic fields. While the Court stated that “no definite conclusions have been drawn by the scientists and scholars,” the Court agreed that “the trend [of studies] is in support of the fact that there may be likelihood of adverse effects of electromagnetic fields on human health.”<sup>46</sup> The right to life

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<sup>39</sup> *Id.*

<sup>40</sup> PAKISTAN CONST. art. 9, cl. a.

<sup>41</sup> *Id.*

<sup>42</sup> *Shehla Zia v. WAPDA*, (1994) PLD (SC) 693 (Pak.).

<sup>43</sup> *Id.* at ¶ 1.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at ¶ 8.

includes one's right to be free from State-induced health hazards as they depreciate one's ability to live.<sup>47</sup> The Court found that the opinion and research provided by the respondent, WAPDA, was "not the best one nor from authentic sources because they are merely relying upon old opinions."<sup>48</sup> In their decision, the Court stated that while there was "no conclusion finding on the effect of electromagnetic fields on human life. One should not wait for conclusive findings... measures should be taken to avert any possible danger and... ensure safety and security or at least minimise the possible hazards."<sup>49</sup> In constructing the grid station, the Court stated that the Government agency must "first consider the welfare and safety of the human beings and the environment," before selecting a policy or plan.<sup>50</sup> Here, the Court intertwined the safety of human beings and the environment, showing that they are interconnected and therefore dependent on one another. While accepting the fact that an increase in energy production is important to economic development, the method in doing so must "strike balance between economic progress and prosperity and to minimise possible hazards."<sup>51</sup> The Court concluded that WAPDA and the Government did not "seek opinions or objections from residents of the locality," and therefore failed to strike a balance between economic progress and the safety of human beings and environmental pollution.<sup>52</sup>

In coming to its conclusion, the Court addressed the fact that Pakistan has obligations in protecting the environment under environmental instruments such as the Stockholm Declaration and the Rio Declaration.<sup>53</sup> The Court also analyzed the meaning of the term "life" in Article 9 of

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<sup>47</sup> *Id.* at ¶ 12.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at ¶ 9.

<sup>50</sup> *Id.* at ¶ 12.

<sup>51</sup> *Id.* at ¶ 10.

<sup>52</sup> *Id.* at ¶ 11.

<sup>53</sup> *Id.* at ¶ 9.

the Constitution.<sup>54</sup> The Court stated that the term “life” is not “restricted only to the vegetative or animal life or mere existence from conception to death,” and that it includes that “a person born in a free country is entitled to enjoy with dignity, legally and constitutionally.”<sup>55</sup> The Court indicated that this included the protection “from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations.”<sup>56</sup> Thus, the Court concluded that the right to life included the protection from pollution and health hazards, finding that the construction of a grid station would violate that right. In the judgement, appointed “NESPAK as Commissioner to examine and study the scheme, planning, device and technique employed by WAPDA and report whether there is any likelihood of any hazard or adverse effect on health of the residents of the locality.”<sup>57</sup> As well, the Court required the respondent to “submit all the plans, scheme and relevant information to NESPAK.”<sup>58</sup> Lastly, the Court asked WAPDA, in the future prior to taking any action as such, to “issue public notice in newspapers, radio and television inviting objections and to finalise the plan after considering the objections, if any, by affording public hearing to the persons filing objections.”<sup>59</sup> This required the Respondent to take into consideration the opinions of the public before taking action that might negatively impact their right to life.

*India.* The right to life is granted under Article 21 of the Indian Constitution, which states, “no person shall be deprived of his life or personal liberty except according to procedure

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<sup>54</sup> *Id.* at ¶ 12.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at ¶ 16.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

established by law.”<sup>60</sup> In the case of *Vellore Citizens Welfare Forum v. Union of India & Ors.* (1996),<sup>61</sup> the Indian Supreme Court was faced with an issue regarding an “enormous discharge of untreated effluent by the tanneries and other industries” that resulted in the polluting of agricultural fields, roadsides, waterways and open lands in the State of Tamil Nadu.<sup>62</sup> This pollution was flowing into the “main source of water supply to the residents of the area,” which resulted in the water being unusable.<sup>63</sup> The Petitioners claimed that “the tanneries in the State of Tamil Nadu have caused environmental degradation in the area” and have hindered the right to life of citizens living in that area.<sup>64</sup>

The Supreme Court of India looked to Article 21 of the Constitution, along with other State environmental legislation, to decide whether the pollution violated the right to life.<sup>65</sup> The Court found that “the Constitutional and statutory provision protect a person’s right to fresh air, clean water and pollution free environment.”<sup>66</sup> This is essential because here the Court in the case at bar accepted that the right to a pollution-free environment is protected by Article 21 of the Constitution. The Court also drew on a commentary regarding the Laws of England, which arose because India’s legal system was “founded on the British Common law,” finding that “the right of a person to pollution free environment is a part of the basic jurisprudence of the land.”<sup>67</sup> Here, again, the Court has affirmed that a person has the right to a pollution-free environment.

With regards to the pollution from the tanneries, the Court stated that that the Central Government did not implement any authoritative measures.<sup>68</sup> The Court emphasized that it was

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<sup>60</sup> India Const. art. 21, cl. 1(a).

<sup>61</sup> *Vellore Citizens Welfare Forum v. Union of India & Ors.*, AIR 1996 SC 2715 (1996) (India).

<sup>62</sup> *Id.* at p.1.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 12-20.

<sup>66</sup> *Id.* at 13.

<sup>67</sup> *Id.* at 14.

<sup>68</sup> *Id.* at 19.

in the duty of the Central Government “to protect the degrading environment in the country.”<sup>69</sup> Therefore, the Court ruled that the Government was accountable for their lack of action in preventing the pollution that negatively impacted the right to life.<sup>70</sup> In the Court’s judgement, it required the closer of “seven industries... for a period of eight week.”<sup>71</sup> As well, the Court, based on reports from the National Environmental Engineering Research Institute, Nagpur (NEERI), directed “the units to comply with the recommendations of NEERI within two months from today. The Tamil Nadu Pollution Control Board shall monitor the directions and have the recommendations of the NEERI complied with.”<sup>72</sup> Lastly, a report of 51 other tanneries resulted in the Court requiring the closure of 34 of them for “not complying with the BOD [Board of Directors] standards.”<sup>73</sup>

### Regional Treaty Approach

The Regional Treaty approach focused on region of Europe, which has a regional court, the European Court of Human Rights (ECtHR), and a regional treaty, the European Convention on Human Rights. All the cases addressed in the European region were heard before the ECtHR and not a State-level court. Therefore, the basis of the legal analysis in these cases are on the right to life articles outlined in the European Convention, rather than in a State Constitution. This was a very common approach in the region of Europe, where all European States are members of the European Convention.

*Italy.* The case of *Guerra and Others v. Italy* (1998) was presented before the ECtHR and concerned a chemical factory that was located approximately one kilometer away from where the

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<sup>69</sup> *Id.* at 20.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 5.

<sup>72</sup> *Id.* at 8.

<sup>73</sup> *Id.* at 9.

applicants lived in Manfredonia.<sup>74</sup> The factory was labelled “high risk” by a Presidential Decree because it involved “certain industrial activities dangerous to the environment and the well-being of the local population.”<sup>75</sup> The factory released “large quantities of inflammable gas” producing “Sulphur dioxide, nitric oxide, sodium, ammonia, metal hydrides, benzoic acid and above all, arsenic trioxide.”<sup>76</sup> There had already been multiple malfunctioning accidents, with the most serious one occurring on the 26<sup>th</sup> of September 1976, when a “scrubbing tower of the ammonia synthesis gases exploded” leading to the admission of 150 people to the hospital for Arsenic poisoning.<sup>77</sup>

The applicants relied on Articles 2 and 8 of the Convention, stating that the “failure to provide them with the relevant information had infringed their right to respect for their private and family life and their right to life.”<sup>78</sup> The air pollution caused by the factory deteriorated the applicants’ right to life as they were not provided with the relevant information on the unfavorable effects of the factory’s pollution. Article 8 was applicable because of the “direct effect of the toxic emissions on the applicants’ right to respect for their private and family life.”<sup>79</sup> The Court found Article 8 applicable to the case at bar but found it “unnecessary to consider the case under Article 2 [right to life]” as Article 8 has been violated.<sup>80</sup>

In coming to its conclusion, the court evaluated the distance the applicants lived from the factory, the chemical production of the factory, and the 1976 incident.<sup>81</sup> The Court emphasized the State’s “failure to act,” stating that while Article 8 involved “arbitrary interference by the

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<sup>74</sup> *Guerra and Others v. Italy*, 1998-I Eur. Ct. H.R. (1998).

<sup>75</sup> *Id.* at ¶ 13.

<sup>76</sup> *Id.* at ¶ 14.

<sup>77</sup> *Id.* at ¶ 15.

<sup>78</sup> *Id.* at ¶ 41.

<sup>79</sup> *Id.* at ¶ 57.

<sup>80</sup> *Id.* at ¶ 62.

<sup>81</sup> *Id.*

public authorities,” it did not “merely compel the State to abstain from such interference.”<sup>82</sup> Here the Court drew on positive obligations of the State under Article 8 in respect to ensuring citizens’ right to respect for private and family life from pollution. The Court then proceeded to analyze if the Government took the “necessary steps to ensure effective protection... guaranteed by Article 8.”<sup>83</sup> The Court found that the Government, in its assessments of the factory, failed to provide the applicants with “essential information” that would have “enabled them to assess the risks they and their families might run if they continued to live at Manfredonia.”<sup>84</sup> Thus, the Government continued to allow the pollution to occur, without providing relevant information that would protect the applicants right to life. Therefore, the Court held that “respondent State did not fulfil its obligation to secure the applicants’ right to respect for their private and family life, in breach of Article 8 of the Convention.”<sup>85</sup> The Court required “that the respondent State is to pay each of the applicants, within three months, 10,000,000 (ten million) Italian lire in respect of non-pecuniary damage; and... that simple interest at an annual rate of 5% shall be payable on that sum from the expiry of the above-mentioned three months until settlement.”<sup>86</sup>

*Spain.* The second case brought before the ECtHR was the case of *López Ostra v. Spain* (1994).<sup>87</sup> The applicant, a Spanish national, Mrs. Gregoria López Ostra, brought an application against the Kingdom of Spain in accordance with Article 8 of the ECHR. The applicant lived in the town of Lorca, which had a “heavy concentration of leather industries,” owned by the company SACURSA.<sup>88</sup> The company had a waste-treatment plant, operating without the necessary license, “for the treatment of liquid and solid waste built with a State subsidy on

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<sup>82</sup> *Id.* at ¶ 58.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at ¶ 60.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at ¶ 66, 75.

<sup>87</sup> *López Ostra v. Spain*, App. No. 16798/90, Eur. Ct. H.R (1994).

<sup>88</sup> *Id.* at ¶ 7.



municipal land twelve metres away from the applicant's home."<sup>89</sup> The plant "released gas fumes, pestilential smells and contamination, which immediately caused health problems" to the people in the applicants' district and resulted in an evacuation.<sup>90</sup> Following this incident, the town council only ordered "cessation of one of the plant's activities."<sup>91</sup>

Mrs. López Ostra began lodging several applications against State authorities, requesting the cessation of all the plants activities.<sup>92</sup> Her alleged violation of Article 8 was due to "the smells, noise and polluting fumes caused by a plant for the treatment of liquid and solid waste sited a few metres away from her home."<sup>93</sup> The pollution was negatively impacting her right to life, protected under Article 8 of the Convention. Mrs. López Ostra also complained that the Spanish authorities were responsible due to their "passive attitude."<sup>94</sup> This was because following the incident that required evacuation, the town council did not take enough action to stop the pollution, along with allowing the plant to operate without the necessary license.

In coming to the Court's holding, the Court assessed "medical reports and expert opinions," to find that the "hydrogen sulphide emissions from the plant exceeded the permitted limit and could endanger the health of those living nearby."<sup>95</sup> This proved that the pollution from the plant was impacting citizens right to life by harming their health. While the Court acknowledged that the Spanish authorities could not be held "directly responsible for the emissions," the relevant authorities still "allowed the plant to be built on its land and the State subsidised the plant's construction."<sup>96</sup> Not only did the State authorities allow the plant to be

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at ¶ 9.

<sup>92</sup> *Id.* at ¶ 10-15.

<sup>93</sup> *Id.* at ¶ 34.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at ¶ 49.

<sup>96</sup> *Id.* at ¶ 52.

built, they also “contributed to prolonging the situation” by resisting judicial decisions from the lower Courts.<sup>97</sup> This further proved the government’s lack of action in stopping the pollution that was negatively impacting nearby citizens’ right to life. Therefore, because “the State did not succeed in striking a fair balance between the interest of the town’s economic well-being - that of having a waste-treatment plant - and the applicant’s effective enjoyment of her right to respect for her home and her private and family life,” the Court held that there has been a breach of Article 8.<sup>98</sup> As well, in the judgement the Court required “that the respondent State is to pay the applicant, within three months, 4,000,000 (four million) pesetas for damage and 1,500,000 (one million five hundred thousand) pesetas... to be converted into pesetas.”<sup>99</sup>

*Russia.* The case of *Fadeyeva v. Russia* (2005),<sup>100</sup> argued in the ECtHR, concerned an applicant, Ms. Nadezhda Mikhaylovna Fadeyeva, who lived “approximately 450 meters from the site of the Severstal steel plant.”<sup>101</sup> The applicant relied on Article 8 of the ECHR to argue that the “operation of a steel plant in close proximity to her home endangered her health and well-being.”<sup>102</sup> Although authorities established a sanitary security zone around the plant to limit pollution, thousands of people were living there.<sup>103</sup> While the Council of Ministers passed a decree to resettle the residents in the zone, it was never implemented.<sup>104</sup>

The applicant presented a number of reports expressing the effects of pollution on her.<sup>105</sup> One of these reports, prepared by Dr. Mark Chernaik, concluded that “the toxic pollutants found in excessive levels within the sanitary security zone” would result in “above-average incidences

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<sup>97</sup> *Id.* at ¶ 56.

<sup>98</sup> *Id.* at ¶ 58.

<sup>99</sup> *Id.* at ¶ 65.

<sup>100</sup> *Fadeyeva v. Russia*, App. No. 55723/00 Eur. Ct. H.R (2005).

<sup>101</sup> *Id.* at ¶ 10.

<sup>102</sup> *Id.* at ¶ 3.

<sup>103</sup> *Id.* at ¶ 11.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at ¶ 44-47.

of odour annoyance, respiratory infections... cancer of the nose and respiratory tract, chronic irritation of the eyes, nose and throat, and adverse impacts on neurobehavioral, neurological, cardiovascular and reproductive functions.”<sup>106</sup> While the Government did not dispute that the applicant was affected by industrial pollution, the Government stated that the claims made by Dr. Chernaik “are abstract in nature, have no substantiation and thus cannot be taken into account.”<sup>107</sup>

The Court considered several factors in reaching their decision. The first was that the evidence must be applied with a “standard of proof beyond a reasonable doubt.”<sup>108</sup> The second factor of consideration was that the Court could only assess “the nature and extent of the alleged interference” from when the “Convention came into force with respect to Russia on 5 May 1998.”<sup>109</sup> Finally, the Court acknowledged the fact that the “Severstal steel plant was built by and initially belonged to the State.”<sup>110</sup> The Court agreed that the State must fulfill its positive duties in protecting the right to respect for private and family life. Thus, due to the Government’s failure to resettle the applicant and their failure to regulate private industry, the Government “failed to strike a fair balance between the interests of the community and the applicant’s effective enjoyment of her right to respect for her home and her private life,” constituting a violation of Article 8. Lastly, in the judgement the ECtHR also required “that the respondent State is to pay the applicant, within three months from the date on which the judgment...EUR 6,000 (six thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles” as well as fees to pay the lawyers the applicant required in the case.<sup>111</sup>

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<sup>106</sup> *Id.* at ¶ 46.

<sup>107</sup> *Id.* at ¶ 78.

<sup>108</sup> *Id.* at ¶ 79.

<sup>109</sup> *Id.* at ¶ 82.

<sup>110</sup> *Id.* at ¶ 90.

<sup>111</sup> *Id.* at ¶ 143-149.

*Ukraine*. The case of *Dubetska and Others v. Ukraine* (2011), involved two State-owned industrial facilities (mine and factory) that generated excessive pollution.<sup>112</sup> The applicants in the case at bar lived 420 meters and 430 meters away from the operation of the factory.<sup>113</sup> From 1989 to 2005, numerous findings confirmed that the State-owned industrial facilities caused environmental effects to the area and on the applicants.<sup>114</sup> This included air pollution, lack of clean water, and soil subsidence. The applicants complained that “the State authorities had failed to protect their home, private and family life from excessive pollution generated by two State-owned industrial facilities.”<sup>115</sup> Similar to *Fadeyeva*, the Court in this case could only examine applicants’ complaints that took place after “the date of the entry of the Convention into force with respect to Ukraine (11 September 1997).”<sup>116</sup>

As “it is often impossible to quantify” the effects of industrial pollution in these cases, the Court gave regard to the “findings of the domestic courts and other competent authorities in establishing the factual circumstances of the case.”<sup>117</sup> In assessing these findings, the Court first examined whether the applicant’s situation “was a result of a sudden and unexpected turn of events or, on the contrary, was long-standing and well known to the State authorities.”<sup>118</sup> By doing so, the Court analyzed whether the State could have prevented the violation of Article 8, or, whether the situation was unexpected and sudden.

The Court in the case at bar noted the efforts of the Government, such as “monitoring the levels of actual pollution... promised compensation for damage... [considering] resettling the

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<sup>112</sup> *Dubetska and Others v. Ukraine*, App. No. 30499/03 Eur. Ct. H.R. (2011).

<sup>113</sup> *Id.* at ¶ 12.

<sup>114</sup> *Id.* at ¶ 13-30

<sup>115</sup> *Id.* at ¶ 73.

<sup>116</sup> *Id.* at ¶ 82.

<sup>117</sup> *Id.* at ¶ 107.

<sup>118</sup> *Id.* at ¶ 108.

applicants.”<sup>119</sup> Although, because the State authorities could not put in place an effective solution “for more than twelve years,” their efforts in fulfilling their obligations under Article 8 were insufficient.<sup>120</sup> Moreover, since the entry into force of the Convention, up until 2005, the mine and the factory were functioning “not in compliance with the applicable domestic environmental regulations and the Government have failed either to facilitate the applicants' relocation or to put in place a functioning policy to protect them from environmental risks associated with continuing to live within their immediate proximity.”<sup>121</sup> Thus, the Government’s failure to provide an effective solution for the applicants over the 12 years resulted in a breach of Article 8, violating their right to life.<sup>122</sup> In the judgment, the ECtHR required the respondent State “to pay, within three months of the date on which the judgment becomes final” EUR 32,000 jointly for applicants 1-4, and EUR 33,000 jointly for applicants 7-11.<sup>123</sup>

### Blended Approach

The Blended Constitution approach focused on regions that did not have a definitive way of addressing the right to a pollution-free environment through the right to life. The cases in this approach are from the region of Africa and Latin America, where cases heard use either a State Constitution, a regional treaty, or an international treaty in the legal analysis. In the region of Latin America, one of the cases discussed uses an international treaty, while another uses a State Constitution. Thus, the blended approach shows how some regions do not only use one approach to address the issue of environmental pollution on the right to life, but instead use multiple approaches and still be successful.

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<sup>119</sup> *Id.* at ¶ 146.

<sup>120</sup> *Id.* at ¶ 147.

<sup>121</sup> *Id.* at ¶ 154.

<sup>122</sup> *Id.* at ¶ 155-156.

<sup>123</sup> *Id.* at ¶ 163.

*Paraguay*. The first case of discussion was decided by the UN Human Rights Committee (the ‘Committee’) concerning Article 6 of the ICCPR. The case, *Portillo Cáceres v. Paraguay* (2019),<sup>124</sup> concerned the death of Rubén Portillo Cáceres, as a result of agrochemical exposure from crop spraying.<sup>125</sup> The applicants lived in the settlement of Colonia Yerutí, adjacent to industrial farms “established in 1991 on State-owned land,” which were “used solely for the extensive mechanized cultivation of genetically modified soybeans.”<sup>126</sup> The plantations were “heavily fumigated using agrochemicals,” and have failed to follow the requirement of a “100-metre buffer zone between where pesticides are used and human settlements.”<sup>127</sup> This is one example of the State failing to “fulfil its obligations in the area of authorization and oversight.”<sup>128</sup>

The toxic agrochemicals had “contaminated water resources and aquifers,” which had resulted in “dead fish... [and] the death of various farm animals and severe crop damage.”<sup>129</sup> The local inhabitants lodged complaints to various State authorities but never received a reply.<sup>130</sup> The Committee emphasized that the right to life includes not only “the negative obligation of not taking any direct action that would deprive a person of his or her life,” but “the positive obligation of guaranteeing decent living conditions” as well.<sup>131</sup> In making this emphasis, the Committee also pointed to General Comment No. 36 that established these measures.<sup>132</sup>

In coming to its conclusion, the Committee pointed to the fact that “a number of government authorities had been alerted to the fumigations and to their impact,” but took no

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<sup>124</sup> *Portillo Cáceres v. Paraguay* (UN Human Rights Council 2019).

<sup>125</sup> *Id.* at ¶ 2.7.

<sup>126</sup> *Id.* at ¶ 2.2-2.3.

<sup>127</sup> *Id.* at ¶ 2.3.

<sup>128</sup> *Id.* at ¶ 2.4.

<sup>129</sup> *Id.* at ¶ 2.5.

<sup>130</sup> *Id.* at ¶ 2.6.

<sup>131</sup> *Id.* at ¶ 5.2.

<sup>132</sup> *Id.* at ¶ 7.3.

action, allowing the fumigation to continue.<sup>133</sup> The Committee also noted that Mr. Portillo Cáceres died “with no explanation from the State party,” and no autopsy conducted.<sup>134</sup> Lastly, the Committee cited to the District Court, which found that “the State failed to honour its obligation or discharge its duty to protect.”<sup>135</sup> Therefore, due of the acute poisoning suffered from the toxic agrochemicals and the State’s lack of action in preventing the death of Mr. Portillo Cáceres, the Committee found “a violation of Article 6 of the Covenant.”<sup>136</sup> Thus, the pollution caused by the toxic agrochemicals violated the right to life. In the Committees’ judgment, the Committee required the State party to “undertake an effective, thorough investigation into the events in question; (b) impose criminal and administrative penalties on all the parties responsible for the events in the present case; (c) make full reparation, including adequate compensation, to the authors for the harm they have suffered.”<sup>137</sup>

*Costa Rica.* The Supreme Court of Costa Rica also faced the issue of pollution violating the right to life in the case of *Carlos Roberto Mejia Chacón v. Municipalidad de Santa Ana* (1993).<sup>138</sup> Chacón alleged that the Ministry of Health and the Municipality of Santa Ana violated his right to life under Article 21 of Costa Rica Constitution and to a healthy environment “by allowing the La Uruca creek, which flows into the Virilla River, to be used as a garbage dump.”<sup>139</sup> The pollution from the garbage dump was in terrible condition and was unsanitary to the locals living in the area.

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<sup>133</sup> *Id.* at ¶ 7.5.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at ¶ 9.

<sup>138</sup> *Carlos Roberto Mejia Chacón v. Municipalidad de Santa Ana* (Constitutional Chamber of the Supreme Court of Costa Rica 1993). Case has been translated from Spanish to English therefore translation may not be identical to original text.

<sup>139</sup> *Id.* at I.

The Court first and foremost stated that “all human life occurs in an inevitable relationship with its environment,” and that the “environment is a fundamental parameter of quality of life.”<sup>140</sup> This is essential to the claim presented in this thesis because the Court, before even going into detail on their argument, explicitly recognized that human life and the environment are interdependent, and that the quality of life is heavily impacted by the environment and its preservation. The Court emphasized that any form of pollution “may negatively affect or be harmful to life... or cause deterioration in the quality of air, water, soil, “natural beauties,” or resources in general, which in synthesis make the quality of life.”<sup>141</sup> Here the Court listed factors that make up the quality of life including air, water, soil, etc. These factors are negatively impacted due to water pollution from the garbage dump, and thus, hindered the right to life. Lastly, the Court expressed that a pollution-free environment is “the condition in which the environment around us is found,” and that to maintain the highest quality of life, the environment should remain pollution-free.<sup>142</sup>

In relating the pollution to Article 21, which states that “the human life is inviolable,” the Court reiterated that “human life is only possible and salutatory with the nature that sustains and supports us.”<sup>143</sup> Here, again, the Court echoed the importance of an environment that is free from pollution to allow for human life to be preserved. The garbage dump was causing pollution which was preventing the full enjoyment of the right to life under Article 21. Thus, in the judgment, the Court issued “the immediate closure of the municipal dump adjacent to the Caraña

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<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at II.

<sup>142</sup> *Id.* at III.

<sup>143</sup> *Id.* at V.



stream,” as it caused pollution that hindered the right to life of the locals.<sup>144</sup> As well, the Court required the State to “pay the costs and damages caused.”<sup>145</sup>

*Nigeria*. The right to life was argued before the African Commission on Human Rights in the case of *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria* (2002), commonly referred to as the “*Ogoniland Case*.”<sup>146</sup> The case concerned oil production from State-sponsored oil companies that “have caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni People.”<sup>147</sup> The State-sponsored oil companies have polluted the environment by “disposing toxic wastes into the environment and local waterways,” as well as through causing “numerous avoidable spills in the proximity of villages,” due to neglecting to maintain the facilities.<sup>148</sup> This “water, soil, and air” pollution has hindered the right to life by causing “serious short and long-term health impacts, including “skin infections, gastrointestinal and respiratory ailments, and increased risk of cancers, and neurological and reproductive problems.”<sup>149</sup>

The Communication alleged that this pollution violated, among others, Article 4 (right to life) and Article 24 of the African Charter.<sup>150</sup> It is important to note that the Government had not produced “basic health and environmental impact studies regarding hazardous operations and materials relating to oil production,” along with refusing “to permit scientists and environmental organisations from entering Ogoniland to undertake such studies.”<sup>151</sup> This is important because it

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<sup>144</sup> *Id.* at VII.

<sup>145</sup> *Id.*

<sup>146</sup> *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria* [2002] 155/96.

<sup>147</sup> *Id.* at ¶ 1.

<sup>148</sup> *Id.* at ¶ 2.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* at ¶ 10.

<sup>151</sup> *Id.* at ¶ 5.

amplifies ways in which the Government lacked action in preventing the deterioration of the environment and the right to life.

With regards to Article 4, the Commission stated that the right to food is implicit within the article, and that the government violated its duties by allowing “oil companies to destroy food sources; and, through terror, has created significant obstacles to Ogoni communities trying to feed themselves.”<sup>152</sup> Here, the Commission is acknowledging that the right to food is a part of the right to life and can be violated through the oil pollution of food resources. The Commission emphasized that because of “the widespread violations perpetrated by the Government of Nigeria... the most fundamental of all human rights, the right to life has been violated.”<sup>153</sup> The Commission came to this conclusion because the pollution amounted to “a level humanly unacceptable” which “has made it living in the Ogoni land a nightmare.”<sup>154</sup> Thus, the Commission found that pollution was in violation of the Ogoni communities’ right to life. In its judgment, the Commission appealed to the State party to conduct an investigation on the human rights violation (including prosecution), to ensure adequate compensation to the victims, and to provide information regarding the health and environmental risks.

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<sup>152</sup> *Id.* at ¶ 66.

<sup>153</sup> *Id.* at ¶ 67.

<sup>154</sup> *Id.*

## ANALYSIS

The State Constitution approach was demonstrated in the three cases from the region of Asia. The courts all interpreted the constitutional right to life to include the right to live in an environment free from pollution. In each of these Supreme Court cases, the Courts relied on their State Constitution, but also went further to take into consideration their international obligations in protecting the environment, such as the Rio Declaration and the Stockholm Declaration, when coming to their decision. For example, in the Supreme Court of Pakistan, the Court stated that “Pakistan is a signatory to this [Rio] declaration and according to Dr. Perwaiz [sic] Hasan although it has not been ratified or enacted, the principle so adopted has its own sanctity and it should be implemented, if not in letter, at least in spirit.”<sup>155</sup> Here the Court is recognizing that while the Rio and Stockholm Declarations are not binding, “the fact remains that they have a persuasive value and command respect.”<sup>156</sup> This shows the importance these declarations have on the State even though they are not legally binding.

Another example is the tanneries case presented before the Supreme Court of India. The Court stated that the Rio Declaration, which focused on sustainable development, included the need to “improve the quality of human life while living within the carrying capacity of the supporting eco-systems.”<sup>157</sup> Thus, the Court had “no hesitation in holding that ‘Sustainable Development’ as a balancing concept between ecology and development has been accepted as a part of the Customary International Law.”<sup>158</sup> The Supreme Court of India regarded the principle of sustainable development, addressed in the Rio Declaration, as customary international law,

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<sup>155</sup> *Supra* note 39 at ¶9.

<sup>156</sup> *Id.*

<sup>157</sup> *Supra* note 58 at 11.

<sup>158</sup> *Id.*

showing the influence of the declaration in customary law regardless of whether it is binding or not.

These examples show how the courts in Asia addressed other environmental framework in coming to their decisions. Thus, differing their legal analysis to the other approaches. This is because the cases were presented before a State Supreme Court and therefore, the court could draw on the respective State's commitments to preserving the environment and human rights. This is different than the Regional Treaty approach, where the ECtHR cannot draw to a State's environmental commitments as they are not regional in their scope. Nonetheless, in each of these cases in the State Constitution approach, the courts used their State Constitutions as the basis of their legal analysis to find that environmental pollution resulted in a violation of the right to life. Therefore, the State Constitution approach shows that legal action can be taken through State Constitutions to protect ones right to life against environmental pollution. The resulting action being the requirement of the closure of a facility or an increase in reporting on the status of the polluting facility.

The Regional Treaty approach focused on cases in Europe that were presented before the European Court of Human Rights (ECtHR). This Court is a regional court and thus, relied on European Convention of Human Rights (ECHR), a regional treaty, to assess the issues presented before them. The cases show the different right to life articles in the ECHR can be interpreted in different ways to push forth a pollution-free environment. This is different than the State Approach, which primarily relied on one article of the constitution concerning the right to life. The cases discussed in the Regional Treaty approach cover different forms of pollution, but all come to the same conclusion, that environmental pollution negatively impacted citizens' right to

life. The cases were similar in that they all focused on governments' positive obligations, the obligation to take action (such as present information, pass policy, etc.) to protect an individual's right to life. Moreover, the ECtHR focused heavily on the State's failure to act in safeguarding this right in these cases. This is similar to the State Constitution approach, which also emphasized the lack of Government action. The cases presented before the ECtHR show how the use of a regional treaty can foster legal action to be taken against public and private actors to prevent pollution as it degrades citizens' right to life.

In the Regional Treaty approach, assessing this minimum level of environmental hazard was relative to the circumstances of the case. Therefore, it can lead to a different conclusion on a case-by-case basis. Assessing the circumstances on a case-by-case basis is also important because it is almost impossible to quantify the effects of industrial pollution generally, especially when the treaty is regional and covers a range of different States. Thus, the assessment must be relative to the facts of the case. This is different than the State Constitution Approach, which could rely only on the precedent of each States territory. As well, it is important to note that in the Regional Treaty approach, the ECtHR did not look to whether the State in the respective case guarantees the right to life under their respective constitution, rather, the ECtHR only relied on the right to life articles outlined in the European Convention. Lastly, the Regional Treaty approach did not take into consideration any environmental framework like the State Constitution approach did. This is because the Regional Treaty approach did not take into consideration whether the State in the respective case was a party to any environmental framework, rather, the Regional Treaty approach only took into consideration whether the State was a member of the ECHR.

While the State Constitution approach and Regional Treaty approach show the ways in which Asia and Europe assess cases regarding environmental pollution and the right to life, the Blend approach brings in this “third” way to take legal action that is seen in other regions where they don’t have a defined approach. Just like the other two approaches, the Blend approach shows that legal action can be taken using the right to life regarding environmental pollution. The cases assessed in this approach came from the regions of Latin America and Africa, where cases were argued using an international treaty (ICCPR), a regional treaty (African Charter on Human Rights), and a State Constitution (Costa Rica). This shows that legal action is not restricted to just State Constitution or a Regional Treaty but can come from an international obligation as well. For example, the *Portillo Cáceres* case was not decided by any court in Paraguay, but rather, was decided by the UN Human Rights Committee in accordance with Article 6 of the ICCPR, which Paraguay is a signature State of. Thus, the case relied on Paraguay’s obligations of protecting the right to life as guaranteed through the ICCPR, rather than through Paraguay’s Constitution. Similarly, in the *Ogoniland* Case, the African Commission only assessed Nigeria’s obligations under the African Charter on Human Rights and not Nigeria’s Constitution. The *Ogoniland* Case was also decided by the African Commission and not a State court in Nigeria, differing it from the State Constitution approach.

While the holdings of the different approaches remained the same – that legal action can be taken using the substantive right to life when environmental pollution occurs – the judgement of the three approaches differ. In the Regional Treaty approach, the judgement of the ECtHR involved a monetary value awarded to the applicants in the respective cases. For example, the applicant in the case of *López Ostra* was awarded four million pesetas for damage.

Although the courts in State Constitution approach did not award the winning party with money, they did implement action onto the polluting party. For example, in the *Vellore Citizens Welfare Forum* case, the Indian Supreme Court required the closure of many polluting tanneries and the active reporting of others. As well, in the Nepal Supreme Court case of *Suray Prasad Sharma Dhungel*, the Court required the mining industry to implement new measures that promote environmental conservation.

In the Blend approach, there is a mix of both compensation and obligation on the losing party. For example, in the *Portillo Cáceres* case, the UN Human Rights Committee required both reparations and for the State party to impose penalties on the responsible parties. In the *Ogoniland* Case, the African Commission appealed to the State party to ensure adequate compensation to the victims and to investigate the human rights violations. Thus, the Blend approach shows a mix of the judgments in the State Constitution approach and the Regional Treaty approach.

## CONCLUSION AND RECOMMENDATIONS

The cases presented in this thesis come from the State, regional, and international level, including the cases before the UN Human Rights Committee, the European Court of Human Rights, the African Commission of Human Rights, and State Supreme Courts. This shows that the claim of this thesis – that legal action can be taken using the substantive right to life when environmental pollution occurs – can be established through a variety of approaches and still be successful. In Asia, the primary approach in obtaining legal action was to use State Constitutions to find a violation of the right to life in the occurrence of environmental pollution. In Europe, the legal action was applied through the regional court (ECtHR), using a convention. Other regions around the world show that those two methods are not the only way to take legal action, with international law being another outlet to achieve the same solution. The remedies available for individuals to argue a violation of the right to life as a result of pollution are countless. Individuals can rely on government obligations, compensation for victims, or by asking the Court to carry out tasks to alleviate ongoing harm as forms of legal action.<sup>159</sup>

The main purpose of this thesis is to present yet another way for humans to seek remedy when environmental pollution causes negative effects on their human rights. More broadly, this link helps to establish the interdependence of human rights and environmental protection. In the word of author Dinah Shelton, “human rights depend upon environmental protection, and environmental protection depends upon the exercise of existing human rights.”<sup>160</sup> Thus, the act of allowing pollution does not only negatively impact the environment, but it also infringes on human rights, specifically, in this thesis, the right to life.

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<sup>159</sup> CARL BRUCH ET AL., CONSTITUTIONAL ENVIRONMENTAL LAW: GIVING FORCE TO FUNDAMENTAL PRINCIPLES IN AFRICA (2000), <https://www.eli.org/sites/default/files/eli-pubs/d10.04.pdf> (last visited Feb. 24, 2020).

<sup>160</sup> Shelton, *supra* note 3, at 169.



Despite the differences in the approaches used by each court, the claim – legal action be taken using the substantive right to life regarding environmental pollution – is still present in all. Thus, using the substantive right to life is effective for arguing against environmental pollution because it makes clear that “States owe obligations not only to one another, but also, and more importantly, to individuals.”<sup>161</sup> This means that States owe obligations of keeping the environment free of pollution to preserve an individual’s right to life. The recommendation of using human rights law, such as the right to life, allows for the interpretation of “internationally-guaranteed human rights to include an environmental dimension when environmental degradation prevents full enjoyment of the guaranteed rights.”<sup>162</sup> This allows for human rights law to include a new dimension that both preserves the environment and human rights. The environmental framework over the last century has consistently repeated the idea that human life is dependent on the quality of the environment, and thus, a pollution-free environment is essential to the preservation of the quality of human life for generations to come.

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<sup>161</sup> John H. Knox, *The Global Pact for the Environment: At the crossroads of human rights and the environment*, 28(1) REV. OF EUR. COMP. & INT’L. ENVTL. L. 46 (2019).

<sup>162</sup> Shelton, *supra* note 3, at 130.

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