

**THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT:
A RESEARCH GUIDE AND ANNOTATED BIBLIOGRAPHY**

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INTRODUCTION

On July 28, 2022, the United Nations General Assembly (“General Assembly”) adopted Resolution 76/300 recognizing the human right to a clean, healthy, and sustainable environment.¹ This is a historic step forward for environmental rights, but it is not the end point.

Internationally, this signals a new phase of engagement, with more focused debates, more international consultations, and new legal actions to promote a rights-based approach to the crises of climate catastrophes, biodiversity loss, and pollution. Closer to home, in state jurisdictions in the United States, this development has the potential to reinforce existing environmental justice efforts and facilitate greater alignment between international and domestic environmental jurisprudence.

This guide² was created to assist the scholars, advocates, and activists who are engaged with the further elaboration and implementation of the human right to a healthy environment, particularly in the U.S. Following this Introduction, Section I provides background on the development and recognition of this new international human right. Section II addresses the emerging content of the right and the challenges associated with defining the right to a healthy environment. Section III outlines human rights principles and standards related to the right. Section IV discusses potential jurisprudential connections between the human right to a healthy environment and state constitutional provisions in the U.S. that address environmental rights. Finally, Section V provides an annotated bibliography of resources that will support further development of the right, both internationally and domestically.

1 See G.A. Res. 76/300, The Human Right to a Clean, Healthy and Sustainable Environment ¶ 1 (July 28, 2022). This follows the United Nations Human Rights Council’s adoption in October 2021 of Resolution 48/13 recognizing the human right to a clean, healthy, and sustainable environment. Human Rights Council Res. 48/13, U.N. Doc. A/HRC/RES/48/13 (Oct. 8, 2021) [hereinafter HRC Res. 48/13]. Annex I, *infra*, describes international bodies that are working on the right to a healthy environment.

2 A version of this guide was previously published by the *Northeastern University Law Review*’s online counterpart, ExtraLegal. Solène Kerisit & Martha F. Davis, *Recognizing the Human Right to a Healthy Environment: Annotated Bibliography*, NE. L. REV.: EXTRA LEGAL (Jan. 27, 2023), <https://nulawreview.org/extralegalrecent/2023/1/10/recognizing-the-human-right-to-a-healthy-environment-annotated-bibliography>.

I. RECOGNIZING THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT

The General Assembly's resolution reflects the widespread awareness of environmental issues, as a majority of people worldwide see climate change as a very serious concern and disapprove of the lack of governmental action to address it.³ As noted by John Knox, the former United Nations Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment, "[w]ere the Universal Declaration of Human Rights to be drafted today, it is hard to imagine that it would fail to include the right to a healthy environment, a right so essential to human well-being and so widely recognized"⁴

Growing public pressure on governments and leaders certainly influenced the General Assembly's recognition of the right to a healthy environment, as well as the emerging content of the right, and the obligations that it places on the state, as discussed in detail in Section II below. But reaching this level of environmental awareness required decades of mobilization.

The initial emergence of the right to a healthy environment corresponded with the beginning of the environmental movement in the late 1960s and early 1970s.⁵ Almost a decade later, Portugal and Spain were the first two countries to include a right to a healthy environment in their constitutions, in 1976⁶ and 1978,⁷ respectively. International declarations related to environmental issues, such as the Stockholm Declaration⁸ and the Rio Declaration,⁹ followed in the two next decades,

3 *Majorities in Most Publics Surveyed See Climate Change as a Very Serious Problem and Think Their Government Is Doing Too Little to Address It*, PEW RSCH. CTR. (Sept. 21, 2020), https://www.pewresearch.org/science/2020/09/29/concern-over-climate-and-the-environment-predominates-among-these-publics/ps_2020-09-29_global-science_03-01/.

4 John H. Knox (Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment), *Report of the Special Rapporteur*, ¶ 37, U.N. Doc. A/73/188 (July 19, 2018).

5 Katarina Zimmer, *A Healthy Environment as a Human Right*, KNOWABLE MAG. (Apr. 20, 2021) (updated Oct. 22, 2021), <https://knowablemagazine.org/article/society/2021/a-healthy-environment-human-right>.

6 See Knox, *supra* note 4, ¶ 30; see also CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA [C.R.P.], art. 66, English translation available at <https://dre.pt/dre/geral/en/relevant-legislation/constitution-of-the-portuguese-republic>.

7 See Knox, *supra* note 4, ¶ 30; see also CONSTITUCIÓN ESPAÑOLA, B.O.E. n. 311, Dec. 29, 1978, art. 45 (Spain).

8 See U.N. Conference on the Human Environment, *Stockholm Declaration*, U.N. Doc. A/CONF.48/14/Rev.1 (June 16, 1972) [hereinafter *Stockholm Declaration*].

9 See U.N. Conference on Environment and Development, *Rio Declaration on*

reflecting the growing awareness of the relationship between human rights and the environment.

Since the 1990s, a more fine-grained understanding of climate change and its consequences, as publicized by the Intergovernmental Panel on Climate Change (IPCC), spurred awareness of the impacts of climate change on human rights.¹⁰ For example, after examining the disparate impacts of climate change on minority communities, the IPCC shifted its policy focus from climate *change* to climate *justice*.¹¹

At the same time, extreme weather events are becoming more frequent and intense, with more severe consequences. Pollution-induced diseases caused 16 percent of deaths in the world in 2015.¹² As of 2017, two billion people lacked access to safely managed water,¹³ a shortage that will only become more acute as the climate changes. Controlling pollution and providing access to safe water are just two examples of the many climate-related challenges that lie ahead. An internationally recognized right to a healthy environment will be an important component of the toolkit needed to meet these challenges.

Over time, most countries have responded to the environmental movement by progressively integrating environmental rights into their national law.¹⁴ One hundred fifty-six countries have now adopted a right to a healthy environment. While some have done so by including the right in national constitutions and legislation or by acknowledging the right in domestic judicial decisions, many have signed international treaties and regional agreements that include the right, thereby committing the nation to obligations on the international stage.¹⁵ As a state party

Environment and Development, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), annex I (Aug. 12, 1992) [hereinafter *Rio Declaration*].

- 10 See U.N. ENV'T PROGRAM, CLIMATE CHANGE AND HUMAN RIGHTS 2 (2015) (citing IPCC report on impacts of climate change and noting the consequential human rights impacts); Hans-O. Pörtner et al., Intergovernmental Panel on Climate Change, *Summary for Policymakers*, in CLIMATE CHANGE 2022: IMPACTS, ADAPTATION AND VULNERABILITY 20, 27–28 (2022).
- 11 See Pörtner, *supra* note 10, at 5–7.
- 12 Philip J. Landrigan et al., *The Lancet Commission on Pollution and Health*, 391 THE LANCET 462, 462 (2018).
- 13 U.N. CHILD'S FUND & WORLD HEALTH ORG., PROGRESS ON HOUSEHOLD DRINKING WATER, SANITATION AND HYGIENE 2000–2017: SPECIAL FOCUS ON INEQUALITIES 8 (2019).
- 14 See Knox, *supra* note 4, ¶¶ 36–37, 50.
- 15 See, e.g., *id.* ¶ 36 (indicating that, as of 2019, 155 countries adopted the right to a healthy environment); CONSTITUTION DE LA RÉPUBLIQUE ALGÉRIENNE DÉMOCRATIQUE ET POPULAIRE, Dec. 30, 2020, art. 21 (Alg.) (providing that the “State seeks to... assure a healthy environment”).

to an international treaty, a government commits to participating in periodic treaty compliance reviews by U.N. human rights experts, and to implementing the provisions of the treaty consistent with the terms of its ratification.¹⁶ In the absence of a universal enforcement mechanism, a nation state that fails to comply with its treaty obligations may face diplomatic impacts, including public criticism from U.N. bodies and peer pressure from other states parties to the treaty.¹⁷

While aspects of the human right to a healthy environment appear in existing treaties, the explicit international recognition of the right to a healthy environment is a new development that is especially promising in three respects. First, some studies have found that the recognition of the right in national constitutions has contributed to improved implementation and enforcement of environmental laws, increased public participation in environmental governance, enhancement of laws related to environmental education, and increased health of people and ecosystems.¹⁸ The full recognition of this right by the U.N. could set the stage for more robust implementation and stronger enforcement at the national level, even in states that have not yet adopted domestic standards.

Second, the international level is a pertinent forum to address issues that are not purely national. Transboundary pollution, greenhouse gas emissions, imported deforestation, and other environmental issues are not subject to national boundaries but often reveal relations of power between nations—from neighboring nations polluting their neighbor's territory, to exploitative relationships between the Global North and the Global South such as toxic waste dumping.¹⁹ While the

16 A state may purport to limit its obligations by attaching “reservations” to its ratification, but reservations may not limit a nation state’s obligations to honor the core provisions of the treaty. See CONG. RSCH. SERV., RESERVATIONS, UNDERSTANDINGS, DECLARATIONS, AND OTHER CONDITIONS TO TREATIES 2 (2022).

17 Valentina Carraro, *Promoting Compliance with Human Rights: The Performance of the United Nations’ Universal Periodic Review and Treaty Bodies*, 63 INT’L STUD. Q. 1079, 1081 (2019) (noting that “[t]he international system . . . heavily relies on voluntary compliance”).

18 See Knox, *supra* note 4, ¶¶ 41–44.

19 See, e.g., Peyman Hekmatpour & Carrie M. Leslie, *Ecologically Unequal Exchange and Disparate Death Rates Attributable to Air Pollution: A Comparative Study of 169 Countries from 1991 to 2017*, 212 ENV’T RSCH. 113161 (2022); Benedetta Cotte, *What Goes Around, Comes Around? Access and Allocation Problems in Global North-South Waste Trade*, 20 INT’L ENV’T AGREEMENTS: POL., L. & ECON. 255 (2020); Ifesinachi Okafor-Yarwood & Ibukun Jacob Adewumi, *Toxic Waste Dumping in the Global South as a Form of Environmental Racism: Evidence from the Gulf of Guinea*, 79 AFRICAN STUD. 285 (2020).

right alone may not provide an enforcement vehicle, a legal tool such as a treaty regime built around the right to a healthy environment could engage with international dynamics that fall outside of most national legal instruments.

Third, the recognition of the human right to a healthy environment could enable right-holders in some countries to hold governments accountable for breach of their international obligations, empowering citizens who find their human rights disrespected. This point is particularly relevant to climate justice, when indigenous peoples; women; persons with disabilities; children; persons living in poverty; and religious, national, ethnic, or linguistic minorities are the most affected by environmental harms but often do not have the legal means to seek redress.²⁰ Recognizing a human right to a healthy environment could alleviate some legal barriers and give citizens leverage when challenging governments or companies responsible for breaching their right to a healthy environment.

Understanding and utilizing the new human right to a healthy environment will also involve challenges. First, the General Assembly resolution recognizing the right does not provide a detailed account of the right's definition and scope.²¹ Furthermore, the countries that have enshrined a right to a healthy environment in their constitutions and laws have described the right in a variety of ways,²² and these different versions of the right have been subject to country-specific interpretations. Work will therefore be required to achieve an international consensus on the meaning of the new right.

Second, international enforcement of the human right to a healthy environment will present the usual enforcement challenges inherent in international human rights law.²³ Diplomatic pressure from peer nations may be insufficient to trigger real change, and as of yet, the right to a healthy environment is not the focus of any international treaty regime that requires periodic reporting and review. Activists and advocates will need to be creative in using the international recognition of the right to promote environmental progress. Subnational implementation of the right can be an important part of that process.²⁴

20 See, e.g., Knox, *supra* note 4, ¶¶ 22–25; Alma Lowry & Tom Stevens, *Environmental Justice*, 80 MICH. B.J. 24, 25 (2001).

21 See H.R.C. Res. 48/13, *supra* note 1.

22 See *supra* notes 15–16 and accompanying text.

23 See, e.g., Carraro, *supra* note 17 (discussing states' compliance with international human rights obligations).

24 One example of creative domestic implementation of a treaty is initiative for cities

Third, researching the right to a healthy environment involves navigating various jurisdictions (international, regional, national, and subnational) and instruments (constitutions, legislation, judicial decisions, and treaties). The undefined nature of the right and the complexity of the research associated with the right will make understanding its practical dimensions a particularly demanding endeavor.

The materials that follow provide scholars, researchers, advocates, and activists a starting place for addressing each of these challenges.

II. DEFINING THE RIGHT TO A HEALTHY ENVIRONMENT

Defining the right to a healthy environment will involve developing richer accounts of the nature of the right, the purpose of the right, the scope of the right, and the State obligations that flow from the right.

Though a version of the right to a healthy environment is recognized by 80 percent of U.N. member States,²⁵ these countries do not all use the phrase “healthy environment” when enshrining the right in their domestic laws.²⁶ International declarations recognizing early environmental rights also use alternative formulations²⁷ that range from the protection of “an environment of a quality that permits a life of dignity and well-being,”²⁸ to the protection of “a healthy and productive life in harmony with nature,”²⁹ the guarantee of an “ecologically balanced environment,”³⁰ and a “balanced and healthful ecology in accord with the rhythm and harmony of nature.”³¹ Although these various expressions make it more complicated to identify a single definition of the right to

to implement the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”). See, e.g., Tamar Ezer, *Localizing Human Rights in Cities*, 31 S. CAL. REV. L. & SOC. JUST. 67, 80–83 (2022).

25 See David R. Boyd (Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Env’t), *Right to a Healthy Environment: Good Practices*, ¶ 13, U.N. Doc. A/HRC/43/53 (Dec. 30, 2019) [hereinafter *Good Practices Report*].

26 Knox, *supra* note 4, ¶¶ 29–36.

27 See Yann Aguila, *The Right to a Healthy Environment*, INT’L UNION FOR CONSERVATION OF NATURE (Oct. 29, 2021) https://www.iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment#_ftnref3.

28 *Stockholm Declaration*, *supra* note 8, at Principle 1.

29 *Rio Declaration*, *supra* note 9, at Principle 1.

30 CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION], art. 225 (Braz.).

31 CONST., (1987), art. II, § 16 (Phil.).

a healthy environment, they share a focus on the interrelation between human life and the environment and an awareness of the importance of ensuring that the environment be healthy enough to support human life. The expression used by the General Assembly, “the right to a clean, healthy and sustainable environment,” is broad and flexible.³² The meanings of its key terms will be developed over time.

In addition to developing a more detailed understanding of the right itself, the international human rights community will be engaged in negotiating competing understandings of the purpose of the right: the anthropocentric view versus the ecocentric view.

The anthropocentric view of the right focuses on the idea that the integrity of the environment is indispensable for supporting healthy humans.³³ In this vein, scholars have defined the right to a healthy environment as the “human right to live in an environment of such a minimum quality as to allow for the realization of a life of dignity and well-being,”³⁴ or as including “the right to an ecologically balanced and sustainable environment which permits healthy living for all of its inhabitants.”³⁵ These definitions are anthropocentric as they focus on a qualitative environment that would enable human life to thrive, expressing a utilitarian vision of the right to a healthy environment. The environment is not considered an object to protect itself but a commodity supporting human subjects.

The ecocentric view of the right provides a broader understanding of the interrelation between humans and their environment: a healthy environment is defined as the health of an ecosystem, independent of its usefulness for human life.³⁶ The Inter-American Court of Human Rights (IACtHR) seems to have adopted an ecocentric definition of the right to a healthy environment, stating:

... it protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life or personal integrity, but [also] because of their

32 H.R.C. Res. 48/13, *supra* note 1, §§ 1–4.

33 Nicholas Bryner, *A Constitutional Human Right to a Healthy Environment*, in RESEARCH HANDBOOK ON FUNDAMENTAL CONCEPTS OF ENVIRONMENTAL LAW 10 (2016).

34 Louis E. Rodriguez-Rivera, *Is the Human Right to Environment Recognized Under International Law? It Depends on the Source* (2001) 12 *COLO. J. INT'L ENV'T L. & POL'Y* 1, 10 (2001).

35 Laura Horn, *The Implications of the Concept of Common Concern of a Human Kind on a Human Right to a Healthy Environment*, 1 *MACQUARIE J. INT'L & COMPAR. ENV'T L.* 233, 240 (2004).

36 See Bryner, *supra* note 33, at 172–73.

importance to the other living organisms with which we share the planet that also merit protection in their own right.³⁷

A similar ecocentric perspective is enshrined in the Constitution of Ecuador, which recognizes the “rights of nature” and calls upon people to respect those rights.³⁸

Both the anthropocentric and ecocentric understandings of the right to a healthy environment have been enshrined in national constitutions and regional agreements and adopted by courts. The General Assembly definition of the right to a healthy environment does not provide clarification of the anthropocentric and ecocentric dimensions of the right. Rather, it leaves this issue to development in future international legal instruments such as targeted environmental treaties.³⁹ Ultimately, because the environment impacts humans, and vice versa, the difference between the anthropocentric and the ecocentric visions of the right to a healthy environment may be more a matter of degree than of substance.⁴⁰

The scope of the right to a healthy environment is also a matter of concern when defining this right. The right to a healthy environment is understood as both an individual and collective right; it is formulated as an individual right in most national constitutions, and as either an individual or a collective right in regional agreements.⁴¹ Collective rights are those that are dependent upon one’s membership in a group (for example, a racial or ethnic group, or a generational group),⁴² while individual rights accrue without regard to any particular group membership. The African Charter on Human Rights provides

37 The Environment and Human Rights (State Obligations in Relation to the Environment in Context of the Protection and Guarantees of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(I) and 5(I) in Relation to Articles I(1) and 2 of the American Convention of Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 62 (Nov. 15, 2017) [hereinafter IACHR Advisory Opinion].

38 CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR [CONSTITUTION] Oct. 20, 2008, tit. II, ch. 7, art. 71–74.

39 H.R.C. Res. 48/13, *supra* note 1, ¶ 4.

40 See generally James R. May, *The Case for Environmental Human Rights: Recognition, Implementation, and Outcomes*, 42 CARDOZO L. REV. 983, 989–1004 (2021) (describing recognition of the right to a healthy environment across the world, as well as varied views of the right).

41 Ishrat Jahan, *Do We Need an International Instrument for the Recognition of the Right to a Healthy Environment?* 51 ENV’T POL’Y & L. 377, 378–79 (2021).

42 See, e.g., Seumas Miller, *Collective Rights*, 13 PUB. AFFS. Q. 331, 331 (1999) (arguing that “collective rights are joint rights to collective goods possessed in part in virtue of membership of a social group”).

for a collective right to a healthy environment,⁴³ whereas the IACtHR defines the right to a healthy environment as “a right that has both individual and also collective connotations.”⁴⁴ The draft proposal of an additional protocol to the European Convention on Human Rights (ECHR), concerning “the right to a safe, clean, healthy, and sustainable environment”⁴⁵ defines it as “the right of present and future generations to live in a non-degraded, viable and decent environment,”⁴⁶ adopting a view similar to that of the IACtHR. The collective connotation of the right to a healthy environment encompasses both current groups of people (in the case of the African Charter of Human Rights) and future generations (as interpreted by the American Court of Human Rights and by the Draft amendment to the ECHR). Since the scope of the right has not been clearly stated in international legal documents, the collective and individual dimensions of the right recognized by the General Assembly are still unclear.

A key aspect of the right to a healthy environment is that it creates state obligations. It is therefore a “claim right” insofar as it imposes “positive obligation[s] of third parties towards the rightholder.”⁴⁷ In other words, the right to a healthy environment enables individuals to assert their right toward States that would infringe on it, rather than merely conferring the right to live in a healthy environment without any legal avenue to enforce that right.

The IACtHR listed the five State obligations encompassed by the right to a healthy environment: “(a) guaranteeing everyone, without any discrimination, a healthy environment in which to live; (b) guaranteeing everyone, without any discrimination, basic public services; (c) promoting environmental protection; (d) promoting environmental conservation[;] and (e) promoting improvement of the environment.”⁴⁸ These obligations give an idea of the kind of new duties that could be imposed on States through the U.N.’s recognition of the right to a healthy environment. For now, such obligations are not explicitly stated in the General Assembly Resolution on the right

43 Org. of African Unity [OAU] Charter art. 24; see Clive Baldwin & Cynthia Morel, *Group Rights, in THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS* 244, 244–45 (2d ed. 2008) (explaining African Charter’s references to “peoples” as a commitment to collective, community-based rights).

44 IACHR Advisory Opinion, *supra* note 37, ¶ 59.

45 Eur. Parl. Assemb., *Anchoring the Right to a Healthy Environment: Need for Enhanced Action by the Council of Europe*, Doc. No. I5367, 4 (2021).

46 *Id.* at 6.

47 Aguila, *supra* note 27.

48 IACHR Advisory Opinion, *supra* note 37, ¶ 60.

to a healthy environment. Rather, the Resolution calls for the full implementation of existing multilateral environmental agreements.

In articulating the State obligations that flow from the right to a healthy environment, it will be important to recognize the substantive and procedural components of the right. Substantive components include the following:⁴⁹

1. The right to clean air, which includes seven State obligations related to: (a) monitoring and (b) assessing pollution sources; (c) making information publicly available; (d) establishing air quality policy; and (e) developing, (f) implementing, and (g) evaluating air quality action plans.⁵⁰
2. The right to a safe climate, implemented by states enacting climate framework legislation or enshrining provisions related to climate change responsibility in their constitutions.⁵¹
3. The right to access to safe water and adequate sanitation, which are themselves independent human rights.⁵² The optimal implementation of these rights requires a clear articulation in a State's legal framework guaranteeing availability, physical accessibility, affordability, quality and safety, and acceptability.⁵³
4. The guarantee of a non-toxic environment in which to live, work, and play.⁵⁴ This element is usually implemented by States that ratify global treaties prohibiting, encouraging the phasing-out of, or limiting certain toxic substances.⁵⁵
5. The right to healthy and sustainably produced food, which implies favoring organic agriculture, agroecological farming, land restoration, and the decrease in meat production and consumption.⁵⁶

49 *Good Practices Report*, *supra* note 25, ¶¶ 38–112. The ordering presented in this Article, different from that set out in the Report, was adopted by the authors for clarity. The substantive content has not been changed.

50 *Id.* ¶¶ 38–47.

51 *Id.* ¶¶ 48–72.

52 *Id.* ¶¶ 80–89.

53 *Id.* ¶ 81.

54 *Id.* ¶¶ 90–102.

55 *Id.* ¶ 91.

56 *Id.* ¶¶ 73–79.

6. The guarantee of healthy ecosystems and biodiversity, which implies States' ratification of international treaties establishing norms for biodiversity protection and/or adopting constitutional provisions protecting wildlife and nature.⁵⁷

The procedural components of the right to a healthy environment are also critical, as without procedural rights, substantive rights cannot be enforced. Procedural rights related to the human right to a healthy environment include three main elements, all of which are common components of human rights:

1. Access to environmental information, which is implemented by nation states that, *inter alia*, create websites providing environmental information, publish national reports, and ensure the affordability of access to this information.⁵⁸ Some countries guarantee the right to environmental information in their constitutions.⁵⁹

2. The right to public participation in environmental decision-making, which requires "ensuring broad, inclusive and gender-sensitive public participation"⁶⁰ and is usually implemented by the enactment of constitutional provisions, laws, or protocols.⁶¹

3. Access to justice and effective remedies.⁶² A common implementation of this element is the recognition that individuals and non-governmental organizations have the standing to bring lawsuits based on the violation of environmental rights.⁶³

The state may have special obligations towards individuals in vulnerable situations as they may be "unusually susceptible to certain types of environmental harm or because they are denied their human rights, or both."⁶⁴ Vulnerable populations include "women, children, persons living in poverty, . . . indigenous peoples . . . , older

57 *Id.* ¶¶ 103–112.

58 *Id.* ¶¶ 14–21.

59 *Id.* ¶ 14.

60 *Id.* ¶ 22.

61 *Id.* ¶¶ 22–29.

62 *Id.* ¶¶ 30–37.

63 *Id.* ¶ 30.

64 Knox, *supra* note 4, ¶ 22.

persons, persons with disabilities, national, ethnic, religious or linguistic minorities and displaced persons.”⁶⁵ The human right to the environment also requires the state to recognize that individuals may be vulnerable to environmental harm across more than one dimension, such as indigenous women or older persons with disabilities, and that vulnerabilities may arise from intersecting and compounded denials of human rights.⁶⁶

In sum, while the General Assembly’s endorsement is an important step, the definition of the human right to a healthy environment is still imprecise in many respects. Nevertheless, the core concept of state obligations to respect and protect the environment established by the General Assembly is clear and will continue to be refined as the right gains influence through both international and domestic implementation efforts.

III. HUMAN RIGHTS PRINCIPLES AND STANDARDS REGARDING THE RIGHT TO A HEALTHY ENVIRONMENT

The right to a healthy environment has not previously been explicitly recognized in international human rights instruments. The so-called International Bill of Human Rights⁶⁷ includes the Universal Declaration of Human Rights,⁶⁸ the International Covenant on Civil and Political Rights (ICCPR),⁶⁹ and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).⁷⁰ These instruments were drafted in the post-war period before the environmental movement of the late 1960s led to an increased awareness of environmental issues.⁷¹

Despite the absence of explicit recognition in the most influential international human rights instruments, the “greening of human rights”

65 *Id.*

66 *Id.*

67 *International Bill of Human Rights: A Brief History, and the Two International Covenants*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights> (last visited May 9, 2023).

68 G.A. Res 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

69 International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Jan. 3, 1976) [hereinafter ICCPR].

70 International Covenant on Economic, Social, and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

71 See John H. Knox, *It Is Time for the United Nations to Recognise the Human Right to a Health Environment*, UNIVERSAL RTS. GRP. INSIGHTS (June 29, 2018), <https://www.universal-rights.org/by-invitation/it-is-time-for-the-united-nations-to-recognise-the-human-right-to-a-healthy-environment/>.

process has led to the implicit recognition that the right to a healthy environment is necessary to the exercise of other fundamental rights.⁷²

For example, the U.N. Human Rights Committee recognized the impact of environmental hazards in its General Comment No. 36 concerning the ICCPR's right to life.⁷³ According to the Committee, which administers the ICCPR, "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."⁷⁴ The Committee thus seems to accept that the right to life, which is a civil and political right, encompasses environmental protection.⁷⁵ The European Court of Human Rights (ECtHR) has adopted the same reasoning to enforce the right to a healthy environment.⁷⁶

In the sphere of economic, social, and cultural norms, several rights have been interpreted to include environmental concerns. The

72 John KNOX, *Greening Human Rights*, OPEN DEMOCRACY (July 14, 2015), <https://www.opendemocracy.net/en/openglobalrights-openpage/greening-human-rights/>; see also John H. Knox, *Constructing the Human Right to A Healthy Environment*, 16 ANN. REV. L. & SOC. SCI. 79, 84 (2020).

73 U.N. Hum. Rts. Comm., General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to life, ¶ 62, U.N. Doc. CCPR/C/CG/36 (Sept. 3, 2019) [hereinafter General Comment No. 36].

74 *Id.*

75 While there is some dispute about the nature of the right to life, it is enshrined in the ICCPR along with rights to vote, to liberty, to freedom of thought, and other civil and political rights. ICCPR, *supra* note 69. Under international law, these rights are subject to immediate implementation and realization upon accession to the ICCPR, in contrast to economic, social and cultural rights, which can be progressively realized. See U.N. Hum. Rts Comm., General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶¶ 5, 14, U.N. Doc. CCPR/C/21/Rev.1/Add.1326 (May 26, 2004); OFF. OF THE HIGH COMM'R FOR HUM. RTS., FREQUENTLY ASKED QUESTIONS ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS 13-14 (2008), <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet33en.pdf>.

76 See generally Svitlana Kravchenko & John E. Bonine, *Interpretation of Human Rights for the Protection of the Environment in the European Court of Human Rights*, 25 PAC. MCGEORGE GLOB. BUS. & DEV. L. J. 245 (2012); see, e.g., *Öneryıldız v. Turkey*, App. No. 48939/99, ¶¶ 52, 107, 166-76 (Nov. 30, 2004), <https://hudoc.echr.coe.int/eng?i=001-67614> (citing the constitutional right to a healthy environment, finding the Turkish government violated that provision among others, and ordering the government to pay the plaintiff). See also Section V.F.2.ii. *infra*, for additional cases and context. The European Court of Human Rights is a regional human rights court that considers cases involving members of the Council of Europe arising under the European Convention on Human Rights. Convention for the Protection of Human Rights and Fundamental Freedoms, art. 19, Nov. 4, 1950, 222 U.N.T.S. 1995; Kravchenko & Bonine, *supra* note 76, at 248.

right to an adequate standard of living provided in Article 11(1) of the ICESCR includes the rights to adequate food, housing, and safe water and sanitation.⁷⁷ The interpretation of this right also encompasses the consideration of environmental hazards. General Comment No. 12 on the right to adequate food details the normative content of Article 11(1) of the ICESCR regarding the adequacy and sustainability of food availability and access:⁷⁸

The notion of *sustainability* is intrinsically linked to the notion of adequate food or food *security*, implying food being accessible for both present and future generations. The precise meaning of “adequacy” is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions, while “sustainability” incorporates the notion of long-term availability and accessibility.⁷⁹

Likewise, U.N. Special Rapporteurs have been responsible for some of the “greening” of human rights.⁸⁰ The Special Rapporteur on the human rights to safe drinking water and sanitation published a two-part thematic report on climate change and the human rights to water and sanitation.⁸¹ The Special Rapporteur on adequate housing included an analysis of the impact of climate change in her Special Report on adequate housing as a component to the right to non-discrimination.⁸²

77 ICESCR, *supra* note 70, at art. 11(1); Comm. on Econ., Soc. and Cultural Rts., General Comment No.15 on the Right to Water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), ¶¶ 3, 12, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [hereinafter General Comment No. 15].

78 General Comment No. 15, *supra* note 77, ¶ 1.

79 *Id.* ¶ 7.

80 Special Rapporteurs, also known as Special Procedures, are “independent human rights experts with mandates to report and advise [U.N. bodies] on human rights” See, e.g., *Special Procedures of the Human Rights Council*, U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/en/special-procedures-human-rights-council/special-procedures-human-rights-council> (last visited May 10, 2023).

81 Pedro Arrojo Agudo (Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation), *Climate Change and the Human Rights to Water and Sanitation, Special Thematic Report I: Outlining the Impacts of Climate Change on Water and Sanitation Around the World* (Jan. 2022), <https://www.ohchr.org/sites/default/files/2022-01/climate-change-1-friendlyversion.pdf>; Pedro Arrojo Agudo (Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation), *Climate Change and the Human Rights to Water and Sanitation, Special Thematic Report 2: The Impact of Climate Change on the Human Rights to Safe Drinking Water and Sanitation of Groups and Populations in Situations of Vulnerability* (Jan. 2022), <https://www.ohchr.org/sites/default/files/2022-01/climate-change-2-friendlyversion.pdf>.

82 Raquel Rolnik, *Report of the Special Rapporteur on Adequate Housing as a Component*

Another economic, social, and cultural right that has been “greened” is the right to the highest attainable standard of physical and mental health, recognized under Article 12 of the ICECSR.⁸³ General Comment No. 14 issued by the Committee on Economic, Social and Cultural Rights indicates that the right to a healthy environment is part of this right. According to the Committee, the “drafting history and the express wording of article 12.2 acknowledge that the right to health . . . extends to the underlying determinants of health, such as . . . a healthy environment.”⁸⁴

Greening of human rights also emerges from the Convention on the Rights of the Child (CRC), which mentions the risk of environmental pollution.⁸⁵ For example, states parties to the treaty must take appropriate measures to “combat disease and malnutrition, including within the framework of primary health care . . . through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution”⁸⁶ In General Comment No. 7 on the implementation of rights in early childhood, environmental concerns are discussed under the right to life, survival, and development of the child.⁸⁷ The Committee on the Rights of the Child reminds States that this right can be holistically implemented only through the enforcement of, among other things, “a healthy and safe environment.”⁸⁸

In sum, although environmental concerns are not always front and center in the treaties’ text, the greening process makes clear that environmental rights are critical to achieving the treaty purposes and

of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context, U.N. Doc. A/64/255 (Aug. 6, 2009).

83 Cf. David R. Boyd, *The Environmental Rights Revolution: Constitutions, Human Rights, and the Environment* 403 (April 2010) (Ph.D. Thesis, University of British Columbia). Scholars like Boyd described that some International human rights instruments, like the Convention on the Rights of the Child, “indirectly suggest that some minimum level of environmental quality is a basic human right.” *Id.* This is analogous to the theory of “greening human rights” described above.

84 Comm. on Econ., Soc. & Cultural Rts., General Comment No. 14 (2000): *The Right to the Highest Attainable Standard of Health* (Article 12 of the International Covenant on Economic, Social and Cultural Rights), ¶ 4, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

85 U.N. Convention on the Rights of the Child, art. 24 § 2(c), *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC].

86 *See id.*

87 Comm. on the Rts. of the Child., General Comment No. 7 (2005): *Implementing Child Rights in Early Childhood*, U.N. Doc. CRC/C/GC/7/Rev.I (Sept. 20, 2006), ¶ 10.

88 *Id.*

are implicit in these texts. Thus, the greening of human rights creates opportunities for the international community and advocates to hold states accountable to environmental obligations as part of states' treaty compliance.

Parallel to the greening of human rights, environmental human rights have been developing as independent concepts on the international stage, notably through international declarations progressively recognizing these rights.

The first major international declaration recognizing environmental rights is the Stockholm Declaration (1972).⁸⁹ The 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, and he bears a solemn responsibility to protect and improve the environment for present and future generations."⁹⁰ Coming only a few years after the environmental movement first gathered steam in the 1960s, this principle is already close to the contemporary understanding of the right to a healthy environment.

Fifteen years after the Stockholm Declaration, in 1987, the U.N.'s World Commission on Environment and Development published an overview that restated, in a similar language, the concepts introduced in the first Principle of the Stockholm Declaration.⁹¹ These two documents thus introduced environmental rights as human rights, though without giving a precise definition.

In the ensuing decades, international declarations on environmental human rights focused on procedural rights. Principle 10 of the Rio Declaration on Environment and Development identified three new fundamental rights related to procedural environmental rights: access to information, access to public participation, and access to justice.⁹² These procedural rights were reinforced in 2010 by the Bali Guidelines,⁹³ which provided voluntary guidelines for the

89 *Stockholm Declaration*, *supra* note 8.

90 *Id.* at Principle I.

91 World Comm'n on Env't and Dev., *Our Common Future*, Annex (1)(I), U.N. Doc. A/42/427, (Aug. 4, 1987).

92 *Rio Declaration*, *supra* note 9, at Principle 10.

93 U.N. ENV'T PROGRAMME, GUIDELINES FOR THE DEVELOPMENT OF NATIONAL LEGISLATION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS (2010), <https://wedocs.unep.org/bitstream/handle/20.500.11822/11182/Guidelines%20for%20the%20Development%20of%20National%20Legislation%20on%20Access%20to%20information%2c%20Public%20Participation%20and%20Access%20to%20Justice%20in%20>

implementation of the rights stated under Principle 10 of the Rio Declaration. In 2012, the U.N. General Assembly adopted the “The Future We Want” Resolution, which reaffirms identical principles⁹⁴ and emphasizes their development at the regional and subnational levels.⁹⁵ These soft law instruments attest to the increasing awareness surrounding environmental human rights. As this history indicates, they eventually led to the formulation and acceptance of the right to a healthy environment.

IV. CONNECTING STATE-LEVEL GREEN AMENDMENTS AND THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT

Greening is not a phenomenon on the international stage alone. In the United States, state constitutions have been a focus of greening since the 1970s, paralleling the growth of environmental constitutionalism internationally. Several states, including Pennsylvania, Montana, Hawaii, Illinois, and Massachusetts amended their state constitutions in the 1970s to include language regarding environmental rights.⁹⁶ More recently, the domestic movement took an important step in 2019 with the founding of the advocacy organization, Green Amendments for the Generations, which serves as a hub for Green Amendments initiatives in the United States.⁹⁷ Since then, Green Amendments activity has increased, with New York State enacting a new constitutional amendment in 2021, and several other states considering similar amendments.⁹⁸

The Green Amendments movement focuses on either amending state constitutions to add self-executing environmental rights provisions⁹⁹ or interpreting existing state constitutional provisions to

Environmental%20Matters.pdf?sequence=1&isAllowed=y.

94 G.A. Res. 66/288, *The Future We Want*, ¶¶ 14–15 (July 27, 2012).

95 *Id.* ¶ 43.

96 Amber Polk, *The Unfulfilled Promise of Environmental Constitutionalism*, 74 *HASTINGS L. J.* 123, 126–27 (2022).

97 *About Green Amendments for the Generations*, GREEN AMENDS. FOR THE GENERATIONS, <https://forthegenerations.org/about-us/> (last visited May 15, 2023).

98 Active States, GREEN AMENDS. FOR THE GENERATIONS, <https://forthegenerations.org/active-states/> (last visited May 15, 2023); Joshua Solomon, ‘Green Amendment’ Added to NY’s State Constitution, *OLEAN TIMES HERALD* (Nov. 3, 2021), https://www.oleantimesherald.com/news/green-amendment-added-to-nys-state-constitution/article_a654ecca-770e-507a-974f-f711d16b4234.html.

99 A provision that is self-executing does not require additional legislation to be enforceable in court. *See, e.g.,* Carlos Manuel Vázquez, *The Four Doctrines of Self-Executing Treaties*, 89 *AM. J. INT’L L.* 695, 695 (1995) (“At a general level, a self-

encompass enforceable environmental rights. This domestic movement shares many of the same goals as international greening efforts—that is, using law to pressure governments to address climate change, promote climate justice, and thwart environmental degradation. Given their similar goals, both in terms of substance and process, there is great potential for these movements to be mutually reinforcing in jurisprudential terms, and for state legislators, courts, and advocates in the United States to draw on concepts that have been developed in international fora as they formulate local approaches to environmental rights.

Looking to international developments as aids to interpreting Green Amendments makes particular sense given the conceptual distinctions between federal and state constitutions. In the U.S., the federal Constitution is primarily concerned with civil and political rights, such as fair procedures and equality protections. While state courts may, and do, develop their own distinctive jurisprudence on these issues, federal constitutional standards are often highly influential in state constitutional interpretations of civil and political rights.¹⁰⁰

But the relevance of federal constitutional jurisprudence to interpretations of state constitutional environmental rights provisions is much more limited. Not only is there no environmental rights analog in the federal constitution, but courts construing the federal constitution have repeatedly rejected calls for broader constitutional constructions that could encompass economic and social rights such as, for example, a right to education or a right to welfare.¹⁰¹ This is in sharp distinction from state constitutions, all fifty of which address one or more aspects

executing treaty may be defined as a treaty that may be enforced in the courts without prior legislation by Congress, and a non-self-executing treaty, conversely, as a treaty that may not be enforced in the courts without prior legislative ‘implementation.’”).

100 See Richard Dietz, *Factories of Generic Constitutionalism*, 14 ELON L. J. 1, 1–2 (2022) (describing “lockstepping” tendencies that bring federal and state constitutional interpretations into line).

101 See, e.g., *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 195 (1989) (“[N]othing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors. The Clause is phrased as a limitation on the State’s power to act, not as a guarantee of certain minimal levels of safety and security.”); *Youngberg v. Romeo*, 457 U.S. 307, 317 (1982) (“As a general matter, a State is under no constitutional duty to provide substantive services for those within its border.”); *Plyler v. Doe*, 457 U.S. 202 (1982) (rejecting claim of federal constitutional right to education); *Dandridge v. Williams*, 397 U.S. 471 (1970) (rejecting claim of substantive right to welfare under federal constitution).

of economic and social rights.¹⁰²

Because the federal Constitution is silent on the issue of environmental rights, state actors must look elsewhere for guidance and inspiration in construing the terms of their own state-level environmental rights provisions. In similar contexts, state actors often look to peer states to inform their approaches; for example, state actors (courts, legislators, advocates) will look to peer states with similar Equal Rights Amendments to inform their jurisprudence.¹⁰³ This state-to-state comparative approach is familiar to state actors, and the growing number of states with constitutional environmental language provides a basis for such state-to-state comparative approaches.¹⁰⁴

However, state actors may also invoke international comparisons to inform their work. Legislators often draw on good practices from other nations to develop state-level policies, and state court judges invoke international or comparative law in developing state-level standards or interpreting unique state constitutional provisions.¹⁰⁵ In the case of Green Amendments, state constitutional language, legislative debates, and ultimately, judicial interpretation, can all benefit from reference to the definitions and standards developed and discussed at the international level in the context of articulating the human right to

102 See generally EMILY ZACKIN, *LOOKING FOR RIGHTS IN ALL THE WRONG PLACES: WHY STATE CONSTITUTIONS CONTAIN AMERICA'S POSITIVE RIGHTS* (2013) (discussing positive rights in state constitutions, which are often greater than the protections of the federal constitution).

103 See, e.g., *Rand v. Rand*, 280 Md. 508, 512 (1977) (“Cases from other state jurisdictions interpreting the breadth and meaning of their equal rights amendments are instructive in ascertaining the reach of Maryland’s [ERA].”); *Wise v. Commonwealth*, 690 A.2d 846, 848–49 (Pa. Commw. Ct. 1997) (citing application of Texas ERA to similar facts); *State v. Lilley*, 204 A.3d 198, 209–10 (2019) (defending court’s references to other state’s ERAs in construing New Hampshire ERA).

104 See *New York’s Green Amendment: How Guidance from Other States Can Shape the Development of New York’s Newest Constitutional Right*, DECHERT LLP (Nov. 11, 2021), <https://www.dechert.com/knowledge/onpoint/2021/11/new-york-s-green-amendment-how-guidance-from-other-states-can-s.html>.

105 Interest on Lawyers Trust Accounts (IOLTA) programs are good example of borrowing international policy and legislative ideas. The first such programs were established in Canada and Australia, and then adopted in the U.S. Edward H. Pappas & Jennifer Bentley, *In Our Best Interest: History and Opportunity to Increase Access to Justice*, MICH. BAR J. (Nov. 2021), <https://www.michbar.org/journal/Details/In-our-best-interest-History-and-opportunity-to-increase-access-to-justice?ArticleID=4283>. For a discussion of how the judiciary borrows from foreign and international courts, see, for example, Margaret Marshall, “*Wise Parents do not Hesitate to Learn from Their Children*”: *Interpreting State Constitutions in an Age of Global Jurisprudence*, 79 N.Y.U. L. REV. 1633 (2004).

a clean, healthy, and sustainable environment.

For advocates seeking to promote the goals of the Green Amendment movement, looking to international law for inspiration and ideas can have particular advantages. As detailed in Sections I and II above, U.N. Special Rapporteurs and expert committees have done considerable work to articulate the components of the right to a healthy environment. This work can be a starting place for the next phase of state-level analyses of the components of a state constitutional right. This is true even when the language of the state-level provisions differs from the international law. For example, the New York Green Amendment provides for a “healthful” environment,¹⁰⁶ rather than the “healthy” environment protected under human rights law. While these terms are distinct, the international standards developed for a healthy environment can still serve as a touchstone for analysis of New York’s Green Amendment.¹⁰⁷

International human rights law also offers an important alternative framework that goes to the very nature of government obligations to protect rights. The U.S. Constitution is generally understood to establish negative rights.¹⁰⁸ In contrast, Green Amendments have been seen, at least aspirationally, as creating positive rights, requiring that the state take affirmative steps to ensure a healthy environment.¹⁰⁹ International human rights law likewise establishes positive obligations for state actors, requiring that they go beyond simply responding to violations.¹¹⁰ Advocates seeking to promote affirmative

106 See *New York’s Green Amendment: How Guidance from Other States Can Shape the Development of New York’s Newest Constitutional Right*, *supra* note 104.

107 See generally Lauren E. Bartlett, *Human Rights Guidance for Environmental Justice Attorneys*, 97 U. DET. MERCY L. REV. 373 (2020) (discussing how attorneys may look to international human rights law in fighting environmental racism).

108 See Elizabeth Weeks Leonard, *State Constitutionalism and the Right to Health Care*, 12 J. CONST. L. 1325, 1331 (2010) (“The U.S. Constitution traditionally is considered a charter of negative rights Under the Constitution, we have negative rights to be free from government interference, but not affirmative rights to government services or protection.”).

109 See *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 951–59 (Pa. 2013) (discussing the state’s obligations under its green amendment); see also Christine Weniger, *What Could New York State’s Proposed Environmental Rights Amendment Achieve?*, CLIMATE L: A SABIN CTR. BLOG (Sept. 1, 2020), <https://blogs.law.columbia.edu/climatechange/2020/09/01/what-could-new-york-states-proposed-environmental-rights-amendment-achieve/> (discussing possibility of positive rights under New York State’s Green Amendment).

110 See, e.g., Hum. Rts. Comm., General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004) (recognizing positive rights

government obligations and to introduce such a conceptual shift to the interpretation of state-level Green Amendments will find support in the jurisprudence of international human rights.

The Green Amendments movement has also asserted that to be considered a true Green Amendment, a state constitutional environmental provision must be self-executing.¹¹¹ That is, it cannot require additional legislation to create an actionable right. This concept is consistent with, and bolstered by, international and comparative legal standards. Courts in other nations have found the environmental provisions in their constitutions to be self-executing under their domestic law.¹¹² Similarly, under international human rights law, the obligation to implement a human right is immediate upon treaty ratification, even if the right can only be fully realized over time.¹¹³

The new human right to a healthy environment is not only an important international development but also has great potential to support the expansion of state level environmental rights in the United States. That potential is not universally recognized. For example, Maya van Rossum, the founder of For the Generations and a leading proponent of Green Amendments, has argued that in the U.S., “we don’t have to look to what is happening internationally” to find positive examples of environmental protection.¹¹⁴ In support of such an inward focus, she cites an important Pennsylvania Supreme Court case that turned on an interpretation of that state’s Green Amendment to strike down state legislation facilitating fracking.¹¹⁵

Yet it would be naïve to think that environmental law developments in the U.S. are unconnected to the international environmental movement. National boundaries are highly porous when it comes to legal ideas, and many subnational governments have

under the ICCPR).

111 Maya van Rossum, *How Green Amendments Protect Key Environmental Rights*, LAW360 (Nov. 23, 2021), <https://www.law360.com/articles/1442901/how-green-amendments-protect-key-environmental-rights>.

112 See, e.g., *Oposa v. Factoran*, G.R. No. 101083 (July 30, 1993) (Phil.), <https://leap.unep.org/sites/default/files/court-case/Oposa%2520v%2520Factoran.pdf>.

113 *International Human Rights Law*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> (last visited May 15, 2023) (“By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights.”).

114 NYLPI, *Webinar: The Environmental Rights Amendment by and for New Yorkers*, YOUTUBE, at 52:20 (Oct. 12, 2021) <https://www.youtube.com/watch?v=CMQnwyswEU>.

115 *Id.*; *Robinson Twp. v. Commonwealth*, 83 A.3d 901 (Pa. 2013).

embraced international frameworks for addressing climate change.¹¹⁶ For state-level actors in the U.S.—not just courts but other government actors and civil society—cross-fertilization may promote learning from environmental challenges faced by other subnational governments in federated states. When appropriate, shared language, understandings, and standards across jurisdictional boundaries—and transparent analysis of how these standards might apply in different contexts—will facilitate such coordination.¹¹⁷ Since environmental challenges transcend borders, close coordination from all sectors, including the legal sector, is required to fully protect the right to a healthy environment. However, state level actors can only learn from, incorporate, and respond to international environmental human rights developments if they have access to the relevant material. The bibliographic materials below build on the exposition of the international evolution of environmental rights in Sections I-III above. They provide an entrée to a more detailed understanding of the international human right to a healthy environment as a predicate for the exchange of ideas and action internationally, nationally, and sub-nationally.

In the Annotated Bibliography (Section V) that follows, Part A provides selected Human Rights Council (HRC) publications highlighting the gradual change in the HRC's position on the adoption of a right to a healthy environment. Part B lists selected reports from Special Procedures that assess the need for the adoption of this right. Part C provides information on the HRC's adoption of Resolution 48/13, which recognized the human right to a healthy environment, and the General Assembly's subsequent recognition of the right. Part D provides one example of the ways in which the resolution is impacting

116 Judith Resnik, *Law's Migration: American Exceptionalism, Silent Dialogues, and Federalism's Multiple Points of Entry*, 115 *YALE L. J.* 1564 (2006) (describing the multiple paths through which “foreign” law enters U.S. jurisprudence). On subnational government's activism on environmental issues, see *Who We Are*, GLOB. COVENANT OF MAYORS FOR CLIMATE AND ENERGY, <https://www.globalcovenantofmayors.org/who-we-are/> (May 15, 2023); SDGs Leadership Cities Network Sixth Convening: World's Forefront SDGs-Promoting Cities Gather in Washington, D.C., OPEN YOKOHAMA (Mar. 28, 2022), <https://businessyokohama.com/blog/2022/03/28/sdgs-leadership-cities-network-sixth-convening/>; *At COP 26, California Assumes Leadership of International Alliance to Boost Carbon-Free Transportation Worldwide*, CAL. AIR RES. BD. (Nov. 10, 2021), <https://ww2.arb.ca.gov/news/cop26-california-assumes-leadership-international-alliance-boost-carbon-free-transportation>.

117 For example, in 2006, the Province of Quebec in Canada amended its Charter of Human Rights and Freedoms to add the right to live in a “healthful environment”—language similar to that adopted fifteen years later in New York. Art. 46.1. Charter of Human Rights and Freedoms, S.Q. 2006, ch. C-12, § 46.1.

other rights. Part E discusses decisions of various U.N. bodies regarding the right to a healthy environment. Part F sets out relevant regional treaties and litigation under those instruments. Part G addresses national laws. Part H describes selected books on the human right to a healthy environment, and Part I sets out relevant journal articles. Annex I describes international bodies that are working on the right to a healthy environment, and Annex II sets out information on national level recognition of environmental human rights.

V. ANNOTATED BIBLIOGRAPHY

A. *Human Rights Council Publications Highlighting the Interconnection Between Environmental Rights and Human Rights: Paving the Way to the Explicit Recognition of the Right to a Safe, Clean, Healthy, and Sustainable Environment*

Publications appearing in this Section highlight the evolution of the HRC's engagement with the right to a healthy environment. This U.N. body (which succeeded the U.N. Commission on Human Rights in 2006) first recognized the link between environmental protection and human rights, and then expanded its understanding by appointing Special Rapporteurs and considering the right to a healthy environment as a human right.

Commission on Human Rights Res. 2005/60, U.N. Doc. E/CN.4/RES/2005/60 (Apr. 20, 2005) [hereinafter HRC Res. 2005/60].

The resolution, adopted by the U.N. Commission on Human Rights (prior to creation of the HRC in 2006), recognized the link between human rights, environmental protection, and sustainable development. The Commission also observed that “environmental damage, including that caused by natural circumstances or disasters, can have potentially negative effects on the enjoyment of human rights and a healthy life and a healthy environment.”¹¹⁸ Subsequent HRC actions built on this foundation.¹¹⁹

¹¹⁸ HRC Res. 2005/60, *supra*, at 1–2.

¹¹⁹ See U.N. Secretary-General, *Annotations to the Provisional Agenda*, ¶ 81, U.N. Doc. A/HRC/4/1/Add.1 (Feb. 27, 2007); Human Rights Council Res. 16/11, U.N. Doc. A/HRC/RES/16/11, ¶¶ 1, 3 (Apr. 12, 2011).

Off. of the U.N. High Comm'r for Hum. Rts., Rep. on the Relationship between Climate Change and Human Rights, Tenth Session, U.N. Doc. A/HRC/10/61 (2009).

This report recognizes that even if the universal human rights treaties do not mention the right to a safe and healthy environment, there is an intrinsic link between this right and “the realization of a range of human rights, such as the right to life, to health, to food, to water, and housing.”¹²⁰ The right to survival and early development also includes the right to healthy and safe environment.¹²¹

Hum. Rts. Council, Rep. of the Office of the United Nations High Commissioner for Human Rights on the Analytical Study on the Relationship between Human Rights and the Environment, U.N. Doc. A/HRC/19/34 (Dec. 16, 2011) [hereinafter HRC Analytical Report].

This report details three theoretical approaches to the relationship between human rights and the environment.¹²² It also identifies the call for the recognition of a human right to a healthy environment and notes alternative views that such a right already exists *de facto*.¹²³

Human Rights Council Res. 19/10, U.N. Doc. A/HRC/RES/19/10 (Apr. 19, 2012).

This resolution decided to appoint an independent expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy, and sustainable environment.¹²⁴ John Knox was appointed to this role.¹²⁵ The HRC opines that the right to a healthy environment requires further study and clarification.

Human Rights Council Res. 25/21, U.N. Doc. A/HRC/RES/25/21 (Apr. 15, 2014).

This resolution recognizes that “human rights law sets out certain obligations on States that are relevant to the enjoyment

120 Rep. on the Relationship between Climate Change and Human Rights, *supra*, ¶ 18.

121 *Id.* ¶ 21.

122 HRC Analytical Report, *supra*, ¶ 7–9.

123 *Id.* at ¶ 11–12.

124 H.R.C. Res. 19/10, *supra*, ¶ 2.

125 *Special Rapporteur on Human Rights and the Environment*, OFF. HIGH COMM'R FOR HUM. RIGHTS, <https://www.ohchr.org/en/special-procedures/sr-environment> (last visited Apr. 29, 2023).

of a safe, clean, healthy and sustainable environment.”¹²⁶ The resolution urges States to comply with their human rights obligations.¹²⁷

Human Rights Council Res. 28/21, U.N. Doc. A/HRC/RES/28/11 (Apr. 7, 2015).

This resolution extends John Knox’s mandate, transitioning the position from Independent Expert to Special Rapporteur on the same subject.¹²⁸ This change in title reflects the growing weight that the HRC attached to the right to a healthy environment.

Human Rights Council Res. 31/8, U.N. Doc. A/HRC/RES/31/8 (Apr. 22, 2016).

This resolution encourages States to “adopt an effective normative framework for the enjoyment of a safe, clean, healthy and sustainable environment”¹²⁹ and to “address compliance with human rights obligations and commitments relating to the enjoyment of a safe, clean, healthy and sustainable environment in the framework of human rights mechanisms”¹³⁰

B. Reports of the Special Procedures on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment: Evaluating the Need for the Recognition of the Right to a Healthy Environment

This Section includes selected reports from the Independent Expert and successive Special Rapporteurs (collectively, Special Procedures) on the right to a healthy environment showing the evolution and conceptualization of the right. These reports range from questioning the need, the scope, and the definition of the right to a healthy environment, to defining in substantial detail the right to a healthy environment and calling for its recognition by the U.N. General Assembly.

126 H.R.C. Res. 25/21, *supra*, ¶ 4.

127 *Id.* ¶ 8.

128 H.R.C. Res. 28/21, *supra*, ¶ 4; *Special Rapporteur on Human Rights and the Environment, supra* note 125.

129 H.R.C. Res. 31/8, *supra*, ¶ 5(a).

130 *Id.* ¶ 5(b).

John H. Knox (Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment), Preliminary Report, U.N. Doc. A/HRC/22/43 (Dec. 24, 2012).

The first report of John Knox as Independent Expert details the evolution of environmental rights, including the right to a healthy environment, identifies human rights that are vulnerable to environmental harms, and underscores vital human rights for environmental policymaking. The report also frames the right to a healthy environment and defines the areas where there is a need for conceptual clarification.

John H. Knox (Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment), Report of the Special Rapporteur, U.N. Doc. A/73/188 (July 19, 2018).

This is the first report of John Knox as a Special Rapporteur submitted to the General Assembly. He recommends that the General Assembly recognize the human right to a healthy environment in a global instrument,¹³¹ such as a new international treaty,¹³² an additional protocol to an existing human rights treaty,¹³³ or by adopting a resolution on the right to a healthy environment.¹³⁴ The report also highlights evidence showing that adopting a right to a healthy environment “contributes to healthier people and healthier ecosystems.”¹³⁵

David R. Boyd (Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment), Report of the Special Rapporteur, U.N. Doc. A/HRC/40/55 (Jan. 8, 2019).

This report highlights that the right to a healthy environment has been recognized by most States, either domestically in their constitution or legislation, or through regional human rights treaties to which they are parties. In a second part, the report focuses on human rights obligations relating to the right to breathe clean air as a substantive element of the right to a

131 Knox, *supra* note 4, ¶ 46.

132 *Id.*

133 *Id.* ¶ 47.

134 *Id.* ¶ 48.

135 *Id.* ¶ 44.

healthy environment.

David R. Boyd (Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment), *Right to a Healthy Environment: Good Practices*, U.N. Doc. A/HRC/43/53 (Dec. 30, 2019).

This report sets out good practices in the implementation of a right to a healthy environment. It is divided into three main sections: (1) good practices implemented by States that have recognized the right to a healthy environment, (2) good practices regarding the procedural elements of the right to a healthy environment, and (3) good practices regarding the substantive elements of this right.

David R. Boyd (Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment), *The Right to a Clean, Healthy and Sustainable Environment: Non-toxic Environment*, U.N. Doc. A/HRC/49/53 (Jan. 12, 2022).

This report focuses on the right to a non-toxic environment, which is a substantive element of the right to a healthy environment.¹³⁶ The report details the impact of pervasive pollution and toxic contamination on people and the planet and focuses on environmental injustices and sacrifice zones, i.e., areas where residents live in close proximity to pollutants. A final section details the procedural, substantive, and special obligations related to pervasive pollution and toxic substances.

C. Human Rights Council Resolution Recognizing the Human Right to a Healthy Environment

The HRC's evolution on the right to a healthy environment, resulting from reports from Special Procedures, and numerous calls from countries, non-governmental organizations, and U.N. bodies, led to the recognition of the right to a healthy environment as a human right in October 2021.

¹³⁶ *The Right to a Clean, Healthy and Sustainable Environment: Non-toxic Environment*, *supra*, ¶ 3.

Human Rights Council Res. 48/13, U.N. Doc. A/HRC/RES/48/13 (Oct. 8, 2021).

In this resolution, the Human Rights Council “[r]ecognizes the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights”¹³⁷

D. Towards a General Comment on the Right of the Child to a Healthy Environment

Following the recognition by the HRC of the right to a healthy environment, the Committee on the Rights of the Child began preparing a General Comment that could include children’s rights to a healthy environment, further defining the right to a healthy environment.

Comm. on the Rts. Child, Concept Note: General Comment on Children’s Rights and the Environment with a Special Focus on Climate Change, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R (Dec. 9, 2021), <https://www.ohchr.org/en/treaty-bodies/crc/concept-note-general-comment-childrens-rights-and-environment-special-focus-climate-change>.

This concept note provides insight into the scope and objectives of the forthcoming General Comment No. 26. It also recalls the impact of climate change on children.

E. Decisions of U.N. Bodies Relevant to the Right to a Healthy Environment

This Section sets out cases examined by U.N. bodies related to the right to a healthy environment. As the right to a healthy environment is a new right, there is no case law directly ruling on this right. Cases mentioned below raised arguments referencing the substantive and procedural aspects of the right to a healthy environment, with varying results as to recognition of the right.

Portillo Cáceres v. Paraguay, CCPR/C/126/D/2751/2016, Decision, Human Rights Committee [H.R.C.] (Sept. 20, 2019).

This case examined whether heavily spraying of toxic agrochemicals on the industrial farms in the area where the

¹³⁷ H.R.C. Res. 48/13, *supra* note 1, ¶ 1.

plaintiffs live and its consequences amount to a violation of their right to privacy and family life, a violation of their right to life and physical integrity, and a violation of their right to an effective remedy. The claimants did not claim a violation of their right to a healthy environment but argued that this right is included in the right to life as per General Comment No. 36.¹³⁸ The Committee concluded that environmental harm poses a reasonable threat to the plaintiffs' lives and ordered Paraguay to provide an effective remedy but did not rule on whether environmental harm amounts to a violation of the right to a healthy environment.

Sacchi v. Argentina, CRC/C/88/D/107/2019, Decision, Committee on the Rights of the Child [CRC] (Nov. 11, 2021).

In this case, the Committee considered whether the State party, through its contributions to climate change, failed to take the necessary preventative and precautionary measures to protect and fulfill children's rights to life, health, and culture. The Committee accepted the plaintiffs' argument, finding that Argentina has an extraterritorial responsibility related to the harmful effects of CO₂ emitted within its borders and impacting children outside its borders. The Committee also found that plaintiffs were victims of foreseeable harm related to CO₂ emissions. The Committee considered the appropriate test for jurisdiction and adopted the one enunciated by the IACtHR, when establishing whether countries have extraterritorial responsibilities related to CO₂ emissions, in its Advisory Opinion recognizing the right to a healthy environment.¹³⁹ The Committee also examined the causal link between the alleged harms and the State's actions and omissions. Ultimately, the Committee dismissed the case on the ground that domestic remedies had not been exhausted.

138 See General Comment No. 36, *supra* note 73.

139 The Environment and Human Rights (State Obligations in Relation to the Environment in Context of the Protection and Guarantees of the Rights to Life and to Personal Integrity – Interpretation and Scope of Articles 4(1) and 5(1) of the Inter-American Convention of Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶¶ 75–76 (Nov. 15, 2017).

F. Regional Human Rights Agreements and Litigation on the Right to a Healthy Environment

This Section details, in Part 1, relevant regional human rights agreements recognizing implicitly or explicitly the right to a healthy environment. Despite superficial regional uniformity of the recognition of this right, situations are diverse, varying with a state's domestic jurisprudence, the individual or collective dimension of the right to a healthy environment, and the lack of the enforceability of some agreements. Part 2 sets out selected cases from regional human rights tribunals enforcing the right to a healthy environment.

I. Regional Human Rights Agreements and the Right to a Healthy Environment

Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 222 U.N.T.S. 1995.

The ECHR does not provide a right to a healthy environment, yet its jurisprudence uses other fundamental rights to recognize the right to a healthy environment (such as the right to life (Article 2) or the right to private and family life (Article 8)), following the “greening of human rights” theory. A recommendation to draft an additional protocol to the ECHR concerning the right to a healthy environment was adopted by the Parliamentary Assembly of the Council of Europe in 2009¹⁴⁰ but was rejected by the Committee of Ministers in 2010.¹⁴¹ A new resolution to anchor the right to a healthy environment was subsequently adopted by the Parliamentary Assembly in September 2021, reviving the discussion about drafting an additional protocol to the ECHR on the right to a healthy environment.¹⁴²

140 Eur. Parl. Ass., *Drafting an Additional Protocol to the European Convention on Human Rights Concerning the Right to a Healthy Environment*, Rec. No. 1885 (Sept. 29, 2009).

141 Committee of Ministers, Eur. Parl. Ass., *Reply to Recommendation: Drafting an Additional Protocol to the European Convention on Human Rights Concerning the Right to a Healthy Environment*, Doc. No. 12298 (June 19, 2010).

142 Eur. Parl. Ass., *Anchoring the Right to a Healthy Environment: Need for Enhanced Action by the Council of Europe*, 27th Sitting, Res. No. 2396 (Sept. 29, 2021).

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environment Matters, art. 1, opened for signature June 25, 1998 [hereinafter Aarhus Convention].

The Aarhus Convention is a treaty developed by the U.N. Economic Commission for Europe and signed by a majority of European and Central Asian countries. The Convention provides for environmental procedural rights such as public access to environmental information and opportunities for participation. The Preamble and the first article of the Convention can be read to include a right to live in a healthy environment, however, these provisions are not enforceable. The Convention thus does not grant any substantive rights regarding a healthy environment.

American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123.

The American Convention on Human Rights (ACHR) does not explicitly include a right to a healthy environment but has recognized this right through an expansive reading of fundamental rights protected by the Convention, notably Article 26 providing the obligation of States to ensure “integral development for their peoples.”¹⁴³

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, adopted Nov. 17, 1988 (entered into force Nov. 16, 1999) [hereinafter Protocol of San Salvador].

The Protocol of San Salvador, an additional protocol to the ACHR addressing economic, social, and cultural rights, explicitly provides a right to a healthy environment: “1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. [] 2. The States Parties shall promote the protection, preservation, and improvement of the environment.”¹⁴⁴ The Protocol entered into force in 1999.

143 *Indigenous Communities of the Lhaka Honhat (Our Land) Ass'n v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 400, ¶ 202 (Feb. 6, 2020).

144 Protocol of San Salvador, *supra*, at art. II.

Regional Agreement on Access to Information Public Participation and Justice in Environmental Matters in Latin America and the Caribbeans, adopted Mar. 4, 2018 (entered into force Apr. 22, 2021) [hereinafter Escazú Agreement].¹⁴⁵

The Escazú Agreement aims at implementing environmental procedural rights in Latin American and the Caribbeans in the same way as the Aarhus Convention does in Europe. The Agreement provides, *inter alia*, that the objective of the Agreement is to “[protect] the right of every person of present and future generations to live in a healthy environment,”¹⁴⁶ yet the enforceability of this provision is still unclear. The Agreement entered into force in 2021.

Org. of African Unity [OAU], African Charter on Human and Peoples’ Rights, Jun. 27, 1981 [hereinafter ACHPR].

The African Charter on Human and People’s Rights (ACHPR) provides a right to a healthy environment: “All peoples shall have the right to a general satisfactory environment favorable to their development.”¹⁴⁷ The phrasing of this right is unique, as it designates a group and not individuals as beneficiaries of this right.

League of Arab States, Arab Charter on Human Rights, May 22, 2004 [hereinafter Arab Charter].¹⁴⁸

The Arab Charter on Human Rights provides a right to a healthy environment: “Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment.”¹⁴⁹ Unlike the ECHR, the ACHR, and the ACHPR mentioned above, the Arab Charter is not enforceable because there is no effective enforcement mechanism provided by the Statute of the Arab Court of Human Rights enabling individual petitions to be brought to the Court.

145 Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-18&chapter=27&clang=_en.

146 Escazú Agreement, *supra*, at art. 1.

147 ACHPR, *supra*, at art. 24.

148 Available at: <https://digitallibrary.un.org/record/551368?ln=en>.

149 Arab Charter, *supra*, at art. 38.

Ass'n of Southeast Asian Nations [ASEAN], **Human Rights Declaration**, Nov. 18, 2012 [hereinafter **AHRD**].¹⁵⁰

The ASEAN Human Rights Declaration (AHRD) provides a right to a healthy environment: “Every person has the right to an adequate standard of living for himself or herself and his or her family, including . . . a safe, clean and sustainable environment.”¹⁵¹ Like the Arab Charter on Human Rights provision, this article is not enforceable because no enforcement mechanism is provided for the AHRD.

2. Cases from Regional Human Rights Tribunals Examining the Right to a Healthy Environment

a. African Commission on Human and People's Rights

Soc. and Econ. Rts. Action Ctr. & Ctr. for Econ. and Soc. Rts. v. Nigeria, No. 155/96, **Decision**, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.] (Oct. 27, 2001).

The Commission examined whether toxic pollution caused by the oil industry in Nigeria amounted to a violation of the Ogoni people's right to a healthy environment as provided by the African Charter. The Commission held that the Nigerian Government violated the right to a healthy environment for the Ogoni people. The Commission concluded that Nigeria had to take reasonable measures to prevent pollution and ecological degradation, promote conservation, and secure ecologically sustainable development and use of natural resources.

b. European Court of Human Rights (ECtHR)

Cases based on Article 8 of the European Convention on Human Rights (ECHR), namely the rights to private and family life:

López Ostra v. Spain, App. No. 16798/90 (Dec. 9, 1994), <https://hudoc.echr.coe.int/fre?i=001-57905>.

The ECtHR considered whether a municipality's inaction on the nuisance caused by a waste treatment plant amounted to a violation of the plaintiff's right to private and family life. The

¹⁵⁰ Available at: https://asean.org/wp-content/uploads/2021/01/6_AHRD_Booklet.pdf.

¹⁵¹ AHRD, *supra*, at art. 28(f).

ECtHR held that Spain failed in establishing a fair balance between the interest of the town's economic development and the applicant's effective enjoyment of her right to private and family life. Consequently, the ECtHR held that Spain breached Article 8 of the ECHR providing the right to private and family life.

Hatton v. United Kingdom, App. No. 36022/97 (July 8, 2003), <https://hudoc.echr.coe.int/fre?i=001-61188>.

The ECtHR examined whether the disturbances of Heathrow airport traffic noises, described as “intolerable noise levels,” amounted to a violation of Article 8. The Court noted that there is no explicit right in the Convention to a clean and quiet environment, but where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8. The Court held that the authorities struck a fair balance within their margin of appreciation and rejected the alleged violation of Article 8.

Tătar v. Romania, App. No. 657021/01 (Jan. 27, 2009).¹⁵²

The ECtHR examined whether Romania's failure to take appropriate measures to protect the health of the population and the environment—both affected by the pollution of a mining corporation—constitutes negligence leading to a breach of Article 8. The Court observed that despite the absence of a causal probability, in this case, the existence of a serious and substantial risk to the health and well-being of the applicants placed a positive obligation on the State to adopt reasonable and adequate measures to protect the rights of the people concerned. The ECtHR held that Romanian authorities violated the right to private and family life and the right of the people concerned to enjoy a healthy and protected environment as provided in Romanian law.

¹⁵² Decision (in French only) available at: <https://hudoc.echr.coe.int/eng?i=001-90909>; Press release issued by the Registrar of the Court (in English) available at: <https://hudoc.echr.coe.int/fre-press?i=003-2615810-2848789>.

Flamenbaum v. France, App. Nos. 3675/04 & 23264/04 (Dec. 13, 2012).¹⁵³

The ECtHR examined whether the development of the Deauville-Saint-Gatien airdrome would amount to a violation of Article 8 due to the increase of noise disturbances that the development of the airdrome would impose on the airport's neighbors. The Court reaffirmed that, while the Convention does not expressly recognize a right to a healthy and quiet environment, where a person is directly and seriously affected by noise or other forms of pollution, Article 8 of the Convention may support a claim. The Court nevertheless dismissed the case on the ground that the project conformed to French law and that the infrastructure would be of public use.

Cases based on Article 2 of the European Convention on Human Rights (right to life):

Öneryildiz v. Turkey, App. No. 48939/99 (Nov. 30, 2004), <https://hudoc.echr.coe.int/fre?i=001-67614>.

The Court examined whether the Turkish authorities had been negligent in failing to take appropriate measures regarding a fatal accident that occurred at the Ümraniye municipal dump, which was operated under the authorities' control. The plaintiffs alleged a violation of their right to life. The Court determined that the right to life included the right to be protected against risks associated with industrial activities which are inherently dangerous, such as wastecollection sites. The Court held that Turkish authorities violated the right to life in its procedural aspect by failing to take affirmative steps to provide adequate protection to safeguard the right to life and deter similar conduct in the future.

¹⁵³ Decision (in French only) available at: <https://hudoc.echr.coe.int/eng?i=001-115143>; Press release issued by the Registrar of the Court (in English) available at: <https://hudoc.echr.coe.int/eng-press?i=003-4197918-4977240>.

c. **Inter-American Court and Inter-American Commission on Human Rights**

The Environment and Human Rights (State Obligations in Relation to the Environment in Context of the Protection and Guarantees of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in Relation to Articles 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23 (Nov. 15, 2017).

This advisory opinion was requested by Colombia and focused on the interpretation of the ACHR regarding state obligations concerning the environment, the right to life and personal integrity. The Court upheld, for the first time, the right to a healthy environment, relying on Article 26 of the ACHR and Article II of the San Salvador Protocol. Spelling out the consequences of this recognition, the Court detailed the state obligations related to environmental harm, including cross-border harm.

Inhabitants of the Area Near the Santiago River Regarding Mexico, Precautionary Measure No. 708-19, Inter-Am. Comm'n H.R., Resolution No. 7/2020 (Feb. 5, 2020).

The Inter-American Commission on Human Rights examined a petition for precautionary measures in the case of contamination of the residents living by the Santiago River. The contamination was caused by exposure to pollutants flowing through the river, used for agricultural purposes and vaporized in the air. The Commission granted the petition and requested that Mexico adopt necessary measures to stop the contamination, as this pollution affected the right to a healthy environment of the inhabitants.

Indigenous Communities of the Lhaka Honhat (Our Land) Ass'n v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 400 (Feb. 6, 2020).

This case is the first contentious case in which the IACtHR ruled on the right to a healthy environment. Plaintiffs argued that the environmental degradation of the territory, due to over-grazing by the cattle, the illegal logging of the forests, and the fences put up by ranching families breached their right to a healthy environment. The Court specified the scope of the obligations

falling under the right to a healthy environment: States have the obligation to respect this right and to ensure its implementation by preventing its violations, including in private spheres. Thus, States must take legal, political, administrative, and cultural measures to ensure the respect of human rights. The Court found that Argentina had violated the right to a healthy environment of the plaintiffs' indigenous communities.

Press Release, Org. of Am. States, IACHR Files Case Before IA Court on Peru's Responsibility for the Effects of Contamination in La Oroya Community, Press Release No. 274/21 (Oct. 14, 2021).

The Inter-American Commission on Human Rights examined whether Peru failed to respect its obligations under the right to a healthy environment by allowing a state-owned metallurgical complex to emit pollution that severely impacted the health of La Oroya's inhabitants, especially children's blood lead levels being far above the World Health Organization guidelines. The Commission held that the Government had prioritized the economic benefits from the complex over the enforcement of domestic environmental regulations. The Commission found that Peru failed to comply with its obligations regarding the right to a life with dignity, personal integrity, fair trial, access to information on environmental issues, the rights of the child, the rights to public participation, judicial protection, and health and a healthy environment. The Commission filed the case against Peru with the IACtHR and asked the Court to order Peru to implement appropriate reparation measures.

G. National Laws and Litigation on the Right to a Healthy Environment

This section focuses on the domestic legal aspects of the right to a healthy environment. Most countries now recognize the right to a healthy environment: more than 80 percent of States Members of the United Nations, or 156 out of 193 countries, recognize this right according to the latest counts.¹⁵⁴ The table summarizing the legal recognition of the right to a healthy environment, reproduced in Annex II, details the form of this recognition: national constitution, international treaty, and/or national legislation.

Part I details some examples of the right to a healthy environment

154 *Good Practices Report*, *supra* note 25, ¶ 13.

in national constitutions. The selections are ordered chronologically, illustrating the evolution and normalization of the recognition of the right to a healthy environment. Selected provisions highlight the diversity of countries recognizing this right, as well as the differences in phrasing, the provision's place within the Constitution, and duties imposed on the State.

In Part 2, cases ruling on the right to a healthy environment, or recognizing one under other fundamental rights, illustrate the ambiguity related to enforcing the right to a healthy environment: cases can be dismissed for lack of standing, or because the constitutional provision is not justiciable. Another issue is the lack of precedential weight given to these cases. These cases highlight, however, the diversity of arguments and interpretations used by petitioners and Courts when examining the right to a healthy environment.

1. National Laws Providing for a Right to a Healthy Environment

CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA [C.R.P.], art. 66.¹⁵⁵

Portugal was the first country to enshrine the right to a healthy environment in its Constitution in 1976. Article 66 of the Portuguese Constitution provides:

1. Everyone has the right to a healthy and ecologically balanced human living environment and the duty to defend it.
2. In order to ensure the right to the environment within an overall framework of sustainable development, the state, acting via appropriate bodies and with the involvement and participation of citizens, is charged with:
 - a) Preventing and controlling pollution and its effects and the harmful forms of erosion;
 - b) Conducting and promoting town and country planning with a view to a correct location of activities, balanced social and economic development and the enhancement of the landscape;
 - c) Creating and developing natural and recreational reserves and parks and classifying and protecting landscapes and places, in such a way as to guarantee the conservation of nature and the preservation of cultural values and assets that are of historic or artistic interest;
 - d) Promoting the rational use of natural resources,

155 Official English translation available at <https://dre.pt/dre/geral/en/relevant-legislation/constitution-of-the-portuguese-republic>.

while safeguarding their ability to renew themselves and ecological stability, with respect for the principle of inter-generational solidarity;

- e) In cooperation with local authorities, promoting the environmental quality of rural settlements and urban life, particularly on the architectural level and as regards the protection of historic zones;
- f) Promoting the integration of environmental objectives into the various policies with a sectoral scope;
- g) Promoting environmental education and respect for environmental values and assets;
- h) Ensuring that the fiscal policy renders development compatible with the protection of the environment and the quality of life.

CONSTITUCIÓN ESPAÑOLA, B.O.E. n. 311. Dec. 29, 1978, art. 45 (Spain).¹⁵⁶

Spain was the second country to recognize the right to a healthy environment in its Constitution in 1978. Article 45 of the Spanish Constitution provides:

1. Everyone has the right to enjoy an environment suitable for personal development, as well as the duty to preserve it.
2. The public authorities shall safeguard rational use of all natural resources with a view to protecting and improving the quality of life and preserving and restoring the environment, by relying on essential collective solidarity.
3. Criminal or, where applicable, administrative sanctions, as well as the obligation to make good the damage, shall be imposed, under the terms established by the law, against those who violate the provisions contained in the previous clause.

TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION] Nov. 7, 1982, art. 56 (Turk).¹⁵⁷

The chapter of Turkey's Constitution on "Social and Economic Rights and Duties" provides Article 56: "Everyone has the right to live in a healthy and balanced environment."

¹⁵⁶ Official English translation available at: <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>.

¹⁵⁷ Official English translation available at: https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf.

CONST. (1987), art. II, § 16 (Phil.).¹⁵⁸

The Constitution of the Philippines provides a right to a healthy environment in paragraph 16 of the second article of the Constitution “Declaration of Principles and State Policies”: “The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.” Notably, the right is not included in the third article setting out the Bill of Rights.

CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 225 (Braz.).¹⁵⁹

The Brazilian Constitution dedicates its fifth chapter to the environment, with Article 225 providing: “All have the right to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, and both the Government and the community shall have the duty to defend and preserve it for present and future generations.” The rest of Article 225 lays out specific duties for the Government with respect to remedies, protected areas, inalienable lands, and nuclear power plants. The right to a healthy environment is not included in Chapter I, Article 5 of the Constitution on individual and collective rights and duties.

CONSTITUTION DE LA IV^{ÈME} RÉPUBLIQUE [CONSTITUTION] Oct. 19, 1992, J.O. No. 36, Title II, Sub. I, art. 41 (Togo).¹⁶⁰

The Togolese Constitution states in Article 41: “Every person has the right to a healthy environment. The State sees to the protection of the environment.”

NUEVA CONSTITUCIÓN POLÍTICA DEL ESTADO [C.P.E.] [CONSTITUTION] Feb. 7, 2009, art. 33 (Bol.).¹⁶¹

Article 33 of the Bolivian Constitution provides: “Everyone has the right to a healthy, protected, and balanced environment. The exercise of this right must be granted to individuals and collectivities of present and future generations, as well as

158 Official document available at: <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>.

159 Official English translation available at: https://www2.senado.leg.br/bdsf/bitstream/handle/id/243334/Constitution_2013.pdf?sequence=11.

160 Unofficial English translation available at: <https://heinonline.org/HOL/P?h=hein.cow/zztg0005&i=5>.

161 Unofficial English translation available at <https://heinonline.org/HOL/P?h=hein.cow/zzbo0044&i=1>.

to other living things, so they may develop in a normal and permanent way.”

CONSTITUIÇÃO DA REPÚBLICA DE ANGOLA [CONSTITUTION] Jan. 21, 2010, art. 39 (1).¹⁶²

The Constitution of Angola includes Article 39(1) in its chapter on “fundamental rights, liberties and guarantees.” The article provides: “Everyone has the right to live in a healthy and unpolluted environment and the duty to defend and preserve it.”

CONSTITUTION DE LA RÉPUBLIQUE ALGÉRIENNE DÉMOCRATIQUE ET POPULAIRE Dec. 30, 2020, art. 21 (Alg.).¹⁶³

Article 21, Section 2 of the Algerian Constitution provides “The State sees to . . . assuring a healthy environment in order to protect persons as well as the development of their well-being.” This article is part of Title I of the Constitution on “the General Principles Governing the Algerian Society” and is not included in the next Title dedicated to fundamental rights and public freedoms.

2. National Litigation on the Right to a Healthy Environment

Kumar v. State of Bihar, AIR 1991 SC 420 (India).

The Supreme Court of India examined the plaintiffs’ action to stop two tanneries from discharging surplus waste in the form of sludge that was flowing from their production plants into the Ganges River. The pollution made the river water unfit for drinking and irrigation purposes. The Court observed that the right to life, set out in Article 21 of the Constitution, includes the right to enjoy pollution-free water and air for the full enjoyment of life. However, the Court dismissed the case for lack of standing, holding that public interest litigation cannot be invoked by a person to satisfy their personal grudge and enmity.

162 Unofficial English translation available at: https://www.constituteproject.org/constitution/Angola_2010.pdf?lang=en.

163 Unofficial English translation available at: <https://heinonline.org/HOL/P?h=hein.cow/zzdz0052&i=8>.

Oposa v. Factoran, G.R. No. 101083 (July 30, 1993) (Phil.).

The Supreme Court of the Philippines examined whether timber licensing permits issued by the Government deprived the plaintiffs, acting on behalf of present and future generations, from their right to a balanced and healthful ecology. The Court found that the petitioners had standing to file a class-wide suit on behalf of present and future generations. Further, the Court held that all timber licenses must be revoked or rescinded by executive action, as they did not constitute contracts, property, or property rights protected by the due process clause of the Constitution and were breaching the petitioners' right to a balanced and healthful ecology.

Dhungel v. Godawari Marble Indus., No. WP 35/1992 (Nepal 1995).

The Supreme Court of Nepal examined whether the environmental degradation of the Godawari forest caused by the marble mining industry violated the applicants' right to life and health and caused damage to their property. The Court determined that the right to a clean and healthy environment is embedded within the right to life. The Court also noted that development is the means to live happily and that human beings cannot live a clean and healthy life without a clean and healthy environment. The Court rejected the mandamus action on the ground that it could not be issued based on a general claim of public interest in the absence of a clear statement of respondents' legal duty.

Montana Env't Info. Ctr. v. Department of Env't Quality, 988 P.2d 1236 (Mont. 1999).

The Supreme Court of the U.S. state of Montana examined whether the licensing of a massive open-pit gold mine by the state Department of Environmental Quality violated the right to a clean and healthful environment guaranteed by the state constitution. The Court applied strict scrutiny to government and private actions that implicate the right to a clean and healthful environment. The Court held that the exclusion of some activities from non-degradation review without any regard to the volume of the substances being discharged by the Montana Department of Environmental Quality violated the fundamental right to a clean and healthful environment.

Gbemre v. Shell Petrol. Dev. Co. of Nigeria Ltd. [2005] FHC/B/CS/53/05 (Nigeria).¹⁶⁴

The Federal High Court of Nigeria examined whether the gas flaring activities conducted by Shell corporation in the country violated the petitioners' right to life and dignity and right to a clean poison-free, pollution-free and healthy environment. The Court determined that respondents carried out their activity without any regard for its deleterious and ruinous consequences, focusing on their commercial interest and maximizing profit. The Court held that the right to life and dignity of the person, including the right to a clean, poison-free, and pollution-free air and healthy environment, had been grossly violated and threatened by the gas flaring activities conducted by the respondent. The Court declared the provisions allowing gas flaring unconstitutional, null, and void.

Conseil constitutionnel [CC] [Constitutional Court] decision No. 2012-282QPC, Nov. 23, 2012, J.O. 0274 (Fr.).

The French Constitutional Supreme Court examined the constitutionality of legislation that regulated advertising. The non-governmental organization petitioners claimed that, by failing to provide for the prevention of damage to the environment and by not empowering the regulatory authority to set rules on the density and format of signs, the law did not respect the principles set by the Charter for the Environment. This Charter is included in the French Constitution and provides for a right live in a balanced environment which shows due respect for health. The Court held that it did not have jurisdiction to rule on the issue as the means of implementing the right to live in a balanced environment which shows due respect for health was a legislative matter.

Robinson Twp. v. Commonwealth, 96 A.3d 1104 (Pa. Commw. Ct. 2014), aff'd in part, rev'd in part, 147 A.3d 536 (Pa. 2016).

In this case, the Commonwealth Court of the state of Pennsylvania examined whether an act reforming the state's Oil and Gas Act regarding shale gas violated the right to a healthy environment as provided by the Pennsylvanian Constitution.

164 Available at: http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2005/20051130_FHCBCS5305_judgment.pdf.

Article I, Section 27 of the state Constitution says: “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come.”¹⁶⁵ The court examined the scope of both sections of the article, that is, individual environmental rights and the public trust doctrine. Striking down the Act, the court held that the Act was incompatible with the state’s duty as a trustee of Pennsylvania’s natural resources. This ruling is particularly interesting in that it examines intergenerational concerns in the context of the right to a healthy environment.

H. Books on the Right to a Healthy Environment

This Section lists books discussing the right to a healthy environment under several frames: the interest in implementing this right, the adoption of the right at the international level and the “greening of human rights” jurisprudence. These books do not analyze the right to a healthy environment recently adopted by the General Assembly but instead illustrate the various paths that can be explored when implementing the right to a healthy environment.

DAVID R. BOYD, THE ENVIRONMENTAL RIGHTS REVOLUTION: A GLOBAL STUDY OF CONSTITUTIONS, HUMAN RIGHTS, AND THE ENVIRONMENT (2011).

This book, written by the current U.N. Special Rapporteur on human rights and the environment, discusses the increasing recognition of the right to a healthy environment and the benefits associated with this legal change. This resource offers a detailed description of the context, evolution, and definition of the right to a healthy environment, as well as a comparison of the adoption of this right between world regions and legal traditions. Boyd concludes that the adoption of a right to a healthy environment has a positive impact on environmental protection provisions and environmental performance. A more detailed, but earlier, version of Boyd’s argument is available in Boyd’s Ph.D. thesis on the same topic.¹⁶⁶

¹⁶⁵ PA. CONST. art. I, § 27.

¹⁶⁶ Boyd, *supra* note 83.

THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT (J. H. Knox & R. Pejan eds., 2018).

This book is a collection of essays from scholars and practitioners detailing their thoughts on what is—or should be—the international human right to a healthy environment. The book challenges the absence of an internationally recognized right to a healthy environment to emphasize the emergence of the interrelation between human rights and the environment, leading to the application of human rights law to environmental issues by U.N. mechanisms.

SUMUDU ATAPATTU & ANDREA SCHAPPER, HUMAN RIGHTS AND THE ENVIRONMENT: KEY ISSUES (2019).

This textbook adopts a socio-legal lens to explain the interrelations between human rights and the environment. It lays out the evolution of human rights and the environment, the relevant human rights for environmental protection, and the influence of climate change on human rights, and emerging issues related to environmental rights.

COUNCIL OF EUROPE, MANUAL ON HUMAN RIGHTS AND THE ENVIRONMENT (3d ed. 2022).

This manual details how the ECHR and the European Social Charter contribute to environmental protection in member states of the Council of Europe, with a specific focus on the interpretation of these human rights instruments with respect to the right to a healthy environment. This manual provides a synthesis of the ECtHR jurisprudence when interpreting fundamental human rights and their relationship with the environment, therefore implicitly upholding a right to a healthy environment.

I. Journal Articles Discussing the Right to a Healthy Environment

This Section describes a selection of scholarly articles discussing the right to a healthy environment. Most of these focus on how to best recognize this right at the U.N. level. An analysis of national provisions recognizing this right helps explain the insufficiency of relying on national or regional recognition, and thus the need for an international agreement. A conceptual clarification on children's rights and the right to a healthy environment provides useful thoughts on the

growth of youth-focused litigation and the proposed General Comment on the rights of the child and the environment. Discussing the green amendments in U.S. state constitutions, often including a right to a healthy environment, and comparing national laws with Australian law provides context for the growing lack of credibility of the U.S. and its human rights commitments.

Janelle P. Eurick, *The Constitutional Right to a Healthy Environment: Enforcing Environmental Protection through State and Federal Constitutions*, 11 INT'L LEGAL PERSP. 185 (1999).

This article examines the right to a healthy environment as incorporated into national and individual state constitutions in the U.S. The article finds several advantages to implementing a constitutional right to a healthy environment: broader standing requirements, new causes for action to enforce environmental protection, new remedies for addressing environmental problems, increased level of scrutiny applied by reviewing courts and a check on legislative action regarding the quality of the environment. Despite being published in 1991, this article provides a good overview of the right to a healthy environment in individual states' constitutions in the U.S., which is especially relevant given the adoption of the Environmental Rights Amendment to the New York State Constitution in November 2021.¹⁶⁷

Alan Boyle, *Human Rights and the Environment: Where Next?*, 23 EUR. J. INT'L L. 613 (2012).

This article describes perspectives on the adoption of a right to a healthy environment at the U.N. level. The article first details the interrelation between human rights and the environment, highlighting the importance of recognizing environmental human rights. Second, the article describes how U.N. Human Rights institutions' reports have been increasingly linking environmental issues with human rights. Then, the article dedicates a section to the development of procedural rights in an environmental context and their interpretation by the ECtHR. The author considers that adopting a declaration or a protocol

167 See David G. Mandelbaum & Steven C. Russo, *The New Environmental Rights Amendment to the New York Constitution*, NAT. L. REV. (Nov. 8, 2021), <https://www.natlawreview.com/article/new-environmental-rights-amendment-to-new-york-constitution>.

could be an appropriate mechanism for recognizing the right to a healthy environment at the U.N. level. This right would then be part of the economic and social rights provided by the ICESCR. The author examines, in the article's final section, the issue of the extra-territorial application of existing human rights treaties and challenges associated with the implementation of human rights to protection from transboundary pollution and climate change.

David R. Boyd, *The Constitutional Right to a Healthy Environment*, 54 ENVIRONMENT: SCI. & POL'Y FOR SUSTAINABLE DEV. 3 (2012).

This article by the current U.N. Special Rapporteur on the right to a healthy environment discusses the advantages of enshrining a right to a healthy environment in national constitutions and lists countries that have recognized this right (in their constitution, through legislation, or by signing international agreements). According to the author, the recognition of this right leads to stronger environmental laws in countries having adopted a right to a healthy environment (in seventy-eight out of ninety-two nations at the time). Another benefit of incorporating the right to a healthy environment is an advanced screening of new laws and regulations, as they must be consistent with the government's obligation to respect, protect and fulfill the right to a healthy environment. Finally, the article describes other benefits related to the recognition of the right to a healthy environment, such as the fact that it serves as a safety net and increases public participation in policy development.

John H. Knox, *Constructing the Human Right to A Healthy Environment*, 16 ANN. REV. L. & SOC. SCI. 79 (2020).

This article by the former U.N. Special Rapporteur on the right to a healthy environment examines the development of environmental human rights since the late twentieth century. The article categorizes this development in three ways: the recognition of environmental rights at the national and regional levels, the greening of human rights, and the development of procedural rights in international instruments. The article then considers the consequences for human rights and the environment of the adoption by the U.N. of an instrument recognizing the right to a healthy environment.

Rachel Pepper & Harry Hobbs, *The Environment Is All Rights: Human Rights, Constitutional Rights, and Environmental Rights*, 44 MELB. U. L. REV. 634 (2020).

This comparative law article reviews the international environmental rights regime and compares the implementation of the right to a healthy environment in specific national legal systems. The article concludes this comparison with the Australian regime, which, the article finds, is less advanced than other countries.

Ishrat Jahan, *Do We Need an International Instrument for the Recognition of the Right to a Healthy Environment?*, 51 ENV'T POL'Y & L. 377 (2021).

This article argues for the implementation of an international instrument recognizing the right to a healthy environment. It describes the scope of this right and the benefits of implementation. The article reviews scholarly articles, national constitutions, and regional court cases to define what the right to a healthy environment encompasses. Examining the gap between the legal recognition of this right at national and regional levels and the actual implementation of its substantive elements, the author argues that an international instrument could precisely fill this gap. He calls for an Optional Protocol to the ICESCR that would recognize the right to a healthy environment. The author argues that such an approach would be the most coherent way to recognize this right because there is already an Optional Protocol to that Covenant and the Covenant already includes some of the rights that could provide support for the right to a healthy environment.

James R. May, *The Case for Environmental Human Rights: Recognition, Implementation, and Outcomes*, 42 CARDOZO L. REV. 983 (2021).

This article reviews national, regional, and international provisions recognizing the right to a healthy environment. The article critiques the implementation of this right while examining the means of implementing the right at the national level, that is, express constitutional recognition of a substantive right or implied constitutional recognition of a substantive right. Despite numerous court decisions upholding the right to a healthy environment, the article observes that a vast

majority of cases have been reversed, ignored, or forgotten. Finally, the article focuses on the effectiveness of environmental constitutional provisions related to the decrease of pollution at the domestic level.

Aoife Daly, Intergenerational Rights Are Children's Rights: Upholding the Right to a Healthy Environment through the UN Convention on the Rights of the Child (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4141475.

This article examines the intersections between intergenerational equity, children's rights, and the rights of future generations under the scope of the U.N. Convention of the Rights of the Child. The article argues that the confusion between these concepts may lead to a failure to include children's rights in climate litigation. The author asserts that intergenerational rights are children's rights as children are present people and, therefore, have legal status, unlike future people. The author describes the principle of the best interest of the child under the Convention of the Rights of Children as the most promising route to improve climate mitigation policies.

CONCLUSION

The contemporary environmental movement triggered international awareness regarding environmental rights, rooting the recognition of the right to a healthy environment in a series of international declarations, treaties, regional agreements, national constitutional provisions, subnational constitutions, jurisprudence, and soft law instruments recognizing the right to a healthy environment in their way. These legal developments reflect a social and political context that further anchors the right.

The human right to a healthy environment is inextricably intertwined with other human rights, especially the right to life, the right to privacy and family life, the right to water and adequate sanitation, the right to food, the right to housing, the right to reach the highest attainable standard of physical and mental health. In all of these dimensions, enforcing the right to a healthy environment would be of particular significance. This guide is a starting place. Further research dedicated to the right to a healthy environment could help to define, implement, enforce, and publicize this right, creating new avenues for interested actors navigating the environment that surrounds them.

ANNEX I

J. International. Bodies Working Directly or Indirectly to Advance the Right to a Healthy Environment

This Annex lists international organizations involved directly or indirectly in advancing the right to a healthy environment. The interdisciplinary nature of this right explains the wide range of relevant organizations at the international level.

I. U.N. Bodies Working Directly or Indirectly to Advance the Right to a Healthy Environment

United Nations Human Rights Council (HRC).¹⁶⁸

The HRC is the main intergovernmental body in the U.N. system responsible for strengthening the promotion and protection of human rights. The HRC can engage U.N. special procedures, which are mechanisms established by the Council to gather expert observations and advice on worldwide human rights issues. The HRC recognized the right to a safe, clean, healthy, and sustainable environment in October 2021.

United Nations Human Rights Committee (Human Rights Committee).¹⁶⁹

The Human Rights Committee is a body of independent experts monitoring the implementation of the ICCPR by State parties. The Human Rights Committee drafts General Comments interpreting the ICCPR. In General Comment No. 26 on the right to life, the Human Rights Committee referenced the impact of climate change, environmental degradation, and unsustainable development on future generations' enjoyment of the right to life.

168 See *Welcome to the Human Rights Council*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/en/hr-bodies/hrc/about-council> (last visited May 15, 2023).

169 See *Human Rights Committee*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R, <https://www.ohchr.org/en/treaty-bodies/ccpr> (last visited May 15, 2023).

United Nations Committee on Economic, Social and Cultural Rights (CESCR).¹⁷⁰

The CESCR is a body of independent experts monitoring the implementation of the ICESCR by State parties. General Comments regarding the ICESCR, drafted by the CESCR, have referenced the right to a healthy environment as implied in economic, social, and cultural rights.

United Nations Committee on the Rights of the Child (CRC).¹⁷¹

The CRC is a body of independent experts monitoring the implementation of the Convention on the Right of the Child and the Optional Protocols to this Convention. The CRC issued General Comment No. 7 on the implementation of child rights in early childhood referencing the right to a healthy environment as an indispensable condition of the realization of child rights in early childhood in a holistic manner.

United Nations Environmental Program (UNEP).¹⁷²

The UNEP is the global agency setting the environmental agenda and promoting the implementation of sustainable development. The UNEP is the leading environmental authority within the U.N. system. It seeks to strengthen environmental standards while ensuring the implementation of existing environmental protections.

Intergovernmental Panel on Climate Change (IPCC).¹⁷³

The IPCC is the U.N. body in charge of assessing the science related to climate change. The Panel publishes reports that serve as a basis for international negotiations on climate change, and national public policies and participates in the international awareness of climate change. IPCC reports are drafted by scientists and evaluated by governments. IPCC reports are a continuous source of information on changing ecosystems and

170 See *Committee on Economic, Social and Cultural Rights*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R, <https://www.ohchr.org/en/treaty-bodies/ceschr> (last visited May 15, 2023).

171 See *Committee on the Rights of the Child*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R, <https://www.ohchr.org/en/treaty-bodies/crc> (last visited May 15, 2023).

172 See *About the United Nations Environment Programme*, U.N. ENV'T PROGRAMME, <https://www.unep.org/about-us> (last visited May 15, 2023).

173 See *About the IPCC*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, <https://www.ipcc.ch/about/> (last visited May 15, 2023).

climate, which are relevant for the right to a healthy environment.

World Health Organization (WHO).¹⁷⁴

The WHO is the U.N. agency in charge of promoting health and cooperation among nation States. The WHO insists on environmental health as it indicates that 24 percent of global deaths are linked to the environment and directs attention toward clean air, a stable climate, adequate water, sanitation and hygiene, safe use of chemicals, and sound agricultural practices that are components of the right to a healthy environment.

2. Other International Bodies Working Directly or Indirectly to Advance the Right to a Healthy Environment

International Union for Conservation of Nature (IUCN).¹⁷⁵

The IUCN is a union of governments and civil society organizations aiming to conserve nature and accelerate the transition to sustainable development by encouraging international cooperation and providing scientific knowledge to guide conservation.

Global Environment Facility (GEF).¹⁷⁶

The GEF is the largest international trust fund focused on projects aiming to improve the environment. It provides support to government agencies, civil society organizations, private sector companies, and research institutions.

ANNEX II

The following information is reproduced from the HRC's *Good Practices* report.¹⁷⁷

174 See *About WHO*, WORLD HEALTH ORG., <https://www.who.int/about> (last visited May 15, 2023).

175 See *About IUCN*, INT'L UNION FOR CONSERVATION OF NATURE, <https://www.iucn.org/about-iucn> (last visited May 15, 2023).

176 See *Who We Are*, GLOB. ENV'T FACILITY, <https://www.thegef.org/who-we-are> (last visited May 15, 2023).

177 *Good Practices* Report, *supra* note 25, at 22–27.

LEGAL RECOGNITION OF THE RIGHT TO A HEALTHY ENVIRONMENT

Y = Yes, Yi = implicit, N = No

* Includes the African Charter, the San Salvador Protocol, the Aarhus Convention, the Arab Charter and the Escazú Agreement.

	<i>National Constitution</i>	<i>International Treaty*</i>	<i>National Legislation</i>
<i>Total Countries</i>	<i>110</i>	<i>126</i>	<i>101</i>
Afghanistan	N	N	N
Albania	N	Y	N
Algeria	Y	Y	N
Andorra	N	N	N
Angola	Y	Y	Y
Antigua and Barbuda	N	N	N
Argentina	Y	Y	Y
Armenia	N	Y	Y
Australia	N	N	N
Austria	N	Y	N
Azerbaijan	Y	Y	Y
Bahamas	N	N	N
Bahrain	N	Y	N
Bangladesh	Yi	N	N
Barbados	N	N	N
Belarus	Y	Y	Y
Belgium	Y	Y	Y
Belize	N	N	N
Benin	Y	Y	Y
Bhutan	N	N	Y
Bolivia (Plurinational State of)	Y	Y	Y
Bosnia and Herzegovina	N	Y	Y
Botswana	N	Y	N
Brazil	Y	Y	Y
Brunei Darussalam	N	N	N
Bulgaria	Y	Y	Y
Burkina Faso	Y	Y	Y

	<i>National Constitution</i>	<i>International Treaty*</i>	<i>National Legislation</i>
Burundi	Y	Y	N
Cambodia	N	N	N
Cabo Verde	Y	Y	Y
Cameroon	Y	Y	Y
Canada	N	N	N
Central African Republic	Y	Y	Y
Chad	Y	Y	Y
Chile	Y	N	Y
China	N	N	N
Colombia	Y	Y	Y
Comoros	Y	Y	Y
Congo	Y	Y	N
Costa Rica	Y	Y	Y
Côte d'Ivoire	Y	Y	Y
Croatia	Y	Y	Y
Cuba	Y	N	Y
Cyprus	Yi	Y	Y
Czechia	Y	Y	Y
Democratic People's Republic of Korea	N	N	N
Democratic Republic of the Congo	Y	Y	Y
Denmark	N	Y	N
Djibouti	N	Y	Y
Dominica	N	N	N
Dominican Republic	Y	N	Y
Ecuador	Y	Y	Y
Egypt	Y	Y	N
El Salvador	Yi	Y	Yi
Equatorial Guinea	N	Y	N
Eritrea	N	Y	Y
Estonia	Yi	Y	Yi
Eswatini	N	Y	N
Ethiopia	Y	Y	N

	<i>National Constitution</i>	<i>International Treaty*</i>	<i>National Legislation</i>
Fiji	Y	N	N
Finland	Y	Y	Y
France	Y	Y	Y
Gabon	Y	Y	Y
Gambia	N	Y	Y
Georgia	Y	Y	Y
Germany	N	Y	N
Ghana	Yi	Y	N
Greece	Y	Y	Y
Grenada	N	N	N
Guatemala	Yi	Y	Y
Guinea	Y	Y	N
Guinea-Bissau	N	Y	Y
Guyana	Y	Y	N
Haiti	N	N	Y
Honduras	Y	Y	Y
Hungary	Y	Y	Y
Iceland	N	Y	N
India	Yi	N	Y
Indonesia	Y	N	Y
Iran (Islamic Republic of)	Y	N	N
Iraq	Y	Y	N
Ireland	Yi	Y	N
Israel	N	N	N
Italy	Yi	Y	N
Jamaica	Y	N	N
Japan	N	N	N
Jordan	N	Y	N
Kazakhstan	N	Y	Y
Kenya	Y	Y	Y
Kiribati	N	N	N
Kuwait	N	Y	N
Kyrgyzstan	Y	Y	Y

	<i>National Constitution</i>	<i>International Treaty*</i>	<i>National Legislation</i>
Lao People's Democratic Republic	N	N	N
Latvia	Y	Y	Y
Lebanon	N	Y	Y
Lesotho	N	Y	Y
Liberia	Yi	Y	Y
Libya	N	Y	N
Liechtenstein	N	N	N
Lithuania	Yi	Y	Y
Luxembourg	N	Y	N
Madagascar	N	Y	Y
Malawi	Y	Y	Y
Malaysia	Yi	N	N
Maldives	Y	N	N
Mali	Y	Y	N
Malta	N	Y	N
Marshall Islands	N	N	N
Mauritania	Y	Y	Y
Mauritius	N	Y	N
Mexico	Y	Y	Y
Micronesia (Federated States of)	N	N	N
Monaco	N	N	Y
Mongolia	Y	N	Y
Montenegro	Y	Y	Y
Morocco	Y	N	Y
Mozambique	Y	Y	Y
Myanmar	N	N	N
Namibia	Yi	Y	N
Nauru	N	N	N
Nepal	Y	N	N
Netherlands	N	Y	N
New Zealand	N	N	N
Nicaragua	Y	Y	Y
Niger	Y	Y	Y

	<i>National Constitution</i>	<i>International Treaty*</i>	<i>National Legislation</i>
Nigeria	Yi	Y	Y
North Macedonia	Y	Y	Y
Norway	Y	Y	Y
Oman	N	N	N
Pakistan	Yi	N	N
Palau	N	N	Y
Panama	Yi	Y	Y
Papua New Guinea	N	N	N
Paraguay	Y	Y	Y
Peru	Y	Y	Y
Philippines	Y	N	Y
Poland	N	Y	N
Portugal	Y	Y	Y
Qatar	N	Y	N
Republic of Korea	Y	N	Y
Republic of Moldova	Y	Y	Y
Romania	Y	Y	Y
Russian Federation	Y	N	Y
Rwanda	Y	Y	Y
Saint Kitts and Nevis	N	Y	N
Saint Lucia	N	N	N
Saint Vincent and the Grenadines	N	Y	N
Samoa	N	N	N
San Marino	N	N	N
Sao Tome and Principe	Y	Y	Y
Saudi Arabia	N	Y	Y
Senegal	Y	Y	Y
Serbia	Y	Y	Y
Seychelles	Y	Y	N
Sierra Leone	N	Y	N
Singapore	N	N	N
Slovakia	Y	Y	Y
Slovenia	Y	Y	Y
Solomon Islands	N	N	N

	<i>National Constitution</i>	<i>International Treaty*</i>	<i>National Legislation</i>
Somalia	Y	Y	N
South Africa	Y	Y	Y
South Sudan	Y	N	N
Spain	Y	Y	Y
Sri Lanka	Yi	N	N
Sudan	Y	Y	N
Suriname	N	Y	N
Sweden	N	Y	N
Switzerland	N	Y	N
Syrian Arab Republic	N	Y	N
Tajikistan	N	Y	Y
Thailand	Y	N	Y
Timor-Leste	Y	N	Y
Togo	Y	Y	Y
Tonga	N	N	N
Trinidad and Tobago	N	N	N
Tunisia	Y	Y	Y
Turkey	Y	N	N
Turkmenistan	Y	Y	Y
Tuvalu	N	N	N
Uganda	Y	Y	Y
Ukraine	Y	Y	Y
United Arab Emirates	N	Y	N
United Kingdom of Great Britain and Northern Ireland	N	N	N
United Republic of Tanzania	Yi	Y	Y
United States of America	N	N	N
Uruguay	N	Y	Y
Uzbekistan	N	N	Y
Vanuatu	N	N	N
Venezuela (Bolivarian Republic of)	Y	N	Y
Viet Nam	Y	N	Y

	<i>National Constitution</i>	<i>International Treaty*</i>	<i>National Legislation</i>
Yemen	N	Y	Y
Zambia	N	Y	Y
Zimbabwe	Y	Y	Y

