UNPACKING THE RIGHT TO A HEALTHY ENVIRONMENT

HOW NATIONAL AND REGIONAL LAWS AND JURISPRUDENCE CLARIFY THE SCOPE AND CONTENT OF THE UNIVERSAL RIGHT
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Unpacking the right to a healthy environment: How national and regional laws and jurisprudence clarify the scope and content of the universal right represents a collaborative effort between NYU School of Law’s Earth Rights Advocacy (ERA) and the Universal Rights Group (URG). The report was made possible by the input from experts in the field including ERA Director César Rodríguez-Garavito and ERA attorneys Melina De Bona, Nathalia Carvalho Dutra, Jacqueline Gallant, and URG experts Louis Mason, Tejaswi Reddy Dokuru, Amalia Ordoñez Vahí and Joseph Burke. The report would not have been possible without the invaluable research skills of NYU Law students Lane Eisenmann, Maximilian Strobel, and James Low. Special acknowledgement is also owed to Victor Ojeda Gallego for his unwavering professionalism and constant support in designing this report.
EXECUTIVE SUMMARY

On 8 October 2021, the United Nations Human Rights Council adopted its historic resolution 48/13 recognizing the human right to a clean, healthy and sustainable environment (hereinafter ‘right to a healthy environment’ or R2HE) by a vote of 43-0-4.1 Although the fundamental link between environmental protection and the enjoyment of human rights has long been acknowledged, and the right to a healthy environment itself has already been widely recognized at national and regional levels, HRC resolution 48/13 was the first formal recognition of the right to a healthy environment at the global level.

Soon after, on 28 July 2022, the United Nations Generally Assembly followed suit and adopted resolution 76/300 (hereinafter ‘R76/300’) by a vote of 43-0-4.1 Although the fundamental link between environmental protection and the enjoyment of human rights has long been acknowledged, and the right to a healthy environment itself has already been widely recognized at national and regional levels, HRC resolution 48/13 was the first formal recognition of the right to a healthy environment at the global level.

The UN Secretary General welcomed the resolution as a ‘landmark development’ and the Executive Director of the UNEP hailed it as a ‘cascade of positive changes that have improved the lives of millions of people’.2 3 The fact that the foundational human rights instruments, i.e. the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights (1966) do not explicitly recognize the right to a healthy environment is not a matter of substance but rather of timing. 3 As these instruments were drafted before the emergence of the modern environmental movement. Indeed, the first explicit international recognition of the intersection between environmental protection and human rights came with the first UN Conference on the Environment, held in 1972 in Stockholm (Stockholm Conference). The Stockholm Declaration proclaimed that the natural environment was ‘essential’ for the enjoyment of basic human rights, including the right to life itself. Its first principle indeed recognized the necessity of ‘an environment of a quality necessary for the survival, the health and the well-being of all peoples’.3 4

However, in the half century between the initial international acknowledgement—that environmental protection and the enjoyment of human rights are interrelated, interdependent and mutually reinforcing—and the formal international recognition, through the adoption of the twin HRC and UNGA resolutions, that everyone, everywhere has a right to a healthy environment, most States gave effect to R2HE through national legislation and/or regional agreements. Indeed, today, there are at least 110 States where R2HE enjoys constitutional protection, 101 States that have incorporated the right into national and 126 of largely overlapping States that have ratified regional treaties that include recognition of the right. Taken together, this means that more than 80 per cent of UN member States (156 out of 193) now legally recognise the right to a safe, clean, healthy and sustainable environment, in different formulations and phraseologies, and with varying degrees of enforcement and impact.

In turn, as this report demonstrates, the legal provisions enshrining R2HE have given rise to an increasing number of legal proceedings in which the right is claimed to enhance the protection of the planet and its people. This corroborates the extensively documented trend of increasing recourse to rights-based legal arguments for the protection of environmental interests—a phenomenon referred to as the ‘greening of human rights’ whereby courts and human rights bodies have interpreted universal rights to compel States and corporations to take steps to protect the environment upon which effective enjoyment of those rights depends.

Rights-based approaches to environmental litigation have been particularly prominent in climate change litigation, notably after the recognition of the human rights dimensions of climate change in the Paris Agreement of 2015 bolstered a ‘rights-turn’ in climate litigation. 6 Prior to 2015, studies recorded 19 rights-based climate cases whereas between 2015 and 2021, 148 climate cases were recorded involving rights language or arguments across 38 national jurisdictions and 11 international judicial or quasi-judicial bodies (amounting to a 778% increase). 7

Moreover, at least 42 of these climate cases invoke the right to a healthy environment, seemingly pointing to the catalysing effects that international developments can have on litigation strategies, given the many examples of international law influencing national court decisions relating to R2HE. For example, the Stockholm Declaration influenced decisions of the Supreme Court of India protecting the implicit constitutional R2HE. 8 In another example, R2HE in the African Charter led Kenyan and Nigerian courts to make important rulings finding R2HE to be an essential part of the constitutional right to life (even though it is not explicitly articulated as such in either the Kenyan or Nigerian Constitutions). 7 Likewise, Costa Rican and Colombian courts have cited the San Salvador Protocol in cases involving R2HE. 1

This also makes strategic sense as the right to a healthy environment is known to reduce costs, decrease delays and minimise risks associated with pursuing other judicial remedies.

However, few cases have to-date considered the broader context of how R2HE has been increasingly invoked not only to address the climate emergency but also to combat the other two components of the triple planetary crisis, namely air pollution and biodiversity loss. There also exists little analysis of how this emerging body of practice clarifies the substantive and procedural elements that constitute the right to a healthy environment, as developed by national and regional laws and cases affirming, applying, and refining the right in a variety of different contexts. Research conducted in the context of this report analysed various examples of laws promulgating the R2HE, as well as 48 notable judicial cases involving the right to a healthy environment. The charts, which can be found in Appendix, provide a representative sample rather a comprehensive compendium of these R2HE cases and laws. They serve to infer broad trends and demonstrate the core transversal elements that constitute the substantive and procedural elements of R2HE.

For example, they show the geographical imbalance in the distribution of R2HE litigation, with Latin America and Africa responsible for most emerging R2HE jurisprudence (with 42.7% and 31.3% respectively), followed by Europe (with 14.6%), Asia (with 6.3%) and North America (with 4.2%). This could partially be the result of Latin American and African countries having been much earlier adopters of the right. For example, both the San Salvador Protocol (1988) and the African Charter on Human and Peoples’ Rights (1981) both recognise R2HE. Interestingly, these figures contrast sharply with statistics compiled by other authors regarding the geographical distribution of human rights based climate litigation that does not invoke R2HE, in which of the 89 cases identified, most took place in Europe (38.2%), followed by Asia (21.3%), Latin America (21.3%), North America (20.2%), and then Africa (4.5%), perhaps reflective of regional differences in...
levels of carbon emission. In a demonstration of how the greening of human rights have also affected quasi-judicial international bodies, such as the human rights treaty bodies, the final 15.7% correspond to international jurisprudence.

Moreover, while the **substantive components** of the right to a healthy environment have been developed differently across jurisdictions, the following most prevalent components identified have been:

1. The protection and conservation of ecosystems, including special protections for fragile ecosystems and ecosystems of special importance
2. The protection of biodiversity within and across ecosystems
3. The protection of the climate system and its integrity
4. The protection against toxic pollution of the land, water, and air
5. The protection of the environmental minimum
6. The duty to regulate
7. Protecting vulnerable groups
8. Incorporating and ensuring compliance with international law, standards and commitments
9. Other potential substantive components of the R2HE

Procedurally, this same body of practice establishes the processes and procedures required by the right to a healthy environment. These procedural elements do not guarantee particular outcomes, nevertheless, adhering to them improves a fair process and decision-making, thus amplifying the likelihood of outcomes that are better for people and the environment.

The most prevalent **procedural components** of the right to a healthy environment include:

1. Environmental impact assessments
2. Access to information
3. Avenues for participation
4. Access to justice and effective remedy
5. Monitoring
6. Duty to Cooperate
7. Environmental education

From there, the report identifies the principles that have been applied by courts and legislatures from around the world to implement R2HE and make decisions that are consistent with its substantive and procedural guarantees.

These cross-cutting principles include:

1. The precautionary principle
2. The prevention principle
3. The principle of non-regression
4. The polluter pays principle
5. Sustainable development
6. Intergenerational equity and responsibility
7. Ecocentrism and the intrinsic value of nature
8. Gender equity
9. Consistency with the best available science
10. Respecting Local and Indigenous wisdom
11. Transboundary Harm and Extraterritoriality
The report continues by discussing the steps that both courts and legislatures have taken according to their specific roles and functions to improve the implementation of the right to a healthy environment and ensure it has material impact on the ground and within communities.

Specifically, legislatures have passed laws that improve implementation of R2HE by:

1. Providing inclusive definitions of the R2HE and what it entails
2. Detailing measures to be taken to realise R2HE
3. Setting up implementing bodies, mechanisms, and institutions
4. Creating causes of action, and
5. Specifying remedies

And courts, for their part, have taken steps to actualise and enforce R2HE by:

1. Providing flexibility for standing requirements
2. Easing the burdens associated with proving causation
3. Articulating methods to guarantee baseline protections in fact-specific circumstances
4. Identifying and providing remedies, including protection and restoration measures, the creation of implementing bodies or compliance mechanisms, and compensation

Though the bulk of this report focuses on describing the contours of R2HE practice around the world, it is centrally concerned with what this body of practice means for efforts to protect and promote the right going forward, especially in light of the historic UN Human Rights Council and General Assembly votes to recognise the right to a healthy environment as an international human right. With this objective in mind, this report concludes with an assessment of the gaps in R2HE practice and a note on the steps countries, government bodies, corporations, and others can take to ensure a safe, clean, healthy, and sustainable environment for generations to come.
INTRODUCTION

Two decades into the new millennium, humanity stands at a crossroads. As a species, we face overlapping and existential ecological threats; what we do over the course of the next decade will determine whether we head down a pathway of restoration, healing the planetary wounds harming humans and non-humans alike, or one where further environmental degradation and destruction risks ecological collapse, with profound consequences for communities and societies around the world.

To chart a path forward – towards restoration, not collapse – we need at our disposal tools that can target the drivers of these ecological threats – namely, climate change, biodiversity loss, and toxic pollution – and the harms they generate.

The right to a healthy environment (R2HE) is one such tool and, indeed, a powerful one at that.

Most countries around the world recognise the right to a healthy environment through their constitutions, laws, and/or accession to regional treaties incorporating the right – and have done so for years. Moreover, regional treaties already recognise R2HE: the San Salvador Protocol, the African Charter, the ASEAN Human Rights Declaration, and the Arab Charter on Human Rights. R2HE is also included among the economic, social and cultural rights protected by the American Convention.

Recently, this global recognition was bolstered by the UN Human Rights Council and General Assembly, which passed in October 2021 and June 2022, respectively, resolutions formally recognising the right to a healthy environment as an international human right.

Given the widespread recognition of this right, there is a sizable body of practice comprising its judicial and legislative implementation around the world. In other words, courts and legislative bodies have been grappling with how best to implement the right to a healthy environment for years. And that means that efforts to implement and improve compliance with the right to a healthy environment is not starting from square one – far from it.

This report examines this body of practice, namely the features and best practices associated with the global implementation of the right to a healthy environment. In doing so, it aims to contextualise the recent recognition of R2HE, shedding light on how countries, courts, and civil societies can ensure that international R2HE materially improves the lives of individuals and communities around the world. In that spirit, it concludes with recommendations on how countries can strengthen the implementation of R2HE and, in the process, tackle the defining ecological challenges of the twenty-first century.
Recognition that human welfare is dependent on the environment is not new. Quite the opposite – it’s very old for millennia, cultural and spiritual traditions around the world have reflected humanity’s place within the natural world and its web of life and underscored our species’ reliance on the components of nature for survival.

Legal recognition of this link between human wellbeing and the welfare of the natural world, however, has been a more recent development. As the consequences of accelerating economic activity and material consumption have become increasingly apparent in the twenty-first century, government actors around the world have taken steps to integrate concern for the environment into law. In particular, as human rights law matured and environmental destruction and degradation increasingly threatened the panoply of human rights – including the rights to life, health, food, and culture – States around the world recognised a domestic right to a healthy environment in order to preserve, protect, and promote the components of the environment on which all humans depend. For decades, through the adoption of treaties and laws as well as the rulings of courts, a substantial majority of countries have recognised the right to a healthy environment.

And now, with the 2021 Human Rights Council and 2022 General Assembly resolutions affirming the right to a healthy environment, governments around the world have also been vocal regarding interactions between governments, companies, and individuals that may touch upon the R2HE. For example, governments are usually ultimately held responsible for failing to hold corporations to the established rules and regulations and corporations may have their business relations scrutinised.

Because these responsibilities are determined in each respective jurisdiction, a spectrum of responsibilities have been created. Yet, generally speaking, governments have both negative and positive obligations under R2HE. This means that they must, on one hand, refrain from certain actions that would infringe on the various substantive and procedural components of the right and, on the other, take concrete steps to preserve, protect, and promote the right and its components.

Laws and judicial decisions can provide important clarity about the government actors and the responsibilities they have in implementing the right to a healthy environment. A review of such laws and decisions shows that the type of State actors most often held responsible for implementing the R2HE are:

- The overall State;
- Specific branches of government, including:
  - The Executive Branch: the President of the republic, specific agencies, departments and ministries (e.g., Ministry of Environment and Health), Secretaries, the Attorney General;
  - The Legislative Branch;
- Provincial, municipal, city and other local governments, and local government leaders (e.g., mayors and governors).

Some of the specific actions that legislatures and courts have ordered government actors to perform in order to ensure their compliance with the substantive and procedural components of R2HE include:

- Preventing environmental harm via the regulation, supervision and monitoring of State and corporate activities that may threaten R2HE;
- Mitigating and compensating for environmental damage;
- Following or devising and implementing mitigation plans;
- Safeguarding an ecological minimum standard of living;
- Conducting comprehensive and participatory scientific studies to ascertain the extent of environmental and human health damage;
- Abstaining from carrying out actions, infrastructure works or undertakings on Indigenous and protected areas that could affect its existence, value, use or enjoyment by communities;

For the purposes of this report, the varied terminology used in different jurisdictions will be consolidated under the umbrella term “right to a healthy environment” or “R2HE.”

The remainder of this section will cover the who, what, and how of the right to a healthy environment: who has duties under R2HE, what the individual and collective dimensions of the right are, and how R2HE relates to other human rights.
• Abstaining from promoting polluting activities and from ordering, requiring, authorising, tolerating or allowing third parties to carry out actions, infrastructure works or undertakings on Indigenous and protected areas;39
• Ensuring prior, adequate, free and informed consultations to affected communities before any action that could affect R2HE is taken within their territory;40
• Directing multiple levels of government and various types of public institutions on specific principles to territory;40
• Implementation of government recommendations to rectify violations of R2HE, including clean up and remediation of contaminated environments;41 and restoration of public services;41
• Conditioning permits and licenses on alternative methods that are more in line with R2HE;42

The reach of R2HE doesn’t end with government actors, however. Critically, in many jurisdictions, legislators and courts have expressly affirmed that R2HE creates duties for corporations and companies as well. Importantly, in many jurisdictions people and organisations can bring claims against corporations to protect their constitutional right to a healthy environment.43 The importance of this express inclusion of corporations in the ambit of R2HE cannot be overstated given the driving role corporations play in environmental degradation in many contexts.

Company and corporate actors that have been held responsible for implementing R2HE through court rulings range from:

• State-owned companies that provide public services related to R2HE, such as running water and sewer services,44 administrating resources and promoting sustainable development,45 and incentivising transnational trade;46
• Different levels of multinational conglomerates and domestic companies involved in a wide range of activities, such as metal mining,47 oil and gas industry operations,48 lead-acid batteries recycling,49 and the development of sugar plantations;50
• This includes companies identified as ‘Carbon Majors’ – big oil, natural gas, coal and cement companies responsible for a majority of the world’s historic industrial carbon emissions;51
• Owners, directors and shareholders of limited liability companies;52
• Corporate officials that hold permits or licenses under their name, such as when mining officials are holders of mining concessions.53

Most judicial decisions against corporations involve the failure of the procedural requirements of R2HE, for example, the carrying out of an environmental impact assessment,54 the adherence to a public participation requirement,55 or breaching a stop notice that would have harmed biodiversity.56 To remedy these and substantive violations of R2HE, courts have largely ordered:

• Cessation of any acts or omissions violating R2HE,57 including by declaring permits and licenses null and void;58
• Mitigation of environmental harm;59
• Implementation of government recommendations to rectify violations of R2HE, including clean up and remediation of contaminated environments;60 and restoration of public services;61
• Financial compensation to be used in remediation of contaminated environments,62 and the development of sugar plantations;63
• Creation of an action plan that counteracts environmental degradation through police, judicial or administrative measures;64
• Compliance with State and court monitoring requirements on activities that may threaten R2HE;65
• Financial compensation to be used in remediation of the environment and community services.66

While a rare case, the R2HE has also been previously used by companies to protect their own business interests. In South Africa, a national association of gasoline stations successfully convinced the Constitutional Court to prohibit a competitor from opening an oil filling station based on the protection of the right to a healthy environment.67

As the examples above show, legislation and court rulings on R2HE may apply to individuals in their official governmental or corporate capacity. However, individuals in their personal capacity also have their own responsibilities when it comes to ensuring a safe, healthy, clean and sustainable environment for all. Indeed, most global legislation and court rulings emphasise the dual nature of R2HE – while it provides a privilege, it also entails a responsibility.

These laws and rulings also emphasise that all individuals are held responsible for protecting R2HE, especially those whose use of property and economic activities directly or indirectly affect the environment.68 In Bhutan, for example, the Waste Prevention and Management Act reiterates the right to a healthy environment as well as corresponding individual duties to protect the environment, stating that a ‘person has the right to a safe and healthy environment and the corresponding duty to protect and promote the environment as well being of the country’.69 Similarly, the Environmental Code of Burkina Faso affirms the right to a healthy environment while underscoring that all natural and legal persons have a duty to promote
The individual and collective dimensions of the right to a healthy environment

The right to a healthy environment protects people individually as well as collectively.

Individually, the right grants people substantive and procedural guarantees that protect them from harms associated with environmental degradation and destruction, and ensures their access to a safe, clean, and healthy environment in which they can live and satisfy their individual needs.

Collectively, the right protects the access of groups, communities, and generations to healthy, clean, and safe environments in which they can live and satisfy their needs.

Courts around the world have affirmed the individual and collective dimensions of R2HE. Indeed, in a watershed opinion by the Inter-American Court of Human Rights on the relationship between human rights and the environment, the court explained that, “the human right to a healthy environment has been understood as a right that has both individual and also collective connotations. In its collective dimension, the right to a healthy environment constitutes a universal value that is owed to both present and future generations. That said, the right to a healthy environment also has an individual dimension insofar as its violation may have a direct and an indirect impact on the individual owing to its connectivity to other rights, such as the rights to health, personal integrity, and life. Environmental degradation may cause irreparable harm to human beings; thus, a healthy environment is a fundamental right for the existence of humankind.”

Enforcing this, in Brazil, it was the Federal Public Ministry – an arm of the government – that brought a case against an individual for violations of R2HE. In this case, the court issued a preliminary decision ordering a farmer to remove a cattle herd that caused deforestation on the farms he was occupying and exploiting illegally in violation of the constitutional right to a healthy environment. In this way, the court emphasised the role that individuals, especially in their use of property, have to play in respecting the environment and others’ fundamental rights.

A healthy environment. And likewise, Eritrean law provides that environmental governance must comply with environmental rights and duties, noting specifically that ‘every person in Eritrea has the right to a clean, healthy and scenic environment and the corresponding duty to protect the environment against pollution and degradation as well as to contribute individually and/or collectively to the maintenance and enhancement of the environment.”

Guangaje, Ecuador. Photo by Azzedine Rouichi on Unsplash.
The Bolivian Constitution recognises the dual dimensions of the right as well, declaring that ‘[p]eople have a 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 to other living beings, so they may develop in a normally and permanent way.’

And, in a recent decision, the Constitutional Court of Ecuador similarly affirmed the two dimensions of the right, underscoring in particular that, ‘the right to a healthy environment is recognised to each person in a particular way, but at the same time . . . from a collective notion, which encompasses the population as a whole.

This collective notion also refers to the recognition of the ownership of this right to population groups in relation to the environment in which they find themselves. In this last sense, the ownership of communities, towns, cities or other jurisdictions may be considered, cities or other jurisdictions.’

The right to a healthy environment and its relationship to other rights

The right to a healthy environment does not exist in isolation: R2HE and other universal human rights are interrelated and interdependent, as has been repeatedly affirmed by courts and lawmakers around the world. Violations of the right to a healthy environment, moreover, often generate harms that, in turn, violate core rights like the rights to life, health, and livelihood. Indeed, in a case dealing with the toxic pollution of the Atrato River and surrounding area due to illegal mining, the Constitutional Court of Colombia made clear that environmental degradation that violates the right to a healthy environment can also violate other fundamental rights, like the rights to food and health. It stated, ‘the protection of the environment as a constitutional right [is] intimately linked with life, health and physical, spiritual and cultural integrity.’

a. Putting the right to a healthy environment on par with other rights and concerns

Though R2HE is indeed inextricably linked to other fundamental human rights, it is – crucially – just as vital as other core rights. One of the benefits of the formal recognition of the right to a healthy environment is that it reinforces R2HE’s status as a co-equal right. In other words, formal recognition of the right to a healthy environment puts it on par with other rights and concerns. This means that in specific instances where R2HE conflicts with other rights, especially those related to the disposition of property and economic development, the former does not always concede to the latter.

In a watershed opinion by the Inter-American Court of Human Rights on the relationship between human rights and the environment, the court explained that, ‘the human R2HE has been understood as a right that has both individual and also collective connotations...’ Indeed, there are many instances in which courts have found that the right to a healthy environment takes precedence over corporate and economic activity. The Constitutional Court of Hungary, for example, found that steps taken by the government to increase the amount of land open for development – namely, by incorporating land in protected natural areas into acquirable land – violated R2HE because it reduced environmental protection without being necessary to secure another constitutional aim or right.

In the Philippines, moreover, the Supreme Court upheld the government’s cancellation of timber licenses as part of its administrative effort to review license grants given increased concern over the destruction of domestic forests. In doing so, the court emphasised that, ‘[w]hile there is a desire to harness natural resources to amass profit and to meet the country’s immediate financial requirements, the more essential need to ensure future generations of Filipinos of their survival in a viable environment demands effective and circumspect action from the government to check further denudation of whatever remains of the forest lands. Nothing less is expected of the government, in view of the clear constitutional command to maintain a balanced and healthful ecology.’

In the context of South Africa, Costa Rica, Chile, Guatemala and Colombia, among others, have all also affirmed the high-level importance of the right to a healthy environment, demonstrating in specific cases that it often takes precedence over competing concerns, including economic activity and financial gain.
In Colombia, courts have specified the precise substantive content of R2HE, explaining that the right means that states must:

1. Protect environmental diversity and integrity,
2. Safeguard the natural wealth of the Nation,
3. Conserve areas of special ecological importance,
4. Promote environmental education,
5. Plan the management and use of natural resources in order to guarantee its sustainable development, its conservation, restoration or substitution,
6. Prevent and control the factors of environmental deterioration,
7. Impose legal sanctions and demand the reparation of the damages caused to the environment and
8. Cooperate with other nations in the protection of ecosystems located in border areas.

The R2HE contains both substantive and procedural elements. A component of the right is substantive – instead of procedural – when it provides a guarantee of a baseline, material outcome. Procedural components of the right, on the other hand, are outcome-neutral: they guarantee the use of and access to certain processes, not particular outcomes from those processes.

This section focuses on the substantive elements of the R2HE, as identified in domestic laws and judicial decisions around the world. Case law on the substantive components of R2HE is especially instructive, as many courts have expressly identified the different legal guarantees protected by the right.
Similarly, the Inter-American Court of Human Rights addressed the substantive obligations associated with the right to a healthy environment in its 2017 Advisory Opinion on the Environment and Human rights, noting that the right involves the following obligations: (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.87

The right’s substantive guarantees have both negative and positive dimensions, meaning that R2HE both prohibits States and other actors from taking certain actions that would degrade and destroy the environment while also requiring that governments and other actors take affirmative actions to protect and preserve environmental quality and prevent and redress environmental harms. These two dimensions of R2HE were highlighted by the Peruvian Constitutional when it explained that the negative dimension of R2HE required individuals and the State to, 'abstain from carrying out any type of act that affects the balanced environment adequate for the development of human life' while the positive dimension "imposes on individuals and the State tasks or obligations aimed at conserving the balanced environment, which are translated, in turn, into a set of possibilities. This not only implies conservation tasks, but also prevention and, evidently, repair or compensation for damage caused."90

The remainder of this section examines the specific substantive obligations that have been identified by courts and legislatures around the world through the steps they have taken to actualise the right to a healthy environment.

Ecosystems provide people and communities with a range of outputs that make human society possible—from clean water and food to pollination and waste regulation. These benefits are called ecosystem services. Unhealthy and unstable ecosystems cannot provide robust ecosystem services, which endangers the ability of people and communities to satisfy their basic needs.

As a result, the right to a healthy environment protects ecosystems, including their integrity and capacity to self-regulate. Given the negative and positive dimensions of this right in practice, States and other actors must, on one hand, refrain from taking actions that disrupt ecosystems and their ability to self-regulate and regenerate,94 and on the other, take steps to protect and preserve ecosystems and their well-being. R2HE, in other words, entails an obligation to 'ensure the preservation of ecology and life,' as noted by the Constitutional Court of Guatemala.91 Explaining this in more detail, the Constitutional Court affirmed that 'the preservation of the ecological balance entails taking the necessary measures to prevent damage to the environment and, if damage was caused, those that are necessary to restore that balance.'91

If ecosystems are especially fragile or particularly important – due to, for example, their status as a biodiversity hotspot – States, corporations, and individuals are subject to heightened requirements. This means that State and non-State action that interferes with the health of special or fragile ecosystems is subject to stricter scrutiny and greater restrictions while at the same time requiring that States and others take more substantial actions to conserve these ecosystems and prevent harm. In Colombia, for example, the right to a healthy environment entails a State obligation to ‘conserve areas of special ecological importance,’ like the Páramo.92

Legislation and policy, in addition to court rulings, emphasise the importance of protecting the integrity of ecosystems as part of the actualisation of the right to a healthy environment. The Environmental Bill of Rights for the Canadian province of Ontario, for example, provides that the right to a healthful environment includes ‘the protection and conservation of natural resources, including plant life, animal life and ecological systems’ and ‘identification, protection and conservation of ecologically sensitive areas or processes,’ in addition to the protection and conservation of biological diversity, protection against harmful pollution, and the wise management of natural resources.93
The protection of biodiversity within and across ecosystems

The protection and preservation of biodiversity within and across ecosystems is also a core substantive component of the right to a healthy environment. Though court rulings across jurisdictions affirm the importance of preserving biodiversity as part of the right to a healthy environment, legislation around the world has been especially proactive in defining the steps that must be taken to protect and promote biodiversity.

In Côte d’Ivoire, for example, the country’s Environmental Code identifies biological diversity – which it defines as, ‘the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and ecological complexes... this includes diversity within species, between species and of ecosystems’ – as a core component of the natural environment to be protected by the right to a healthy and balanced environment. To that end, the Environmental Code provides that ‘[a]ny action must avoid having significant adverse effects on biological diversity.’

The Environmental Code of the Central African Republic likewise includes biological diversity as a component of the natural environment protected by the right to a healthy environment. It then lists the actions that the government should take to protect biodiversity and safeguard against biodiversity loss, including, ‘the protection of fauna and flora [and] the creation and management of protected areas.’

Legislation in Brazil, South Africa, Spain, Cuba, and Canada also outline the importance of biological diversity to the maintenance of a healthy environment, as protected by R2HE, and direct the government to take certain steps – like, creating protected areas and implementing biodiversity plans – to conserve biodiversity. These are only a few examples – many other laws demonstrate the affirmative steps countries can take to realise the biodiversity component of the right to a healthy environment.

The protection of biodiversity has also been at the centre of court adjudications throughout the world. The Brazilian Constitutional Court, for example, has emphasised the relevance of the protection of Amazon flora and fauna biodiversity for the fulfilment of the fundamental right to a healthy environment of all people – with a special emphasis on Indigenous communities and future generations. In an attempt to curb deforestation, the court also emphasised that violations of R2HE produce irreversible effects upon humans and non-humans alike.

In brief, this body of practice means that State and corporate actions are subject to restraint if those actions interfere with the diversity of species within and across ecosystems. Projects, for example, may be halted or required to change if they unduly interfere with biodiversity. On the flip side, States and others are also required to take affirmative steps to conserve and promote biodiversity, including through the regulatory apparatuses established through legislation.
The protection of the climate system and its integrity

The climate system is intimately entangled with the health of ecosystems: as the former destabilises, the latter diminishes, generating a whole range of environmental harms for people and communities. As a result, the right to a healthy environment protects the integrity of the climate system – locally, regionally, and globally. And by extension, it also encompasses safeguards against climate change.

Courts around the world have recognised the climate protections embedded in the right to a healthy environment, often in rights-based climate cases argued on the basis of R2HE. In *Greenpeace Mexico v. Ministry of Energy*, for example, a Mexican appeals court affirmed that two electricity sector policies that reduced the availability of renewable energy violated the right to a healthy environment in part by undermining needed greenhouse gas emission reductions.104

In *Future Generations v. Ministry of the Environment and Sustainable Development* – wherein Colombian youth sued their government for its failure to fulfil its commitment to reduce deforestation in the Amazon to net zero – the Colombian Supreme Court of Justice found that deforestation in the Amazon infringes upon young and future generations’ right to a healthy environment, among others, in part due to the climate impacts associated with such deforestation.105

In their complaints, moreover, plaintiffs all over the world invoke the right to a healthy environment to secure action on climate change.106

Legislation can help actualise the climate guarantees associated with the right to a healthy environment by codifying obligations States and others are required to meet to reduce greenhouse gas emissions, protect the climate system, and prevent dangerous climate change. North Macedonia’s Law on the Environment, for example – created ‘for the purpose of exercising the right of citizens to a healthy environment’ – details steps the government will take to protect the climate system, including the adoption of a national plan for the mitigation of climate change.107

Legislation can help actualise the climate guarantees associated with the R2HE by codifying obligations States and others are required to meet to reduce greenhouse gas emissions, protect the climate system, and prevent dangerous climate change.
The protection against toxic pollution of the land, water, and air

The right to a healthy environment protects peoples’ access to clean water, land, and air. Because toxic pollution threatens this access, protection against it constitutes a substantive guarantee of R2HE. Courts and legislatures have made this clear. Judges have instructively refined the scope of protection against toxic pollution provided by the right, while legislators have demonstrated through law and policy the actions that can and should be taken to prevent, tackle, and remedy toxic pollution.

In Luyara Odando v. National Management Environmental Authority, a case that challenged the pollution of the Nairobi and Athi rivers as well as local air pollution from toxic dumping and industrial activity, the Kenyan Environment and Land Court found that the government failed to stop the alleged water and air pollution and was therefore responsible for violating the plaintiffs’ constitutional R2HE. In doing so, the court explained that the right to a healthy environment obligates the State and its agencies to act to ‘eliminate processes and activities that pollute the environment.’

As a result, the court issued a series of orders requiring government agencies to take steps to eliminate the contested water and air pollution, including through the creation and implementation of a plan and strategy for the clean-up. The African Commission on Human Rights, likewise, has affirmed that the right to a healthy environment imposes clear obligations on States to ‘take reasonable and other measures to prevent pollution and ecological degradation.’

More generally, in Henares et al v. Land Transportation Franchising and Regulatory Board and Department of Transportation and Communications, the Supreme Court of the Philippines recognised the right to clean air under the constitutional right to a balanced and healthful ecology. The Court went to ‘reaffirm the premium [they] have placed on the protection of the environment.’

Robust legislation from around the world has added specificity to the scope of protection against toxic pollution offered by R2HE by codifying the steps that can and should be taken to realise this particular guarantee. Legislation, moreover, often focuses on tackling a particular component of the pollution problem – waste pollution, air pollution, water pollution, and so on – which can clarify the regimes that operate to address each type of toxic pollution. Laws in South Africa and Mexico, for example, are designed to specifically target and remedy pollution stemming from waste.

Beyond issue-specific laws, environmental framework legislation also requires the government to take definitive steps to reduce and eliminate pollution, including through the support of implementing mechanisms or institutions. For example, in Guinea-Bissau, Law 1/2011 provides that ‘all people have the right to a humane and ecologically sound environment’ while simultaneously laying down the framework to guide the management of different forms of pollution, including waste, noise, and chemical pollution.

The South Korean Framework Act on Environmental Policy – which provides that ‘all citizens shall have the right to live in a healthy and agreeable environment’ – takes a similarly broad approach to the forms of pollution it subjects to government management, defining environmental pollution as ‘air pollution, water pollution, soil pollution, sea pollution, radioactive contamination, noise, vibration, malodor, sunshine obstruction, light pollution from artificial lighting and other similar pollution caused by industrial activities and other human activities, which are such conditions as inflict damage on human health or the environment.’ The framework law then specifies the obligations with which the State, business entities, and individuals must comply to prevent and mitigate environmental pollution.

The protection of the environmental minimum

The right to a healthy environment guarantees a minimum environmental quality. In other words, it obliges States to guarantee a baseline environmental quality that allows people to meet their basic needs and live lives of dignity. Court decisions have specifically instructive on this substantive component of R2HE. The Constitutional Court of Hungary, for example, outlined this component when it noted that, ‘the constitutional right to a healthy environment entails the responsibility of the State to protect the environment and maintain the natural basis of life... [the] right to a healthy environment guarantees the physical conditions necessary to enforce the right to human life.’

Likewise, the German Constitutional Court in Neubauer v. Germany recognised the existence of ‘a right to an ecologically minimum standard of living’... which is derived among other things from the ‘minimum standard of living consistent with human dignity’... guaranteed under Art 1(1) in conjunction with Art. 20(1) GG [provision on environmental protection], whereby minimum ecological standards are regarded as a precondition for a minimum standard of living... It is true that physical survival or even the possibilities for cultivating interpersonal relationships and taking part in social, cultural and political life... could not be guaranteed by economic safeguards alone if the only environment available for this purpose has been radically altered by climate change and had become toxic by human standards.’ Many other courts, moreover, address this environmental minimum in their rulings by reference to the minimum conditions that are guaranteed by R2HE.
The duty to regulate

Pursuant to the right to a healthy environment, States have an obligation to regulate. In other words, States must actually create, implement, and enforce laws, policies, regulations, and programmes designed to protect the components of a healthy and safe environment, including the climate system, biodiversity, and clean water, land, and air.

The Philippines’ Supreme Court, for example, has noted that governmental compliance with the right to a healthy environment is shown, in part, through the active implementation of projects and programmes that target environmental harms, like air pollution.120

Laws around the world, moreover, reference this duty as a motivating force for their adoption. The Environmental Base Regulations of Timor-Leste, for example, state that, ‘[i]t is incumbent upon the State, in promoting a healthy and ecologically balanced environment conducive to the health and well-being of people and in the preservation and sustainable use of natural resources, to define and implement environmental policy, legislation, programmes, plans and projects that aim.’ 121 Similarly, Tajikistan’s Law on the Protection of the Environment provides that, in order to protect the right to a healthy environment, achieve sustainable development, and implement international environmental law, ‘programs, concepts, strategies, as well as action plans based on them, are developed, providing for measures for environmental protection, sustainable and rational use and restoration of natural resources, [and the] improvement of the environment in the long term.’ 122

Protecting vulnerable groups

Though all humans depend on the natural world to satisfy their basic needs, certain groups of people are especially vulnerable to impacts of environmental destruction and degradation. Those groups include children, the elderly, minority communities, Indigenous and traditional communities, and individuals with disabilities, among others.

As a result, States and other actors must take more robust steps to protect vulnerable groups from environmental harms. This, again, includes negative and positive dimensions: refraining from actions that would unreasonably infringe on vulnerable groups’ access to a clean and safe environment while taking affirmative steps to protect and promote this access.

Vietnam’s Law on Environmental Protection, for example, provides that, ‘[e]nvironmental protection serves as a basis, key factor and prerequisite for sustainable socioeconomic development. Environmental protection activities are associated with economic development and natural resource management, and considered and assessed in the process of carrying out development activities. Environmental protection harmonises with social security, protection of children’s right, promotion of gender equality and protection of the human right to live in a pure environment.’ 125

Case law helps paint a picture of what this vulnerability looks like in practice. The Inter-American Commission of Human Rights, for example, explored how the Brazilian State’s environmental destruction of Alcântara Quilombola (afro-descendant) land affected various local ways of subsistence in a context of various vulnerabilities. It pointed out that environmental destruction, which is often discriminatory and of unequal effects, in turn deepened these communities’ systematic discrimination, territorial defencelessness and lack of access to justice, as well as the neglect, indifference, and failure of the State in solving problems for these poor and historically excluded communities.126
Incorporating and ensuring compliance with international law standards and commitments

To fully realise the right to a healthy environment, domestic law and policy should incorporate and be consistent with international law commitments and standards. Biodiversity and climate change, for example, are both the subject of major international framework agreements – the Convention on Biological Diversity (CBD) and the UN Framework Convention on Climate Change, respectively. Domestic law on biodiversity and climate change should reflect and incorporate the standards and principles set by these treaties as well as commitments made by States pursuant to them.

Courts around the world have recognised the importance of harmonising domestic law with international law when it comes to the right to a healthy environment. In Earthlife Africa Johannesburg v. Minister of Environment, for example, the High Court of South Africa ordered the Minister of the Environment to reconsider the environmental authorisation granted to a coal-fired power plant, requiring him to specifically consider the requirements of international conventions and standards.128 In Mexico, the First Circuit Collegiate Tribunal used international climate law – including the UN Framework Convention on Climate Change and the Paris Agreement – as part of its analysis that ultimately found that energy policies diminishing the availability of renewable energy violated the right to a healthy environment.129 In Colombia, the Supreme Court held that despite the ‘international instruments that make up the global ecological public order’, the government failed to effectively tackle deforestation in the Amazon.130 In Ecuador, the Constitutional Court noted that the protection against pollution offered by the right to a healthy environment is meant to be ‘in line with the international instruments developed to mitigate the effects of pollution, such as the United Nations Convention on Climate Change and the Kyoto Protocol, of which Ecuador is a part.’131 Similarly in Latvia, the Constitutional Court recognised that the right to a healthy environment is found in international agreements that were binding on Latvia.132

Legislation has given effect to this substantive component of R2HE by translating international law into domestic law. Turkmenistan’s Law on Environmental Safety, for example, provides that, ‘[r]eforms and regulations in the field of environmental safety are developed on the basis of modern achievements in science and technology in the field of environmental safety, taking into account the requirements of international conventions and standards’ while also prohibiting activities that allow the ‘implementation of activities that contribute to global negative changes in the environment and its components, including activities carried out in violation of international treaties of Turkmenistan in the field of environmental safety.’133 In Cuba, Law No. 81 (Environmental Law) confirms and implements the right to a healthy environment while also affirming that the ‘State shall promote and participate in international agreements and actions for the protection of the environment, particularly those that include the Latin American and Caribbean region, cooperating in a spirit of global solidarity to conserve, protect and restore the global environment and guarantee the national implementation of said decisions.’134 These, importantly, only represent two examples among many others.
Other potential substantive components of the right to a healthy environment

While there does not yet exist legislation or case law explicitly incorporating these elements into the right to a healthy environment, legislation and courts have emphasised their clear connection and often observe a violation of R2HE and the independent rights to food and water in the same decisions. In Center for Social Justice Studies v. Presidency of the Republic et. al, for example, the Colombian Constitutional Court held that mining and illegal logging in the Atrato River amounted to a violation of R2HE and food security, among others.137

The court further stressed that the protection of water, forests and food security and sovereignty are intimately related and interdependent to the preservation of the environment.138

PROCEDURAL COMPONENTS OF THE RIGHT TO A HEALTHY ENVIRONMENT

As explained above, procedural rights differ from substantive rights insofar as they guarantee adherence to certain processes, not particular outcomes from the use of these processes. Nevertheless, adhering to them improves decision-making, thus amplifying the likelihood of outcomes that are better for people and the environment.

Courts and lawmakers around the world have specified and refined the scope of procedural protections provided under the right to a healthy environment. Also, international and regional treaties on the environment and human rights further establish procedural protections pursuant to R2HE. Indeed, procedural guarantees and rights are the focus of regional treaties regarding the environment: the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)138 and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).143

At the domestic level, the Law on Environmental Protection in Belarus, for example, lists procedural rights citizens have pursuant to the right to a healthy environment, including the right ‘to compensation for harm caused by the violation of this right, as well as to receive, store and disseminate complete, reliable and timely environmental information;’ the right to ‘participate in public discussions of draft environmentally significant decisions, environmental impact assessment reports, environmental reports on strategic environmental assessment;’ and the right to ‘make proposals on conducting a public environmental review and participate in its conduct in the manner prescribed by the legislation of the Republic of Belarus.’141 Similarly, the Constitutional Court of Latvia, citing the Aarhus Convention, held that the right to a healthy environment included ‘three procedural elements – first, the right to access to information on the environment, second, the right to participate in environmental decision-making, and third, the right of access to the courts in environmental matters.’142

This section examines the procedural components of the right to a healthy environment, as defined by legislative and judicial practice around the world.
Environmental Impact Assessments

Environmental Impact Assessments (EIAs) are, in many ways, the cornerstone of environmental law, especially domestically. EIAs, in essence, are analyses performed to guide decision-making with respect to actions that may damage or otherwise impact the environment. They help governments make reasoned and informed decisions when considering whether to authorise actions – for example, project development by corporations – by ensuring that the environmental risks associated with the activities are catalogued and considered.

In order to ensure reasoned decision-making, moreover, governments and corporations are generally required to follow certain norms in composing and analysing environmental impact assessments. For example, governments must review EIAs as a whole, not in a fragmented manner that undervalues the cumulative and synergistic environmental impacts of the proposed action. EIAs must also consider risks to components of the environment that are the subject of substantive guarantees under R2HE, including climate and pollution, among others.

Legislation that affirms the right to a healthy environment often also details requirements for environmental impact assessments. The Dominican Republic’s Law on the Environment and Natural Resources, for example, both affirms R2HE and comprehensively details the environmental impact assessment process that will apply to activities and projects with potential environmental consequences, including agro-industries, mining projects, thermoelectric plants, and tourist development. Likewise, Hungary’s General Rules of Environmental Protection also reiterate the right to a healthy environment while providing rules for environmental impact assessments. In Brussels, the Constitution Court found that a Belgian town and country planning code violated the Constitution when it failed to provide for an environmental impact assessment procedure that satisfied the relevant requirements of the Aarhus Convention.

Access to information

States and other actors must ensure that people and communities have access to information on the environment and actions taken or contemplated that may impact it, especially when those people and communities are specially impacted by potential or ongoing actions.

Courts around the world have affirmed the right to obtain environmental information pursuant to R2HE, underscoring in the process the importance of this procedural guarantee. The Constitutional Court of Latvia, for example, noted that the constitutional right to a healthy environment ‘endows the individual with the right of obtaining information on the environment and cooperating in the process of adoption of decisions on environmental issues.’ This, in turn, means that the State must ‘efficiently inform society about its rights and possibilities of receiving information on environment and participation in making the decisions – shall evaluate the viewpoints, expressed by it. The main objective of the mandatory, determined by the law public participation is to ensure that the best possible decision is taken in the interests of the public and objections of every person shall be evaluated and as much as possible taken into consideration.’ The Argentinian Supreme Court of Justice has likewise demonstrated that access to information is a key component of the right to a healthy environment through remedies issued in cases dealing with environmental harms. And the European Court of Human Rights, among other examples, has also affirmed the duty to inform the public, including publicising the results of impact assessments, as part and parcel of the right to a healthy environment.
Avenues for participation

People and communities have a right to participate in decision-making on actions, activities, and projects that may impact their environment. In addition to supporting democratic decision-making, this right of participation also helps to ensure that governments make the best possible environmental decisions by incorporating diverse and affected voices into the decision-making process.

Both courts and legislatures have consistently affirmed the right to participate as a core component of the right to a healthy environment. The Latvian Constitutional Court, for example, emphasised the public’s right of ‘participation in the process of taking decisions on activities in the sphere of the environment,’ including in decisions related to hazardous waste incineration. The court stated, ‘public participation shall serve two main objectives: first of all to obtain information, which advances taking a motivated and fair decision, secondly, to convince the public that the viewpoints, expressed by it are being taken into consideration.’

The Czech Constitutional Court similarly held that non-governmental organisations promoting environmental protection shall be deemed to have an interest in environmental decision-making based on its interpretation of the Aarhus Convention. Meanwhile, legislation in Haiti, among many other examples, provides for participation in environmental governance, including the evaluation of environmental impact assessments. And legislation in Lithuania requires that ‘State authorities, administrators, and inspectors, pursuant to their jurisdiction... encourage the participation of citizens and public organisations in environmental protection.’

Environmental activist and geographer Hindou Oumarou Ibrahim speaks at TEDWomen 2019: Bold + Brilliant, in California. Photo: Marla Aufmuth / TED
Access to justice and effective remedy

Given R2HE’s status as a human and, in many countries, constitutional right, people are entitled to have their claims of R2HE violations heard and resolved by courts. In other words, they have a right to access justice for infringements of the right to a healthy environment. In Mexico, various courts have recognised that the Escazú Agreement establishes that access to justice in environmental matters is a crucial procedural component of R2HE, and that disregarding this component constitutes a violation of the right. The courts have further emphasised the importance of guaranteeing the right of access to justice by, among other measures, allowing for broad active legal standing in cases relating to the defence of the environment.

Similarly in Latvia, the Constitutional Court held that R2HE applies directly and immediately, and a person has the right to address the court on action or inaction that violates this right.

Legislation around the world has been particularly clear on that front, specifying and codifying this procedural component of the right to a healthy environment into law. For example, Bhutan’s National Environmental Protection Act provides that “any person aggrieved by a decision taken under this Act may appeal to the [National Environmental] Commission. The person aggrieved may challenge the substantive and procedural legality of any decision, act or omission.” A decision of the Commission can, in turn, be appealed to the High Court. And in addition to this right of appeal, the law also provides citizens with a right to seek review, providing that: “[t]his right of access to a review procedure shall apply in particular to any person who considers that: (a) a request for information has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with; and (b) a decision, act or omission has otherwise impaired his or her rights.”

The Environmental Code of Burkina Faso, meanwhile, provides that “everyone has the right to a healthy environment. To this end, [one] may lodge a complaint with the competent administrative or judicial authorities in order to put an end to the nuisances generated by the activities which disturb the tranquillity, undermine public safety or health. The administration is required to respond to his request.”

COP 26 1.5 Action by YACAP and 350 Filipinas volunteers held at the Commission on Human Rights of the Philippines on Dec 11, 2020.

Photo by 350.org
Monitoring is a key procedural support for the on-the-ground implementation of the right to a healthy environment, since it ensures that there is actual compliance with laws and orders meant to protect and promote the right to a healthy environment.

The African Commission on Human Rights and Peoples’ Rights, for example, has noted that monitoring constitutes an important component of compliance with the right to a healthy environment, providing specifically that government compliance with R2HE requires ‘ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.’

Legislative schemes implementing the right to a healthy environment, moreover, often require governments to undertake different forms of monitoring and establish mechanisms to facilitate the monitoring of domestic environmental quality – including, for example, Ethiopia’s 1997 Environmental Policy.

Governments have a duty to cooperate to implement the right to a healthy environment that applies both domestically and internationally.

Domestically, the various organs and agencies that comprise a government are required to cooperate to address the myriad challenges that impact the right to a healthy environment and to develop and implement policies, programmes, and projects that help realise the right to a healthy environment.

Internationally, States are required to cooperate with each other to reach agreements that tackle the various threats that endanger the right to a healthy environment, including those of a transboundary and global nature. Once States have defined their obligations, States must cooperate to fully implement those agreements and ensure they run smoothly.

Legislation that implements the right to a healthy environment has also affirmed this two-prong duty to cooperate. The Eritrean Environmental Protection, Management and Rehabilitation Framework, for example, is intended, in part, to ‘set up the basis for Eritrea’s effective contribution to and benefit from international cooperation in the global efforts for environmental protection.’ In Portugal, the Basic Law on the Environment explicitly requires the government to pursue international collaboration on environmental matters.

The Environmental Base Regulations of Timor-Leste, moreover, state that ‘public entities [addressed in this law] have the duty to collaborate and cooperate with the government department responsible for the environment, regarding the implementation of the environmental policy in order to guarantee unity and uniformity in its application.’

Environmental education has been identified around the world as an important procedural component of the right to a healthy environment.

The Law of Georgia on Environmental Protection, for example, provides that every citizen has a right to receive an ‘ecological education and raise their environmental awareness.’ That law continues by establishing that a “unified system of environmental education shall be set up in order to raise the environmental awareness of society and train relevant specialists. The system includes a network of educational institutions, personnel training and qualification upgrading institutions.”

Similarly, in Indonesia, the Environmental Management and Protection Act specifies that ‘[i]n protecting and managing the environment, the government shall be assigned and authorised to... provide education, training, fostering and appreciation’ while at the same time affirming that ‘[e]verybody shall be entitled to environmental education, information access, and participation access and justice access in fulfilling the right to proper and healthy environment.’

And likewise, in North Macedonia, the Law on the Environment emphasises the importance of environmental education and includes a number of provisions to facilitate access to environmental education and improve ecological awareness.

Finally in Colombia, the Supreme Court held that the constitutional mandate to protect the environment requires the State to, inter alia, promote environmental education.
Cross-cutting principles provide conceptual clarity to the right to a healthy environment and shape its implementation across jurisdictions. Courts and legislatures around the world have applied these principles in specific contexts and to particular problems in order to guide their decision-making and ensure that State and non-State action is consistent with the right to a healthy environment. International and regional treaties governing environmental and human rights also mention such principles as key in guiding their implementation.

**The precautionary principle**

The precautionary principle provides that uncertainty about the exact consequences of a particular action or process does not justify failing to implement measures to combat associated environmental degradation and destruction if there is a risk of serious and/or irreversible harm. In other words, in the face of scientific uncertainty, authorities should still take measures to address environmental threats. The precautionary principle is one of the most widely cited principles of environmental law, and it guides the implementation of the right to a healthy environment.

Courts around the world have employed the precautionary principle to adjudicate the validity of government and corporate action that impacts the environment, often finding that application of the principle ultimately requires the challenged action to stop or that certain remedies be issued to ameliorate environmental harm.

The Kenyan Environment and Land Court, for example, has found that, in the context of environmental governance and the right to a healthy environment, the precautionary principle dictates that the State has a duty to prevent environmental harm and health risks as well as conduct that may be harmful even where conclusive scientific evidence regarding the harmfulness is not available. The (government) must take precautionary actions aimed at reducing exposure to potentially harmful substances, activities and conditions to minimise significant adverse effects to health and the environment... One way of implementing the precautionary principle is by shifting the burden of proof to the polluters and exploring alternatives to the harmful actions... The precautionary approach to be adopted by the State should focus on how much harm can be avoided rather than consider how much can be tolerated.

A Colombian court, moreover, has illustratively explained that the ‘spirit of this principle of prevention or precaution requires acting before the damage occurs, taking all possible measures, at the slightest evidence of damage to health, the environment or the life of people or living beings that are affected.’

Legislation intended at least in part to implement the right to a healthy environment very often explicitly adopts the precautionary principle as a guiding norm for environmental governance. This is the case in Burkina Faso, Cameroon, Finland and the Philippines, among many other examples around the world.
The prevention principle

According to the principle of prevention, States and other actors must take meaningful steps to avoid environmental harms before they occur.

Argentinian courts have, for example, confirmed that the right to a healthy environment requires the government to take preventative action against environmental degradation and damage.\textsuperscript{188} The Inter-American Court of Human Rights has, moreover, provided more detail on the precise operation of this principle, explaining that ‘the principle of prevention of environmental harm forms part of customary international law and entails the State obligation to implement the necessary measures ex ante to stop any environmental degradation that could cause significant harm to the environment.’\textsuperscript{189}

The principle of non-regression protects against backsliding in environmental management and the implementation of the right to a healthy environment. Specifically, it provides that, generally speaking, governments cannot reduce existing levels of environmental protection unless necessary to protect another fundamental right. And in instances where such reductions are necessary, it must be in proportion to the goal to be achieved.

In the first case to annul a law for violating the principle of non-regression, the Belgian Constitutional Court held that a new version of a law that regulated the development zone of an industrial nature without providing for an environmental impact assessment was unconstitutional because it allowed the transfer of a degree of protection already achieved unless the conditions are such that would also allow restrictions from a degree of protection already achieved unless the conditions are such that would also allow restrictions of individual fundamental rights. The enforcement of the right to a healthy environment constitutionally obliges the State - so long as legal protection is indeed necessary - not to regress from a degree of protection already achieved unless the conditions are such that would also allow restrictions of individual fundamental rights. The enforcement of the right to a healthy environment by upholding the degree of protection also compels the State not to regress from preventive rules of protection to protection ensured by sanctions. Similarly to the previous rule, any action by the State contrary to this requirement must be compelled by unavoidable necessity and proportionate with this necessity.\textsuperscript{192}

The polluter pays principle

Indeed, there are objective criteria - a range of which are defined as mandatory by international norms - which in effect prescribe the necessity of the protection of nature. Environmental damage destroys non-renewable resources, is often irreparable, and the neglect of environmental protection sets in motion irreversible processes. The enforcement of the right to a healthy environment thus cannot be subjected to such quantitative and qualitative fluctuations caused by economic and social circumstances as that of social and cultural rights, in the case of which restrictions arising from circumstances may subsequently be redressed. Due to these distinct features, prevention has precedence over all other means to guarantee the right to a healthy environment, for subsequent penalties for irreparable damages cannot ensure restoration of the original condition. The enforcement of the right to a healthy environment constitutionally obliges the State - so long as legal protection is indeed necessary - not to regress from a degree of protection already achieved unless the conditions are such that would also allow restrictions of individual fundamental rights. The enforcement of the right to a healthy environment by upholding the degree of protection also compels the State not to regress from preventive rules of protection to protection ensured by sanctions. Similarly to the previous rule, any action by the State contrary to this requirement must be compelled by unavoidable necessity and proportionate with this necessity.\textsuperscript{192}

The polluter pays principle provides that the entities that pollute, whether it be land, air, water, or food, bear the responsibility to remedy harms to humans and the environment generated by this pollution. Courts around the world – ranging from India to Argentina and Kenya – have used the polluter pays principle to issue rulings on liability for environmental harms and craft orders to remedy them. In the Indian case, the National Green Tribunal found that black carbon produced through vehicle use was a major factor in the melting of glaciers in the Himalayas and affirmed that the polluter pays principle applied to the State government.\textsuperscript{196} In Argentina, the court analysed the norms in the Constitution relating to environmental law and the polluter pays principle, and held that a municipality has the duty to control that the public highway remains in such conditions that people can travel through it safely.\textsuperscript{197} In the Kenyan case, the Land and Environment Court upheld a lower court decision ordering a county government to restore the environment harmed by its project on the basis of the polluter pays principle, despite the government’s complaint that the costs of restoration were burdensome.\textsuperscript{198}

In a similar manner, the High Court at Nairobi applied the principle to individuals. It rejected the argument by property owners that the cost of environmental restoration due to discharge of liquid wastewater from septic tanks into the open environment and the river would be beyond them, because ‘there is no price for the lives of people downstream whose lives are endangered by the pollution.’\textsuperscript{199} Legislation has in many places – including, for example, Chad\textsuperscript{200} and Romania\textsuperscript{201} – identified the polluter pays principle as a norm that should guide decisions and methods of enforcing the right to a healthy environment.
Sustainable development

According to the principle of Sustainable Development, States should pursue measures that allow present generations to meet their needs but do so without compromising the ability of future generations to also meet their needs. In other words, it recognises the need for economic development to ensure fundamental rights – including the rights to livelihood, health and R2HE – are fully realised, while also protecting the conditions necessary to support future generations and their rights.

Courts around the world have highlighted the relevance of the principle of sustainable development in decisions on the right to a healthy environment. In many Latin American jurisdictions, for example, the principle has served as guidance for States to ease the tension between the protection of the environment and economic development. The Constitutional Court of Colombia explained that, “the economic development-conservation and preservation of the environment tension, which in another sense corresponds to the economic welfare-quality of life tension, has been decided by the Constituent in a balancing synthesis that underlies the idea of sustainable economic development enshrined in various ways in the constitutional text.”202

Along similar lines, the Constitutional Court of Peru clarified that “the perspective of sustainable development seeks to balance the scheme of the social market economy with the right to live in a balanced and adequate environment. It is a maximisation of profits or utility against the quality of the environment that suffers the wear and tear of economic activity. In this sense, with the principle of sustainability (article V of the General Law of the Environment) it is intended to modulate this economic activity to the preservation of the environment, which will also have to serve as vital support for future generations. Thus, the rights of current generations should not be the ruin of the aspirations and future generations.”203

The High Court of South Africa noted that the government’s duty to pursue sustainable development is an extension of R2HE. Specifically, they explained that officials responsible for a healthy environment have a duty to promote sustainable development which are underpinned by the integration of social, economic and environmental factors in the planning, implementation and evaluation of decisions to ensure that all developments serve present and future generations and not only the economic and commercial needs of property owners or developers.204

Laws around the world have also identified sustainable development as a relevant principle for the implementation of the right to a healthy environment. In Rwanda, for example, a 2005 law on the modalities of environmental conservation, protection, and promotion aims to, among other things, “guarantee to all Rwandans sustainable development which does not harm the environment and the social welfare of the population.”205 In another section, the law further explains that “[h]uman beings are central to sustainable development. They are entitled to the right of a healthy and productive life in harmony with nature. However, the right to development must be achieved in consideration of the needs of present and future generations.”206
Intergenerational equity and Responsibility

The right to a healthy environment is centrally concerned with equity for future generations relative to present generations. This means that government and corporate actions should be consistent with preserving the ability of future generations to satisfy their needs. In other words, actions that allow present generations to meet their needs and wants but sacrifice the ability of future generations to meet their basic needs and live lives of dignity contravene the principles of intergenerational equity and responsibility.

Considerations of equity for young and future generations vis-à-vis present generations as well as the responsibilities of present generations towards future generations has guided legislation and court decisions implementing the right to a healthy environment around the world.

In Germany, for example, the German Constitutional Court found that the German government’s failure to adequately specify emission reductions in the short- to-medium term to reach its net zero greenhouse gas emissions target was unconstitutional because it risked unduly burdening future generations with severe emissions reductions relative to present generations. The German government would have to specify how emission reductions would be spread out more equally across generations.

In Colombia, the Supreme Court in Amazon’s Future Generations v. Ministry of the Environment explained that international and constitutional law protected future generations and their environmental rights, which, in turn, necessitated limitations on the behaviour and actions of present generations in order to guarantee those rights of future generations. Applied to the case at hand, that ultimately meant that the government had to take actions to meet its commitment to reduce deforestation in the Amazon to net zero.

In the Philippines, the Supreme Court recognised that for R2HE claims, there is personality to sue on behalf of future generations based on the concept of intergenerational responsibility. The present assertion of a right to a sound environment entails the concurrent performance of an obligation to ensure the protection of that right for such future generations.

Laws in Lesotho, Mexico, Portugal, Rwanda, and Tanzania, among many other examples, also exemplify the importance of intergenerational equity and responsibility to the implementation of the right to a healthy environment. Lesotho’s 2008 Environmental Act, for instance, directs courts to ‘be guided by the following principles of sustainable development... the principle if inter-generational and intra-generational equity’ in exercising their jurisdiction. Mexico’s General Law of Ecological Balance and Environmental Protection similarly provides that, among the principles the federal executive authority is required to observe, the government must consider the ‘responsibility regarding the ecological balance involves both, the present conditions and those conditions that will determine the life quality of future generations.’ And Rwanda’s Organic Law Determining the Modalities of Protection, Conservation and Promotion of the Environment aims to ‘consider[] the durability of the resources with an emphasis especially on equal rights on present and future generations.’
Ecocentrism and the intrinsic value of nature

In a number of countries, court decisions and laws have understood the right to a healthy environment to protect the environment not just for humans’ sake but for the sake of nature itself. In other words, the right to a healthy environment recognises the intrinsic value of nature, not just its utility value for humans.

In the *Vía Parque Isla de Salamanca* case, for example, the Colombian Supreme Court of Justice, in the process of discussing constitutional rights including the right to a healthy environment, noted ‘[t]his is how the need arose to rethink the pillars of the interdependence that in reality sustain the roles of nature and the human being, and that the protection of [nature] cannot be exclusively subordinated to human comfort, since the environment and every form of life that composes it is endowed by itself and before it, with certain autonomous prerogatives (ecocentrism).’218

Similarly, in the *Los Cedros* case adjudicated by the Ecuadorian Constitutional Court, the court repeatedly affirmed the intrinsic value of nature in its own right throughout its analysis.219 Indeed, the court concluded that ‘[t]he right to a healthy environment under the Ecuadorian constitutional framework and international instruments not only focuses on ensuring adequate environmental conditions for human life, but protects also to the elements that make up nature from a biocentric approach.’220 In both of these cases, moreover, the courts recognised components of nature – *Vía Parque Isla de Salamanca* and *Los Cedros*, respectively – as the subject of rights.

Legislation can also encourage a more ecocentric approach to implementing the right to a healthy environment. The Organic Environmental Code in Ecuador, for example, provides that ‘the right to live in a healthy and ecologically balanced environment comprises... [the] conservation, sustainable management and recovery of natural heritage, biodiversity and all its components, with respect for the rights of nature...’ which are explained in greater detail elsewhere in the code.221

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In a number of countries, court decisions and laws have understood the R2HE to protect the environment not just for humans’ sake but for the sake of nature itself.
Gender equity should guide the implementation of the right to a healthy environment, meaning that, when possible, measures taken to realise the right should promote gender equity and, at the very least, not contribute to gender inequity.

This principle is especially relevant when considering the fulfilment of the R2HE substantive component of protecting vulnerable groups, which often includes women. This intersection was recognised by petitioners in a case brought by a group of women against the government of Chile for delaying the closure of a thermoelectric power plant found in a vulnerable community. Plaintiffs explained that these conditions stemmed from the level of poverty, access to health, education and the presence of susceptible groups such as children, pregnant women and older adults. They explained: ‘if we look at the rest of the national population as holders of the same right to health and to live in a pollution-free environment, we find ourselves with an unequal distribution of environmental benefits and burdens, which in itself is not tolerated by law, and which has its source in a ‘sociological’ aspect, namely, the concentration tolerated by the State of polluting industries. Therefore, measures tending to substantial equality with positive actions are justified.’

An application has also been filed in the Lahore High Court by a coalition of women, alleging that because climate change has a disproportionate impact on women, the Pakistan Federal Government’s inaction on climate change not only violated their fundamental rights, including R2HE, but also their rights to equal protection of the law and non-discrimination on the basis of sex.

Legislation has codified another key intersection of R2HE and gender equality: the key role that women play for the environment and in environmental decision-making. The Mexican General Law on Ecological Balance and Environmental Protection, for example, provides that ‘[w]omen play an important role in the protection, preservation and sustainable exploitation of natural resources and in development. The full participation of women is essential to achieve sustainable development.’

Consistency with the best available science

Rules, regulations, policies, programmes, and any other measure taken to manage the environment or with expected environmental impacts should be consistent with the best available science. For instance, the European Council’s Pollution Prevention and Control Directive requires permits for industrial and agricultural activities with high pollution potential and one of the permit requirements is the prevention of pollution using ‘best available techniques.’

Some courts have explicitly recognised that to comply with R2HE obligations, State action must be consistent with the best available science existing for the issue in question. For example, in invalidating an agency’s decision to allow higher ethanol content in gasoline, the Supreme Court of Mexico concluded that a measure carrying significant environmental risks must be evaluated using the relevant best scientific information available. The Court also held that State regulation more generally must be analysed with the greatest scientific information possible in light of international commitments established in the Paris Agreement.

In its decision, the Court also reminded the State that, pursuant to the precautionary principle, it must adopt preventative and regulatory measures that tend to the protection of the environment, without having at its disposal all necessary scientific knowledge.
Respecting local and indigenous wisdom

Governmental and non-governmental actors should respect local and Indigenous wisdom, especially when it comes to environmental matters. As a result, local and Indigenous wisdom should be actively incorporated into rights-based environmental governance. This includes seeking out the active participation of Indigenous and local communities in environmental decision-making.

Laws and court decisions around the world recognise the value of local and Indigenous wisdom in implementing the right to a healthy environment. The Environmental Law of Mozambique, for example, explains that ‘environmental management is based upon fundamental principles that are derivative of the right of all citizens to an ecologically balanced environment that is favourable to their health and physical and mental well-being, namely... the recognition and valorisation of the traditions and the knowledge of the local communities that contribute to the conservation and preservation of natural resources and the environment.’

The Environmental Protection and Management Law of Indonesia, moreover, establishes that ‘[i]n protecting and managing the environment, the government shall be assigned and authorised to... stipulate policies on procedures for recognising the existence of traditional communities, local wisdom, and rights of traditional communities with respects to environmental protection and management.’

And in Mexico, among many other examples, the General Law on Ecological Balance and Environmental Protection provides that ‘the preservation and sustainable exploitation of wild flora and fauna’ will consider the ‘traditional biological knowledge and participation of communities and indigenous peoples in the development of biodiversity programmes in the areas where they live.’

The Inter-American Court of Human Rights, recalling international treaties - including the Rio Declaration and the Convention on Biological Diversity - that recognise the importance of traditional knowledge and practices has also emphasised, ‘that the management by indigenous communities of the resources that exist in their territories should be understood in pragmatic terms, favorable to environmental preservation.’

At the domestic level, other courts have also highlighted the necessity of preserving ancestral and traditional knowledge. In Ecuador, this understanding has been observed in the Los Cedros case, when the Ecuadorian Constitutional Court recognised the importance of combining technical, scientific reports and the knowledge of indigenous communities, given their special relationship with nature. On occasion, the Brazilian Constitutional Court has also recognised that the R2HE is connected to the necessity of preserving indigenous communities’ cultures, identities and values as a means of environmental protection.
Transboundary harm and extraterritoriality

At the international level, transboundary harm is largely considered to be harm caused in the territory of or in other places under the jurisdiction or control of a State other than the State of origin.236

In the environmental context, this includes issues of climate change, ozone depletion, the loss of biological diversity, long-range air pollution, marine pollution, plastic pollution and trade in hazardous substances.237 These transboundary issues may implicate violations of R2HE since, as set out in the 2011 Office of the High Commissioner on Human Rights report on human rights and the environment, ‘one country’s pollution can become another country’s environmental and human rights problem, particularly where the polluting media, like air and water, are capable of easily crossing boundaries. These issues are of particular importance in the environmental context, in the light of the number and intensity of transboundary and global environmental threats to the full enjoyment of human rights.’238

Relatedly, the no-harm rule – another widely recognised and binding principle of international law – requires States to prevent, reduce and control the risk of environmental harm to other States.239 Along these lines, the obligation of States to cooperate to achieve universal respect for and observance of human rights requires States to work together to address transboundary and global environmental threats to human rights. Once their obligations have been defined, States must comply with them in good faith.240

Further, although international case law and State practice varies on this issue, environmental harm that is transboundary in nature may trigger the extraterritorial dimension of human rights, meaning that the State causing the harm would have a human right obligations vis-à-vis a person that is not within its territory. Extraterritoriality may also be triggered when States fail to adequately regulate transnational corporations and other business entities having substantial business operations in their territories but that cause environmental harm in other countries where they operate.241

Elaborating on the concept and taking it a step further, an Advisory Opinion of the Inter-American Court of Human Rights was of the view that the obligation to prevent transboundary environmental damage or harm ‘does not depend on the lawful or unlawful nature of the conduct that generates the damage, because States must provide prompt, adequate and effective redress to the … victims of transboundary harm resulting from activities carried out in their territory or under their jurisdiction, even if the action which caused this damage is not prohibited by international law.’242 It further explained that ‘States must ensure access to justice, without discrimination, to persons affected by environmental damage originating in their territory, even when such persons live or are outside this territory.’243
Courts have conceptually clarified the right to a healthy environment (R2HE) and its components through decades of judicial decision-making and precedent setting. This conceptual clarity has improved the implementation of R2HE by ensuring its application in a variety of fact-specific circumstances, from particular mining projects to the climate policies of different countries to instances of deforestation and beyond. In other words, by articulating the doctrines, methods, and approaches that can and should be used to adjudicate R2HE claims, courts have helped translate the R2HE from an abstraction to a concrete norm with material impacts.

This section will examine how courts have adjudicated claims concerning the R2HE and, in doing so, have added substance to the body of R2HE practice.

Flexible standing requirements

Generally speaking, people and organisations need standing to bring claims to a court for resolution. Standing refers to the capacity of a given party to have their claims heard, typically requiring that the party demonstrate an individualised harm linked to the actions of the defendant which can be redressed by the court. Standing has proven to be a barrier to the adjudication of claims of environmental harms in many jurisdictions.

Some international and regional treaties that regard the right to a healthy environment emphasise that to guarantee the right of access to justice in environmental matters, States shall have ‘broad active legal standing in defense of the environment, in accordance with domestic legislation.’ To improve the implementation of the right to a healthy environment, many courts have sought to reduce this barrier to judicial enforcement by providing flexibility to standing requirements.

The Kenyan Environment and Land Court has likewise explained in the context of a case challenging the inadequate management of a dumpsite that, ‘it is not necessary for one to demonstrate that they have suffered loss or injury, for them to move the court when claiming that the [constitutional] right to a clean and healthy environment has been violated or is under threat of violation. It is not therefore a requirement for the petitioners to show that they have personally suffered or that the presence of the dumpsite has directly caused them any direct harm. It is sufficient for the petitioners to point out that there is an ongoing or imminent threat of harm to the environment.’

To improve the implementation of the right to a healthy environment, many courts have sought to reduce this barrier to judicial enforcement by providing flexibility to standing requirements.
Reducing barriers to proving causation

Overall, legal causation is the requirement that plaintiffs demonstrate a causal link between the defendant’s actions and the alleged harm. Similar to standing, causation has also been a barrier to the adjudication of environmental rights claims. This has been a particular problem for claims of rights violations stemming from climate change, given the complex causality of climate change impacts.

Like with respect to standing, some courts have found ways to lessen the burden associated with proving causation in order to reduce this barrier to enforcing R2HE in court. In particular, in instances where difficulties proving causation result from the inherent nature of the problem – like climate change’s role as a threat multiplier – courts have interpreted causation requirements to provide flexibility, so as to prevent these difficulties from undermining the protection of rights like the right to a healthy environment.

For example, in a case dealing with pollution generated by the inadequate management of a landfill site, for example, the High Court of South Africa noted that it was not necessary for the plaintiff to prove that the environmentally harmful activities are causally linked to harm to her wellbeing, as the constitutional right to a healthy environment involved a general governmental duty to protect the environment. In other words, it was enough to show that the government failed to comply with its environmental duties, in this case informed by duties imposed by environmental statutes.

Methods for ensuring baseline protections

Courts have developed various methods and standards to assess the appropriateness of government and corporate action relative to the baseline environmental quality needed to guarantee the right to a healthy environment.

In India, for example, the National Green Tribunal provided that the appropriateness of government action that has environmental ramifications would be judged according to a ‘reasonable person’s test.’ This test, in short, helps resolve claims where the challenged action degrades the environment but provides some sort of economic benefit. Specifically, the ‘risk of potential harm to the environment and human health resulting from development should be considered by somewhat tilting the balance in favour of the environment and in the larger public interest. According to a ‘reasonable person’s test’, life, public health and ecology have priority over unemployment and loss of revenue.’

Meanwhile, in a South African case challenging the approval of a new coal-fired power plant on the basis of its environmental impacts, the High Court explained that in assessing whether governmental action was consistent with the right to a healthy environment, ‘short-term needs must be evaluated and weighed against long-term consequences.’ In other words, short-term gains alone cannot justify environmental degradation and destruction when their long-term consequences undermine the right to a healthy environment.

Remedies

Judicial enforcement of the right to a healthy environment depends enormously on the remedies they provide. Appropriate and effective remedies for violations of R2HE play a key role in ensuring the right materially improves people’s lives and protects the environment and its various components.

The remainder of this section explores the primary remedies courts around the world have offered to redress harms and violations of the right to a healthy environment – namely, protection measures, restoration orders, the creation of compliance mechanisms or implementing bodies, and compensation. Often, courts offer more than one of these remedies to rectify harms.

a. Protection Measures

Courts around the world have required States and corporations to undertake a wide array of measures to affirmatively protect the environment and its various components. This includes, for example, ordering governments to write and implement actions plans to tackle the challenged harm, like deforestation.

In Colombia, for example, in response to uncontrolled deforestation in the protected Vía Parque Isla de Salamanca, the Supreme Court of Justice ordered the defendant government (and relevant agencies) to ‘formulate a strategic and effective plan of action in the medium term to reduce the levels of deforestation and degradation to zero (0) in the Vía Parque Isla de Salamanca. Said planning must contain commitments, responsible authorities, lines of action and dates specific measures for the promotion of VPIS prevention and restoration actions, as well as the consequences in case of non-compliance, in accordance with the legal provisions on environmental matters.’
b. Restoration

In instances where environmental degradation and destruction has already occurred, restoration constitutes an important objective to remedy violations of the right to a healthy environment. Courts have recognised this time and time again and have, as a result, ordered the parties responsible for the harm to take restorative actions to return the environment and its components to a State as close to its pre-degraded state as possible.

The Kenyan Environment and Land Court, for example, in a case dealing with the pollution of the Nairobi and Athi Rivers, ordered the government parties to develop and implement a plan and strategy for cleaning up the Nairobi and Athi Rivers such that the water is ‘restored to a point where it is free from the pollution.’252

c. Creation of an implementing body or compliance mechanism

To redress complex and often ongoing harms, courts have ordered the creation of implementing bodies or compliance mechanisms to ensure action is taken to redress the challenged harm over the long periods of time such action may require.

In Pakistan, for example, the Lahore High Court found that the government’s failure to implement its national climate change framework policy violated citizens’ fundamental rights (including R2HE). In its order directing the government to implement this policy, the court ordered the formation of a climate change commission. The court tasked the commission – composed of government agency representatives, NGOs, and technical experts – with monitoring the progress made towards implementing the climate change framework.253

Colombian courts have made monitoring bodies key components of structural remedies they’ve issued to redress environmental degradation, including, for example, a ‘permanent monitoring committee’ in a case in which government agencies were ordered to develop and implement a strategic plan to reduce deforestation and degradation to zero in the Vía Parque Isla de Salamanca.254 And the Indian National Green Tribunal, among many other examples, ordered the creation of a monitoring committee composed of representatives of government agencies to supervise efforts to protect and restore a sensitive ecosystem in Himachal Pradesh that had been degraded by human activity.255
d. Compensation

In addition to preventing environmental harm before it occurs and reversing that which has already occurred, courts regularly order reparations and compensation to be paid to the people and communities whose right to a healthy environment has been infringed by the challenged State or corporate action. For instance, the Indian Supreme Court ordered the Central Government to establish an authority to 'determine the compensation to be recovered from the polluters as cost of reversing the damaged environment,' applying the 'precautionary principle' and the 'polluter pays principle.' Within the Americas, the Inter-American Court of Human Rights has been, 'since its first ruling on the matter in 1989... developing standards applicable to the compensation of damage.' In Colombia, the Constitutional Court has even ordered consultations between the defendants and harmed indigenous communities for the purpose of adopting compensation measures. In Kenya, the Environment and Land Court cited Principle 13 of the Rio Declaration, obliging States to develop law on liability and compensation for victims of pollution, when making an order for compensation.

Like courts, legislatures around the world have taken steps specific to their particular roles and functions to implement the right to a healthy environment and improve its enforcement. This section covers the legislative steps that have been taken to implement R2HE that cut across jurisdictions and regions. These include: providing inclusive definitions of the right to a healthy environment, specifying measures to effectuate the right, establishing implementing bodies and institutions, creating causes of action, and listing available remedies for violations of the right.

**Providing inclusive definitions of the right to a healthy environment**

One of the challenges in ensuring that the right to a healthy environment has material impact on the ground is its lack of specificity relative to the complexity of the world. Legislation and policy can tackle this challenge by providing inclusive and robust definitions of the guarantees associated with the right to a healthy environment. Indeed, many legislators and policymakers around the world have done just that.

In Azerbaijan, for example, the Law on Environmental Protection lists the various guarantees comprising the right of ‘citizens, stateless persons and foreigners’ to a healthy environment, which includes, among other things, the right to: ‘receive accurate information about the existence of a favourable environment for the life and health of every citizen, its condition and measures to improve its condition;’ ‘as a result of their violation of environmental protection legislation receive compensation for damage to health and property;’ ‘participate in meetings, rallies, pickets, marches and demonstrations, referendums related to environmental protection in accordance with the law;’ and ‘file lawsuits before relevant authorities and courts to hold guilty organizations, officials and citizens responsible for violations of environmental protection legislation.’

Many other laws similarly specify what the right to a healthy environment entails in practice. The Environmental Code of Kazakhstan enumerates the various components of the right to a healthy environment to which present and future generations are entitled, including the right to: ‘access timely, complete and reliable environmental information under the laws of the Republic of Kazakhstan;’ ‘participate in the decision-making of State bodies and officials on environmental matters in the manner specified by this Code;’ and ‘apply to court to challenge the legality of actions (inaction) and decisions of State bodies, local authorities, officials and civil servants on environmental protection matters, including those related to reversing the caused environmental damage and stopping the violation of the environmental legislation of the Republic of Kazakhstan.’

In Ecuador, 262 Estonia, 263 Georgia, 264 and Mozambique, 265 among many others, also detail the components, guarantees, and entitlements that define the right to a healthy environment.

Crucially, laws can also promote the effective implementation of the right to a healthy environment by protecting against efforts to criminalise or harass environmental defenders. Indonesia’s Environmental Protection and Management Law, for example, provides that ‘[e]verybody struggling for a right to proper and healthy environment may not be charged with criminal or civil offense.’

**LEGISLATING THE RIGHT TO A HEALTHY ENVIRONMENT**

Photo by Abhyuday Majhi on Unsplash
Measures to effectuate the right to a healthy environment

Relatedly, legislators and policymakers have also greatly enhanced R2HE practice by spelling out in clear terms the measures governments (and their subdivisions) and corporations are required to take to effectuate the right to a healthy environment.

The Environmental Code of Mauritania, for example, specifies that the Minister for the Environment is required to take precautionary measures to protect the environment. In the Philippines, the Act to Promote Environmental Awareness through Environmental Education requires the government and relevant agencies to integrate environmental education into all levels of schooling as well as develop and programme concepts and principles, environmental laws, the state of international and local environment, local environmental best practices, the threats of environmental degradation and its impact on human wellbeing, the responsibility of the citizenry to the environment and the value of conservation, protection and rehabilitation of natural resources and the environment in the context of sustainable development – as viewed by the law as an important tool to facilitate the implementation of the right to a healthy environment.

Environmental agencies – government agencies tasked with regulating activities affecting the environment and designing and implementing measures to protect the environment and remedy environmental harms – are one such example. In Liberia, for example, the Environment Protection Agency Act established the agency’s Environment Protection Agency as an autonomous body within the executive branch of the government, tasked with regulating to protect and manage the environment, in part to facilitate and enhance the constitutional right to a healthy environment.

Legislation can also set up other bodies to oversee management of the environment and inject technical and specialised expertise into management processes. For example, Bhutan’s National Environmental Protection Act establishes the National Environment Commission to serve as ‘the highest decision-making body on all matters relating to the environment and its management in the country.’ The Commission is charged with ‘[s]etting the policies and [] coordinat[ing] the actions required to . . . protect and promote a safe and healthy environment’ in line with the constitutional right to a healthy environment, among other tasks.

An environmental statute in Chad, moreover, establishes a National Technical Committee to facilitate its international commitments to reduce pollution and help guarantee the right to a healthy environment. More specifically, this National Technical Committee is placed ‘in charge of the implementation, monitoring and evaluation of the measures for the execution of the international instruments relating to pollution and nuisances.’

Meanwhile, a Haitian environmental law sets up a National Environmental Information System, which collects data on the environment to inform, assess, and monitor environmental quality and decision-making in Haiti and thus facilitates the implementation of the right to a healthy environment. And the Palau Environmental Quality Protection Act, among many other examples, created the Environmental Quality Protection Board, which monitors various markers of environmental health and regulates to protect and enhance environmental quality.

Domestic laws can also create courts and judicial bodies dedicated to adjudicating environmental claims, including claims related to the right to a healthy environment. India’s National Green Tribunal Act, for example, established the National Green Tribunal, a specialised court authorised to hear environmental claims.

Proper implementation and enforcement of the right to a healthy environment requires resources. Legislation can tackle this need by creating special funds dedicated to environmental governance, including the protection and promotion of R2HE. The Comoros Framework Law on the Environment, for example, both affirms the right to a healthy environment and establishes an Environmental Management Fund to support the implementation of environmental programmes and the activities of environmental associations. The Kenyan Environmental Management and Coordination Act, meanwhile, created the National Environment Trust Fund to finance the country’s environmental policies.

Implementing bodies, institutions, and mechanisms

Realising the substantive and procedural guarantees of the right to a healthy environment takes time and effort. Bodies, institutions, and mechanisms dedicated to environmental governance are therefore crucial in implementing the right to a healthy environment.

Environmental education – which ‘encompass[es] environmental concepts and principles, environmental laws, the state of international and local environment, local environmental best practices, the threats of environmental degradation and its impact on human wellbeing, the responsibility of the citizenry to the environment and the value of conservation, protection and rehabilitation of natural resources and the environment in the context of sustainable development’ – is viewed by the law as an important tool to facilitate the implementation of the right to a healthy environment. And Spain’s Law of Environmental Responsibility, among other examples, details a scheme for holding parties liable for environmental damage or breach of environmental responsibilities, including that which infringes upon the right to a healthy environment.

Legislation can also set up other bodies to oversee management of the environment and inject technical and specialised expertise into management processes. For example, Bhutan’s National Environmental Protection Act establishes the National Environment Commission to serve as ‘the highest decision-making body on all matters relating to the environment and its management in the country.’ The Commission is charged with ‘[s]etting the policies and [] coordinat[ing] the actions required to . . . protect and promote a safe and healthy environment’ in line with the constitutional right to a healthy environment, among other tasks.
Creating a cause of action

Legislation can play a meaningful role in both promoting access to justice as a procedural guarantee of the right to a healthy environment and ensuring judicial oversight of government and corporate actions that may implicate R2HE. One of the primary ways that legislation can do that is by providing a route for people and organisations to bring their claims involving R2HE in front of courts. Indeed, legislation around the world affirming R2HE commonly includes provisions that create a cause of action for R2HE claims, meaning that it authorises parties to bring these claims to court for resolution. Laws in Bhutan, Burkina Faso, Estonia, Lesotho, the Philippines, and Timor-Leste, among many other examples, provide this type of cause of action.

Estonia’s law, for example, permits a legal person - an individual, company, or other entity which has legal rights and is subject to obligations - to file a claim or appeal with the administrative authority or court. If it is an environmental organisation that is bringing the claim, its rights are presumed to have been violated if the contested decision relates to the environmental protection goals or activities of that organisation. The Philippines permits a Writ of Kalikasan, which is a special civil action for vindication of the constitutional right to a ‘balanced and healthful ecology’ or an unlawful act or omission involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. The Writ also prohibits many motions in response that are otherwise typically available in civil actions, such as motion to dismiss, motion for extension of time to file return, counterclaim or cross-claim, among others.

Courts around the world have ensured that causes of action created by domestic legislation are indeed actualised. In holding that plaintiffs did not need to show that they had a right or interest in the property, environment, or land alleged to be damaged, the High Court of Kenya emphasised that every person in Kenya was entitled to a healthy environment and therefore had a right to prosecute their cause in court. The court therefore denied the argument of the defendant mining company that some plaintiffs did not have sufficient entitlement to bring the case to court or a valid interest in the property in question. In other words, the plaintiff’s entitlement R2HE was sufficient to open the door for their day in court.

Specifying remedies

Legislation can also aid the judicial protection of the right to a healthy environment by specifying the remedies that plaintiffs can claim in cases brought to enforce R2HE. Laws in Azerbaijan and Belarus, for example, provide that plaintiffs in R2HE cases can seek compensation for harms suffered. Plaintiffs claiming violations of the right to a healthy environment can, moreover, seek measures to restore the environment and its various components to their pre-degraded condition, as far as possible, according to laws in Hungary and Uganda, among others. Fines may also be issued for noncompliance with environmental laws, including those intended to implement the right to a healthy environment. And the Kenyan Environmental Management and Coordination Act, like many laws affirming R2HE, lists multiple remedies that the High Court can provide for infringements of R2HE, which includes injunctions, restoration measures, and compensation orders.
CONCLUSION: LEARNING BY EXAMPLE

Through the legislative recognition and judicial enforcement of procedural and substantive components of R2HE, as well the following of guiding principles and best practices, we have come a long way in the effective implementation of the right to a healthy environment. Yet as the window of opportunity to avoid extreme scenarios of climate change and environmental destruction closes on us, there remains much to be done. But far from provoking feelings of resignation, this report, in part, aimed to show by example: it has been through the volition of States, judiciaries, and concerned citizens that we have made great progress in the protection of our ecosystems and their inhabitants. At this point in time, we can only keep moving forward, with urgency and ambition.

As you do so, this report invites you to value the opportunity to embrace the right to a healthy environment – along with its fundamental companion rights – as a powerful tool in your arsenal in the fight for our beloved world.
## APPENDIX: R2HE CASE CHART

This chart documents cases around the world where the right to a healthy environment is invoked to redress environmental harms. Though comprising a diverse and representative sample of R2HE cases, this chart doesn’t include the entire universe of global R2HE cases.

### REGIONAL

<table>
<thead>
<tr>
<th>S/N</th>
<th>YEAR</th>
<th>CASE NAME</th>
<th>JURISDICTION &amp; COURT</th>
<th>PLANTIFFS</th>
<th>ELEMENT</th>
<th>SUMMARY OF HOW R2HE IS ADDRESSED</th>
<th>SUMMARY OF CLAIMS</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>2002</td>
<td>Social and Economic Rights Action Centre and Centre for Economic and Social Rights v Nigeria</td>
<td>African Commission on Human and Peoples Rights</td>
<td>NGO</td>
<td>Pollution</td>
<td>The Commission determined that, as guaranteed under Article 24 of the African Charter on the right to a healthy environment, Governments have clear obligations “to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.”</td>
<td>Applicants alleged that the oil consortium has exploited oil reserves in Ogoniland with no regard for the health or environment of the local communities, disposing toxic wastes into the environment and local waterways in violation of applicable international environmental standards.</td>
</tr>
<tr>
<td>2</td>
<td>2006</td>
<td>Maganopoulos Foundation for Human Rights v Greece</td>
<td>European Committee of Social Rights</td>
<td>NGO</td>
<td>Pollution, Climate</td>
<td>Greece has not managed to strike a reasonable balance between the interests of persons living in the lignite mining areas and the general interest, and finds that there has thus been a violation of Article 11§§1, 2 and 3 of the Charter (protects citizens’ right to a clean environment by requiring, among other things, restrictions on pollutants known to compromise human health).</td>
<td>Alleged that the Greek government was not in compliance with Greek, European, and international law owing to the nature of its oversight (and partial ownership) of several lignite coal mines and coal-fired power plants. Among the legal authorities cited, perhaps most central to MFHR’s claims was Article 11 of the European Social Charter of 1961, that article protects citizens’ right to a clean environment by requiring, among other things, restrictions on pollutants known to compromise human health.</td>
</tr>
<tr>
<td>3</td>
<td>2009</td>
<td>Tatăr and Tatăr v Romania</td>
<td>European Court of HR</td>
<td>Father and son</td>
<td>Pollution</td>
<td>The court concluded that the State’s failure to take positive steps to prevent an environmental disaster violated the rights to life, private and family life and, more generally, to the enjoyment of a healthy and protected environment.</td>
<td>Plaintiffs alleged that the Baia Mare mine posed an environmental and health hazard because the mining process contained cyanide and aggravated the son’s medical condition.</td>
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### AMERICAN

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<tr>
<th>S/N</th>
<th>YEAR</th>
<th>CASE NAME</th>
<th>JURISDICTION &amp; COURT</th>
<th>PLANTIFFS</th>
<th>ELEMENT</th>
<th>SUMMARY OF HOW R2HE IS ADDRESSED</th>
<th>SUMMARY OF CLAIMS</th>
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<tbody>
<tr>
<td>4</td>
<td>2017</td>
<td>Advisory Opinion, OC-23-17 / Medio Ambiente y Derechos Humanos v. A Request for an Advisory Opinion from the Inter-American Court of Human Rights Concerning the Interpretation of Article 1(1), 4(1) and 5(1) of the American Convention on Human Rights</td>
<td>Inter-American Court of HR</td>
<td>Republic of Colombia</td>
<td>Biodiversity, Climate, Pollution</td>
<td>The rights to a healthy environment under the San Salvador Protocol protect individuals and collectives, including future generations, and can be used to hold States responsible for cross-border violations that are within their effective control.</td>
<td>The Court was asked to determine “how the Pact of San José should be interpreted when there is a danger that the construction and operation of major new infrastructure projects may have severe effects on the marine environment in the Wider Caribbean Region and, consequently, on the human habitat that is essential for the full enjoyment and exercise of the rights of the inhabitants of the coasts and/or islands of a State Party to the Pact, in light of the environmental standards recognized in international customary law and the treaties applicable among the respective States.”</td>
</tr>
<tr>
<td>5</td>
<td>2020</td>
<td>Indigenous Communities of the Chakha Honhat Association v. Argentina</td>
<td>Inter-American Court of HR</td>
<td>Indigenous Communities</td>
<td>Biodiversity</td>
<td>Argentina violated the right of the Chakha Honhat indigenous groups to a healthy environment due to the lack of effective measures to stop activities harmful to them. Thus, Courts have recognized that States can have an obligation to prevent violations of the right to a healthy environment.</td>
<td>Plaintiffs alleged a violation of the obligations to respect, protect and adopt necessary measures to ensure the effective enjoyment of the right to communal property, based on the construction of several public works and the exploration of hydrocarbons in the traditional indigenous territory without respecting Inter-American standards on free, prior and informed consultation, and for having consented to and tolerated illegitimate actions by private individuals such as the installation of incineration plants, gold mining, logging and cattle farming in traditional indigenous territory.</td>
</tr>
<tr>
<td>S/N</td>
<td>COUNTRY</td>
<td>YEAR</td>
<td>CASE NAME</td>
<td>JURISDICTION</td>
<td>PLAINTIFFS</td>
<td>ELEMENT</td>
<td>SUMMARY OF HOW R2HE IS ADDRESSED</td>
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<tr>
<td>1</td>
<td>Argentina</td>
<td>2008</td>
<td>(decided)</td>
<td>Supreme Court of Argentina</td>
<td>A group of concerned residents of the Matanza-Riachuelo River basin</td>
<td>Pollution</td>
<td>In its decision, while the Court did not explicitly frame the analysis within human rights law, it focused on issues that have dramatic impact on and relevance for human rights, including the rights to life, health, water, sanitation, and food. Argentina established an action plan mandating the Government agency responsible for the Matanza-Riachuelo basin to undertake certain actions to clean up the basin.</td>
</tr>
<tr>
<td>2</td>
<td>Belgium</td>
<td>2006</td>
<td>Inter-Environment Wallonie v. Wallonie Region</td>
<td>Constitutional Court</td>
<td>Environmental NGO</td>
<td>Pollution</td>
<td>Court relied on R2HE in Constitution &amp; int’l law. Emphasis on principle of non-regression.</td>
</tr>
<tr>
<td>3</td>
<td>Brazil</td>
<td>2010</td>
<td>(pending)</td>
<td>Federal Supreme Court</td>
<td>Labor Party (PT)</td>
<td>Biodiversity</td>
<td>N/A</td>
</tr>
<tr>
<td>4</td>
<td>Chile</td>
<td>1997</td>
<td>(decided)</td>
<td>Supreme Court</td>
<td>Citizens</td>
<td>Biodiversity, Pollution</td>
<td>N/A</td>
</tr>
<tr>
<td>5</td>
<td>Chile</td>
<td>2010</td>
<td>(pending)</td>
<td>Supreme Court</td>
<td>Plaintiffs</td>
<td>Biodiversity</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**NGO**

**Litigation**

**Government and the Amazon**

**Environment**

**Silva and other**

**Cases**

**Riachuelo**

**Pollution**

**In its decision, while the Court did not explicitly frame the analysis within human rights law, it focused on issues that have dramatic impact on and relevance for human rights, including the rights to life, health, water, sanitation, and food. Argentina established an action plan mandating the Government agency responsible for the Matanza-Riachuelo basin to undertake certain actions to clean up the basin.**

**N/A**

**The plaintiffs explain that in view of the omission of the Federal Executive Power regarding the duties of protection, prevention, precaution, inspection, conservation and sustainable development of the Pantanal and Amazon Forest biomes – national patrimonies by constitutional order, that have been degraded, the R2HE (art. 225 of the Constitution) has been violated.**

**Claim that amendment to law regulating land-use detrimental to the Belders’ people of environmental protection.**

**The plaintiffs emphasize that the Pantanal and Amazon Forest biomes are national patrimony and therefore necessitating special protection. Plaintiffs state that the constitutional vector for the environment is that human action must be guided by the fundamental right of everyone to an ecologically balanced environment.**

**The lawsuit asserts that the Government is significantly contributing to climate change by failing to uphold its obligations under international law and national environmental law. The plaintiffs claim that the Government is significantly contributing to climate change by failing to uphold its obligations under international law and national environmental law.**

**The plaintiffs claim that the Trillium corporation’s project violated their constitutional right to a healthy environment. The plaintiffs claim that the Government, in violation of its obligations under international law and national environmental law, has failed to protect the Pantanal and Amazon Forest biomes from the destruction caused by the Trillium corporation’s project.**
<table>
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<tr>
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<tr>
<td>8</td>
<td>Chile</td>
<td>2021 (pending)</td>
<td>Women from Huasco and Others v. the Government of Chile, Ministry of Energy, Environment and Health</td>
<td>Court of Appeals of Copiapó</td>
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<td>Pollution, Climate</td>
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<td>Environmental and Government of Chile, Ministry Fundepublico v. Others</td>
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<td>Constitutional Court</td>
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<td>Constitutional Court</td>
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<tr>
<td>9</td>
<td>Colombia</td>
<td>1995 (decided)</td>
<td>Fundepublico v. Mayor of Bucaramanga and Others</td>
<td>Constitutional Court</td>
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<td>NGOs (Fundepublico representing residents of the community of the La Planta and Cococoinpa neighborhoods)</td>
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<td>Court held in favor of the right to a healthy environment as a fundamental human right because it was part and parcel of what was consolidated in the Colombian Constitution and also to “recent developments in international law”</td>
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<td>Plaintiff’s claim: “The thermal power plant is violating the right to a healthy environment”</td>
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<tr>
<td>10</td>
<td>Colombia</td>
<td>1995 (decided)</td>
<td>Prospera v. National Department of Agriculture, National Department of Environment</td>
<td>Constitutional Court</td>
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<td>Corporation</td>
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<td>The plaintiffs demanded that the defendant Ministry of Agriculture implement the environmental protection measures that would allow the thermal power plant to operate in a sustainable manner. The Court held that the right to a healthy environment is a constitutional right that must be guaranteed even in the face of uncertainty as to the risk of violating the right.</td>
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<td>Coral Reef, which is enshrined in article 79 of the Constitution, was violated by pollution of the Paleo river.</td>
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<td>The thermal power plant is violating the right to a healthy environment as a constitutional right to live in an environment free of pollution (art. 19, n. 4).</td>
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<td>The state must act in concert with other public administrations, and private enterprises, to prevent the products contaminated with industrial operations into the Palenque river to the detriment of the right to life and work of the applicants and community living in Puerto Leyda.</td>
</tr>
<tr>
<td>11</td>
<td>Colombia</td>
<td>2012 (decided)</td>
<td>Corporación para el Desarrollo Sostenible del Archipiélago de Santa Catalina v. Providers of Precious Substances</td>
<td>Constitutional Court</td>
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<td>NGOs (Corporate for the Sustainable Development of the Archipelago of Santa Catalina)</td>
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<td>Court granted the protection of the right to a healthy environment.</td>
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<tr>
<td>12</td>
<td>Colombia</td>
<td>2002 (decided)</td>
<td>Corporación para el Desarrollo Sostenible del Archipiélago de Santa Catalina v. Providers of Precious Substances</td>
<td>Administrative Tribunal of Intervention</td>
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<td>13</td>
<td>Colombia</td>
<td>2003 (decided)</td>
<td>Corporación para el Desarrollo Sostenible del Archipiélago de Santa Catalina v. Providers of Precious Substances</td>
<td>Constitutional Court</td>
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<tr>
<td>14</td>
<td>Colombia</td>
<td>2015</td>
<td>Barragán, et al. v. The Presidency of the Republic</td>
<td>Constitutional Court</td>
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<td>15</td>
<td>Colombia</td>
<td>2016</td>
<td>Rarraga, et al v. Supreme Court of Justice</td>
<td>Constitutional Court</td>
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<td>16</td>
<td>Colombia</td>
<td>2016</td>
<td>Naturaleza v. Colombia</td>
<td>Constitutional Court</td>
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<td>17</td>
<td>Colombia</td>
<td>2018</td>
<td>Actoras v. Colombia</td>
<td>Supreme Court</td>
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<tr>
<td>18</td>
<td>Colombia</td>
<td>2018</td>
<td>Actoras v. Colombia</td>
<td>Constitutional Court</td>
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<tr>
<td>19</td>
<td>Colombia</td>
<td>2018</td>
<td>Salamanca v. Colombia</td>
<td>Supreme Court</td>
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</table>

**Summary of claims:**
- Alleging that the mining exploration and mining activities in the region are causing irreversible damage to the collective rights invoked by the petitioners.
- Seeking the Court to order the mining companies and individuals to cease the mining exploration and gold mining expansion and exploitation activities in the region.
- Requesting the Court to order the individuals to be ordered to for the mining exploration and gold mining expansion and exploitation activities in the region.
- Petitioner requested that the mining exploration and mining expansion and exploitation activities in the region be reviewed and enforced in order to protect the rights to a healthy environment.
- Alleging that the mining exploration and mining activities in the region are causing irreversible damage to the collective rights invoked by the petitioners.
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- Requesting the Court to order the individuals to be ordered to for the mining exploration and gold mining expansion and exploitation activities in the region.
- Petitioner requested that the mining exploration and mining expansion and exploitation activities in the region be reviewed and enforced in order to protect the rights to a healthy environment.
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<th>S/N</th>
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<th>Summary of How R2HE is Addressed</th>
<th>Summary of Claims</th>
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<tbody>
<tr>
<td>24</td>
<td>Costa Rica</td>
<td>2014</td>
<td>(decided)</td>
<td>Presidente de la junta de Marlene S.A. v. Municipalidad de Tibas Marlene</td>
<td>The decision emphasized that the right to a healthy environment is a constitutional right. It ruled that the right to a healthy environment is fundamental and inalienable.</td>
<td>The Court ordered the State to take further action to ensure that the right to a healthy environment is respected.</td>
</tr>
<tr>
<td>25</td>
<td>Czech Republic</td>
<td>2014</td>
<td>(decided)</td>
<td>Constitutional Court NGO</td>
<td>Natural persons, when associated in an association, have the right of protection of nature and landscape.</td>
<td>The Court ordered the State to take further action to ensure the right to the protection of nature and landscape is respected.</td>
</tr>
<tr>
<td>26</td>
<td>Ecuador</td>
<td>2015</td>
<td>(decided)</td>
<td>Provincial Court of Justice of Sucumbios 9 Individuals (Youth)</td>
<td>Pollution, Biodiversity</td>
<td>The court recognized that pollution and biodiversity protection are constitutional rights.</td>
</tr>
<tr>
<td>27</td>
<td>Ecuador</td>
<td>2021</td>
<td>(decided)</td>
<td>Constitutional Court</td>
<td>Protection action by the GAD of Santa Ana de Cotacachi</td>
<td>Constitutional rights of individuals, communities, and ecosystems to a healthy environment.</td>
</tr>
</tbody>
</table>
30 Germany 2020 (decided) Neubauerg v. Germany Federal Constitutional Court Group of German Youth Climate The Federal Constitutional Court published its decision striking down parts of the KSG as incommensurable with fundamental rights for failing to set sufficient provisions for emission cuts beyond 2020. The Court found that Article 20a of the Basic Law not only obliges the legislature to protect the climate, but also aims at achieving climate neutrality, but “also connotes less environmental burdens are spread out between different generations.”

Plaintiffs filed a legal challenge against Germany’s Federal Climate Protection Act as it did not meet the explicit target of reducing GHG by 55% until 2030 from 1990 levels was insufficient. The complainants alleged that protecting the environment is a human right and their human rights as protected by the Basic Law. Germany’s constitution. Their constitutional complaints rely primarily on clauses of protection arising from fundamental rights under Art. 22(1) (fundamental right to environmental protection) of the Basic Law, as well as on a fundamental right to a future consistent with human dignity and a fundamental right to an ecological minimum standard of living.

31 Ghana 2017 (decided) Center for Public Interest Law and Another v. Tema Oil Refinery High Court of Justice at Tema Environmental NGOs and a citizen living in the affected area Pollution

In the complaint in Court’s assessment of the defendant’s request for dismissal, R2HE is recognized as an international legal obligation as well as a derivative constitutional right.

Plaintiff claimed that defendant company polluted the Chemu II lagoon, damaging the health of citizens living in the area, especially fishermen. Plaintiff believes it would be a violation of R2HE (derivative constitutional right and international legal obligation).


The court held that protection of the environment, in particular, the protection of the ecosystem, is a constitutional right through Art. 97 of the Constitution and is centered on the human being and his/her dignity.

Alleging that the municipal council of San Pedro Las Casas failed to put in place the environmental impact assessment plan to authorize and has not been licensed under section 58 of Environmental Management and Coordination Act 2010 (EMC). R2HE is addressed as a statutory and constitutional right under Kenyan Environmental law.

33 Hungary 2016 (decided) Magyarország vs Union Of India Constitutional Court Not stated in decision Bio-diversity (destruction of natural treasures)

The court rejected the statute for the repeal, reasoning that “[t]he right to a healthy environment guarantees the physical conditions necessary to enforce the right to human life...extraordinary notice is called for in establishing legislative guarantees for the right.” Once the state creates a baseline of environmental conditions it could not thereafter degrade it.

Complainant requested the court to declare that a certain provision of the law on the commission on the organisation of soil management is unconstitutional and violates his right to a healthy environment because it reduced the degree of environmental protection.

34 India 2016 (decided) Vellore Citizens vs Union Of India Supreme Court NGO Pollution Compensation for environmental damage to be assessed applying the “polluter pays principle” and “polluter pays principles”

Complainant filed a public interest petition relating to “the pollution which is being caused by encroachment of untapped effluents by the tanneries and other industries in the State of Madhya Pradesh.”

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35 India 2015 (decided) In re Court with motion v. State of Himachal Pradesh and others National Green Tribunal Biodiversity, Climate

The court found that Black Carbon, which can be produced through soot use, is a major causative factor for rapid melting of glaciers in the Himalayan region. It concluded that Indian citizens have the right to a wholesome, clean and decent environment.

Court on its own motion dismissed the suit and decided that Black carbon is a major cause of environmental degradation in the region.

36 Kenya 2001 Rodrigues Mwema & Others v. Tema Mining High Court at Mombasa Rodrigues Mwema & 2 others Pollution (Share mining)

R2HE is addressed as a statutory right under Kenyan Environmental law (Section 1 (1) EMA Act). R2HE is addressed by the court to determine that the plaintiffs have a standing in court and in general a right to an injuction (without the need to show a likely loss or damage to the environment in the affected area).

The following reasoning focuses on the legal position of the mining project an abstract of section 58 without examining substantial components of the R2HE.

Petitioners charge twin of “failure to ensure that the mining project was unlawful due to several reasons, including (i) that the drafted environmental impact assessment report asserted the area of activity to be 5 sq. km, whereas (ii) that the defendant did not obtain consent of the owners and conceded for change of use under section 261 of the Land Control Act Cap 362 before using the land and (iii) that the defendant did not comply with the then prevailing resettlement plan nor show what plan it had put into place to avoid the effects of expose titanium to redness, radioactivity or (iv) pollution and (v) that the defendant has not submitted an appropriate environmental assessment plan to the authorities and has not been licensed under section 58 of Environmental Management and Coordination Act 2009 (EMCA).”

Plaintiffs claimed that the mining project was unlawful due to several reasons, including (i) that the drafted environmental impact assessment report asserted the area of activity to be 5 sq. km, whereas (ii) that the defendant did not obtain consent of the owners and conceded for change of use under section 261 of the Land Control Act Cap 362 before using the land and (iii) that the defendant did not comply with the then prevailing resettlement plan nor show what plan it had put into place to avoid the effects of expose titanium to redness, radioactivity or (iv) pollution and (v) that the defendant has not submitted an appropriate environmental assessment plan to the authorities and has not been licensed under section 58 of Environmental Management and Coordination Act 2009 (EMCA).
39 Kenya 2018 (Decided) Mohamed Ali 
& others v Maraba 
Management 
Authority & 3 
General & 11 
& 7 others
High Court of Kenya (Nairobi) 
Individually 
Climate, Pollution
The Court agreed with the residents that the project proposal should have prepared an SIA before the LAPSSET project started. The Court was not convinced by the government’s argument that SIA was not legally required until 2023, as greenfield projects, like the one here, are subject to the Kenyan environmental law and the constitution, noting that the drafters intended to promote broad environmental governance principles and encourage project proponents and stakeholders to ‘look beyond’ traditional environmental impacts. The Court criticized the government for not considering the port project’s external costs, stating, “To the extent that such an estimation of external costs was not considered, assessed or reported, this amounts to a significant procedural inadequacy in the EIA and the SEA Report”. The Court agreed with the residents that the project will “potentially render the marine ecosystem in Lamu by removing mangrove forests, harming fisheries, and degrading water quality among other impacts”. Through the site visit, the Court observed that the project will “harms outweighed ensuing threats of damage to the environment, immediate, irreversible, and toxic conditions that would irrevocably harm the Lamu environment by approving a project that would irrevocably harm the Lamu County Government and the Center for Justice and Environmental Action”. The court held that the EIA was insufficient to conclude that the project was consistent with all national and international environmental laws, particularly the Right to a Healthy Environment.

40 Kenya 2019 (Decided) National Environment Management Authority & 11 
others v Maraba 
Management 
Authority & 2 
Residents 
Association & 10 
& 1 others
High Court of Kenya (Nairobi) 
Residents Association, NGO (Wanja for Justice & Environmental Action) 
Polution
The court held that the EIA was invalid and the right to a clean and healthy environment was violated because the mitigation measures proposed were inadequate to meet the international, national and applicable laws. Alleged that the EIA for the railway project was invalid because there was no adequate public participation.

41 Kenya 2020 (Decided) K& B Others v Attorney General & 9 
& 2 others
High Court of Kenya (Nairobi) 
9 Individuals 
for Justice & Environmental Action 
Polution
Court relied heavily on constitution of RHRE as well as standards for RHRE. Focus on state responsibility for ensuring that RHRE is not violated by private parties. Petitioners assert that their human rights (including RHRE) have been violated by pollution caused by the operation of metal refineries, and industrial activities. Court directed that, going forward, government in Lamu, violating the Kenyan constitutional principle of devotion.

42 Kenya 2021 (Decided) Isaiah Lupara 
Odhiambo & another v 
Minister of Environment 
& 4 others 
& 3 others 
& 2 others & 4 
& 7 others
Environmental 
and Land Court at Nairobi 
& 4 others 
Adult Kenyan Community 
& 3 others 
& 2 others 
& 4 
Polution
Government violated Plaintiffs’ RHRE because they did not act on the precautionary principle in environmental management. Seeking to prevent the pollution of the Nalbidi and Athi rivers.

43 Latvia 2003 (Decided) Baltblacks 
Calibraled 
Regions (Case No. 50427/01)
Constitutional Court 
Residents (community) 
Pollution
The right to a clean and healthy environment (Article 13) is a fundamental right of every person, but when procedural (constitutional) rights to information and participation are complied with, the government has done its duty.

44 Mexico 2020 (Decided) Ruling on 
Modification to Ethanol 
Policy
Supreme Court 
Minister Alberto Pérez 
Dávila 
Polution
The precautionary principle and the need for early consideration of adverse environmental risks, including its contributions to greenhouse gas emissions. In 2017 Mexico’s Energy 
Secretary modified a fuel rule to allow a maximum of 10% ethanol in gasoline sales, up from 5.8%. The modified rule would have applicability over the next 10 years. The petitioners requested the Supreme Court to declare the modified rule invalid.

45 Mexico 2020 (Decided) Greenpeace 
Mexico v Minister of 
Environment & 3 others 
& 5 others 
& 6 others & 2 
Polution
Greenpeace Mexico sued the government for failing to meet its obligations under the Environmental Justice Law to establish an Environmental Rights Advisory Council. The court declared the new Environmental Rights Advisory Council unconstitutional.
### S/N | Country | Year | Case Name | Jurisdiction | Summary of how R2HE is addressed | Summary of claims |
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<td>46</td>
<td>Mexico</td>
<td>2021</td>
<td><em>pending</em></td>
<td>District Court in Administrative Matters</td>
<td><em>pending</em></td>
<td>Climate</td>
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<td>47</td>
<td>Mexico</td>
<td>2021</td>
<td>Nuestras Derechos Ambientales y Naturess, et al. v. Mexico (unconstitutionality of the reform to the Environmental Law)</td>
<td>District Court in Administrative Matters</td>
<td><em>pending</em></td>
<td>Climate</td>
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<tr>
<td>48</td>
<td>Mexico</td>
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<td><em>pending</em></td>
<td>Supreme Court of Justice</td>
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<td>49</td>
<td>Latvia</td>
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<td><em>pending</em></td>
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<td>50</td>
<td>Laos</td>
<td>2018</td>
<td><em>pending</em></td>
<td>Constitutional Court</td>
<td><em>pending</em></td>
<td>Pollution &amp; biodiversity</td>
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<td>51</td>
<td>Pakistan</td>
<td>2016</td>
<td><em>pending</em></td>
<td>High Court of Lahore</td>
<td><em>pending</em></td>
<td>Climate</td>
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<tr>
<td>52</td>
<td>Peru</td>
<td>2009</td>
<td><em>pending</em></td>
<td>High Court of Lahore</td>
<td><em>pending</em></td>
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<td>53</td>
<td>Peru</td>
<td>2009</td>
<td><em>pending</em></td>
<td>High Court of Lahore</td>
<td><em>pending</em></td>
<td>Climate</td>
</tr>
</tbody>
</table>

#### 46. Mexico 2021

**Case Name:** R2HE is addressed **Jurisdiction:** Climate

The court held that the negative effects that plaintiffs suffer as a consequence of the acts of the defendants does not give them a legitimate interest. While the combined divide would allow more pollutants in the air and water and affect people's health and a healthy environment, the plaintiffs allege cannot be classified as belonging to a special situation in the legal order or to an identifiable group. In the exclusion of the rest of the different groups and individuals that make up society, because the affects that they indicate in any case would be rectified by the entire population.

Plaintiffs argue that the court-ordered plan is constitutionally obliged to mitigate and adjust to the climate change, which necessitates applying and implementing an energy policy that favors the gradual development of renewable energy. Wishes the same case as Nuestras Derechos at Future and Medio Ambiente Sano et al. in v. Mexico, with youth acting as plaintiffs, rather than civil associations for procedural reasons (Supreme Proceso).

#### 47. Mexico 2021

**Case Name:** R2HE is addressed **Jurisdiction:** Climate

On April 7, 2021, the District Court issued an injunction to suspend the effects of the contested amendments until the court reaches a final decision on the merits of the case. The judge reasoned that the amendments would affect the Mexican government's duty to transition towards renewable energy. This duty is mainly established in the 18th Transitory Article of the Decree of Constitutional Energy Reforms of 2013. The judge also noted that, in the Energy Reforms of 2011, the legislation agreed to enable the Mexican State to work towards its international climate and environmental commitments, specifically, the Paris Agreement and the 2030 Sustainable Development Goals. The Court reasoned that compliance with the international commitments could only be possible if the limits they set on the generation of clean energy.

Plaintiffs argue that the concrete effect of the State's energy policies, in the non-compliance with national goals and reduction of CO2 emissions that has occurred, is affected by the amendments. Plaintiffs argue that this violates the Constitution in two ways: 1) because they violate the energy transition mandated by the Constitution in articles 3 and 25 of the Constitution of the Republic of Mexico, and 2) because they violate the right to a climate stable future (article 4).

#### 48. Mexico 2022

**Case Name:** R2HE is addressed **Jurisdiction:** Biodiversity

Court found that the authorities of the Ministry of Environment and Natural Resources approved the R2HE by verifying in a fragmented manner the environmental impacts of the expansion works of the Port of Veracruz.

Plaintiffs claimed that the proposal plan violated their R2HE, since the area included is uninhabited and began without having guaranteed, under the highest standard of protection, Plaintiffs right to a healthy environment.

#### 49. Latvia 2021

**Case Name:** R2HE is addressed **Jurisdiction:** Pollution & biodiversity

R2HE is addressed as a constitutional right that can be invoked against a urban planning decision to allow the building of houses within a flood zone.

Plaintiffs claimed that the spatial plan violated their R2HE under Section 115 because it allowed the building of houses in a flood zone not in accordance with national planning/environmental laws.
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<tr>
<th>S/N</th>
<th>Country</th>
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<th>Case Name</th>
<th>Jurisdiction</th>
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<td>Philippines</td>
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<td>Supreme Court</td>
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<td>59</td>
<td>Philippines</td>
<td>2017</td>
<td>Franchising and Climate Change Jr. et al. v. Land H.M. Henares, et al</td>
<td>High Court</td>
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<td>60</td>
<td>South Africa</td>
<td>2007</td>
<td>Fuel Retailers v. Minister of Environmental Affairs</td>
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<td>62</td>
<td>South Africa</td>
<td>2016</td>
<td>EarthLife Africa v. Minister of Environmental Affairs</td>
<td>High Court</td>
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<td>64</td>
<td>Uganda</td>
<td>2006</td>
<td>Advocates Coalition for Development and Environment v. Attorney General</td>
<td>High Court</td>
</tr>
<tr>
<td>65</td>
<td>United States</td>
<td>2009</td>
<td>Montana Environmental Information Center v. Department of Environmental Quality</td>
<td>Supreme Court</td>
</tr>
</tbody>
</table>

### Summary of How the Right to a Healthy Environment is Addressed

**Case Name:** Franchising and Climate Change Jr. et al. v. Land H.M. Henares, et al

**Jurisdiction:** High Court

- **Case Description:** The court recognized the right to a healthy environment as a constitutional right to a balanced and healthy ecology. The petitioners alleged that the government's failure to prevent pollution and climate change-related impacts resulted in the continued degradation of the environment. The court ordered the government to develop a comprehensive environmental policy and to establish procedures to investigate and report back.

- **Implications:** The court's decision recognized the right to a healthy environment as a constitutional right, emphasizing the government's duty to ensure a balanced and healthy ecology. The court's decision also established procedures for investigating environmental violations and reporting back.

**Case Name:** Fuel Retailers v. Minister of Environmental Affairs

**Jurisdiction:** Constitutional Court

- **Case Description:** The court recognized the right to a healthy environment as a fundamental right, emphasizing the government's duty to ensure a balanced and healthy ecology. The plaintiff alleged that the defendant's failure to prevent pollution and climate change-related impacts resulted in the continued degradation of the environment. The court ordered the defendant to implement measures to address the environmental problems.

- **Implications:** The court's decision recognized the right to a healthy environment as a fundamental right, emphasizing the government's duty to ensure a balanced and healthy ecology. The court's decision also established measures for addressing environmental problems.

**Case Name:** EarthLife Africa v. Minister of Environmental Affairs

**Jurisdiction:** High Court

- **Case Description:** The court recognized the right to a healthy environment as a constitutional right, emphasizing the government's duty to ensure a balanced and healthy ecology. The plaintiff alleged that the defendant's failure to prevent pollution and climate change-related impacts resulted in the continued degradation of the environment. The court ordered the defendant to implement measures to address the environmental problems.

- **Implications:** The court's decision recognized the right to a healthy environment as a constitutional right, emphasizing the government's duty to ensure a balanced and healthy ecology. The court's decision also established measures for addressing environmental problems.

**Case Name:** Advocates Coalition for Development and Environment v. Attorney General

**Jurisdiction:** High Court

- **Case Description:** The court recognized the right to a healthy environment as a constitutional right, emphasizing the government's duty to ensure a balanced and healthy ecology. The plaintiff alleged that the defendant's failure to prevent pollution and climate change-related impacts resulted in the continued degradation of the environment. The court ordered the defendant to implement measures to address the environmental problems.

- **Implications:** The court's decision recognized the right to a healthy environment as a constitutional right, emphasizing the government's duty to ensure a balanced and healthy ecology. The court's decision also established measures for addressing environmental problems.

**Case Name:** Montana Environmental Information Center v. Department of Environmental Quality

**Jurisdiction:** Supreme Court

- **Case Description:** The court recognized the right to a healthy environment as a constitutional right, emphasizing the government's duty to ensure a balanced and healthy ecology. The plaintiff alleged that the defendant's failure to prevent pollution and climate change-related impacts resulted in the continued degradation of the environment. The court ordered the defendant to implement measures to address the environmental problems.

- **Implications:** The court's decision recognized the right to a healthy environment as a constitutional right, emphasizing the government's duty to ensure a balanced and healthy ecology. The court's decision also established measures for addressing environmental problems.

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**Summary of How the Right to a Healthy Environment is Addressed:**

- **Right:** The right to a healthy environment is recognized as a constitutional right, emphasizing the government's duty to ensure a balanced and healthy ecology.
- **Implications:** The court's decisions established measures for addressing environmental problems, including implementing environmental policies, establishing procedures for investigating environmental violations, and reporting back.

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**Summary of the Scope and Content of the Universal Right:**

- **Scope:** The right to a healthy environment encompasses the right to a balanced and healthy ecology and the right to control pollution and climate change-related impacts.
- **Content:** The right includes the right to a balanced and healthy ecology, the right to control pollution, and the right to address climate change-related impacts.

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**Conclusion:** The court's decisions emphasized the government's duty to ensure a balanced and healthy ecology and established measures for addressing environmental problems. The recognition of the right to a healthy environment as a constitutional right highlights the importance of protecting the environment for future generations.
This chart documents laws, policies, and regulations around that world that include and/or implement the right to a healthy environment. Though comprising a diverse and representative sample of such laws and policies, this chart doesn’t include the entire universe of global R2HE legislation.

### INTERNATIONAL AND REGIONAL

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<thead>
<tr>
<th>S/N</th>
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<th>NAME OF LEGISLATION</th>
<th>TYPE OF INSTRUMENT</th>
<th>ELEMENT</th>
<th>SUMMARY OF LEGISLATION</th>
<th>SUMMARY OF HOW R2HE IS ADDRESSED</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>1981</td>
<td>1986</td>
<td>Additional Protocol to the American Convention on Human Rights (in the area of Economic, Social and Cultural Rights (“San Salvador Protocol”)</td>
<td>Treaty</td>
<td>Climate and biodiversity</td>
<td>This legislation governs the State Parties of the American Convention on Human Rights and establishes the duty of State Parties to adopt, both domestically and through cooperation among States, the full guarantees of the rights recognized in the Protocol.</td>
<td>Art. 12(1): “Everyone shall have the right to live in a healthy environment.”</td>
</tr>
<tr>
<td>2</td>
<td>1981</td>
<td>1986</td>
<td>African Charter on Human and Peoples’ Rights</td>
<td>Treaty</td>
<td>Climate and biodiversity</td>
<td>This legislation establishes that the State Parties of the Organization of African Unity shall respect and promote the inherent human dignity and freedoms for Humans and Peoples that are laid out in the Treaty and give effect to them</td>
<td>Art. 24: “All peoples shall have the right to a general satisfactory environment that is not detrimental to public health or to their development.”</td>
</tr>
<tr>
<td>4</td>
<td>2012</td>
<td></td>
<td>ASEAN Human Rights Declaration</td>
<td>Declaration</td>
<td>Climate and biodiversity</td>
<td>Establishes the framework for human rights cooperation among Member States of the Association of Southeast Asian Nations</td>
<td>Art. 28(9): “Everyone has the right to an adequate standard of living for himself or herself and his or her family including: the right to a safe, clean and sustainable environment.”</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>S/N</th>
<th>ADOPTED</th>
<th>ENTRY INTO FORCE</th>
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<th>SUMMARY OF HOW R2HE IS ADDRESSED</th>
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<tbody>
<tr>
<td>5</td>
<td>1998</td>
<td>2001</td>
<td>Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Escazú Agreement)</td>
<td>Treaty</td>
<td>Climate and biodiversity</td>
<td>Aims to further accountability and transparency in decision-making and strengthening public support for decisions of the environment. It established that State Parties shall guarantee the rights to access of information, public participation in decision-making and access to justice in environmental matters according to the provisions of the Convention.</td>
<td>Art. 1: “The right of every person of present and future generations to live in an environment adequate to his or her health and wellbeing.”</td>
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<tr>
<td>6</td>
<td>1996</td>
<td></td>
<td>Council Directive 96/61/EC</td>
<td>Directive</td>
<td>Pollution</td>
<td>The purpose of the Directive is to “achieve integrated prevention and control of pollution” by also establishing measures to control pollution, that is not applicable, to reduce emissions in the air and water and land, “to achieve a high level of protection of the environment taken as a whole” (art. 1)</td>
<td>Art. 3(a): “Member States shall take the necessary measures to provide that the competent authorities are operated in such a way that all the appropriate preventive measures are taken against pollution, in particular through application of the best available techniques.”</td>
</tr>
<tr>
<td>7</td>
<td>2018</td>
<td>2021</td>
<td>Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement)</td>
<td>Treaty</td>
<td>Climate and biodiversity</td>
<td>The Agreement aims to guarantee and effectively implement the rights related to access to environmental information, public participation and access to justice in environmental matters.</td>
<td>Art. 1: “The objective of the present Agreement is to guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation and access to justice in environmental matters.”</td>
</tr>
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</table>
## Unpacking the Right to a Healthy Environment: A Global Perspective

###はじめに

このページは、国際的な環境法と裁判所の判例が、国際的な人権宣言における環境権の範囲と内容を明確にする役割を演じていることを説明しています。特に、各国の環境法が保護すべき環境の定義や、環境権を行使する権利者の特定、制裁の種類など、環境権の内容を具体的に示しています。

### 国内の法規制

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<th>条項</th>
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<td>1982-08-12</td>
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<td>バイオディバーサイティ</td>
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<td>計画、実施、管理</td>
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### 例

1. **アゼルバイジャン**
   - 年次: 1988
   - 法規制: 保護環境法
   - 独立性: バイオディバーサイティ
   - 記述: 計画、実施、管理

2. **アゼルバイジャン**
   - 年次: 1988
   - 法規制: 保護環境法
   - 独立性: バイオディバーサイティ
   - 記述: 計画、実施、管理

3. **アゼルバイジャン**
   - 年次: 1988
   - 法規制: 保護環境法
   - 独立性: バイオディバーサイティ
   - 記述: 計画、実施、管理

4. **アゼルバイジャン**
   - 年次: 1988
   - 法規制: 保護環境法
   - 独立性: バイオディバーサイティ
   - 記述: 計画、実施、管理

5. **アゼルバイジャン**
   - 年次: 1988
   - 法規制: 保護環境法
   - 独立性: バイオディバーサイティ
   - 記述: 計画、実施、管理

6. **アゼルバイジャン**
   - 年次: 1988
   - 法規制: 保護環境法
   - 独立性: バイオディバーサイティ
   - 記述: 計画、実施、管理

### まとめ

このページは、国際的な環境法と裁判所の判例が、国際的な人権宣言における環境権の範囲と内容を明確にする役割を演じていることを説明しています。特に、各国の環境法が保護すべき環境の定義や、環境権を行使する権利者の特定、制裁の種類など、環境権の内容を具体的に示しています。
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<td>Côte d’Ivoire</td>
<td>1996</td>
<td>Environmental Code of Côte d’Ivoire (Law No. 01 of October 1996)</td>
<td>Côte d’Ivoire</td>
<td>Law</td>
<td>Biodiversity, pollution (generally)</td>
<td>Art. 30: “Everyone has the fundamental right to live in a healthy and pollution-free environment.” Article 2: This code aims to protect the right of all persons to live in a healthy environment and to enjoy a healthy, and pollution-free environment with respect to: plant formations, the fauna and flora and particularly classified areas, national parks and existing reserves. It establishes the framework principles intended to manage and protect the environment against any forms of degradation in order to develop natural resources in a rational manner and to prevent pollution and nuisances; improve the living conditions of different types of people while respecting the balance with the surrounding environment; create conditions for national and sustainable development. Citizens can enjoy a healthy and balanced living environment; ensure the rehabilitation of damaged environments.</td>
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<td>14</td>
<td>Cuba</td>
<td>1997</td>
<td>Environmental Law No. 8</td>
<td>Cuba</td>
<td>Law</td>
<td>Pollution, biodiversity (chapter 21, climate, brief mention)</td>
<td>Article 6: “The freedom of citizens in the use of natural resources is based on the right of all persons to enjoy a healthy environment.” Establishes the basic principles of environmental protection and the basic norms for the regulation of the administration of the environment and the actions of the citizens and society in general, with the goal to protect the environment and achieve the sustainable development of the Country.</td>
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<td>Dominican Republic</td>
<td>2000</td>
<td>Laws on the Environment and Natural Resources No. 64-00</td>
<td>Dominican Republic</td>
<td>Law</td>
<td>Pollution, biodiversity</td>
<td>Article 2: “Everyone has the fundamental right to live in an environment that is healthy and in harmony with nature.” Establishes the principles of environmental protection and the use of natural resources, as well as the basic and constitutional duties and penalties resulting from non-compliance.</td>
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<td>16</td>
<td>Ecuador</td>
<td>2008/2011</td>
<td>Constitution of the Republic of Ecuador</td>
<td>Ecuador</td>
<td>Constitution</td>
<td>Biodiversity, pollution</td>
<td>Art. 90(2): “The right of all persons are recognized, guaranteed the right to live in a healthy environment that is healthy and in harmony with nature.” Establishes the constitutional principles in Ecuador for its territories and jurisdiction to guarantee the rights of all persons to live in an environment that is healthy and in harmony with nature.</td>
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<td>17</td>
<td>Ecuador</td>
<td>2017</td>
<td>Organic-Environmental Code</td>
<td>Ecuador</td>
<td>Law</td>
<td>Pollution, climate, biodiversity (article 110)</td>
<td>Article 5 states what is included in the right to live in a healthy and ecologically balanced environment. It aims to guarantee the right of people to live in a healthy and ecologically balanced environment and the “rights of nature” recognized in the Constitution of Ecuador.</td>
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<td>18</td>
<td>Eritrea</td>
<td>2017</td>
<td>Proclamation 179/2017 (Environmental Protection and Management Framework)</td>
<td>Eritrea</td>
<td>Law</td>
<td>Pollution</td>
<td>Article 14: “Environmental rights and duties of persons: every person in Eritrea has the right to a clean, healthy and scenic environment and to the protection of the environment against pollution and degradation and to act individually and/or collectively for the maintenance and enhancement of the environment.” This legislation establishes the following objectives: to establish the foundations of environmental protection and management principles; and provide the institutions and legal instruments for their implementation and enforcement and to specify the implementation and enforcement policy consistent with the sustainable development goals. To initiate public and community participation in the conservation and protection of the environment, and to set up the basis for the implementation of the strategies and the implementation of international cooperation in the global efforts for environmental protection.</td>
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<td>Estonia</td>
<td>2011</td>
<td>General Part of the Environmental Code Act</td>
<td>Estonia</td>
<td>Law</td>
<td>Pollution, biodiversity</td>
<td>Article 231: “Everyone has the right to a healthy environment which meets the needs of health and well-being.” Determines general principles for an environment which meets the needs of health and well-being.</td>
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<td>Environmental Policy</td>
<td>Ethiopia</td>
<td>Law</td>
<td>Biodiversity, climate, pollution</td>
<td>Art. 2.3 (b): “The Key Guiding Principles are every person has the right to enjoy a healthy environment.” The Environmental Policy of Ethiopia creates broad policy guidelines and key principles. States that it is unswerving and clearly defined, these guiding principles are very important as they will shape the subsequent policy, strategy and programme formulations and their implementation. Sectoral and cross-sectoral policies and their strategies and frameworks need to be consistent with these broad macro policies will be checked against these principles to ensure consistency.</td>
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<td>21</td>
<td>Finland</td>
<td>2014</td>
<td>Environmental Protection Act 27/2014/527</td>
<td>Finland</td>
<td>Law</td>
<td>Pollution, biodiversity</td>
<td>Art. 120(2): “The laws and regulations organize the individual’s right to a healthy environment and contribute to ensuring a harmonious balance between urban zones and rural areas. Art.120(5): Recognises the right to an environment that is healthy, clean and safe and harmonious, pleasant and economically sustainable and versatile for productive and sustainable development and counteract climate change.” For the prevention of pollution, pollution, the conservation of a varied and balanced environment, and to provide for environmentally sustainable use of resources and the achievement of effects of economic development.</td>
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<tr>
<td>22</td>
<td>France</td>
<td>2009</td>
<td>French Environmental Code</td>
<td>France</td>
<td>Law</td>
<td>Pollution, biodiversity</td>
<td>Article 1103(2): “The laws and regulations organize the individual’s right to a healthy environment and contribute to ensuring a harmonious balance between urban zones and rural areas.” Contains most of the acts and decisions related to the environment, such as those concerning the preservation of natural resources, the monitoring of hazardous activities, environmental assessment and public information on projects.</td>
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<td>23</td>
<td>Georgia</td>
<td>2005</td>
<td>Law on Environmental Protection</td>
<td>Georgia</td>
<td>Law</td>
<td>Pollution, biodiversity</td>
<td>Article 5: “Citizens shall have the right to: live in an environment that is healthy and sound for their health, use the natural environment, etc.” Regulates legal relations in the field of environmental protection and the use of natural resources between state bodies and natural and legal persons throughout Georgia, including its territorial waters, airspace, territorial and专属 economic zone.</td>
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<tr>
<td>24</td>
<td>Guinea-Bissau</td>
<td>2011</td>
<td>Basic Environmental Laws (Constitution)</td>
<td>Guinea-Bissau</td>
<td>Law</td>
<td>Pollution, biodiversity</td>
<td>Article 431: “Everyone has the right to a humane and ecologically balanced and healthy environment and the duty to defend it, and the duty to actively act to achieve this goal. This right is extended to the enjoyment of individual and collective quality of life.” Defines the basic concepts and specifies the norms, and the basic principles related to policies and actions of protection, preservation and sustainable use of natural resources in the Constitution of the Republic of Guinea-Bissau. It also promote the improvement of the quality of life through a correct management of the natural environment and a rational use of natural resources, so as to ensure the sustainability and the maximum use of the use of such resources.</td>
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<tr>
<td>25</td>
<td>Haiti</td>
<td>2006</td>
<td>Decree on the Management of the Environment and the Regulation of the Conduct of Citizens for a Sustainable Development</td>
<td>Haiti</td>
<td>Decree (law?)</td>
<td>Biodiversity</td>
<td>Art. 9: “Everyone has the right to a healthy and sustainable environment. This right is accompanied by the constitutional obligation to protect the environment.” Defines the national policy on environmental management and regulates the conduct of citizens for sustainable development.</td>
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<tr>
<td>27</td>
<td>India</td>
<td>2010</td>
<td>National Green Tribunal Act (P. 19 of 2010)</td>
<td>India</td>
<td>Law</td>
<td>Pollution, biodiversity</td>
<td>Preamble: and whereas in the judicial pronouncement in India, the right to a healthy environment is part of the right to life under arts 21 and 21-C of the Constitution. Establishes the National Green Tribunal to deal with cases relating to the environment.</td>
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<td>S/N</td>
<td>COUNTRY</td>
<td>YEAR Passed</td>
<td>NAME OF LEGISLATION</td>
<td>JURISDICTION</td>
<td>TYPE OF INSTRUMENT</td>
<td>ELEMENT</td>
<td>SUMMARY OF HOW R2HE IS ADDRESSED</td>
<td>SUMMARY OF LEGISLATION</td>
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<td>28</td>
<td>Indonesia</td>
<td>2009</td>
<td>Environmental Protection and Law No. 20 of 2009</td>
<td>Indonesia</td>
<td>Law</td>
<td>Pollution, biodiversity</td>
<td>Art. 65: “Everyone has the right to live in a healthy and healthy environment and to a healthy and healthy development.” This law establishes the principles, rights, duties and obligations set forth by the Charter.</td>
<td>Establishes the main rights and duties of legal and natural persons of Lithuania in regards to the environment.</td>
</tr>
<tr>
<td>30</td>
<td>Kenya</td>
<td>2000</td>
<td>Environmental Management and Coordination Act</td>
<td>Kenya</td>
<td>Law</td>
<td>Pollution, biodiversity</td>
<td>Section 50: States in its general principles that “Every person in Kenya is entitled to a clean, healthy, and sustainable environment and to the prevention and control of pollution and other environmental degradations.”</td>
<td>Establishes the right of everyone to live in a healthy and healthy environment.</td>
</tr>
<tr>
<td>32</td>
<td>Lesotho</td>
<td>2006</td>
<td>Environment Act, 2006</td>
<td>Lesotho</td>
<td>Law</td>
<td>Pollution (part X), biodiversity (within part X)</td>
<td>Art. 4(2): “Every person living in Lesotho has the right to a clean and healthy environment and to a healthy and healthy development; and (B) has a duty to safeguard and enhance the environment and the outdoor environment, including the duty to inform the Director and the Department of Environmental Affairs of any changes or phenomena that may affect the environment.”</td>
<td>Establishes the right to live in a healthy and healthy environment.</td>
</tr>
<tr>
<td>33</td>
<td>Liberia</td>
<td>2009</td>
<td>Environmental Protection Agency Act 2003</td>
<td>Liberia</td>
<td>Law</td>
<td>Pollution, biodiversity (minima)</td>
<td>Art. 32(2): “Every person in Liberia has the right to live in a clean and healthy environment and to a healthy and healthy development; and (A) to see that those who cause or contribute to pollution and other environmental degradations, including industries and other persons who are responsible for such pollution, are properly punished and are also responsible for the restoration and the prevention of recurring pollution or other environmental degradations.”</td>
<td>Establishes the right of the population of the Republic of Liberia to a healthy and safe environment.</td>
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<tr>
<td>34</td>
<td>Lithuania</td>
<td>1992</td>
<td>Law on Environmental Protection</td>
<td>Lithuania</td>
<td>Law</td>
<td>Pollution</td>
<td>Article 2.1(2) establishes the right of the population of the Republic of Lithuania to a healthy and a safe environment and to the protection and conservation of biodiversity.</td>
<td>Establishes the right of every person to live in a healthy and healthy environment.</td>
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<td>S/N</td>
<td>Country</td>
<td>Year Passed</td>
<td>Name of Legislation</td>
<td>Jurisdiction</td>
<td>Type of Instrument</td>
<td>Element</td>
<td>Summary of How R2HE is addressed</td>
<td>Summary of Legislation</td>
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<td>40</td>
<td>Mozambique</td>
<td>1997</td>
<td>Environment Law [Law No. 20/97 dated 1 October]</td>
<td>Mozambique</td>
<td>Law</td>
<td>Biodiversity (Article 122 (chapter 3))</td>
<td>preamble: “The Constitution of our nation confers on every citizen a healthy and ecologically balanced environment as well as the duty to defend this right.” Art. 4: “Environmental management is based upon fundamental principles that are derived from the right of all citizens to an ecologically balanced environment, that is favorable to the health, well-being and the physical and mental well-being.” This Act establishes protective measures in the ecological, legal, and moral sectors and impact assessment conditions in order to avoid environmental disasters. It promotes activities defining natural elements, as well as authorized activities relevant to the exploitation of the environment. It also provides for the nation, public entities and private individuals, under the responsibility of competent authorities.</td>
<td>Aims at ensuring protection and improvement of the environment and to advance the right of the people to a balanced and healthy ecology. It includes a &quot;remedy of habeas corpus&quot; which is a remedy that can be taken on behalf of persons whose constitutional right to a balanced and healthy ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or public or private entity, in seeking environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.</td>
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<tr>
<td>41</td>
<td>Niger</td>
<td>1998</td>
<td>Framework Law on Environmental Management [Loi N° 20/97, dated 1 October]</td>
<td>Niger</td>
<td>Law</td>
<td>Pollution &amp; biodiversity (Article 4)</td>
<td>“Everyone has the right to a healthy, environment.” Art. 2: “Everyone has the right to be informed about his environment and to participate in decision making.” This law establishes the general legal framework and the fundamental principles of environmental management in the country. It favorably adopts National Environmental Policy (Act 15). This fund will notably be used in support of programs to combat desertification, including reforestation, fight against bush fires, improved farming techniques, and the development of renewable energy sources.</td>
<td>The law also provides for the protection and advancement of the right of the people to a balanced and healthy ecology. It includes a &quot;remedy of habeas corpus&quot; which is a remedy that can be taken on behalf of persons whose constitutional right to a balanced and healthy ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or public or private entity, in seeking environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.</td>
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<tr>
<td>42</td>
<td>Norway</td>
<td>2014 (Nov 2014)</td>
<td>The Constitution of the Kingdom of Norway</td>
<td>Norway</td>
<td>Constitution</td>
<td>Biodiversity pollution (Article 122)</td>
<td>“Every person has the right to an environment that is conducive to health and to a balance of the biological diversity and natural beauty.”</td>
<td>Art. 122 “Every person has the right to an environment that is conducive to health and to a balance of the biological diversity and natural beauty.” The law serves as a general framework for environmental protection, which comes with the right to a healthy environment, including the permitting procedure for projects with environmental impact. The law also provides for the obligations of natural and legal persons in relation to the environment.</td>
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<tr>
<td>43</td>
<td>North Macedonia</td>
<td>2005</td>
<td>Law on Environment (article 1)</td>
<td>North Macedonia</td>
<td>Law</td>
<td>Climate, biodiversity pollution (Article 4)</td>
<td>The rights and responsibilities of the Republic of Macedonia, municipalities, the City of Skopje and the municipalities of the City of Skopje as well as the rights and responsibilities of legal entities and natural persons, in the provision of conditions required to ensure protection, improvement and enhancement of the environment, for the purpose of enhancing the right of citizens to a healthy environment.</td>
<td>Art. 122 “Every person has the right to an environment that is conducive to health and to a balance of the biological diversity and natural beauty.” The law serves as a general framework for environmental protection, which comes with the right to a healthy environment, including the permitting procedure for projects with environmental impact. The law also provides for the obligations of natural and legal persons in relation to the environment.</td>
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<tr>
<td>44</td>
<td>Palau</td>
<td>1981</td>
<td>Environmental Quality Protection Act [P.L. 30/92]</td>
<td>Palau</td>
<td>Law</td>
<td>Pollution (throughout biodiversity) (Article 19)</td>
<td>The Obii Era Kakau (Palauan national legislation) recognizes that each person has a fundamental right for a healthy and ecologically balanced environment. It establishes general environmental principles, provides the Palau (Environmental Quality Protection Board) (the environmental body) with the power to manage pollution and enforce the implementation and enforcement of environmental laws.</td>
<td>Art. 122 “Every person has the right to an environment that is conducive to health and to a balance of the biological diversity and natural beauty.” The law serves as a general framework for environmental protection, which comes with the right to a healthy environment, including the permitting procedure for projects with environmental impact. The law also provides for the obligations of natural and legal persons in relation to the environment.</td>
</tr>
<tr>
<td>45</td>
<td>Philippines</td>
<td>1987</td>
<td>The Constitution of the Republic of the Philippines</td>
<td>Philippines</td>
<td>Constitution</td>
<td>Biodiversity (Article 2)</td>
<td>“The State shall protect and advance the right of the people to a balanced and healthy ecology in accord with the rhythm and harmony of nature.”</td>
<td>Art. 2 “The State shall protect and advance the right of the people to a balanced and healthy ecology in accord with the rhythm and harmony of nature.” The law serves as a general framework for environmental protection, which comes with the right to a healthy environment, including the permitting procedure for projects with environmental impact. The law also provides for the obligations of natural and legal persons in relation to the environment.</td>
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<td>46</td>
<td>Philippines</td>
<td>2008</td>
<td>Republic Act No. 9512 on National Environmental Awareness and Education Act</td>
<td>Philippines</td>
<td>Law</td>
<td>Biodiversity (Article 7)</td>
<td>“Consistent with the policy of the State to protect and advance the right of the people to a balanced and healthy ecology in accord with the rhythm and harmony of nature.”</td>
<td>Art. 7 “Consistent with the policy of the State to protect and advance the right of the people to a balanced and healthy ecology in accord with the rhythm and harmony of nature.” The law serves as a general framework for environmental protection, which comes with the right to a healthy environment, including the permitting procedure for projects with environmental impact. The law also provides for the obligations of natural and legal persons in relation to the environment.</td>
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<tr>
<td>S/N</td>
<td>COUNTRY</td>
<td>YEAR PASSED</td>
<td>NAME OF LEGISLATION</td>
<td>JURISDICTION</td>
<td>TYPE OF INSTRUMENT</td>
<td>ELEMENT</td>
<td>SUMMARY OF NEW LEGISLATION</td>
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<td>52</td>
<td>South Africa</td>
<td>2004</td>
<td>National Environmental Management: Biodiversity Act 10 of 2004</td>
<td>South Africa</td>
<td>Law</td>
<td>Biodiversity</td>
<td><em>Drafts Art. 34 of the Constitution, which sets out the right to a healthy environment.</em> Provide for the implementation and conservation of South Africa’s biodiversity and the preservation of the natural assets of South Africa, which serve to protect ecosystems and the environment for the benefit of the country and of all people who live and work in the country, as well as to ensure that the relationship between people, nature, and the environment is maintained.</td>
<td>The implementation and conservation of South Africa’s biodiversity and the preservation of the natural assets of South Africa, which serve to protect ecosystems and the environment for the benefit of the country and of all people who live and work in the country, as well as to ensure that the relationship between people, nature, and the environment is maintained.</td>
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<tr>
<td>53</td>
<td>South Africa</td>
<td>2004</td>
<td>National Environmental Management: Protection of Environmental Values Act 57 of 2003</td>
<td>South Africa</td>
<td>Law</td>
<td>Biodiversity</td>
<td><em>Drafts Art. 24 of the Constitution, which sets out the right to a healthy environment.</em> Provide for the protection and conservation of ecosystems, which serve to protect natural areas and their environment, as well as to ensure that the relationship between people, nature, and the environment is maintained.</td>
<td>The protection and conservation of ecosystems, which serve to protect natural areas and their environment, as well as to ensure that the relationship between people, nature, and the environment is maintained.</td>
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<tr>
<td>54</td>
<td>South Korea</td>
<td>1990</td>
<td>Framework Act on Environmental Policy</td>
<td>South Korea</td>
<td>Law</td>
<td>Pollution (throughout, biodiversity)</td>
<td><em>Art. 6(1): “Every citizen shall have the right to live in a clean, safe and healthy and agreeable environment.”</em> The purpose of this Act is to prevent environmental pollution and environmental damages and to properly manage and preserve the environment through defining rights and duties of citizens and obligations of the State.</td>
<td>The purpose of this Act is to prevent environmental pollution and environmental damages and to properly manage and preserve the environment through defining rights and duties of citizens and obligations of the State.</td>
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<tr>
<td>55</td>
<td>Spain</td>
<td>2007</td>
<td>Law No. 40 on National Biodiversity</td>
<td>Spain</td>
<td>Law</td>
<td>Biodiversity</td>
<td><em>Art. 1: Recognizes that the Constitution establishes R2HE (Art. 45).</em> Establishes the basic legal framework in order to ensure the human right to a clean, safe and healthy environment and to prevent environmental pollution and environmental damages and to properly manage and preserve the environment through the definition of citizens’ rights and the obligations of the State.</td>
<td>The recognition of the Constitution establishing R2HE (Art. 45) establishes the basic legal framework in order to ensure the human right to a clean, safe and healthy environment and to prevent environmental pollution and environmental damages and to properly manage and preserve the environment through the definition of citizens’ rights and the obligations of the State.</td>
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<tr>
<td>56</td>
<td>Spain</td>
<td>2007</td>
<td>Environmental Responsibility Law (Law No. 26/2007)</td>
<td>Spain</td>
<td>Law</td>
<td>Pollution (law)</td>
<td><em>Law creates administrative regime to enforce the R2HE found in Art. 40 of Spain’s Constitution. Articles of the Constitution recognize the right of people to a healthy environment. The law specifies an administrative regime to enforce the R2HE found in Spain’s Constitution.</em> Tapejera Directive 2004/35/EC of the European Parliament and the Council of April 25, 2004 on environmental responsibility and liability in connection with the prevention and repair of environmental damages. <em>Creates an administrative regime to back substantiated environmental law, including that found in Spain’s Constitution, Article 45.</em></td>
<td>The law creates an administrative regime to enforce the R2HE found in Art. 40 of Spain’s Constitution. Articles of the Constitution recognize the right of people to a healthy environment. The law specifies an administrative regime to enforce the R2HE found in Spain’s Constitution.</td>
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<tr>
<td>57</td>
<td>Tajikistan</td>
<td>2011</td>
<td>Law of the Republic of Tajikistan on Protection of Environment</td>
<td>Tajikistan</td>
<td>Law</td>
<td>Pollution, biodiversity &amp; climate</td>
<td><em>Art. 12: “Citizens of the Tajikistan Republic have the right to live in an environment favorable for the protection of health, well-being, healthy and favorable environment, prevention of negative environmental impact, ecological safety and natural use of natural resources. The present Law regulates the relations connected with interaction of the society, enterprises, organizations, institutions, public bodies, the implementation of economic and other environmental impact related activities on the territory of the Republic of Tajikistan.”</em> This Law establishes legal grounds of state policy in the sphere of environmental protection in order to ensure the human right to a clean, safe and healthy environment. This Law creates an administrative regime to back substantiated environmental law, including that found in Tajikistan’s Constitution, Article 45.</td>
<td>The law establishes legal grounds of state policy in the sphere of environmental protection in order to ensure the human right to a clean, safe and healthy environment. This Law creates an administrative regime to back substantiated environmental law, including that found in Tajikistan’s Constitution, Article 45.</td>
</tr>
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</table>
22. See e.g. CONST. (1988, rev. 2017), §225 (Braz.) and CONST. (1991, rev. 2015), §79 (Colom.).


17. CONST. (1987), art. 2, §16 (Phil.).

16. The Environment And Human Rights (State Obligations In Relation To The Environment In The Context Of The Protection And Guarantee Of The Rights...)

15. As of 2020, the Right to a Healthy Environment was explicitly included in regional treaties ratified by 126 States. Additionally, 156 out of 193 UN Member States had legally recognised the right to a safe, clean, healthy and sustainable environment in their legislative provisions. See U.N Special Rapporteur for the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Report on the Right to a Healthy Environment: good practices. 43 U N Doc A/HRC/43/23 (March 2020) [hereinafter UN Special Rapporteur Report].


8. See e.g.: Jacqueline Peel and Hari M Osofsky, ‘A Rights Turn in Climate Change Litigation?’ (2018) 7 Transnational Environmental Law 37; Annalisa Marcelli, supra note 9, ¶ 1 (hereinafter Marcelli, supra note 9).


1 - the right to a fair trial - where domestic courts failed to properly consider R2HE as recognised under domestic law. Around this jurisdictional hurdle and presented their case to the European Court of Human Rights (ECtHR) by grounding their complaint in Article 6 § 1 of the ECHR. Note that The European Convention currently does not recognise R2HE, but pressure on this respect is increasing. Actors have in the past gotten recognition of their complaint in the Strasbourg Court - see e.g. Minors Oposa v. Secretary of the Department of Environment and Natural Resources, Supreme Court, G.R. No. 101083 (Jul. 30, 1999) [hereinafter Minors Oposa (Phil.)]; Fuel Retailers Association of South Africa v. Director-General Environmental Management, Dept of Agriculture, Conservation and Environment, Mpumalanga Province, & others, Constitutional Court, Case CCT 67/06 (Jun. 7, 2007) (S. Afr.) [hereinafter Fuel Retailers Association (S. Afr.)]; H.M. Henares Jr. & others v. Land Transportation Franchising and Regulatory Board et al., Supreme Court, G.R. No. 158200 (Oct. 23, 2006) (Phil.) [hereinafter H.M. Henares Jr. & others v. Land Transportation Franchising and Regulatory Board et al.]; Salamanca Mancera (Colom.), supra note 16, ¶ 17; Future Generations, supra note 17; Salamanca Mancera, supra note 16; Barragán, et al. v. The Presidency of the Republic of Colombia, et al., Supreme Court, No 1100220015 000 2018 00319 01 (5 April 2018) [Colom.]; Salamanca Mancera et al v Presidencia de la Republica de Colombia et al, Supreme Court of Justice, No 1100220015 000 2018 00319 01 (5 April 2018) [Colom.]; Mendoza Beatris Silva et al v. State of Argentina et al, Supreme Court of Justice, M. 1569. XL (Jun. 2, 2014) (Phil.) [hereinafter Mendoza Beatris Silva et al v. State of Argentina et al].
36. Bundesverfassungsgericht (BVerfG), Constitutional Court, 1 BvR 2666/16 (Mar. 24, 2022) (Ger.) [note 114 (hereinafter Neubauer (Ger.)].
37. KM (Kenya), supra note 14, ¶ 172 (order not made because scientific studies “had been done going by the reports filed in [that] petition”).
38. Lhaka Honhat (IACtHR), supra note 23, ¶ 288.
39. Herrera Carrion (Ecuador), supra note 15, 99 (Google translate); Lhaka Honhat (IACtHR), supra note 23, ¶ 15; KM v. AG, supra note 15, ¶ 153.
40. Lhaka Honhat (IACtHR), supra note 23, ¶ 241.
42. Judgment C-431/00, Constitutional Court, D-2589, 35 (Apr. 12, 2000) (Colom.) (Google translate).
43. ACCDE (Uganda), supra note 29. See also Jaime Hans Bustamante Johnson v. Occidental Petroleum del Perú LLC, Repsol Exploración Perú y Petróleos Energía Perú S.A., Constitutional Tribunal, Exp No 83343-2007-PATC (Feb. 19, 2009) [hereinafter Bustamante Johnson (Peru)], Center for Public Interest Law and avor. tema Oil Refinery, High Court, Suit No E12/91/07 (Sept. 20, 2007) (Ghana) (the High Court holding that a plaintiff has a cause of action against a defendant oil refinery company for polluting a lagoon and violating the residents’ R2HE); Irazú Margarita v. Coperto SA, Chamber of Civil and Commercial Appeals, No 215328 (Feb. 9, 1990) (Arg.) [hereinafter Irazú Margarita (Arg.)].
44. Aguas Argentinas (Arg.), supra note 21.
45. Future Generations (Colom.), supra note 16.
46. KM (Kenya), supra note 14.
47. Combeima River, supra note 13; Rodgers Muema Nzizka & 2 others v. Tiomin Kenya Limited, High Court, Civil Case No. 97 of 2001, (Sept. 21, 2001) (Kenya) [hereinafter Rodgers Muema Nzizka (Kenya)].
48. See Bustamante Johnson (Peru), supra note 33.
49. KM (Kenya), supra note 14.
50. ACCDE (Uganda), supra note 19.
51. In re Greenpeace Southeast Asia and Others, Commission on Human Rights, Case No. CHR-N-2016-0001 (Phl.).
52. Khalis No and Another v. Aquarellos Investments (Pty) Ltd Others, High Court, No. 9114/2007 (Jun. 22, 2007) (S. Afri) [hereinafter Khalis No (S. Afri)].
53. Combeima River (Colom.), supra note 13.
54. ACCDE (Uganda), supra note 19, 23 (pdf).
55. Antonio Horvath Kiss y otros contra Comisión de Evaluación Ambiental de la Región de Aysén, Court of Appeals, Rol de la causa 153-2011 (Oct. 6, 2011) (Chile).
56. Khalis No (S. Afri), supra note 42.
57. Aguas Argentinas (Arg.), supra note 21, ¶ 17 (Google translate); Khalis No (S. Afri), supra note 42, 35; Irazú Margarita (Arg.), supra note 33; Rodgers Muema Nzizka (Kenya), supra note 37, 19.
58. ACCDE (Uganda), supra note 19, 23 (pdf).
60. KM (Kenya), supra note 14, ¶ 161-162.
61. Aguas Argentinas (Arg.), supra note 21, ¶ 20 and 34 (Google translate).
62. Combeima River, supra note 11, ¶ 5.15-6 (Google translate).
63. Future Generations (Colom.), supra note 16, 49.
64. Aguas Argentinas, supra note 21, ¶ 20 (Google translate).
65. KM (Kenya), supra note 14, ¶ 168; Irazú Margarita (Arg.), supra note 33.
68. Waste Prevention & Management Act (Bhutan), supra note 57, ch. 2, ¶ 6.
69. Environmental Code (Bun:quin Faso), supra note 57, ch. 3, arts. 56. 6.
70. Environmental Protection, Management, and Rehabilitation Framework (Ethnia), supra note 57.
71. See, e.g., Ministerio Público Federal v. de Rezende (Braz.).
72. See, e.g., Agencia Nacional de Hidrocarburos (Colom.), supra note 17.
74. CONST (2009), art. 33 (Boliv.)
75. Municipality of Santa Ana de Cotacachi v. Minister of the Environment, Constitutional Court, No. 1149-19-JP , (Nov. 10, 2011) (Ecuador) ¶140 (Deep Transliteration) [hereinafter Los Cedros case (Ecuador)]. Original Spanish version: “El derecho constitucional a un ambiente sano es reconocido a cada persona de manera particular, pero a la vez desde una noción colectiva, que abarca a la población en su conjunto. Esta noción colectiva refiere también al reconocimiento de la titularidad de este derecho a grupos poblacionales en relación al entorno al que se encuentran vinculados. En este último sentido, se puede considerar la titularidad de comunidades, pueblos, ciudades u otras jurisdicciones.”
76. See, e.g., Lhaka Honhat (IACtHR), supra note 23 (Referring to diverse statements made by international bodies, the Court has underlined the “close” relationship or “interdependence” between the environment and human rights. This is because the latter may be adversely affected by environmental degradation and, in turn, because – as United Nations agencies have indicated – “affective-environmental protection often depends on the exercise of human rights.”).
77. Judgment T-622/16, Constitutional Court (Nov. 10, 2016) (Colom.), ¶ 5.5 (hereinafter Judgment T-622 or Atrato River case (Colom.)]
78. See Magyarország Alkotmánnyúságé, Constitutional Court, Case 28/1994 (V. 20) (May 20, 1994) (Hung.) [hereinafter Case 28/1994 (Hung.)].
79. Yimawi Jr (Phl.), supra note 17.
80. See Khalis No (S. Afri), supra note 42, ¶ 10 (“It is not in dispute that applicants, as officials responsible for a healthy environment have a duty to promote sustainable development which are underpinned by the integration of social, economic and environmental factors in the planning, implementation and evaluation of decisions to ensure that all developments serve present and future generations and not only the economic and commercial needs of property owners or developers.”)
81. See Presidente de la sociedad MARLENE S.A. v. Municipalidad de Tibas Marlene, Constitutional Chamber of Supreme Court, No. 6918/94 (Costa Rica).
82. See Francisco Chahuan v. Empresa Nacional de Petróleos, Supreme Court of Justice, Rol. 5888-2019 (May 28, 2019) (Chile) [hereinafter Francisco Chahuan (Chile)].
83. See Castillo Montov v. Municipal Council of San Pedro La Laguna, Constitutional Court, No. 5956-2016 (Oct. 5, 2017) (Guatemala) [hereinafter Case 5956-2016 (Guatemala)].
84. See Sentencia C-085/16, Constitutional Court (Feb. 8, 2016) (Colom.) [hereinafter Castillo Salazar (Colom.)].
85. These elements are mirrored in international guiding documents. Special Rapporteur David Boyd identified the R2HE substantive components to be: (i) clean air, (ii) safe climate, (iii) healthy and sustainably produced food; (iv) access to safe water and adequate sanitation; (v) non-toxic environments in which to live, work and play; and (vi) healthy ecosystems and biodiversity. See generally, UN Special Rapporteur Report, supra note 1.
86. Castillo Salazar (Colom.), supra note 74, ¶ 131 (Google Translate).
88. Bustamante Johnson (Peru), supra note 33, ¶ 45 (Deep Transliteration).
89. See, e.g., Aguas Argentinas (Arg.), supra note 21, ¶ 18.
90. Case No. 5956-2016 (Guatemala), supra note 73, 34 (google translate).
91. Case No. 5956-2016 (Guatemala), supra note 73, 35 (Google translate).
92. Castillo Salazar (Colom.), supra note 74, ¶ 141; see also C.P. Oswaldo Giraldo López, Highest Court on Administrative Law, radicado: T0001 23 1 300 2011 006113 (Sept. 14, 2020) (Colom.).
94. Environmental Code (1996), Law No. 8.96-766, Title 1 Art. I (Côte d’Ivoire) (Google Translate).
95. id. Title 6, ¶ 635.3 (Google Translate).


243. Id. ¶ 240.

244. Escazú Agreement, supra note 130, art. 8, section 3(c). While standing requirements are less clear under the Aarhus Convention, the European Commission, in The Aarhus Convention An Implementation Guide, emphasised that parties must not use criteria laid down in their national law so strictly that they essentially prevent environmental organisations from taking an environmental case to court. See generally U.N. ECON COMM N FOR EUR., THE AARHUS CONVENTION: AN IMPLEMENTATION GUIDE (2nd ed., 2014), https://unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf.

245. ACODE (Uganda), supra note 19, 6.


247. For a case pertaining to the R2HE, see, e.g., Francisco Chahuan (Chile), supra note 72, para. 41 (where the court concluded that there was not enough proof of causality to attribute legal responsibility of environmental harm and pollution to any company, despite there being sufficient connections to presume, with good reason, that the economic activity carried out by the different companies would be the cause of the persistent and serious episodes of contamination and intoxication that have affected the inhabitants of the communes in question).

248. See Mumbula Local Municipality (S. Afr.), supra note 22.

249. CWPL No. 15 of 2010 (India), supra note 25, at ¶ 12.


251. Parque Isla Salamanca (Colom.), supra note 208.

252. Rodgers Muema Nzioka (Kenya), supra note 37, 10.


255. See, e.g., Environment Management Act (Tanzania), supra note 204.

256. See Decree on the Regulation of Pollution and Damage to the Environment (Chad), supra note 190, at §2, art. 8.

257. For a case pertaining to the R2HE, see, e.g., Francisco Chahuan (Chile), supra note 72, para. 41 (where the court concluded that there was not enough proof of causality to attribute legal responsibility of environmental harm and pollution to any company, despite there being sufficient connections to presume, with good reason, that the economic activity carried out by the different companies would be the cause of the persistent and serious episodes of contamination and intoxication that have affected the inhabitants of the communes in question).

258. See Environmental Law (Mozambique), supra note 220.

259. KM (Kenya), supra note 14, paras. 88 and 160.


263. See General Part of the Environment Code Act (Estonia) [hereinafter General Part of the Environment Code Act (Estonia)].

264. See Law on Environmental Protection (Georgia), supra note 167.

265. See Environmental Protection and Management (Indonesia), supra note 169, art. 66.

266. Environmental Protection and Management (Indonesia), supra note 169, art. 66.


268. See Act to Promote Environmental Awareness through Environmental Education and for Other Purposes, Rep. Act No. 9512, §§ 3 – 4 (Dec. 12, 2008) (Phil.) (hereinafter “Act to Promote Environmental Awareness through Environmental Education and for Other Purposes (Phil.)”).

269. Act to Promote Environmental Awareness through Environmental Education and for Other Purposes (Phil.), at §3.