

International References on Environmental Rights

A. Environmental Constitutionalism

Citation	Summary
Books & Reports	
Environmental Rights and Defenders: A Handbook for the North American Judicial Forum James R. May & Erin Daly United Nations Environment Programme (2022)	<p>Introduction to Rights-Based Approaches to Environmental Harm in <u>North America</u></p> <ol style="list-style-type: none"> I. What are Environmental Rights? II. What Environmental Rights are Not III. Litigation Issues in Rights-Based Approaches IV. The Unique Vulnerabilities of Environmental Human Rights Defenders <p>Chapter 1: The Judiciary and Environmental Rights</p> <ol style="list-style-type: none"> I. Environmental Rights in International, Foreign, and Domestic Arenas II. Obstacles to Rights-Based Environmental Litigation III. Judicial Engagement of Environmental Rights-Based Claims IV. Enforcement in Environmental Rights-Based Cases <p>Chapter 2: Environmental Human Rights Defenders</p> <ol style="list-style-type: none"> I. The Basics <ol style="list-style-type: none"> A. Who are EHR Defenders? B. What work do EHR Defenders do? C. Where do EHR Defenders work? D. Why do people risk everything they have to protect the environment and those who live in it? II. Legal Protection for EHRDs III. What Makes Environmental Human Rights Defenders More Vulnerable IV. Harms and threats against EHRDs V. Judicial Opportunities and Obligations <p>Case Study: United States District Court for the District of Old Union, Tracy Mills v. US EPA, Civil Action No. 92661 Plaintiffs contend that federal and state action and inaction in the face of Defendant’s ongoing and continuous contamination of the Edie Aquifer contravenes various rights afforded by the U.S. Constitution and the Constitution of the State of Old Union.</p> <p>https://perma.cc/6LP7-2WUC</p>

<p>Annex 2 to A/HRC/49/53: The right to a clean, healthy and sustainable environment: non-toxic environment</p> <p>(Apr. 3, 2022)</p>	<p>Supplementary information to the Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.</p> <p>https://perma.cc/A8KM-BK2Y</p>
<p># The Time is Now: The case for universal recognition of the right to a safe, clean, healthy and sustainable environment</p> <p>David Boyd, John Knox & Marc Limon</p> <p>Universal Rights Group (Feb. 2021)</p>	<p>Part I. Towards universal recognition of the right to a safe, clean, healthy and sustainable environment, a journey 50 years in the making</p> <p>Part II. The content of the human right to a safe, clean, healthy and sustainable environment</p> <p>Part III. How would universal recognition of the right to a safe, clean, healthy and sustainable environment help improve lives and protect the planet?</p> <p>Part IV. Conclusions and Recommendations</p> <p>Annex I: Legal recognition of the right to a healthy environment [List of Countries]</p> <p>https://perma.cc/R22S-RXVJ</p>
<p>Right to a Healthy Environment: Good Practices</p> <p>UN Human Rights Special Procedures & UNEP (2020)</p>	<p>Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment:</p> <p>The report (and its annexes) describes good practices of States in recognizing the right to live in a safe, clean, healthy and sustainable environment and implementing the procedural and substantive elements of the right. This fundamental human right is now recognized in law by more than 80 percent of United Nations Member States (156 out of 193). The procedural elements are access to information, public participation, and access to justice/ effective remedies. The substantive elements include clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems. In the context of the global environmental crisis, accelerated diffusion and adoption of good practices to protect human rights is imperative.</p> <p>https://perma.cc/Y5N7-WAHS</p>
<p>Global Judicial Handbook on Environmental Constitutionalism</p> <p>James R. May & Erin Daly</p> <p>United Nations Environment Programme & Widener University Delaware Law School (3d ed. 2019)</p> <p>U.S. & Brazil</p>	<p>Introduction</p> <p>Chapter 1: Role of the Judiciary in Environmental Constitutionalism</p> <p>Chapter 2: A Taxonomy of Environmental Constitutionalism</p> <p>A. Substantive Rights</p> <p>B. Procedural Environmental Rights</p> <p>C. Other Aspects of Environmental Constitutionalism</p> <ol style="list-style-type: none"> 1. Environmental Obligations, Duties and Policies 2. Rights to Water 3. Rights of Nature 4. Sustainability and Public Trust

	<ul style="list-style-type: none"> 5. Climate Change 6. Dignity D. Subnational Environmental Constitutionalism Chapter 3: Justiciability of Environmental Constitutionalism <ul style="list-style-type: none"> A. Presumptions About Justiciability B. Who Can Enforce Constitutional Environmental Rights? C. Who is Responsible?: Identifying the Appropriate Defendant D. Timing: When is the Right Time to File a Claim? E. Justiciability and Process F. Affirmative Defenses Chapter 4: Adjudicating Environmental Constitutionalism <ul style="list-style-type: none"> A. Challenges in Adjudicating Environmental Rights <ul style="list-style-type: none"> 1. Interpreting Constitutional Text 2. Identifying Breaches B. Four Types of Judicial Interpretation <ul style="list-style-type: none"> 1. Independent Environmental Rights 2. Dependent Environmental Rights 3. Derivative Environmental Rights 4. Dormant Environmental Rights Chapter 5: Remedies <ul style="list-style-type: none"> A. State Obligations under the International Law Framework B. The Range of Remedies <ul style="list-style-type: none"> 1. Preventing Further Environmental Harm. 2. Injunctions. 3. Damages 4. Compliance Orders 5. Imprisonment C. Challenges to Enforcement Chapter 6: Environmental Dignity Rights <ul style="list-style-type: none"> A. Dignity Rights B. Dignity and the Environment C. Dignity Rights and Environmental Constitutionalism D. Bringing Dignity Rights into Environmental Constitutionalism <ul style="list-style-type: none"> 1. Defining the cause of action 2. Standing 3. Remedies
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	<p>Chapter 7: Environmental Constitutionalism and Climate Justice</p> <p>A. Climate Justice</p> <p>B. Express Constitutional Provisions Addressing Climate Change</p> <p>C. Climate Constitutionalism and Justice in the Courts</p> <p>Conclusion: Judicial Engagement of Environmental Constitutionalism</p> <p>https://perma.cc/9EMR-7FQ6</p>
<p>Compendium of Global Environmental Constitutionalism: Selected Cases and Materials</p> <p>Erin Daly & James R. May</p> <p>UN Environment Programme & Widener University (2d ed. 2019)</p>	<p>Section I: Judicial Opinions from Around the Globe</p> <p>A. Asia Pacific</p> <ol style="list-style-type: none"> 1. Juan Antonio, Anna Rosario and Jose Alfonso Oposa & Others v. The Honorable Fulgencio S. Factoran, Jr., (Supreme Court of the Philippines, 1993) 2. Vellore Citizens' Welfare Forum v. Union of India (Supreme Court of India, 1996) 3. Dr. Mohiuddin Farooque and another v. Bangladesh (Supreme Court of Bangladesh, 1997) 4. M.C. Mehta v. Union of India & Others (Supreme Court of India 2004) 5. Santosh Mittal vs State Of Rajasthan And Ors. (The High Court of Judicature for Rajasthan 2004) 6. Advisory Opinion: Whether the Supervision of and Assistance to Public and Private Waste Cleanup and Disposal Organs is Unconstitutional? (Taiwan Constitutional Court 2006) 7. Naewonsa Temple v. Korea Rail Network Authority (Supreme Court of Korea 2006) 8. Arnold v Minister Administering the Water Management Act 2000 (High Court of Australia 2010) 9. Mendaing v. Ramu Nico Management (National Court of Justice for Papua New Guinea, 2011) 10. Pro Public v Godavari Marble Industries Pvt. Ltd. and Others (Supreme Court of Nepal 2015) 11. Teitiota v Ministry of Business Innovation and Employment (Supreme Court of New Zealand 2015) 12. Raub Australian Gold Mining v. Hue Shieh Lee (Court of Appeal, Malaysia 2016) 13. Salim v. State of Uttarakhand (High Court of Uttarakhand at Nainital 2017) 14. Miglani v. State of Uttarakhand & others (High Court of Uttarakhand at Nainital 2017) 15. Ashgar Leghari v. Federation of Pakistan (Lahore High Court, 2018) <p>B. Central and South America and the Caribbean</p> <ol style="list-style-type: none"> 1. Pablo Miguel Fabián Martínez Y Otros (Tribunal Constitucional de Peru, 2006) (La Oroya) 2. Beatriz Silvia Mendoza and others v. National State of Argentina (Supreme Court of Argentina 2008) 3. Padilla Gutierrez, Clara Emilia y otros, todos en su condición de vecinos de lugares aledaños al Parque Nacional Marino Las Baulas de Guanacaste c/ SETENA, Secretaria Técnica Nacional Ambiental (Corte Suprema de Justicia de Costa Rica, Sala Constitucional 2008) 4. Domitila Rosario Piche Osorio, conocida por Domitila Rosario Piche Estrada, en contra del Ministro y de la Viceministra del Medio Ambiente y Recursos Naturales, (Sala de lo Constitucional de la Corte Suprema de Justicia, El Salvador, 2010) 5. Expediente sobre permisos de mineras a cielo abierto en los sitios de la UNESCO (Superior Tribunal de Justicia de Argentina, 2010)

6. La Camaronera en la Reserva Ecológica (Corte Constitucional del Ecuador, 2015)

C. Africa

1. Gbemre v Shell Petroleum Development Company Nigeria Limited and Others (Federal High Court, Nigeria 2005)
2. Earthlife Africa Johannesburg v Minister of Environmental Affairs (High Court of South Africa, Gauteng Division 2017)

D. Europe

1. Lopez Ostra v. Spain (European Court of Human Rights, Chamber 1995)
2. Guerra and Others v Italy (European Court of Human Rights, Grand Chamber 1998)
3. In the case of Hatton and Others v. the United Kingdom, European Court of Human Rights (Grand Chamber 2003)
4. Kyrtatos v. Greece (European Court of Human Rights, First Section 2003)
5. Fadeyeva v. Russia (European Court of Human Rights, First Section 2005)
6. Hamer v. Belgium (European Court of Human Rights, Second Section, 2007)
7. Borysiewicz v. Poland (European Court of Human Rights, Fourth Section 2008)
8. International Federation for Human Rights v. Greece (European Committee of Social Rights, 2013)
9. Jugheli and Others v. Georgia (European Court of Human Rights Fifth Section 2017)
10. O’Sullivan McCarthy Mussel Development Ltd v. Ireland (European Court of Human Rights, Chamber 2018)
11. Bursa Barosu Başkanlığı and Others v. Turkey (European Court of Human Rights, Chamber, 2018)
12. Netherlands v. Urgenda Foundation, (The Hague Court of Appeal, 2018)

E. North America

1. Juliana v. United States (United States Federal District Court for the District of Oregon 2016)
2. Pennsylvania Environmental Defense Foundation v. Commonwealth of Pennsylvania, 161 A.3d 911 (Supreme Court of Pennsylvania 2017)
3. In Re Application of Maui Electric Company (Sierra Club v. Public Utility Commission of Hawai’i) (Supreme Court of Hawai’i 2017)

Section II: Reports

- A. United Nations: Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Section III: Sample Provisions of Environmental Constitutionalism

- A. Substantive Environmental Rights
- B. Procedural Environmental Rights

Section IV: Bibliography

- A. Cases
- B. Secondary Sources

<https://perma.cc/6EET-WAJA>

<p>The Human Right to a Healthy Environment</p> <p>Editors: John H Knox and R Pejan</p> <p>Cambridge University Press, 2018</p> <p>K3585.H853 2018</p>	<p>The absence of a <u>globally recognized right to a healthy environment</u> has not prevented the development of human rights norms relating to the environment. Indeed, one of the most noteworthy aspects of human rights law over the last 20 years is that UN treaty bodies, regional tribunals, special rapporteurs, and other human rights mechanisms have applied human rights law to environmental issues even without a stand-alone, justiciable human right to a healthy environment. In this book, a diverse set of scholars and practitioners, all of whom have been instrumental in defining the relationship between human rights and the environment, provide their thoughts on what is, or should be, the role of an international human right to a healthy environment. It includes the following:</p> <ol style="list-style-type: none"> 1. Introduction / John H. Knox and Ramin Pejan 2. Catalyst for change: evaluating forty years of experience in <u>implementing the right to a healthy environment</u> / David R. Boyd 3. Learning from constitutional environmental rights / Erin Daly and James R. May 4. The right to a satisfactory, healthy, and sustainable environment in the <u>African</u> regional human rights system / Lilian Chenwi 5. The European Court of Human Rights and international environmental law / Ole W. Pedersen 6. Complexities and uncertainties in matters of human rights and the environment: identifying the judicial role / Dinah Shelton 7. Reasoning up: environmental rights as customary international law / Rebecca M. Bratspies 8. In search of a right to a healthy environment in international law: jus cogens norms / Louis J. Kotzé 9. A human right to a healthy environment?: moral, legal, and empirical considerations / César Rodríguez-Garavito 10. Quality control of the right to a healthy environment / Marcos Orellana 11. The politics of human rights, the environment, and climate change at the Human Rights Council: toward a universal right to a healthy environment? / Marc Limon 12. The male formulation of the overarching environmental human right / Daniel Magraw and Kristina Wienhöfer 13. Human rights in the climate change regime: from Rio to Paris and beyond / Lavanya Rajamani 14. The right to a healthy environment and climate change : mismatch or harmony? / Sumudu Atapattu <p>https://doi.org/10.1017/9781108367530</p>
<p>Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment</p> <p>A/HRC/37/59 (Jan. 24, 2018)</p>	<p>Provides framework principles on human rights and the environment, and addresses the human right to a safe, clean, healthy, and sustainable environment. Discusses the next steps in the evolution of human rights and the environment.</p> <p>https://perma.cc/45DW-K4Y6</p>
<p>Judicial Handbook on Environmental Constitutionalism</p> <p>James R. May & Erin Daly</p> <p>UN Environment Programme, 2017</p>	<p>Chapter 1: The Role of the Judiciary in Environmental Constitutionalism</p> <p>Chapter 2: A Taxonomy of Environmental Constitutionalism</p> <ol style="list-style-type: none"> A. Substantive Rights B. Procedural Environmental Rights C. Other Aspects of Environmental Constitutionalism: Environmental Obligations, Duties and Policies; Rights to Water; Rights of Nature; Sustainability and Public Trust; Climate Change; Dignity

	<p>D. Subnational Environmental Constitutionalism</p> <p>Chapter 3: Justiciability of Environmental Constitutionalism</p> <ul style="list-style-type: none"> A. Presumptions About Justiciability B. Who Can Enforce Constitutional Environmental Rights? C. Who is Responsible?: Identifying the Appropriate Defendant D. Timing: When is the Right Time to File a Claim? E. Justiciability and Process F. Affirmative Defenses <p>Chapter 4: Adjudicating Environmental Constitutionalism</p> <ul style="list-style-type: none"> A. Challenges in Adjudicating Environmental Rights B. Four Types of Judicial Interpretation <p>Chapter 5: Remedies</p> <ul style="list-style-type: none"> A. State Obligations under the International Law Framework B. The Range of Remedies C. Challenges to Enforcement <p>Conclusion</p> <p>Appendix: Sample Provisions of Environmental Constitutionalism</p> <p>https://perma.cc/4YVJ-MMX9</p>
<p>The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment</p> <p>David Richard Boyd</p> <p>Vancouver, BC: UBC Press, 2012.</p> <p>K3585.B69 2012</p>	<p>The right to a healthy environment has been the subject of extensive philosophical debates that revolve around the question: Should rights to clean air, water, and soil be entrenched in law? David Boyd answers this by moving beyond theoretical debate to measure the practical effects of enshrining the right in constitutions. His pioneering analysis of 193 constitutions and the laws and court decisions of more than 100 nations in Europe, Latin America, Asia, and Africa reveals a positive correlation between constitutional protection and stronger environmental laws, smaller ecological footprints, superior environmental performance, and improved quality of life.</p> <p>Part 1. The Emergence and Evolution of a New Human Right.</p> <ol style="list-style-type: none"> 1. Constitutions, Human Rights, and the Environment: The Context 2. The Right to a Healthy Environment: framing the Issues 3. The Prevalence and Enforceability of Environmental Provisions in National Constitutions 4. The Influence of International Law <p>Part 2. The Constitutional Right to a Healthy Environment in Practice</p> <ol style="list-style-type: none"> 5. A Framework for Assessing the Legal Influence of the Right to a Healthy Environment 6. Latin America and the Caribbean 7. Africa

	8. Asia 9. Eastern Europe 10. Western Europe Part 3. Evaluating the Impacts of Environmental Provisions in Constitutions 11. Lessons Learned: Practical Experiences with the Right to a Healthy Environment 12. Do Environmental Provisions in Constitutions Influence Environmental Performance? 13. An Idea Whose Time Has Come.
The Human Right to a Green Future: Environmental Rights and Intergenerational Justice Richard P Hiskes New York: Cambridge University Press, 2009	This book presents an argument for environmental human rights as the basis of intergenerational environmental justice. It argues that the rights to clean air, water, and soil should be seen as the environmental human rights of both present and future generations. It presents several new conceptualizations central to the development of theories of both human rights and justice, including emergent human rights, reflexive reciprocity as the foundation of justice, and a communitarian foundation for human rights that both protects the rights of future generations and makes possible an international consensus on human rights, beginning with environmental human rights. In the process of making the case for environmental human rights, the book surveys and contributes to the entire fields of human rights theory and environmental justice. 1. Environmental human rights and intergenerational justice 2. Emergent human rights, identity, harms, and duties 3. Reflexive reciprocity and intergenerational environmental justice 4. Cosmopolitan ethics, communal reciprocity, and global environmentalism 5. Toward a global consensus on environmental human rights 6. Human rights as inheritance: instituting intergenerational environmental justice 7. Conclusion: environmental justice and the emergent future of human rights https://doi.org/10.1017/CBO9780511575396
Articles	
The right to a clean, healthy and sustainable environment: how to make it operational and effective Brian J Preston Journal of Energy & Natural Resources Law (2023-01-31): 1-23	In the last year, the United Nations General Assembly has adopted, and New York State's Constitution Bill of Rights has been amended to include, a right to a healthy environment. This continues a trend of adoption of a constitutional or statutory right to a healthy environment. The right to a healthy environment is constitutionally recognised in 110 countries. The article explores what a right to a healthy environment entails and how it can be made operational and effective. It is presented in three parts: first, what the right to a healthy environment involves; second, the correlative duties to uphold and protect the right; and third, the systematic and structural change to law and governance needed to uphold the right and discharge the duties. https://doi.org/10.1080/02646811.2023.2165310
The Right to a Healthy Environment and Climate Litigation: A Game Changer?	At this momentous time of renewed interest over the explicit recognition of the right to a healthy environment, this article examines the evidence emerging from the use of this right in climate change litigation. The aim is to assess whether climate litigation corroborates or disproves the UNSRs' findings concerning the use of the right to a healthy environment in litigation. We therefore

<p>Pau de Vilchez & Annalisa Savaresi</p> <p>32 Y.B. Int'l Env't L. 3 (2021)</p>	<p>look at climate litigation as a case study to ascertain the extent to which the right to a healthy environment contributes to improved implementation and enforcement of climate laws, protects against gaps in climate laws, and creates opportunities for better access to justice for climate litigants. First, we define the parameters of our case study, explaining how we selected the data we analysed, positioning our inquiry into the rapidly growing body of literature on human rights and climate change. Second, we provide a bird's eye perspective on rights-based climate litigation and on the use of the right to a healthy environment in this litigation. We identify the cases where this right has been invoked, by whom, where and when, and with what outcomes. We then take a closer look at how courts have interpreted and applied the right to a healthy environment in the climate judgments that have been issued to date. We conclude by drawing some general inferences on whether the right to a healthy environment has furthered the chances of success of climate litigants and on whether the recognition of this right is a significant determining factor in the outcome of climate litigation.</p> <p>https://doi.org/10.1093/yiel/yvac064</p>
<p>Environmental constitutionalism: Aspiration or transformation?</p> <p>Lael K. Weis</p> <p>16 Int'l J. Const. L. 836 (2018)</p>	<p>A striking feature of environmental constitutional provisions is that state obligations are pre- dominantly entrenched using contra judicative provisions: provisions, such as directive principles, that are designed to be given effect by the political branches and not by direct judicial enforcement. Yet, scholarship to date has largely focused on the direct judicial enforcement of environmental constitutional rights. This article argues that a rights-focused approach is misguided. Correctly understood, environmental constitutionalism presents an alternative to existing, rights-based models of social values constitutionalism within the legal constitutionalist tradition: the “contra judicative model.” This model addresses concerns about constitutional entrenchment by allocating institutional responsibility for defining fundamental social values and the legal norms that they require to the political branches. By drawing attention to its unique formal features, the article thus demonstrates that environmental constitutionalism holds significant interest for constitutional theory and should not be treated as a sub- topic in environmental law or subsumed within existing debates about the forms of judicial review and enforcement mechanisms appropriate for social rights.</p> <p>https://doi.org/10.1093/icon/moy063</p>
<p>Environmental Constitutionalism in Defense of Nature</p> <p>Erin Daly</p> <p>53 Wake Forest L. Rev. 667 (2018)</p>	<p>Most of the world's population live in countries whose constitutions protect environmental rights in one way or another and, increasingly, courts throughout the globe are implementing these provisions to advance both environmental and human rights. This Article examines some of the most innovative ways constitutional courts have sought to vindicate these rights to better protect nature and natural resources. It describes how the limitations on human rights law impacts the protection of natural resources and suggests that constitutional law can help to fill some of these gaps, creating new opportunities for vindication of environmental and human rights. The Article then explores two innovations in constitutional adjudication - primarily from South America and the Indian sub-continent - that have further expanded opportunities for protection of the environment and of natural resources, first, by expanding the range of people who can bring claims based on environmental human rights, and second, by extending juridical personhood to nature itself. As environmental constitutionalism has evolved and become interwoven into the fabric of judicial decision-making, courts have adapted their constitutional doctrines to advance environmentally protective ends.</p>
<p>A Right Most Dear: The Case for a Constitutional Environmental Right</p> <p>Caleb Hall</p>	<p>Introduction Environmental Claims: Remedies Without a Right The Recognition of Implied Rights Constitutional Right to a Clean Environment: Recognizing the Right; Carefully Describing the Right; Defending the Right Conclusion</p> <p>https://perma.cc/847H-26FX</p>

<p>30 Tul. Env't L.J. 85 (2016)</p> <p>An Inspirational Right to a Healthy Environment</p> <p>Sam Kalen</p> <p>34 UCLA J. Env't. L. & Poly 156 (2016)</p>	<p>A right to a healthy environment is neither novel nor extreme. As this Essay posits, this is a propitious moment for exploring why such a right is supported by this Nation's legal institutions. This Essay walks through those institutions -- our Constitution, the common law, as well as Congressional and state efforts to embed a right to a healthy environment into our legal fabric. Those institutions collectively demonstrate how an aspirational right, such as a right to a healthy environment, enjoys sufficient legal currency and is capable of enforcement.</p> <p>This Essay suggests that how environmental rights envelop the fabric of our legal institutions, casting a shadow for an aspirational right that warrants acknowledging. An aspirational right might, for instance, contextualize appeals to employ the public trust doctrine as an enveloping principle to protect our resources for current and future generations. 14 Mary Wood, after all, spearheaded the idea of establishing a children's trust premised upon a capacious appreciation for the importance of both state and federal public trust doctrines. To be sure, this short inquiry does not mine, in measurable detail, all of the issues surrounding the right to a healthy environment; instead, it provides a framework for how a necessary dialogue can unfold, positing that we should consider the jurisprudential and pragmatic issues surrounding an aspirational right to a healthy environment. As this Essay illustrates, an aspirational environmental right has become part of an international dialogue, and our legal institutions and history demonstrate how our society has slowly gravitated toward recognizing some form of such a right.</p> <p>II. The Case for an Environmental Right</p> <p>III. Constitutional Rights and the Common Law: Potential Avenues for Recognizing an Environmental Right?</p> <p>IV. Legislating for a Healthy Environment: Incorporating Environmental Rights into the Law</p> <p>V. Reconciling Positive and Negative Rights: An Aspirational Environmental Right?</p> <p>https://doi.org/10.5070/L5342031731</p>
<p>Arguments in Support of a Constitutional Right to Atmospheric Integrity</p> <p>Elizabeth Fuller Valentine</p> <p>32 Pace Env't. L. Rev. 56 (2015)</p>	<p>As used in this paper, "atmospheric integrity" refers to the interrelated physical, chemical, and biological processes on planet Earth that enable human and non-human life now and in the future and recognizes that modern civilization has developed within the relatively stable, current geologic period known as the Holocene. I chose to focus on atmospheric integrity, rather than more broadly on environmental integrity, because the health of terrestrial and aquatic habitats is inextricably tied to atmospheric stability. This assertion is not meant to minimize the multitude of harms impacting land and water. It is just that the magnitude of the climate crisis overwhelms all other environmental threats and will have obvious, detrimental impacts on humanity. Also, the determination of what constitutes a decent environment is a value judgment over which reasonable people will differ. Conversely, focusing on a goal that can be measured with scientific accuracy will enable courts and policy makers to confidently measure progress toward (or away from) the goal.</p> <p>In this paper I explore the establishment of a federal constitutional right to atmospheric integrity. I begin, in Part II, with a review of the threat presented by global climate change. In Part III, I discuss various conceptions of rights: constitutional, basic, natural, and human. I then review modes of constitutional analysis and presently-recognized state and national constitutional environmental rights in Part IV. In Part V, I review <i>Robinson Township v. Commonwealth of Pennsylvania</i> in which the Pennsylvania Supreme Court, for the first time, provided substantive interpretation of the environmental rights contained in the Commonwealth's constitution. Finally, in Part VI, I conclude that the Supreme Court may recognize a constitutional right to atmospheric integrity based on historical, doctrinal, prudential, ethical, and structural analysis.</p>

	https://digitalcommons.pace.edu/pelr/vol32/iss1/2
<p>Global Environmental Constitutionalism: Mapping the Terrain</p> <p>Klaus Bosselmann</p> <p>21 Widener L. Rev. 171 (2015)</p>	<p>I. The Rise of Global Constitutionalism</p> <p>II. The Constitutional Character of International Environmental Law</p> <p>III. Constitutionalizing Environmental Rights</p> <p>IV. Sustainability as a Constitutional Principle</p> <p>V. Towards a Global Environmental Constitution?</p> <p>VI. Conclusion</p>
<p>The Conceptual Contours of Environmental Constitutionalism</p> <p>Louis J. Kotze</p> <p>21 Widener L. Rev. 187 (2015)</p>	<p>The time is arguably ripe to commence more deliberately with an enquiry into the conceptual contours of environmental constitutionalism from a normative point of view. While it would be impossible to propose any convincing and systemized normative analysis of environmental constitutionalism in a succinct way that respects the space limitations of this special issue of the Widener Law Review, I do hope to take some tentative steps towards such a normative enquiry that could hopefully be expanded in the future. In doing so, and as a point of departure, the paper commences in Part II with an analysis of existing views on environmental constitutionalism, including a brief search for the rationale behind this concept. Part III elaborates on, what I believe, is the conceptual fulcrum around which environmental constitutionalism revolves, namely the concepts of constitutions and constitutionalism. Based on the foregoing analysis, Part IV proposes a consolidated description of "environmental constitutionalism."</p>
<p>Comparative Environmental Constitutionalism</p> <p>Erin Daly and James R. May</p> <p>6 Jindal Glob. L. Rev. 9 (2015)</p>	<p>As more and more countries around the globe are amending their constitutions to recognise environmental rights and duties relating to air, water, the use of natural resources, sustainability, climate change, and more, courts are increasingly engaging with these provisions and developing a common constitutional law of environmental rights. This article examines this growing jurisprudence and surveys the central axes around which debates about environmental constitutionalism revolve. First, we examine whether environmental rights are more suitably advanced at the international level or at the national level of constitutional law, as is increasingly the case; the former offers two alternatives--protecting the environment for its own sake or protecting it as a human right, whereas constitutionalism tends to integrate the two approaches. Concluding that international protection presents problems of articulation and enforcement, we examine the arguments for protection of environmental rights at the level of national constitutionalism. Lastly, we argue that engaging in comparative constitutionalism is a necessary component of understanding the envisioned reach and inherent limitations of environmental constitutionalism.</p>
<p>Constitutional Protection for Environmental Rights: The Benefits of Environmental Process</p> <p>Erin Daly</p> <p>17 Int'l J. Peace Stud. 71 (2012)</p>	<p>More and more constitutions around the world - from Bangladesh to Bolivia, and from the Philippines to the countries of the EU -- are explicitly protecting environmental rights and the values of a clean and healthy environment. In many instances, environmental rights are recognized not as substantive entitlements (which would allow litigants to sue if the government polluted their rivers or clearcut their forests), but as procedural rights. Examples of procedural rights include imposing on governments the obligation to consult with communities before they take actions that will affect their environment or giving individuals the right to participate in governmental processes that will affect their environment. While procedural rights do not guarantee a particular outcome, they may be more effective in preventing environmental degradation. This paper assesses the efficacy of these procedural constitutional environmental protections and seeks to determine whether procedural rights can be more efficacious than substantive environmental rights.</p> <p>https://perma.cc/23VP-PXNK</p>

<p>The Implicit Constitutional Right to Live in a Healthy Environment</p> <p>David R. Boyd</p> <p>20 Rev. Eur. Cmty. & Int'l Env't L. 171 (2011)</p>	<p>The right to a healthy environment has rapidly gained constitutional protection around the world. In at least twenty countries, recognition of the right to a healthy environment first occurred through court decisions determining that it is implicit in other constitutional provisions, primarily the right to life. The right is now recognized explicitly in the constitutions of 90 countries spanning Europe, Asia, Latin America, the Caribbean and Africa, and is recognized as an implicit and enforceable constitutional right in at least twelve additional countries. The decisions of international courts and tribunals provide further support for concluding that the right to life necessarily includes the right to a healthy environment.</p> <p>https://doi.org/10.1111/j.1467-9388.2011.00701.x</p>
<p>Constituting Fundamental Environmental Rights Worldwide</p> <p>James R. May</p> <p>23 Pace Env't. L. Rev. 113 (2006)</p>	<p>Constitutions provide a framework for social order. They also reflect a paradox. While constitutions are usually the product of a convulsive event of majoritarian democracy, most contain anti- majoritarian features designed to protect so-called fundamental rights against the tyranny of the majority. Traditional fundamental rights, such as those found in the Bill of Rights to the Constitution of the United States, include protecting for its citizens free speech, religious exercise and voting rights. Does a fundamental, enforceable, individual right to a clean and healthy environment belong in the pantheon of fundamental constitutional rights? This article discusses the extent to which nations worldwide have constituted such "fundamental environmental rights" (FERs).</p> <p>https://digitalcommons.pace.edu/pelr/vol23/iss1/5</p>

B. Environment and Human Rights

Citation	Summary
Books & Reports	
<p>Climate Change: A Comparative Overview of the Rights Based Approach in the Americas</p> <p>Claudia S. de Windt, Maximiliano Campos, Andrés Felipe Sánchez Peña & Estefania Jimenez</p> <p>Organization of American States (2016)</p>	<p>I. Introduction and purpose II. Climate Change in the OAS III. Climate Change and Environmental Law IV. Climate Change and Human Rights Law: A Peoples Centered Approach to address the impacts of Climate Change V. Responses: How are Uncertainties being addressed? VI. Final thoughts and considerations</p> <p>https://perma.cc/HF7W-QRR9</p>
<p>Climate Change and Human Rights</p> <p>UNEP and Columbia Law School Sabin Center for Climate Change Law</p>	<p>Part 1: The Human Rights Implications of Climate Change Part 2: The Obligations of Governments and Private Actors to Respond to the Human Rights Implications of Climate Change Part 3: Implementation Assessment Part 4: Recommendations</p> <p>https://perma.cc/E7UL-6GHM</p>

December 2015	
Articles	
<p>The right to a healthy environment: Reconceptualizing human rights in the face of climate change</p> <p>Elena Cima</p> <p>31 Rev. Eur. Comp. & Int'l Env't L. 38 (2022)</p>	<p>There is hardly any doubt that climate change threatens the enjoyment of a wide range of human rights. Yet, in the absence of a distinct right to a healthy environment, a victim of climate change impacts would have to rely on existing rights to bring a claim. However, not only are these avenues not always successful or even sufficient to effectively and adequately compensate the victims, but they appear especially problematic in the context of climate change. This article explores the implications of the recognition of a stand-alone substantive right to a healthy environment in the context of climate change. In doing so, it argues that such a recognition could trigger a paradigm shift that would facilitate the reconceptualization of human rights law to better adapt to the negative impacts of climate change, in particular by incorporating key environmental law principles in the human rights system.</p> <p>https://doi.org/10.1111/reel.12430</p>
<p>The Case for Environmental Human Rights: Recognition, Implementation and Outcomes</p> <p>James R. May</p> <p>42 Cardozo L. Rev. 983 (2021)</p>	<p>This Article examines three aspects of the case for environmental human rights, and includes an associated Appendix. Part I considers the extent to which environmental human rights have been recognized in law, such as by international instrument, constitution, or court decision. Part II then examines the extent to which courts are reaching results because of an environmental right. Part III then contemplates the extent to which recognizing environmental human rights in law improves environmental outcomes. Last, the Appendix lists countries that currently recognize a right to a healthy environment constitutionally.</p> <p>This Article concludes that although environmental human rights have found footholds about half the world over, judicial recognition has been slow in coming and mixed in results. There remain few cases issued from apex courts (that is, courts that issue controlling opinions) engaging environmental rights, leaving much opportunity for the development of legal principles. There is also sparse demonstrable evidence that legal recognition of a right to a healthy environment improves environmental outcomes, suggesting a need for further interrogation.</p> <p>https://perma.cc/6LH9-TTRX</p>
<p>Can we conceive of the right to a safe environment in the face of climate catastrophe?</p> <p>Bruce Lindsay</p> <p>29 Hum. Rts. Def. 21 (2020)</p>	<p>We are in a time of hard truths. The biggest of these is climate change, or rather 'dangerous anthropogenic interference with the climate system' so profound it is not merely on the verge of dangerous but catastrophic. This truth is supported by scientific consensus and increasingly by direct experience. In what ways should we have a right to feel safe from such a crisis? Moreover, do we have a right to objective conditions of safety and health, and can we call on the state to strive for those conditions? In Australia we confront a further hard truth, namely that government and society are notoriously averse to norms of rights, and certainly human rights, as a form of claim on the state. The tacit bargain of Australian government and 'people' is a democratic one, with a certain protective function, but without lofty ambitions. Human rights considerations should be integral to obligations to tackle climate change.</p> <p>https://perma.cc/7DVR-Z3AN</p>
<p>Do We Need a Human Right to a Healthy Environment?</p> <p>Rebecca Bratspies</p>	<p>I. Why Human Rights? II. Why Look Beyond Environmental Law A. The Problem of Transboundary Environmental Harms B. International Law is Light on Substance and Enforcement III. The Intersection of Human Rights and the Environment</p>

<p>13 Santa Clara J. Int'l L. 31 (2015)</p>	<p>A. A Healthy Environment as a Precondition for Human Rights B. Human Rights as Tools to Address Environmental Issues IV. <u>An Emerging Right to a Healthy Environment?</u> V. What About Non-State Actors? VI. Conclusion</p> <p>https://perma.cc/4L8S-PNUR</p>
<p>The Status of Constitutional Protection for the Environment in Other Nations</p> <p>David R. Boyd</p> <p>David Suzuki Foundation, Paper 4 (2013)</p>	<p>The Status of Constitutional Protection for the Environment in Other Nations Types of Environmental Provisions Government's Environmental Duties Substantive Environmental Rights Procedural Environmental Rights Individual Environmental Duties Other Environmental Protection Provisions The Enforceability of Environmental Provisions in National Constitutions Conclusion Appendix A. Types of Environmental Protection Provisions in National Constitutions</p> <p>https://perma.cc/E5EF-PFRK</p>
<p>Classical environmentalism and environmental human rights: an exploration of their ontological origins and differences</p> <p>S Ravi Rajan</p> <p>2 J. Hum. Rts. & Env't 106 (2011)</p>	<p>This article offers an exploration of the ontological differences between classical environmentalist perspectives and those of environmental human rights advocates. It has two substantive parts. The first section is a historical survey of central tenets of traditional forms of environmentalism, which discusses the aesthetic, utilitarian and scientific frameworks therein. The second section similarly examines environmental human rights and, in particular, two key concepts: sustenance rights and security rights.</p> <p>https://doi.org/10.4337/jhre.2011.01.06</p>
<p>The vulnerable living order: human rights and the environment in a critical and philosophical perspective</p> <p>Anna Grear</p> <p>2 J. Hum. Rts. & Env't 23 (2011)</p>	<p>One of the problems encountered in bringing the discourses of human rights and environment together concerns the philosophical foundations lying beneath certain closures of liberal (legal) theory. Linking a destructive mind/body split to the destructive relationship between 'humanity' and the 'environment,' the author argues that a critical analysis of legal anthropomorphism reveals a fundamental failure of representation at its heart, in so far as the 'human being' qua 'human being' is not fully included in it. On further analysis human beings can be seen to be functionally united with non-human animals and the environment in a form of conceptual exclusion linked to certain violence of capitalism. The author reflects upon the thought of Merleau-Ponty, offering it as a basis for an alternative philosophical lens through which to understand the relationship between human rights and the environment, one uniting them in the ontological vulnerability of the living order itself. Human beings, in this light, are not the hyper-rational subjects of liberal legal theory acting upon an objectified, exploitable 'nature.' We are, rather, part of a living tissue of interconnection bearing profound implications for ethics, epistemology, and legal theory.</p> <p>https://doi.org/10.4337/jhre.2011.01.02</p>

<p>The right to an ecologically unimpaired environment as a strategy for achieving environmentally sustainable human societies</p> <p>Paul A Barresi</p> <p>6 Macquarie J. Int'l & Comp. Env't L. 3 (2009)</p>	<p>Substantive environmental rights-based claims offer both promises and human societies worldwide. In general, the belief that these rights are real and must be protected is not embedded deeply enough in the world's legal cultures to make them judicially enforceable against States at municipal or international levels. Perhaps the most useful worldwide is through what Caroline Dommen calls the 'mobilisation of shame', which implicitly presupposes the cultural reframing of environmental sustainability as a substantive civil rights issue in relevant jurisdictions.</p> <p>https://perma.cc/7LZT-MPDV</p>
<p>Contextualizing Environmental Human Rights: A Relativist Perspective</p> <p>Roda Mushkat</p> <p>26 Pace Env't. L. Rev. 119 (2009)</p>	<p>The aim of this paper is to make a modest contribution in that direction by injecting a diluted relativist element into the evaluation of proposals to entrench environmental human rights. The experience of China is invoked for this purpose and the more ambitious concept of ecological rights is relegated to the periphery because the conclusions drawn may be extended beyond the specific area highlighted here.</p> <p>https://digitalcommons.pace.edu/peir/vol26/iss1/4</p>
<p>Are We There Yet? The Right to Environment in International and European Law</p> <p>Lynda Collins</p> <p>3 McGill Int'l J. Sustainable Dev. L. & Pol'y 119 (2007)</p>	<p>Recent decades have witnessed a progressive integration of international human rights law and international environmental law. Environmental human rights have been widely recognized in international environmental policy, domestic constitutions, and the decisions of international tribunals. A review of existing scholarship and jurisprudence reveals three discernible approaches to environmental human rights. The first is the recognition that environmental degradation may result in the violation or deprivation of existing human rights such as the right to life, the right to health, or the right to culture. A second approach, which has been codified internationally in at least two important treaties, recognizes procedural environmental rights, including the right to environmental information, the right to participate in environmental decision-making, and the right of access to justice in environmental matters. Finally, commentators, states, and tribunals are increasingly recognizing a free-standing "right to environment" which overlaps with, but extends beyond, other existing human rights. This Article will evaluate the content and current status of these three categories of environmental human rights in international law, and in the law of one of the most environmentally progressive regions of the world—Europe.</p> <p>https://perma.cc/AR5Y-LTQ3</p>
<p>Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized?</p> <p>Dinah Shelton</p>	<p>As early as the 1972 Stockholm Conference on the Human Environment, efforts were made to explore and attempt to understand the interrelationship between human rights and environmental protection. Preparations for the Stockholm Conference coincided with the 1968 United Nations Teheran Conference on Human Rights, the first international conference organized by the United Nations, and marking the twentieth anniversary of the adoption of the Universal Declaration of Human Rights. The Teheran Conference, overcoming a long-standing political debate that led to the adoption of two human rights covenants¹ rather than a single instrument, proclaimed that all human rights are interdependent and indivisible, opening the door for consideration of complex issues like environmental rights.</p>

<p>35 Denv. J. Int'l L. & Pol'y, 129 (2006)</p>	<p>The Teheran Conference also addressed concerns about economic development and human rights, proclaiming the interdependence of peace, development and human rights. Resource depletion fit within this agenda and stimulated interest among developing states in the Stockholm Conference, which culminated in the Declaration recognizing environmental protection as a pre-condition for the enjoyment of many human rights. Almost twenty years after the Stockholm Conference, in resolution 45/94, the UN General Assembly recalled the language of the Stockholm Declaration. ... There is a substantial practical reason for emphasizing international human rights law. For those whose well-being suffers due to environmental degradation, human rights law currently provides the only set of international legal procedures that can be invoked to seek redress for harm that is the consequence of an act or omission attributable to a state. The inclusion of inaction is significant because most environmental harm is due to non-state activity. Human rights law makes clear that while its primary objective is to protect individuals from abuse of power by state agents, including legislative representatives of the democratic majority, each state is also obliged to exercise due diligence to ensure that human rights are not violated by non-state actors. Due diligence requires measures to prevent abuses where possible, investigate violations that occur, prosecute the perpetrators as appropriate, and provide redress for victims. Thus, while no international human rights procedure allows a direct action against private enterprises or individuals who cause environmental harm, a state allowing such harm may be held accountable, as the following discussion indicates (litigation can be commenced in certain instances against non-state actors in national courts, for example under the Alien Tort Statute, 28 U.S.C. § 1350 (2006)).</p> <p>https://perma.cc/ANP5-FR5N</p>
<p>The Right to a Green Future: Human Rights, Environmentalism, and Intergenerational Justice</p> <p>Richard P. Hiskes</p> <p>27 Hum. Rts. Q. 1345 (2005)</p>	<p>This article develops an argument for intergenerational justice within the language of human rights, specifically the human right to a safe environment. After acknowledging the difficulties associated with such an argument, the author presents a new approach rooted in pragmatist philosophy that establishes environmental rights as "emergent human rights." Accepting the validity of such emergent rights carries several beneficial consequences both for the philosophy of human rights and for its practice. First, emergent environmental rights supply a strong argument for justice across generations, because environmental rights logically presume concern for the future. Second, the argument for emergent environmental rights helps to resolve the so-called consensus versus pluralism debate within human rights theory and practice. It does so by positing that all societies can accept environmental human rights, at least for the successor generations of their own societies. Third, environmental human rights presume the continued significance of national sovereignty and citizenship within human rights practice, thereby enhancing the possibility of their acceptance within a culturally diverse world.</p> <p>https://doi.org/10.1353/hrq.2005.0049</p>
<p>The Human Right to a Good Environment - The sword in the stone</p> <p>Steve Turner</p> <p>4 Non-State Actors & Int'l L. 277 (2004)</p>	<p>In 1994, the Secretary General of the United Nations said that, "without protection of the environment, the basis of human survival will be eroded." Time has shown that the principles of "sustainable development" alone will not be sufficient to protect the environment. Time has shown that the interest that present and future generations have in the environment need to be rooted in positive law. The argument is that the human right to a good environment provides a cost effective, forward thinking and practical method of dealing with environmental problems. The first step in its introduction would be for the right to be recognised formally on an international level. The second step would be the introduction of appropriate legal mechanisms and regulations that govern decision making on a day-to-day basis.</p> <p>https://doi.org/10.1163/1571807042794663</p>

<p>The Right to a Healthy Life or the Right to Die Polluted?: The Emergence of a Human Right to a Healthy Environment Under International Law</p> <p>Sumudu Atapattu</p> <p>16 Tul. Env't L.J. 65 (2002)</p>	<p>I. Introduction II. Evolution of the Right to Environment III. What are Environmental Rights? IV. Survey of Human Rights Provisions that are relevant for Environmental Protection A. International Human Rights Law: Right to Life, Health, Privacy & Adequate Standard of Living/Quality of Life B. National Level V. A Third Generation Right to a Clean Environment? VI. Right to Development versus the Right to Environment VII. Conclusion: The Right to Sustainable Development</p> <p>https://perma.cc/C95B-F5SS</p>
<p>The Right to a Healthy Environment, Human Rights and Sustainable Development</p> <p>Sueli Giorgetta</p> <p>2 Int'l Env't Agreements: Pol. L. & Econ. 171 (2002)</p>	<p>The concept of sustainable development is presented as a solution able to cope with development needs and the preservation of the environment, protecting it for present and future generations. The right to a healthy environment may be part of existing international law being implemented through human rights instruments. The procedural aspect of the right to a healthy environment embodies the right to information, the right to participate and the right to effective remedies. Participation in the decision-making process and available and effective means of redress are essential features of the right to a healthy environment. Expressed in the field of human rights law, these principles convey the notions that citizens are entitled to participate. The Aarhus Convention links environmental protection and human rights norms and is the first international legally binding instrument elaborating on Principle 10 of the Rio Declaration and recognizing the right to a healthy environment.</p> <p>https://doi.org/10.1023/A:1020938009559</p>
<p>Environment and Human Rights: A New Approach to Sustainable Development</p> <p>Maria Adebowale Capacity Global, Chris Church Anped, Beatrice Nduta Kairie, Boris Vasylykivsky & Yelena Panina Eco-Pravo Kyiv</p> <p>International Institute for Environment and Development (IIED) & Regional and International Networking Group (2001)</p>	<p>The paper suggests that the lack of success of many of the Rio initiatives makes it appropriate to consider new approaches, and that such approaches should be rooted in recognition of an <u>inalienable right to a safe and healthy environment</u>. It first considers the need for environmental human rights and looks at what such rights might be. It includes perspectives from different nations and regions and highlights the UN Draft Principles from 1994. It also considers the issue of globalisation and suggests that environmental human rights could play an important part in this debate. The paper concludes by looking ahead to the 2002 Summit. The central conclusion is that this is a very appropriate time to be considering these issues and that there is a need for debate leading to a convention that will for the first time put these rights in a clear legal framework. It welcomes the moves by UNCHR and UNEP to work together on these issues and stresses the need for this debate to be developed as part of the broader discussions at the 2002 Summit.</p> <p>https://perma.cc/UFF9-RFX6</p>
<p>A Right to Environment in International Law: Current Status and Future Outlook</p>	<p>This article adopts a policy science perspective, viewing law as a process of authoritative decision-making wherein policy choices play an important role. The policy science approach recognizes a broader methodological basis for identifying and appraising current or emerging norms or standards, for evaluating new trends in international law encapsulated within declarations, recommendations,</p>

<p>Paula M Pevato</p> <p>8 Rev. Eur. Cmty. & Int'l Env't L. 309 (1999)</p>	<p>decisions, amongst other soft law documents. With that international legal philosophical perspective in mind, policy science would attempt to make law and jurisprudence more relevant to contemporary social, economic and political realities, and dependent upon demands and expectations of a particular society,⁴ in this case in the context of balancing competing interests amongst human rights, environment and various tensions to both, including trade, development, sovereignty and other tensions. Despite the uncertain legal status of a human right to environment in international law, the policy science approach would consider that decisions taken to protect and improve the environment have elevated such demands to a position of importance in the decision- making process, in conformity with the expectations of contemporary society. It may be safe to say that such policy choices have already influenced law-making and may continue to do so in the future.</p> <p>Progress Since 1994: From Optimism to Skepticism The UN Study on Human Rights and the Environment Current Circumstances in the UN: a postscript</p> <p>Present Status of Right to Environment in International Law: A Selection of Persistent Ambiguities, Restraints and Tensions Conceptual Issues: Defining A Right to Environment Sources of International Law: A Few Observations</p> <p>Deconstructing a Right to Environment: Who, What and From Whom Category A: General Characteristics, Substantive and Procedural Elements Category B: Environmental 'Dimensions'</p> <p>Human Rights Tensions The Future of a Right to Environment: Concluding Thoughts</p> <p>https://doi.org/10.1111/1467-9388.00215</p>
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