**The Effectiveness of Constitutional Environmental Rights**

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Dr. David R. Boyd

Assistant Professor, University of Victoria

Adjunct Professor, Simon Fraser University

Email: [drboyd@uvic.ca](mailto:drboyd@uvic.ca)

Fifty years ago, the concept of a human right to a healthy environment was viewed as a novel, even radical, idea. Today it is widely recognized in international law and endorsed by an overwhelming proportion of countries. Even more importantly, despite their recent vintage, environmental rights are included in more than ninety national constitutions. These provisions are having a remarkable impact, ranging from stronger environmental laws and landmark court decisions to the cleanup of pollution hotspots and the provision of safe drinking water.[[1]](#endnote-1)

Environmental rights and responsibilities have been a cornerstone of Indigenous legal systems for millennia.[[2]](#endnote-2) Yet the right to a healthy environment is not found in pioneering human rights documents such as the *Universal Declaration of Human Rights* (1948), the *International Covenant on Civil and Political Rights* (1966), or the *International Covenant on Economic, Social, and Cultural Rights* (1966). Society’s awareness of the magnitude, pace, and adverse consequences of environmental degradation was not sufficiently advanced during the era when these agreements were drafted to warrant the inclusion of ecological concerns.

The first written suggestion that there should be a human right to a healthy environment came from Rachel Carson in *Silent Spring*, published in 1962:

If the Bill of Rights contains no guarantees that a citizen shall be secure against lethal poisons distributed either by private individuals or by public officials, it is surely only because our forefathers, despite their considerable wisdom and foresight, could conceive of no such problem.[[3]](#endnote-3)

Similarly, in her final public speech before dying of cancer, Carson testified before President Kennedy’s Scientific Advisory Committee, urging it to consider

a much neglected problem, that of the right of the citizen to be secure in his own home against the intrusion of poisons applied by other persons. I speak not as a lawyer but as a biologist and as a human being, but I strongly feel that this is or ought to be one of the basic human rights.[[4]](#endnote-4)

The first formal recognition of the right to a healthy environment came in the *Stockholm Declaration*, which emerged from the pioneering global eco-summit in 1972:

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.[[5]](#endnote-5)

In the four decades since the *Stockholm Declaration*, the right to a healthy environment rapidly migrated around the globe. As of 2013, 182 of the world’s 193 UN member nations recognize this right, either through their constitution, environmental legislation, court decisions, or ratification of an international agreement. The only remaining holdouts are the US, Canada, Japan, Australia, New Zealand, China, Oman, Afghanistan, Kuwait, Lebanon, and North Korea. Even among these laggards, some sub-national governments recognize the right to a healthy environment, including six American states, five Canadian provinces or territories, and a growing number of cities.[[6]](#endnote-6)

Regional human rights agreements recognizing the right to a healthy environment have been ratified by more than 130 nations spanning Europe, Asia, the Americas, the Caribbean, and the Middle East. The Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the African Commission on Human and Peoples Rights, the European Court of Human Rights, and the European Committee on Social Rights have issued decisions in cases involving violations of this right.

While international law plays a vital role in establishing norms and offering a court of last resort for human rights violations, the reality is that most of the action to protect and fulfill rights occurs at the national level. Within countries, a constitution is the highest and strongest law, as all laws, regulations, and policies must be consistent with it. A constitution protects human rights, sets forth the obligations of the state, and restricts government powers. On a deeper level, constitutions reflect the most deeply held and cherished values of a society. As a judge once stated, “ a constitution is a mirror of a nation’s soul.”[[7]](#endnote-7)

Portugal (in 1976) and Spain (1978) were the first countries to include the right to a healthy environment in their constitutions. Article 66 of the Portugal’s Constitution states “Everyone has the right to a healthy and ecologically balanced environment and the duty to defend it.”[[8]](#endnote-8) Since the mid-seventies, ninety-five countries have granted constitutional status to this right, (see Map 2). Constitutional law experts observe that recognition of environmental rights has grown more rapidly over the past fifty years than any other human right.[[9]](#endnote-9)

Despite this progress*,* there is an ongoing debate about the scope and potential utility of the right to a healthy environment. Supporters argue that the potential benefits of constitutional environmental rights include:

-stronger environmental laws and policies;

-improved implementation and enforcement;

-greater citizen participation in environmental decision-making;

-increased accountability;

-reduction in environmental injustices;

-a level playing field with social and economic rights; and

-better environmental performance.

Critics, on the other hand, argue that constitutional environmental rights are

-too vague to be useful;

-redundant because of existing human rights and environmental laws;

-a threat to democracy because they shift power from elected legislators to judges;

-not enforceable;

-likely to cause a flood of litigation; and

-likely to be ineffective.

Is the constitutional right to live in a healthy environment merely a paper tiger with few practical consequences? Or is this right a powerful catalyst for accelerating progress towards a sustainable future? The best way to answer these questions is by examining the experiences of the 95 nations where this right enjoys constitutional status.

Proving a clear cause and effect relationship is always challenging in the social sciences. However, new research demonstrates that the incorporation of the right to a healthy environment in a country’s constitution leads directly to two important legal outcomes—stronger environmental laws and court decisions defending the right from violations. Evidence indicates that the other anticipated benefits of constitutional environmental rights also are being realized, while the potential drawbacks are not materializing.

**Stronger Environmental Laws**

In 78 out of 95 nations, environmental laws were strengthened after the right to a healthy environment gained constitutional status. Laws were amended to specifically focus on environmental rights, as well as access to environmental information, participation in decision-making, and access to justice. This includes all surveyed nations in Eastern Europe (19 out of 19); almost all nations in Western Europe (8/9), Latin America and the Caribbean (16/18), and Asia (12/14); and a clear majority in Africa (23/35).

Among the small number of nations where no constitutional influence on environmental laws is discernable are countries where constitutional changes are very recent (e.g. Jamaica-2011, Morocco-2011, Zambia-2012) and countries wracked by civil war and other over-riding social, economic, or political crises (e.g. Democratic Republic of the Congo). Twelve of the 17 nations where there is no evidence of constitutional influence on environmental laws are in Africa. However, Kenya’s 2010 constitution offers a new wrinkle intended to overcome this legislative lethargy, mandating that new environmental laws to implement constitutional commitments must be enacted within four years.[[10]](#endnote-10)

In some nations, the constitutional right to a healthy environment has become a unifying principle, permeating the entire body of environmental law and policy. This is most clearly the case in Argentina, where the reform of the constitution in 1994 to include the right to a healthy environment “triggered the need for a new generation of environmental legislation.”[[11]](#endnote-11) After 1994, Argentina passed a new comprehensive environmental law (which “sought to make the constitution a reality”), a law governing access to environmental information, and minimum standard laws on issues ranging from industrial waste to clean water.[[12]](#endnote-12) The national constitution also caused a cascade effect, as provincial constitutions were amended to incorporate the right to a healthy environment, and provincial environmental laws altered to identify the right as a guiding principle.[[13]](#endnote-13) The constitutional right to a healthy environment also had a comprehensive effect on environmental law in other countries including Portugal, Costa Rica, Brazil, Colombia, South Africa, and the Philippines. A similar transformation is underway in France following the enactment of the *Charter for the Environment* in 2005.[[14]](#endnote-14)

Constitutional provisions are not the only factor contributing to improved environmental laws. For example, the European Union’s accession process had a major influence on environmental legislation in Eastern Europe. Other key factors include public pressure, the migration of ideas and legislative approaches from other jurisdictions, and international assistance from agencies such as the UN Environment Programme and the International Union for the Conservation of Nature (IUCN).

**Advance Screening of New Laws and Regulations**

Constitutional recognition of the right to a healthy environment requires that all proposed laws and regulations be screened to ensure that they are consistent with the government’s duty to respect, protect, and fulfill the right. In some nations, this is a formal process. For example, in France, the Constitutional Council reviews proposed legislation prior to its enactment. In other nations, the screening process is informal. For instance in Colombia, the close scrutiny of the Constitutional Court has compelled legislators to consider constitutional case law when drafting the content of new legislation.[[15]](#endnote-15)

**Safety Net**

In addition to providing an impetus for strengthening environmental laws, the constitutional right to a healthy environment has been used to close gaps in environmental law. Costa Rica and Nepal offer examples of courts ordering governments to enact legislation or regulations that would protect fisheries and reduce air pollution respectively.[[16]](#endnote-16) The courts did not spell out the details of the laws but merely clarified that certain legislation is an essential element of fulfilling the government’s environmental responsibilities. In other nations, courts issued carefully crafted judgments that did not compel but rather influenced states to take action (e.g. legislation governing plastic bags in Uganda, public smoking in India, and air quality standards in Sri Lanka).[[17]](#endnote-17)

Courts are not always willing to fill legislative or regulatory gaps. The Supreme Court of the Philippines, despite agreeing that air pollution from motor vehicles was a threat to health, declined to order the government to convert all of its vehicles to compressed natural gas because it believed this would have interfered with legislative and executive responsibilities.[[18]](#endnote-18)

**Prevents Rollbacks**

Another legal advantage flowing from constitutional recognition of the right to a healthy environment is that it may prevent the future weakening of environmental laws and policies (commonly referred to as rollbacks). Courts have articulated the principle, based on the right to a healthy environment, that current environmental laws and policies represent a baseline that can be improved but not weakened.[[19]](#endnote-19) This concept is called the standstill principle in Belgium and is also recognized in Hungary, South Africa, and many nations in Latin America. In France, the principle is known as the ‘ratchet effect’ or ‘non regression.’[[20]](#endnote-20)

Belgian authorities are precluded from weakening levels of environmental protection except in limited circumstances where there is a compelling public interest.[[21]](#endnote-21) For example, a proposal to accommodate motor racing by weakening standards for air and noise pollution was rejected.[[22]](#endnote-22) Similarly, Hungary’s Constitutional Court rejected an attempt to privatize publicly owned forests because weaker environmental standards governed private land.[[23]](#endnote-23) The standstill principle recognizes that in society’s quest for sustainable development, the only viable direction is toward stronger environmental laws and policies.

**Improved Implementation and Enforcement**

Recognition of the constitutional right to a healthy environment can facilitate increased implementation and enforcement of environmental laws. Citizens, communities, and non-government organizations (NGOs) in Europe, Latin America, and Asia have supplemented the enforcement efforts of the state, drawn attention to violations, and provided an impetus for the allocation of additional resources to environmental monitoring and protection. A leading example is the cooperative approach taken in Brazil where the public and NGOs can report alleged violations of constitutional rights and environmental laws to the independent Ministerio Publico, which conducts investigations, civil actions, and prosecutions. The constitutional changes in 1988 that empowered the Ministerio Publico to enforce constitutional environmental rights have resulted in a dramatic increase in enforcement of environmental laws.[[24]](#endnote-24) A Brazilian judge wrote that “hundreds of pages would be needed to mention all the precedents” set by Brazilian courts in recent years dealing with constitutional protection for the environment.[[25]](#endnote-25) In the state of Sao Paolo alone, between 1984 and 2004, the Ministerio Publico filed over 4,000 public civil actions in environmental cases addressing issues ranging from deforestation to air pollution.[[26]](#endnote-26)

**Increased Public Involvement**

Constitutional environmental provisions have substantially increased the public’s role in environmental governance. The right to a healthy environment has been interpreted consistently as including procedural environmental rights—access to information, participation in decision-making, and access to justice. Citizens, in ever-increasing numbers, are using these rights. Other major factors contributing to the growing public role in environmental governance include the enhanced importance of civil society, advances in communications technology (particularly the Internet), and in many nations the transition from closed, authoritarian types of government to open, participatory democracy. In many nations recognizing the right to a healthy environment, administrative processes and courthouse doors are now open to citizens who lack a traditional economic or personal interest but seek to protect society’s collective interest in a healthy environment.

Several Latin American nations—Costa Rica, Colombia, Argentina, and Brazil—are in a class of their own in terms of enhancing access to justice. Procedural innovations have radically increased the ability of citizens, communities, and ENGOs to seek judicial protection of their constitutional rights, including the right to a healthy environment. These innovations reduce costs, decrease delays, and minimize risks previously associated with pursuing judicial remedies. The Philippines, with its special procedural rules for environmental litigation, is moving in the same direction.[[27]](#endnote-27) Recent constitutional amendments in Mexico are intended to increase access to justice in environmental cases.

**Increased Accountability**

Corporate and government accountability are increased by more rigorous implementation and enforcement of environmental laws. One measurable indicator of the influence of the constitutional right to a healthy environment on accountability is court decisions based on this right. Court decisions defending the right to a healthy environment have been made in at least 44 of 95 nations and are increasing in frequency and importance. This includes almost all surveyed nations in Western Europe (8 out of 9), most nations in Latin America and the Caribbean (13/18) and Eastern Europe (12/19), a minority of nations in Asia (6/14), but only a few nations in Africa (5/35).

The number of reported cases per nation ranges from one (e.g. Malawi) to hundreds in some Latin American, Asian, and European nations. In total, thousands of reported cases are available, led by Colombia, Costa Rica, Brazil, Argentina, India, the Philippines, the Netherlands, Belgium, and Greece. The recent nature of some constitutional environmental rights, combined with difficulties in accessing the jurisprudence of at least 46 nations mean that these statistics likely underestimate the full extent of litigation based on the right to a healthy environment.[[28]](#endnote-28)

Data from Latin America, Europe, and India indicate that the majority of lawsuits based on the constitutional right to a healthy environment are successful.[[29]](#endnote-29) In Brazil, environmental public civil actions are successful in 67.5 percent of cases.[[30]](#endnote-30) In Colombia, the applicants were successful in 53 percent of the cases related to drinking water based on the right to a healthy environment brought between 1991 and 2008.[[31]](#endnote-31) In Costa Rica, roughly 66 percent of cases asserting violations of the right to a healthy environment are successful.[[32]](#endnote-32) Jariwala estimated that nearly 80 percent of environmental cases brought in India up until 1999 were successful.[[33]](#endnote-33) These statistics assuage concerns that environmental activists will attempt to block economic development by filing frivolous lawsuits.

Courts have ruled that the constitutional right to a healthy environment imposes three duties upon government: to respect the right by not infringing it through state action; to protect the right from infringement by third parties (which may require regulations, implementation, and enforcement); and to take actions to fulfill the right (e.g. by providing services including clean water, sanitation, and waste management). As well, courts have consistently held that laws, regulations, and administrative actions that violate the constitutional right to a healthy environment will be struck down.

It is rare for courts to decide that the constitutional right to a healthy environment is not directly enforceable, although this is the case in South Korea, Spain, the Czech Republic, Slovakia, and Paraguay. In these nations, the courts are constrained by constitutional language specifying that the right can only be enforced pursuant to enabling legislation. Overall, constitutional principles related to the right to a healthy environment “have created the right conditions for courts of law … to begin to play a more prominent role in protecting the environment.”[[34]](#endnote-34)

**Addressing Environmental Justice**

The constitutional right to a healthy environment should promote environmental justice by ensuring a minimum standard of environmental quality for all members of society. Some politically weak and marginalized communities have enjoyed success in the courts in enforcing their right to a healthy environment. Many cases, particularly in Latin America, deal with the provision of clean water, sewage treatment, and adequate waste management, environmental concerns more likely to confront the poor than middle or upper classes. Millions of people enjoy clean drinking water today because the constitutional right to a healthy environment compelled governments to invest in infrastructure and protecting water supplies.

There are many examples of courts addressing environmental injustices by defending peoples’ right to live in a healthy environment. Citizens in countries as diverse as Russia, Romania, Chile, and Turkey brought lawsuits based on their right to a healthy environment and received compensation for damage to their health caused by industrial pollution.[[35]](#endnote-35) Because of litigation based on their constitutional environmental rights, people in the Peruvian village of La Oroya are finally receiving medical treatment for their long-term exposure to lead and other heavy metals emitted by a nearby smelter.[[36]](#endnote-36)

There are some situations where systemic changes are being produced by constitutions, legislation, and litigation. In Brazil, litigation based on the constitutional right to a healthy environment resulted in a new government policy that all citizens have the right to a core minimum of essential services including clean water, adequate sanitation, and proper waste management.[[37]](#endnote-37) The comprehensive court-ordered cleanup and restoration of the Matanza-Riachuelo watershed in Argentina will lead to improved living conditions for millions of economically marginalized people. In 2008, the Argentine Supreme Court issued a comprehensive decision in which it ordered, on a strict schedule:

-regular inspections of all polluting enterprises and implementation of wastewater treatment plans;

-closure of all illegal dumps, redevelopment of landfills, and cleanup of the riverbanks;

-improvement of the drinking water, sewage treatment, and storm-water discharge systems in the river basin;

-development of a regional environmental health plan, including contingencies for possible emergencies;

-supervision, by the federal Auditor General, of the budget allocation for implementation of the restoration plan;

-ongoing judicial oversight of the implementation of the plan, with a federal court judge empowered to resolve any disputes related to the Court’s decision; and

-notice that any violations of the timelines established by the court would result in daily fines against responsible politicians.[[38]](#endnote-38)

These remedies are intended to restore past damage as well as prevent future degradation of the river system. Substantial on-the-ground progress has already been made. The World Bank approved $US 2 billion in financing for the Matanza-Riachuelo Basin Sustainable Development Project.[[39]](#endnote-39) The Argentine government established a new watershed authority which must (i) implement a comprehensive action plan (ii) coordinate and harmonize activities, and (iii) control and monitor environmental compliance.[[40]](#endnote-40) The number of environmental inspectors in the region is increasing from three to 250.[[41]](#endnote-41) Progress made by mid-2012 included: three new drinking water treatment plants providing clean drinking water to more than one million people; eleven new, upgraded, or expanded wastewater treatment systems serving millions of people; the creation of 139 sampling stations for monitoring water, air, and soil quality; 169 garbage dumps closed and replaced by regulated landfills; and 484 polluting companies closed.[[42]](#endnote-42) Argentina is spending over one billion dollars annually on improving the health of the Riachuelo River and surrounding communities. The Supreme Court continues to hold quarterly public hearings in which it questions the federal Environment Minister and the head of the watershed authority on progress towards fulfilling the court’s order. International scholars have hailed the litigation for its “remarkable policy impact” and benefits for marginalized communities.[[43]](#endnote-43) As the World Bank observed, there have been previous pledges to restore the Matanza-Riachuelo watershed, but the Supreme Court ruling ensures an unprecedented degree of political and legal accountability.[[44]](#endnote-44)

On the other hand, it can be difficult for the communities most affected by environmental degradation to influence law and policy-making processes or take advantage of their constitutional right to a healthy environment. Barriers include limited awareness of their rights, lack of financial resources, lack of access to legal assistance, and distrust of the judicial system. Some critics claim that environmental litigation brought by middle class litigants to enforce their right to a healthy environment worsens the plight of the poor. For example, the closure or relocation of polluting factories in India is alleged to have displaced workers and caused adverse socio-economic effects.[[45]](#endnote-45) More broadly, there are unresolved questions about leakage, wherein legislation, litigation, or other societal forces displace environmentally harmful activities from relatively wealthy nations to poorer nations or regions.[[46]](#endnote-46)

**Level Playing Field**

Another advantage of the constitutional right to a healthy environment is the prospect of a level playing field with competing social and economic rights. Environmental laws often constrain the exercise of property rights, recognizing that there are circumstances in which the public interest should take precedence over private interests. In many nations where environmental rights are articulated in constitutions, courts have rejected challenges in which plaintiffs alleged that their property rights were violated by environmental laws or policies. For example, the Slovenian Constitutional Court upheld a tax on water pollution based on the constitutional interest in environmental protection.[[47]](#endnote-47) In Belgium, “courts are no longer inclined when facing conflicting interests, to automatically sacrifice environmental interests in favor of economic interests.”[[48]](#endnote-48)

Governments and courts go to great efforts to balance competing rights and conflicting social priorities. For example, in a Turkish case involving air pollution from coal-fired power plants, the courts ordered the installation of pollution abatement equipment instead of requiring the plants to be closed.[[49]](#endnote-49) Some would argue that courts have not gone far enough to level the playing field and defend constitutional environmental rights, particularly in cases involving powerful economic interests, such as the Sardar Sarovar Dam in India, the Camisea natural gas project in Peru, or French controversies involving genetically modified crops.[[50]](#endnote-50) On the other hand, the constitutional right to a healthy environment played an instrumental role in the Greek Council of State’s repeated decisions to strike down approvals for the Acheloos water diversion project, the Finnish Supreme Administrative Court’s decision blocking the Vuotos hydroelectric project, Costa Rican court decisions blocking offshore oil and gas development, the Ecuadorian Constitutional Court’s rejection of the Baba Dam, Hungarian and Russian court decisions preventing the privatization of public forests, and the Thai Supreme Court’s decision to block dozens of petrochemical projects.[[51]](#endnote-51) These cases involved powerful actors and major economic consequences, yet courts took bold decisions based on constitutional environmental provisions.

Finally, constitutional recognition of the right to a healthy environment can have a systematic effect on the exercise of discretion by legislators, judges, and public authorities, pushing countless decisions in a more sustainable direction. At a minimum, constitutional provisions requiring environmental protection should ensure a better balancing of competing interests than has been the case in the past.

**Education**

Among the many laws spurred, at least in part, by constitutionalizing environmental protection are national laws related to environmental education in nations including the Philippines, Armenia, South Korea, and Brazil.[[52]](#endnote-52) Courts in India, Argentina, and the Philippineshave issued creative orders requiring governments to develop and implement environmental education programs.[[53]](#endnote-53) The French *Charter for the Environment* reportedly revitalized environmental education in France.[[54]](#endnote-54) As well, extensive efforts have been made by international agencies to educate judges, enforcement agencies, prosecutors, and other groups involved in the implementation and enforcement of environmental laws about the right to a healthy environment.[[55]](#endnote-55)

**The Impact on Environmental Performance**

While the foregoing developments are impressive, the ultimate test of constitutional environmental rights is whether they contribute to cleaner air and water and healthier people and ecosystems. The evidence in this regard is limited but thus far uniformly positive. Nations with environmental provisions in their constitutions have smaller ecological footprints, rank higher on comprehensive indices of environmental indicators, are more likely to ratify international environmental agreements, and made faster progress in reducing emissions of sulphur dioxide, nitrogen oxides, and greenhouse gases than nations without such provisions. This positive relationship was consistent in a heterogeneous group of 150 nations from across the world and in two smaller, more homogeneous groups of nations (thirty members of the Organization for Economic Cooperation and Development and seventeen large, wealthy democracies).[[56]](#endnote-56)

The consistency of the correlation between constitutional protection for the environment and superior environmental performance across three indices and four indicators provides persuasive, albeit not conclusive, evidence of substantial influence. There are other potential explanations for this pattern. For example, it might be that the causal relationship works in the other direction – a nation with strong environmental policies and broad public support for environmental protection may be more likely to entrench constitutional environmental rights. In such circumstances, the costs of implementing constitutional environmental responsibilities could be perceived as small.

However, when the consistent relationship between constitutional provisions and superior environmental performance is combined with the evidence of stronger environmental legislation, enhanced opportunities for public participation in environmental governance, and increasing enforcement of environmental laws, the case for entrenching environmental protection in national constitutions must be regarded as compelling.

Most importantly, these constitutional provisions are making a substantial contribution to improving people’s lives and well-being. Benefits include improved access to safe drinking water, cleaner air, more effective sanitation and waste management practices, more sustainable approaches to managing natural resources, and healthier ecosystems.

**The Challenges Ahead**

Few of the potential downsides of constitutional environmental rights have materialized. The widespread reliance on the right to a healthy environment by citizens, legislatures, and courts demonstrates that it is neither too vague to be implemented, nor does it duplicate the protection offered by existing human rights and environmental laws. Environmental rights have not been used to systematically trump other rights, with legislators and judges opting instead for careful balancing. There has been no flood of frivolous litigation, as lawsuits based on the right to a healthy environment represent a small fraction of the total number of constitutional cases in any given nation and enjoy a high success rate.

Two critiques have some degree of validity. First, there are some countries where constitutional environmental rights and responsibilities have had minimal impact. Problems such as the absence of the rule of law (e.g. effective legal institutions, including an independent judiciary), widespread poverty, civil wars, or authoritarian governments can pose daunting obstacles to progress in realizing human rights, including the right to a healthy environment. Thus most of the nations where constitutional environmental provisions have not yet had a discernible effect are in sub-Saharan Africa.

Second, excessive judicial activism can undermine democracy by shifting power from elected politicians to unelected judges. The most prominent example is the Supreme Court of India, which has been accused of exceeding its reach in several high-profile cases, involving motor vehicles in Delhi, pollution of the Ganges River, and forest conservation.[[57]](#endnote-57) The Indian Supreme Court’s actions can be defended as responding to government’s persistent failure to implement and enforce its environmental laws, thus fulfilling the court’s constitutional mandate. In general, however, excessive judicial activism is rare.

There are still dozens of countries that have not incorporated environmental rights into their constitutions, including the US, Canada, China, Japan, Australia, and New Zealand. Some of these countries refuse to recognize that the right at all, making constitutional recognition unlikely in the short term. For example, in response to a case brought to the Inter-American Commission on Human Rights by citizens of Mossville, Louisiana, the US government argued that no right to a healthy environment exists under international law.[[58]](#endnote-58) Even if proven wrong on that point, the US government claimed that the right would not apply to American citizens, since the US had persistently objected to the recognition of such a right. In China, it is likely that meaningful recognition of the right to a healthy environment and other human rights will have to wait until the current authoritarian government is replaced.

Another obstacle facing some countries is the extreme difficulty inherent in amending the constitution. For example, Denmark has not revised its constitution since 1953 because of an incredibly daunting amendment process. Canada’s constitution is also reputed to be notoriously hard to amend.

In countries whose constitutions are silent on the environment, options for moving forward include legislative recognition of the right to a healthy environment, litigation that seeks to establish that the right is implicit in another constitutional right, or recognition at the sub-national level. In the United Kingdom, a joint committee of the House of Commons and the House of Lords recommended that the right to a healthy environment be included in a proposed UK Bill of Rights.[[59]](#endnote-59) Canada came close to legislating an environmental bill of rights in 2011.[[60]](#endnote-60) While ordinary laws recognizing the right to a healthy environment lack the legal strength and symbolic power of constitutional provisions, they are a step in the right direction.

In at least 20 nations—from Argentina to Israel—where the constitution did not include explicit environmental rights, supreme or constitutional courts have ruled that the right to life includes an implicit right to a healthy environment.[[61]](#endnote-61) In a typical example of judicial reasoning, the Supreme Court of Nepal held that “since a clean and healthy environment is an essential element for our survival, the right to life encompasses the right to a clean and healthy environment.”[[62]](#endnote-62) Again, the US is an outlier, as American courts rejected this argument in several cases during the 1970s.[[63]](#endnote-63)

**Conclusion**

The right to live in a healthy environment continues to gain recognition. New constitutions incorporating the right to a healthy environment were enacted in Jamaica, Morocco, and South Sudan in 2011 and Somalia and Zambia in 2012. Iceland’s new constitution, approved in a public referendum but pending parliamentary approval, includes the right. A broad coalition of Zimbabwean civil society organizations has called for the drafting of a new constitution with a “justiciable Bill of Rights that recognizes civil, political, social, economic, cultural and environmental rights.”[[64]](#endnote-64) In 2012, the UN Human Rights Council appointed an independent expert to report on the universal right to a healthy environment.[[65]](#endnote-65)

From Argentina to France, something extraordinary is happening. In communities, legislatures, and courtrooms around the world, a new human right is blossoming from seeds planted decades ago. The constitutional right to live in a healthy environment represents a tangible embodiment of hope, an aspiration that the destructive, polluting ways of the past can be replaced by cleaner, greener societies in the future. While no nation has yet achieved the holy grail of ecological sustainability, the evidence indicates that constitutional protection of environmental rights can be a powerful and potentially transformative step toward that elusive goal.

ENDNOTES

1. This article summarizes and updates research published in D.R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (Vancouver, University of British Columbia Press, 2012). [↑](#endnote-ref-1)
2. J. Borrows, *The Indigenous Constitution*. (Toronto: University of Toronto Press, 2010). [↑](#endnote-ref-2)
3. R. Carson, *Silent Spring* (Boston, Houghton Mifflin, 1962, pages 12-13). [↑](#endnote-ref-3)
4. Carson is quoted in J. Cronin and R.F. Kennedy, Jr. *The Riverkeepers: Two Activists Fight to Reclaim Our Environment as a Basic Human Right* (New York: Scribner 1997, 235). [↑](#endnote-ref-4)
5. *Stockholm Declaration*, *(Declaration of the United Nations Conference on the Human Environment),* 1972, UN Doc. A/Conf.48/14/Rev.1. [↑](#endnote-ref-5)
6. The six US states are Hawaii, Illinois, Massachusetts, Montana, Pennsylvania, and Rhode Island. The Canadian provinces and territories are Ontario, Quebec, the Yukon, Nunavut, and the Northwest Territories. Cities include Pittsburgh, Santa Monica, and Montreal. [↑](#endnote-ref-6)
7. *State v. Acheson* 1991 2 SA 805 (Namibia). [↑](#endnote-ref-7)
8. Constitution of Portugal, 1976. In R. Wolfrum and R. Grote, *Constitutions of the Countries of the World.* G.H. Flanz, ed. emeritus. New York: Oceana Law, 2012. [↑](#endnote-ref-8)
9. D.S. Law and M. Versteeg. 2012. “The Declining Influence of the United States Constitution,” *New York University Law Review* 87 (in press). [↑](#endnote-ref-9)
10. Constitution of Kenya, 2010, Art. 261(1), Fifth Schedule. [↑](#endnote-ref-10)
11. J.R. Walsh, “Argentina’s Constitution and General Environmental Law as the Framework for Comprehensive Land Use Regulation,” in N.J. Chalifour, P. Kameri-Mbote, L.H. Lye, and J.R. Nolon, eds., *Land Use Law for Sustainable Development,* (Cambridge: Cambridge University Press, 2007, 503-25 at 505). [↑](#endnote-ref-11)
12. D.A. Sabsay, “Constitution and Environment in Relation to Sustainable Development,” in M.E. Di Paola, ed., *Symposium of Judges and Prosecutors of Latin America: Environmental Compliance and Enforcement* (Buenos Aires: Fundacion Ambiente y Recursos Naturales, 2003, 33-43). [↑](#endnote-ref-12)
13. An example of a provincial law that incorporates the right to a healthy environment as a guiding principle is Rio Negro’s *Environmental Impact Assessment Law* (Rio Negro Law No. 3266, 16 December 1998). [↑](#endnote-ref-13)
14. D. Marrani, “The Second Anniversary of the Constitutionalisation of the French Charter for the Environment: Constitutional and Environmental Implications,” *Environmental Law Review* 10, 1 (2008): 9-27 at 25. [↑](#endnote-ref-14)
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