The Implicit Constitutional Right to Live in a Healthy Environment

David R. Boyd

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.

INTRODUCTION

Many scholars have argued that because clean air, clean water, fertile soil and functioning ecosystems are integral to human survival and well-being, they must be included in the rights to life and health.1 The World Health Organization (WHO) underscores the fact that a healthy environment ought to be an essential element of these rights. According to the WHO, approximately one-quarter of the entire burden of disease globally (including mortalities, illnesses and injuries) is attributable, in whole or in part, to environmental risk factors.2 Children are particularly vulnerable to environmental hazards.3

Since the 1972 Stockholm Declaration, constitutional recognition of the right to a healthy environment has spread rapidly around the world.4 It has emerged in two distinctive processes: by legislators explicitly including it in constitutions, and via courts ruling that it is implicit in other constitutional provisions. Among the 192 countries belonging to the United Nations, 90 constitutions explicitly recognize the right to a healthy environment:

Europe: Albania, Andorra, Armenia, Belarus, Belgium, Bulgaria, Croatia, Czech Republic, Finland, France, Georgia, Greece, Hungary, Latvia, Macedonia, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovak Republic, Slovenia, Spain and Ukraine.

Latin America and the Caribbean: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela.

Asia: Azerbaijan, East Timor, Indonesia, Iran, Iraq, Kyrgyzstan, Mongolia, Nepal, Philippines, South Korea, Thailand, Turkey and Turkmenistan.


For example, the Constitution of Norway states:

Art. 110(b) Every person has a right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. Natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well.5

The constitutional right to a healthy environment was recognized by courts in at least eight of these 90 countries prior to explicit language being incorporated into the constitution, including Argentina, Costa Rica, El Salvador, Greece, Kenya, Nepal, Peru and Romania.

5 Ibid., Appendix 2.
6 R. Wolfrum and R. Grote (eds), Constitutions of the Countries of the World (Oceana, 2011).
In at least twelve additional countries lacking an explicit constitutional right to a healthy environment, supreme or constitutional courts have held that such a right is implicit in the constitution, and enforceable. These countries include Bangladesh, Estonia, Guatemala, India, Israel, Italy, Malaysia, Nigeria, Pakistan, Sri Lanka, Tanzania and Uruguay. In general, courts from these countries have held that the right to live in a healthy environment is an essential element of the right to life, although this is not always the case as in Italy where it was held to be a vital aspect of the right to health. However, it should be noted that courts in some countries – for example, the United States – have rejected the argument that there is an implicit constitutional right to a healthy environment.\textsuperscript{7}

In total, the constitutional right to a healthy environment is recognized in over 100 countries, either explicitly or through judicial interpretation of other provisions. No other second- or third-generation right (i.e., not a civil or political right) has gained such widespread constitutional recognition so quickly.\textsuperscript{8} In at least twenty of these countries, the right first gained constitutional recognition through the courts before being explicitly included in constitutional texts.

Jurisprudence recognizing the right is particularly relevant for citizens, scholars, policy makers, lawyers and courts in countries where the right to a healthy environment does not yet enjoy constitutional recognition. Constitutions in many of these countries contain provisions that may be interpreted to include an implicit right to a healthy environment. For example, the right to life is almost universally recognized in national constitutions, the right to health is explicitly included in 74 constitutions and the State duty to protect the environment is found in 136 constitutions.\textsuperscript{9}

ARGENTINA

The right to live in a healthy environment was added to Argentina’s constitution in 1994.\textsuperscript{10} Argentine courts had already recognized that this right was implicit in the constitutional right to life. According to a prominent and oft-cited judgment, ‘the right to live in a healthy environment is a fundamental attribute of people. Any aggression to the environment ends up becoming a threat to life itself and to the psychological and physical integrity of the person, which is based on ecological balance.’\textsuperscript{11}

BANGLADESH

Bangladesh’s constitution contains no environmental protection provisions. The leading case on the implicit constitutional right to a healthy environment in Bangladesh involved a petition against various authorities for not fulfilling their statutory duties to mitigate air and noise pollution caused by motor vehicles in the capital city of Dhaka. The court stated:

Articles 31 and 32 of our constitution protect right to life as a fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, and sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life.\textsuperscript{12}

The court ordered the elimination of miniature taxis using highly polluting two-stroke diesel engines, ordered the conversion of government vehicles to compressed natural gas (CNG) and required that all imported vehicles be equipped with catalytic converters. In this vein, the Bangladesh Environmental Lawyers Association has brought numerous cases based on the constitutional right to a healthy environment – attempting to address industrial air pollution, illegal shrimp cultivation, lack of compliance with environmental permitting requirements, the decommissioning of contaminated ships and commercial development in municipal green space.\textsuperscript{13}

COSTA RICA

The right to a healthy environment was added to Costa Rica’s constitution in 1994. However, the Supreme Court of Costa Rica had previously affirmed the right to a healthy environment in a case concerning a municipality’s practice of dumping waste in a stream in close proximity.


\textsuperscript{8} D.S. Law et al., The Evolution and Ideology of Global Constitutionalism, California Law Review (2011, in press).


\textsuperscript{10} See R. Wolfrum and R. Grote, n. 6 above, Binder I.

\textsuperscript{11} Margarita v. Copetra (1993), ruling of 10 May 1993, Cámara Civil y Comercial de La Plata, citing an earlier decision in V.H. Morales et al v. Mendoza Province (1986), Amparo Action, Civil Court of First Instance (2 October 1986).


\textsuperscript{13} See Bangladesh Environmental Lawyers Association, List of Public Interest Litigation of Bangladesh Environmental Lawyers Association (undated), found at <http://www.belabangla.org/html/pil.htm>. For example, see Bangladesh Environmental Lawyers Association v. Bangladesh et al. (2005), Writ Petition No. 6025/05.
proximity to a poor neighbourhood." The court stated that life is only possible when it exists in solidarity with nature, which nourishes and sustains us – not only with regard to food, but also with physical well-being. It constitutes a right that all citizens possess to live in an environment free from contamination. This is the basis of a just and productive society.’

In a subsequent decision, the court stated that the right to a healthy environment emanated from the right to life and from the State’s obligation to protect nature. The court added that without recognition of the rights to health and to the environment, the right to life would be severely limited.

EL SALVADOR

Although the right to a healthy environment incorporated in El Salvador’s constitution in 1983 appears limited to children, the Constitutional Chamber of El Salvador’s Supreme Court of Justice has ruled that this constitutional right is held by everyone by virtue of the State’s obligation to protect the environment and the importance of a healthy environment for fulfilling the rights to life and dignity.

ESTONIA

The Estonian constitution makes no explicit reference to the right to a healthy environment, although it does include a government duty to protect the environment. Nevertheless, Estonian courts now recognize that individuals enjoy a constitutional right to a healthy environment. The courts reached their conclusion through an analysis of Estonia’s constitution, the Aarhus Convention and jurisprudence from the European Court of Human Rights. The recognition of an implicit constitutional right to a healthy environment has contributed to relaxation of previously restrictive standing requirements, enabling citizens and environmental nongovernmental organizations (ENGOs) to access the courts.

GREECE

In 1975, Greece was among the first countries in the world to make reference to the environment in its constitution. Although the right to a healthy environment was not added to the Greek constitution until 2001, courts had already recognized that it was implicit in Article 24, which articulated the State’s duty to protect the environment.

GUATEMALA

There is no explicit right to a healthy environment in the Guatemalan constitution. However, Guatemalan courts have allowed NGOs to bring lawsuits based on the constitutional right to a healthy environment. Guatemala’s Constitutional Court explained that the objective of environmental measures is to guarantee the right to health and the achievement of a standard of living that guarantees the survival of future generations.

INDIA

Among the countries whose constitutions do not recognize explicitly the right to a healthy environment, no judiciary has gone further than the Supreme Court of India. Article 48A of the Indian constitution mandates that the State ‘shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country’. This provision is framed as a Directive Principle of State Policy, which ‘shall not be enforceable by any court’. While the Directive Principles are explicitly unenforceable, Article 32 guarantees all citizens the right to petition the Supreme Court when their fundamental rights are violated or threatened. There is a long line of cases in India in which the Supreme Court and High Courts have sought the ‘harmonious construction’ of the unenforceable Directive 1536.

14 Carlos Roberto García Chacón, Constitutional Chamber of the Supreme Court, Vote No. 3705 (30 July 1993).
15 Presidente de la sociedad MARLENE S.A. v. Municipalidad de Tibás Marlene, Decision 6918/94 (November 1994), Sala Constitucional de la Corte Suprema de Justicia.
18 Ibid.
21 See C. Bruch et al., Constitutional Environmental Law: Giving Force to Fundamental Principles in Africa (Environmental Law Institute, 2007), at 75.
23 See R. Wolfrum and R. Grote, n. 6 above.

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Principles (which include many social, economic and cultural rights) and the enforceable Fundamental Rights (the traditional civil and political rights). In effect, Indian courts have used the Fundamental Rights to transform Directive Principles into enforceable duties.

In 1987, two court decisions suggested, in obiter dicta, that there could be an implicit right to a healthy environment among the fundamental rights in the Indian constitution. In a case dealing with limestone quarries causing deforestation, soil erosion and river siltation, the Supreme Court mentioned 'the right of the people to live in a healthy environment with minimal disturbance of the ecological balance'. The High Court of Andhra Pradesh wrote that 'slow poisoning caused by environmental pollution and spoliation should be treated as amounting to a violation of Article 21 of the Constitution'. In 1991, the Supreme Court clarified the state of the law, ruling that:

The right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.

In 1995, the Supreme Court expanded upon its earlier articulation of the right, stating that the right to life:

... encompasses within its ambit the protection and preservation of the environment, ecological balance, freedom from pollution of air and water, and sanitation, without which life cannot be enjoyed. Any contract or action which would cause environmental pollution... should be regarded as amounting to violation of Article 21. ... Therefore, there is a constitutional imperative on the state government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect, and improve both the manmade and the natural environment.

There have been hundreds of cases decided by the Supreme Court and High Courts on the basis of, or influenced by, the right to a healthy environment. Among the environmental issues addressed by these cases are: air pollution in Delhi caused by motor vehicles; water pollution of the Ganges River by tanneries; protection of the Taj Mahal (292 industrial plants ordered to either switch from coke/coal to natural gas or relocate); industrial air pollution; groundwater management; the right to water; location of a plant for liquefied petroleum gas; mining and quarrying activities; forest conservation; disasters caused by hazardous activities; large dam projects; sentencing for environmental crimes; genetically modified organisms; large dam projects; smoking in public places; protection of wildlife; and noise pollution.

The Supreme Court has opened the door wide to judicial remedies by treating the right to a healthy environment as a fundamental right capable of being protected by citizens and NGOs by means of writ petitions. The procedures are relatively informal but the caseload of the court can create lengthy delays, with 12% of environmental cases taking at least a decade to reach a resolution. The constitutional right to a healthy environment has also contributed to improvements in the recognition of procedural rights including access to information and participation in decision making.

**ISRAEL**

Israel does not have a conventional constitution, but rather a series of Basic Laws with constitutional status. The Basic Laws make no reference to environmental protection. An Israeli ENGO brought a constitutional (or Basic Law) challenge to the Israeli Law on Planning and Construction, which was amended in 2002 to accelerate approvals for major national infrastructure

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24 V. Nimushakavi, Constitutional Policy and Environmental Jurisprudence in India (Macmillan India, 2006).
25 For the judgments of the Supreme Court of India and several High Courts, Government of India, see Ministry of Information Technology, National Informatics Centre, The Judgment Information System (undated), found at <http://judis.nic.in/>.
32 M.C. Mehta v. Union of India, AIR 1997 SC 735 (Taj Trapezium case).
40 Namda Bachao Andolan v. Union of India, AIR 1999 SC 3345.
45 Ramasubramnayam v. Member Secretary, Chennai Metropolitan DA, AIR 2002 Madras 125.
projects. The Supreme Court of Israel wrote that there is an implicit constitutional right to a minimum environmental quality (which it did not define), based on the constitutional right to ‘honor of his being and his freedom’.

ITALY

In Italy, there is no explicit constitutional right to a healthy environment. However, courts have interpreted the constitutional right to health as incorporating the right to live in a healthy environment. The first recognition of this concept came from the Constitutional Court in 1987 when it held that, with regard to Articles 9 (State’s duty to safeguard natural beauty) and 32 (right to health) of the Italian Constitution, ‘[w]e must recognize the ongoing efforts to give specific recognition to the protection of the environment as a fundamental human right’. In 1990, the Constitutional Court held that environmental protection must take priority over economic considerations when acceptable limits for human health are exceeded. Since then, many successful cases have invoked the right to a healthy environment.

KENYA

Kenya’s 2010 Constitution recognizes the right to a healthy environment for the first time. However, Kenyan courts already had decided several cases based on the right, which was previously included in the Environmental Management and Coordination Act. For example, in P.K. Waweru v. The Republic – a case involving new residential construction without adequate wastewater treatment infrastructure – Kenya’s High Court acknowledged that the right to life in section 71 of the Constitution (as it then was) necessarily includes the right to a healthy environment.

MALAYSIA

A government committee recommended adding the right to a healthy environment to Malaysia’s constitution in 1993 but the recommendation has not been implemented. The Malaysian Court of Appeal has a mixed record in referring to the right to a healthy environment as part of the constitutional right to life. In several cases, the court followed the lead of the Supreme Court of India by interpreting the right to life in Article 5(1) of the Malaysian Constitution broadly:

Article 5(1) does not refer to mere existence. It incorporates all those facets that are an integral part of life itself. . . . It includes the right to live in a reasonably healthy and pollution free environment.

However, in a subsequent case, involving a proposed hydroelectric project with major environmental consequences and impacts on indigenous people, the Malaysian Court of Appeal relied upon a narrower interpretation of the constitutional right to life. Therefore, Malaysian case law is contradictory regarding recognition of an implicit constitutional right to a healthy environment.

NEPAL

While the current interim Constitution of Nepal (2006) explicitly recognizes the right to a healthy environment, previous Nepalese constitutions did not. Nevertheless, the Supreme Court of Nepal has repeatedly ruled that the right to a healthy environment is a prerequisite for the enjoyment of other constitutional human rights. As the Court has stated: ‘[S]ince 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.’

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NIGERIA

Despite the lack of an explicit constitutional right to a healthy environment in Nigeria, several court decisions have relied on the implicit right to a healthy environment. For example, the High Court ruled that Shell’s practice of flaring gas from its oil operations in the Niger Delta ‘is a gross violation of the fundamental right to life (including healthy environment) and dignity of human person as enshrined in the Constitution’. This decision is under appeal and has not yet been implemented, and severe environmental and health problems in the region are ongoing.

PAKISTAN

Pakistan’s constitution is silent on environmental protection, but the Supreme Court has recognized that the right to a healthy environment is implicit in the right to life. The leading case involved the potential hazard of electro-magnetic radiation from an electrical grid station and associated high voltage power lines. Local residents in a suburb of Islamabad, led by the widow of Pakistan’s former ruler, filed a petition alleging violation of their constitutional right to life. The court held that the rights to life and dignity under the Constitution of Pakistan included a clean atmosphere and unpolluted environment. The court stayed construction of the project pending the report of a court-appointed expert commission and a court-ordered public consultation process.

Another case focused on the right to clean water, threatened by effluent from coal mining operations. The Supreme Court held that ‘the right to have water free from pollution and contamination is a right to life itself... the right to have unpolluted water is the right of every person wherever he lives’. Other cases involved illegal urban development, dumping of waste in coastal areas, sewage treatment in Karachi and plastic bags (on the grounds that they were not biodegradable and burning them contributes to harmful air pollution).

Lower courts also have applied the constitutional right to a healthy environment. For example, in a lawsuit about health problems caused by poor municipal solid waste management, the Lahore High Court stated:

‘Lives of tens of thousands of citizens of this country... are sinking in the ocean of dirt, solid waste, garbage and pollution and that too, at the hands of City District Government. It is high time that the public functionaries should realize their duties and perform their functions, keeping in view the import of [the] word ‘life’ as defined by the apex Court of this country in the Shehla Zia case.

The courts in Pakistan have been praised for their progressive articulation of the right to a healthy environment. According to Hassan, the Pakistani judiciary is ‘boldly and proactively applying international and national laws to meet local needs and in granting the widest latitude in procedural matters that may affect the vindication of environmental rights’. However, there is relatively little public interest environmental litigation in Pakistan, despite the magnitude and urgency of the environmental problems facing large swaths of the population. Pakistan’s Supreme Court has ‘accorded environmental rights constitutional legitimacy and status, which is the highest legal status in Pakistan’ yet the ‘activism of the courts is not a substitute for proper policy-making and implementation’.

PERU

The right to a healthy environment was first included in Peru’s constitution in 1993. Several court decisions prior to 1993 recognized the implicit right to live in a healthy environment. For example, the Supreme Court ordered a halt to shrimp farming in a coastal mangrove ecosystem based on the implicit right to a healthy environment. In addition, the right to a healthy environment was held to enable citizens to protect collective interests despite an absence of direct harm.
ROMANIA

Romania’s 1991 constitution included a government duty to protect the environment. In a 1997 case, Romania’s Supreme Court of Justice used this government duty as the basis for finding an implicit constitutional right to a healthy environment.69 The court decided that construction of a hotel in a park established to protect ecological values violated the constitution. Romania incorporated the explicit right to a healthy environment in its constitution in 2003. It was a decision of Romania’s Constitutional Court, based upon a review of the proposed constitutional amendments, which directed the government to include the right to a healthy environment in the Fundamental Rights chapter of the revised constitution.70 The original draft amendments had included a government duty to protect the environment in the Fundamental Rights chapter of the constitution, but not an individual right, which the court found illogical.

SRI LANKA

Sri Lanka’s constitution imposes a duty on the government and the people to protect the environment. In several cases, the Supreme Court of Sri Lanka has implicitly endorsed the right to live in a healthy environment. For example, in 1998 an environmental lawyer filed a lawsuit claiming that his constitutional right to life, including a healthy environment, was violated by the government’s failure to enact standards to protect air quality from vehicle emissions.71 The Minister of Forestry and Environment provided the court with an undertaking to enact regulations to control vehicle emissions, making it unnecessary to decide the legal issues related to the rights to life and a healthy environment. The promised regulations were enacted.72 In another case, the Supreme Court of Sri Lanka determined that a proposal to develop a phosphate mine without conducting an environmental impact assessment violated the fundamental constitutional rights of a group of concerned local citizens. The court enjoined the government from entering into a contract to develop the phosphate mine until a comprehensive environmental assessment had been completed and all relevant environmental permits approved. In the words of the court: ‘[D]ecisions with regard to the nature and scale of activity require the most anxious consideration from the point of view of safeguarding the health and safety of the people, naturally, including the petitioners, ensuring the viability of their occupations, and protecting the rights of future generations of Sri Lankans.’73

TANZANIA

In Tanzania, there have been several high-profile cases involving the operation of garbage dumps near residential communities. The High Court has ruled that the right to a healthy environment is an integral part of the constitutional right to life and was violated by these dumps.74 Despite these favourable court decisions, experts have expressed concern that Tanzania’s constitution ‘does not directly spell out the environmental rights which could prompt the development of environmental laws.’75

URUGUAY

Uruguayan legal experts argue that the right to a healthy environment is implicit in that country’s constitution.76 The right to a healthy environment is recognized explicitly in Uruguay’s framework environmental law.77

INTERNATIONAL LAW

RECOGNIZING AN IMPLICIT RIGHT TO A HEALTHY ENVIRONMENT

A total of 115 countries have signed legally binding regional agreements that explicitly recognize the right to a healthy environment, including the African Charter on Human and Peoples’ Rights, the Additional Protocol

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to the American Convention on Human Rights (San Salvador Protocol), the Arab Charter on Human Rights, and the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Regional courts and commissions have actively applied the right to a healthy environment.

Of greater interest for purposes of this article is that other international courts and tribunals, interpreting treaties and conventions that do not explicitly include the right to a healthy environment, have ruled or suggested that such a right is implicit in other human rights. These judicial bodies include the European Court of Human Rights (ECHR), the European Committee of Social Rights, the International Court of Justice and the Inter-American Commission on Human Rights (IACHR). For example, in a recent case brought pursuant to the European Convention on Human Rights, which is silent on environmental rights, the ECHR concluded that Romania’s failure to take positive actions to prevent an environmental disaster caused by using sodium cyanide for gold mining violated ‘the rights to life, private and family life, and more generally, to the enjoyment of a healthy and protected environment’. The European Committee of Social Rights, which adjudicates violations of the European Social Charter, ruled that the Greek government’s failure to address air pollution from coal mining violated the right to a healthy environment, which is implicit in the right to health. While the International Court of Justice has not directly addressed the right to a healthy environment, in the Gabcikovo-Nagymaros Case, involving a controversial dam project in Eastern Europe, Judge Weeramantry wrote in an oft-cited separate opinion that:

The protection of the environment is . . . a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself . . . damage to the environment can impair and undermine all the rights spoken of in the Universal Declaration and other human rights instruments.

Similarly, in a report on the effects of oil and gas development on Ecuador’s Yanomami people, the IACHR concluded that toxic pollution was contaminating the Yanomami’s water, air and soil, jeopardizing their health and their lives. The IACHR observed that:

The realization of the right to life, and to physical security and integrity is necessarily related to, and in some ways dependent upon one’s physical environment. Accordingly, where physical contamination and degradation pose a persistent threat to human life and health, the foregoing rights are implicated.

THE GLOBALIZATION OF THE RIGHT TO A HEALTHY ENVIRONMENT

Five processes are contributing to the globalization of the right to a healthy environment: transplantation, harmonization, integration, convergence and elite networking. Transplantation is the ‘deliberate copying and adaptation of significant portions of statutes or particular doctrines of law by one country from another’. It is clear that this has occurred in the context of the constitutional right to a healthy environment, given similar language being used around the world. For example, the phrase ‘right to a healthy and ecologically balanced environment’ was first used in the Portuguese constitution in 1976 and is now found in 21 other constitutions. National courts frequently cite decisions from other national courts. For example, the Supreme Court of India’s decisions on the right to a healthy environment have influenced courts in Bangladesh, Pakistan, Sri Lanka, Uganda and Kenya.

Harmonization is the adjusting and conforming of national standards to meet the requirements of an international system. Integration is the process of linking national legal systems. Both harmonization and integration are occurring, most prominently in the European Union, where new members must upgrade environmental laws and all members must comply with EU-wide environmental directives and regulations.

Convergence describes how distinct legal systems, like biological species, can evolve to become more similar not because of deliberate acts of copying but rather as a response to similar external pressures, especially

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70 For example, see Social and Economic Rights Action Centre (SERAC) and The Centre for Economic and Social Rights (CESR) v. Nigeria (2001), African Commission on Human and Peoples’ Rights (27 October 2001) (ACHPR/COM/CMO/A044/1, 27 May 2002).


84 Ibid., at 88.


87 See J. Razzaque, n. 12 above.
environmental pressures. Again, this phenomenon can be observed in the similarities between constitutions, national environmental laws and court decisions related to the right to a healthy environment. For example, the court decisions in leading cases involving Manila Bay in the Philippines and the Matanza-Riachuelo River in Argentina share many common elements. In both cases, the courts imposed extensive duties upon multiple government agencies, employed independent scientific experts to inform their judgments and established innovative measures to ensure compliance with their orders. The judgments occurred independently in response to similar environmental pressures and ongoing failures to respond.

Liefferink and Jordan describe elite networking (i.e., sharing of ideas among individuals who interact internationally) as another process contributing to the cross-pollination of environmental law. Elite networking has played a vital role in the globalization of the right to a healthy environment through the activities of judges, prosecutors, legislators, academics, lawyers and ENGOs.

The Internet facilitates these processes by making constitutions, legislation and case law increasingly accessible. As Slaughter observed, ‘courts are talking to one another all over the world’, especially about human rights because of their universal nature. These developments are not without their critics. McCrudden raises concerns about cherry-picking, and fears that important cultural differences could be glossed over.

**CONCLUSION**

The right to a healthy environment is spreading across the globe in international agreements, constitutions, environmental legislation and court decisions. Even in countries where the constitution does not explicitly include the right to a healthy environment, courts have often ruled that this right is implicit in the right to life, the right to health, or the government’s duty to protect the environment. These cases provide compelling evidence that constitutions are living trees, capable of modern interpretations to address modern problems that violate human rights. The decisions of international tribunals provide additional support for recognition of an implicit constitutional right to a healthy environment.

For countries whose court systems are open to the use of comparative constitutional law, the court decisions described in this article may have value as precedents in cases asserting that environmental degradation violates constitutional rights. It is possible that the globalization of constitutional and environmental law will provoke a race to the top, with different countries adopting, adapting and building on the precedents established elsewhere. Lasser observed that in Europe, an ‘inter-institutional dynamic has prompted a frantic race to the top’ in terms of human rights, with the result that the ‘rights revolution is transforming the judicial landscape at breakneck speed’. Given the state of the global environmental crisis, increased recognition and enforcement of the constitutional right to a healthy environment should be seen as a positive and promising development.


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88 See T. Yang et al., n. 85 above.
89 Beatriz Silvia Mendoza et al. v. National Government et al. (Damages stemming from contamination of the Matanza-Riachuelo River) (2008) M, 1569, Supreme Court of Argentina (8 July 2008); Concerned Residents of Manila Bay v. Metropolitan Manila Development Authority et al. (2008), G.R. Nos. 171947-48 (Supreme Court of the Philippines).