



David
Suzuki
Foundation

Photo credit: Gregg Cormie

PAPER #4:

The Status of Constitutional Protection for the Environment in Other Nations

David R. Boyd

The Status of Constitutional Protection for the Environment in Other Nations

Canada's Constitution, including the Charter of Rights and Freedoms, does not mention the environment at all, despite our fundamental dependence on air, water, soil and healthy ecosystems. Meanwhile, unbeknownst to most Canadians, most of the world has undergone a rapid and remarkable shift toward constitutional protection of the environment. When Pierre Trudeau began discussing repatriation of the Canadian Constitution in 1968, no constitutions anywhere incorporated environmental rights, and only a handful imposed modest environmental responsibilities (e.g., Italy, Madagascar).

Every year since 1971, at least one nation has written or amended its constitution to include or strengthen provisions related to environmental protection. The first broad provisions focusing on protection of the environment appear in the constitutions of Switzerland (1971), Greece (1975) and Papua New Guinea (1975).¹ Portugal (1976) and Spain (1978) were the first countries to recognize the right to live in a healthy environment. Between 1970 and 1982, the peak years of constitutional debates in Canada, 28 nations wrote environmental provisions into their constitutions. During the 1980s, the trend of greening constitutions was led by nations in Latin America and Western Europe. The number of nations incorporating environmental provisions into their constitutions accelerated in the early 1990s, led by nations in Africa and Eastern Europe. Between 1983 and 1992, when further constitutional amendments were a hot topic of discussion in Canada, another 44 countries enacted constitutional provisions requiring environmental protection.

Today, more than three quarters of the world's national constitutions (149 out of 193) include explicit references to environmental rights and/or environmental responsibilities (see Appendix A). This includes the majority of nations belonging to the Organization for Economic Cooperation and Development, the Commonwealth, La Francophonie and even the Organization of Petroleum Exporting Countries. It also includes the majority of countries in Africa, the Americas (except North America), Asia-Pacific, Europe and the Middle East/Central Asia.

The peak year for the incorporation of environmental rights and responsibilities into national constitutions was 1992, with new environmental provisions included in 18 in that year alone. Not coincidentally, 1992 was a peak year in terms of global attention to environmental issues, marked by the Earth Summit in Rio de Janeiro, Brazil, which attracted an unprecedented number of heads of state to an international environmental meeting.² And yet the Charlottetown Accord, brokered by political elites and put to the people of Canada that same year, contained only a feeble reference to sustainable development (see The History of

the Right to a Healthy Environment in Canada). Broken down by decade, the incorporation of environmental protection provisions in national constitutions is as follows:

Pre-1970:	5
1970 – 1979:	18
1980 – 1989:	22
1990 – 1999:	68
2000 – 2009:	27
2010 – 2013:	9

A year-by-year breakdown is provided in Table 1.

Broken down by region, the incorporation of provisions requiring environmental protection in national constitutions is as follows:³

Africa:	46⁴
Asia:	36⁵
Europe:	40⁶
Latin America:	18⁷
North America:	1
Caribbean:	5⁸
Oceania:	3⁹

Table 1. Year environmental provisions first included in national constitutions

1948: Italy
1959: Madagascar
1962: Kuwait
1964: Malta
1965: Guatemala
1971: Switzerland, United Arab Emirates
1972: Panama
1973: Bahrain, Syrian Arab Republic
1974: San Marino
1975: Greece, Papua New Guinea
1976: Cuba, India, Portugal
1977: Tanzania
1978: Spain, Sri Lanka, Thailand, Yemen
1979: Iran, Peru

1980: Chile, Guyana, Vanuatu, Vietnam
1981: Belize, Palau
1982: China, Equatorial Guinea, Honduras, Turkey
1983: El Salvador, Netherlands, Panama
1984: Austria, Ecuador
1986: Nicaragua
1987: Haiti, Philippines, South Korea, Suriname, Sweden
1988: Brazil
1989: Hungary
1990: Benin, Croatia, Guinea, Mozambique, Namibia, Sao Tome and Principe
1991: Bulgaria, Burkina Faso, Colombia, Gabon, Laos, Macedonia, Mauritania, Slovenia, Zambia
1992: Angola, Cape Verde, Czech Republic, Estonia, Ghana, Lithuania, Mali, Mexico, Mongolia, Norway, Paraguay, Saudi Arabia, Slovak Republic, Togo, Turkmenistan, Uzbekistan
1993: Andorra, Cambodia, Kyrgyzstan, Lesotho, Russia, Seychelles
1994: Argentina, Belarus, Belgium, Costa Rica, Germany, Malawi, Moldova, Tajikistan
1995: Armenia, Azerbaijan, Ethiopia, Finland, Georgia, Kazakhstan, Uganda
1996: Algeria, Cameroon, Chad, Gambia, Niger, Oman, South Africa, Ukraine, Uruguay
1997: Eritrea, Poland
1998: Albania, Latvia, North Korea
1999: Nigeria, Venezuela
2000: Cote d'Ivoire (Ivory Coast), Indonesia
2001: Comoros, Senegal
2002: Bolivia, Congo-Brazzaville, East Timor
2003: Qatar, Romania, Rwanda
2004: Afghanistan, Central African Republic, Somalia
2005: Burundi, Democratic Republic of the Congo, France, Iraq, Sudan, Swaziland
2006: Nepal, Serbia
2007: Egypt, Luxembourg, Montenegro
2008: Bhutan, Maldives, Myanmar
2010: Dominican Republic, Kenya
2011: Bangladesh, Jamaica, Morocco, South Sudan
2012: Iceland
2013: Fiji, Zimbabwe

What are the countries that, like Canada, have bucked this global trend? Among the 44 UN nations whose constitutions are silent on the matter of environmental protection, there are several political, geographic and legal patterns.¹⁰ The United Kingdom is one of the 44, as are 27 nations that are former British colonies.¹¹ Twenty-three of the 44 nations without constitutional environmental provisions are small island states.¹² Like Canada, almost all of the English-speaking nations of the Americas (11 out of 13) lack environmental provisions in their constitutions.¹³ The constitutions of these nations include few if any references to economic, social or cultural rights. The exceptions are Belize, (constitutional environmental provisions are limited to the preamble) and Jamaica (right to a healthy environment added in 2011). In contrast, all 22 of the non-English speaking nations in the Americas have incorporated environmental protection provisions into their constitutions.¹⁴

National legal systems provide another pattern that partially explains the variation in the presence of constitutional environmental provisions. The UN's 193 member-states can be divided into 15 categories according to the type of legal system.¹⁵ There is a striking difference between common and civil law nations in the extent to which environmental provisions are or are not incorporated into constitutions. Of the 23 nations employing predominantly common law systems, only three have environmental provisions in their constitutions.¹⁶ While the constitutions of most former British colonies contain Bills of Rights, they adopt the classic liberal approach to human rights — i.e., a focus on civil and political rights while economic, social and cultural rights are not protected (except for property). This Anglo-American caution regarding constitutional recognition of social and economic rights has persisted in former British colonies, including Canada.¹⁷ In contrast, among the 77 nations with predominantly civil law systems, 73 have environmental provisions in their constitutions.¹⁸ It is interesting to note that Quebec is the only Canadian province with a civil law system and Quebec added the right to a healthy environment to its Charter of Human Rights and Freedoms in 2006. Among the 25 nations with mixed legal systems that combine civil law and customary law, 23 have environmental provisions in their constitutions.¹⁹ The remaining types of legal systems fall in between the civil and common law extremes.²⁰

The distribution of constitutional environmental provisions across the world provides a convincing rebuttal to the charge of cultural imperialism, leveled by critics who assert that environmentalism is a Western conception. The 149 nations whose constitutions include provisions related to environmental protection include a majority of nations in Central and South America, Africa, Asia, the Middle East and Eastern Europe. In fact, the Western nations — the U.S., Canada, the U.K., Australia and others — are the ones lagging in constitutional recognition of the value of environmental protection.

The wave of constitutional changes was driven by the end of colonialism in Africa, the end of military dictatorships in Latin America, the end of the Communist empire in central and Eastern Europe and the ongoing process of constitutional modernization in other nations, such as Norway and France. In some countries strong public pressure caused amendments related to environmental protection. For example, in Switzerland, a 1971 public petition with more than 100,000 signatures led to a referendum authorizing constitutional changes to ensure a strong federal role in environmental protection. In some countries forceful political leadership is a driving force, as in France where President Jacques Chirac worked tirelessly to secure the Environmental Charter.

It is often mistakenly observed that virtually every constitution enacted or amended since 1970 has included either environmental rights or environmental responsibilities.²¹ Canada is obviously one example of a country where a new constitution failed to incorporate environmental protection. In Ireland, despite repeated amendments, the constitution remains silent regarding environmental protection. In 1996, an expert committee tasked with reviewing Ireland's Constitution recommended inclusion of a government duty to protect the environment.²² The Irish Constitution has been amended 10 times since then but still lacks any environmental provisions.²³ In nations such as the U.S. and Denmark, it is extremely difficult to amend the constitution. In summary, among the 44 nations whose constitutions remain silent on the matter of environmental protection, 37 have written or amended their constitutions since 1970 without including environmental provisions despite varying degrees of public pressure to do so.²⁴

Types of Environmental Provisions

A review of the 149 constitutions that incorporate environmental protection reveals five main categories of provisions, including government's responsibility to protect the environment; substantive rights to environmental quality; procedural environmental rights; individual responsibility to protect the environment; and a miscellaneous "catch-all" category of diverse provisions. Each of these five categories is discussed in greater detail below.

Government's Environmental Duties

Phrased in many different ways, the government duty to protect the environment imposes upon the state an obligation to conserve or protect the environment. For example, in the Instruments of Government Act, which is part of Sweden's Constitution, the duty is succinctly stated:

Article 2. The public institutions shall promote sustainable development leading to a good environment for present and future generations.²⁵

Portugal's duty is more detailed, as Portugal's Constitution states:

Art. 66(2) In order to ensure enjoyment of the right to the environment within an overall framework of sustainable development, acting via appropriate bodies and with the involvement and participation of citizens, the state shall be charged with:

- a) Preventing and controlling pollution and its effects and the harmful forms of erosion;
- b) Conducting and promoting town and country planning with a view to a correct location of activities, balanced social and economic development and the enhancement of the landscape;
- c) Creating and developing natural and recreational reserves and parks and classifying and protecting landscapes and places, in such a way as to guarantee the conservation of nature and the preservation of cultural values and assets that are of historic or artistic interest;
- d) Promoting the rational use of natural resources, while safeguarding their ability to renew themselves and maintain ecological stability, with respect for the principle of inter-generational solidarity;
- e) Acting in cooperation with local authorities, promoting the environmental quality of rural settlements and urban life, particularly on the architectural level and as regards the protection of historic zones;
- f) Promoting the integration of environmental objectives into the various policies of a sectoral nature;
- g) Promoting environmental education and respect for environmental values;
- h) Ensuring that tax policy renders development compatible with the protection of the environment and the quality of life.²⁶

The government duty is the most common form of constitutional provision related to environmental protection, found in 144 constitutions (see *Appendix A*). In the majority of cases, the government's duty is explicitly articulated. In a handful of constitutions, there is no provision directly articulating the government's obligation to protect the environment, but there is recognition of the right to live in a healthy environment.²⁷ In these cases, the basic human rights concept that there can be no right in the absence of a corresponding duty can be used to infer that the government has an obligation to protect the environment.²⁸

Substantive Environmental Rights

This human right is most often articulated as “every person has the right to a healthy environment” or “every person has the right to a healthy, ecologically balanced environment.” For example, Art. 110(b) of Norway’s Constitution (1992) states:

*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.*²⁹

Ninety-six national constitutions recognize that citizens have a substantive right to live in a healthy environment (see *Appendix A*). All of these environmental rights are universal (i.e., held by all individuals in a nation) with the exception of El Salvador, where the right to a healthy environment appears to be limited to children, and the Maldives, where the right appears to be limited to Muslims (a limitation discussed below).³⁰ The constitutions of Burundi, Madagascar and Mauritania are unusual because they do not explicitly mention the right to a healthy environment but rather incorporate by reference all of the rights recognized in the African (Banjul) Charter on Human and People’s Rights, an international agreement that includes “the right to a general satisfactory environment.”³¹

A timeline of the incorporation of the right to a healthy environment in national constitutions is in Table 2. As was the case with environmental provisions generally, the peak year for constitutional recognition of the right to a healthy environment was 1992.

Table 2. Year that right to a healthy environment first included in national constitutions

1976: Portugal
1978: Spain
1979: Iran, Peru
1980: Chile, Guyana
1982: Honduras, Turkey
1983: El Salvador, Netherlands, Panama
1984: Ecuador
1986: Nicaragua
1987: Philippines, South Korea
1988: Brazil
1989: Hungary

1990: Benin, Croatia, Guinea, Mozambique, Sao Tome and Principe
1991: Bulgaria, Burkina Faso, Colombia, Gabon, Macedonia, Mauritania, Slovenia
1992: Angola, Cape Verde, Czech Republic, Mali, Mongolia, Norway, Paraguay, Slovak Republic, Togo
1993: Andorra, Kyrgyzstan, Russia, Seychelles
1994: Argentina, Belarus, Belgium, Costa Rica, Malawi, Moldova
1995: Armenia, Azerbaijan, Ethiopia, Finland, Georgia, Uganda
1996: Cameroon, Chad, Niger, South Africa, Ukraine
1997: Poland
1998: Albania, Latvia
1999: Mexico, Venezuela
2000: Cote d'Ivoire, Indonesia
2001: Comoros, Senegal
2002: Bolivia, Congo (Brazzaville), East Timor, Greece
2003: Romania, Rwanda
2004: Central African Republic
2005: Burundi, Democratic Republic of Congo, France, Iraq, Sudan
2006: Nepal, Serbia
2007: Egypt, Montenegro, Thailand
2008: Maldives, Turkmenistan
2010: Dominican Republic, Kenya, Madagascar
2011: Jamaica, Morocco, South Sudan
2012: Iceland, Somalia, Zambia
2013: Fiji, Zimbabwe

Broken down by decade, the incorporation of provisions recognizing the right to a healthy environment in national constitutions is as follows:

1970 – 1979:	4
1980 – 1989:	13
1990 – 1999:	47
2000 – 2009:	23
2010 – 2013:	11

Broken down by region, the incorporation of provisions recognizing the right to a healthy environment in national constitutions is as follows:³²

Africa:	36 ³³
Asia:	14 ³⁴
Europe:	30 ³⁵
Latin America:	15 ³⁶
North America:	1
Caribbean:	2 ³⁷
Oceania:	0

Sixty-eight of the 98 constitutions that include substantive environmental rights use the language of a healthy environment or an environment that is not harmful to health. Twenty-five of the 98 constitutions also describe the right in terms of an ecologically balanced environment. A wide variety of other words and phrases are used to describe the right to a healthy environment, including (with their frequency in parentheses) fit or adequate for human development or wellbeing (10), preserved/protected (7), clean (6), safe (6), favourable (5), satisfying (5), natural (3), unpolluted (2), sound (2), free from contamination (2), sustainable (2), good (2), diverse (2), harmonious (2), wholesome (1), lasting (1), human (1), pleasant (1) and benevolent (1).³⁸ It should be noted that some of this variability might be a result of inconsistent translation.

Like other constitutional guarantees of human rights, the right to a healthy environment is not absolute. Four types of provisions can limit all or a subset of the rights recognized in a given constitution: generic limits; restrictions during emergencies; acknowledgement that rights will be fulfilled on the basis of progressive implementation; and limits on who is eligible to enjoy constitutional rights. In some cases, more than one of these limitations can be found in a single constitution. First, many constitutions include generic provisions that authorize restrictions on all human rights in order to meet the public interest in security, order, health and/or the exercise of other rights.³⁹ These limits are similar to s. 1 of Canada's Charter, which states that rights and freedoms are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." Second, constitutions may expressly authorize restrictions on the exercise of rights during emergencies such as wars, invasions and natural disasters.⁴⁰ These emergency provisions either enumerate specific rights that can be suspended or identify specific rights that cannot be restricted even during these times of crisis. Third, in some developing nations, the right to a healthy environment is limited by the concept of progressive implementation, recognizing that individual nations have different capacities and resources for respecting, protecting and fulfilling human rights.⁴¹

For example, Turkey's Constitution states, "The State shall fulfill its duties as laid down in the Constitution in the social and economic fields within the capacity of its financial resources, taking into consideration the priorities appropriate with the aims of these duties."⁴² Fourth, in a limited number of constitutions, provisions seemingly unrelated to the right to a healthy environment may restrict the application of the right. For example, non-Muslims in the Maldives do not appear to have equal constitutional rights, including the right to a healthy environment.⁴³ Most constitutions include one or more of these types of limits.

The location and classification of the right to a healthy environment within a constitution can also influence its implementation, enforceability and judicial interpretation, albeit in an indirect manner, merely by creating particular perceptions about the nature of the right. In 61 out of 98 constitutions, the right to a healthy environment is articulated in the same section or chapter as other fundamental human rights.⁴⁴ Theoretically, this will result in similar treatment for all of the human rights identified as fundamental, although in practice legal developments may not always reflect words on paper or the intent of the constitution's framers. In 18 constitutions, the right to a healthy environment is grouped together with economic, social and cultural rights, a classification that is sometimes viewed as of secondary importance compared to civil and political rights.⁴⁵ Eleven nations describe the right to a healthy environment in a section of their constitutions that sets out general provisions or guiding objectives and principles of state policy.⁴⁶ This may diminish the legal strength of the environmental right. In three constitutions (Cameroon, the Comoros and Mauritania), the right to a healthy environment is found in the preamble, where it would generally be of limited practical value. However, while the constitutions of these nations place rights only in the preamble, they explicitly state that the preamble is an integral part of the constitution. In two constitutions (Colombia, Democratic Republic of the Congo), the right to a healthy environment is included in a chapter called "Collective Rights" that follows a chapter enumerating social, economic and cultural rights. Three other nations have unique constitutional arrangements for the right to a healthy environment, including Argentina (included in a section called New Rights and Guarantees), Egypt (Public Rights) and France (the Charter for the Environment). It is possible that the unusual location of the right to a healthy environment within these constitutions could affect its interpretation.

Procedural Environmental Rights

Thirty-one national constitutions provide procedural rights specifically related to environmental protection, including the right to information, the right to participate in decision-making and the right of access to the judicial system to challenge government decisions, unconstitutional laws or alleged violations of individual rights. An example is provided by the Czech Republic's Constitution:

Article 35. (2) Everybody is entitled to timely and complete information about the state of the environment and natural resources.⁴⁷

It is important to recognize that many other national constitutions incorporate generic procedural rights that apply to a broad spectrum of issues, including the environment. As well, in many industrialized nations, such as Canada, these procedural rights are already available to citizens because of existing laws and policies, although constitutional affirmation will generally strengthen the individual's position. In almost every case, the procedural environmental rights are included in constitutions that also contain a substantive right to live in a healthy environment.

Procedural environmental rights are most commonly found in constitutions from Eastern Europe and Latin America. In some countries, this may be due to the historical suppression of environmental information by autocratic regimes. For example, in the Ukraine, a compelling motivation for the inclusion of guaranteed access to environmental information in the constitution was the Chernobyl nuclear disaster, where vital information about high radiation levels was withheld from the public.⁴⁸

Some constitutions also create an independent office with responsibility for monitoring human rights violations. This can take the form of an independent human rights commission, an ombudsman or a defender of human rights. For example, El Salvador has a Procurator for the Defense of Human Rights.⁴⁹ Namibia's Constitution specifically empowers the Ombudsman to investigate problems related to environmental damage.⁵⁰ There is a wide variability in the powers available to these human rights bodies and officers, ranging from merely preparing reports to initiating litigation intended to protect citizens' rights and ordering reparation for rights that have been violated. In general, these officials can act on complaints received by citizens or initiate their own investigations.

In Canada, procedural rights are to some extent found in federal and provincial legislation, such as laws governing access to information or the right to participate in environmental decision-making. These legislative provisions would be stronger and more consistent if supported by constitutional recognition of the right to a healthy environment.

Individual Environmental Duties

This type of provision is generally phrased as “everyone has the duty (or responsibility) to conserve and protect nature and the environment.” For example, in France’s Charter for the Environment (2005):

Article 2. Every person has the duty to take part in the preservation and the improvement of the environment.

Article 3. Each person shall, in the conditions provided for by law, foresee and avoid the occurrence of any damage which he or she may cause to the environment or, failing that, limit the consequences of such damage.⁵¹

Individual responsibility for protecting the environment is provided in 86 constitutions, a total slightly lower than the number of constitutions recognizing the right to live in a healthy environment (see Appendix A). Six nations have constitutions that establish an individual duty to protect the environment but do not establish an individual right to a healthy environment or impose environmental obligations upon the state.⁵² This seems to run counter to the fundamental idea that constitutions are intended to provide constraints upon government power.⁵³ Constitutions are generally enforceable against the state, not individuals. The Gambia’s Constitution explicitly states that the individual’s duty to protect the environment is unenforceable.⁵⁴ It is unclear what, if any, legal purpose is served by the constitutionalization of individual environmental duties. These provisions appear to be symbolic, hortatory and educational, confirming that everyone has a part to play in protecting the environment from human-imposed damage and degradation. Canada’s Charter makes no reference to any individual responsibilities, focusing exclusively on individual rights.

Other Environmental Protection Provisions

Not surprisingly, given the diverse legal systems of the world, there is a broad variety of other constitutional environmental provisions. Among the most common in this catch-all category are authorization of restrictions on the use of private property in order to protect the environment; prohibitions on importing toxic, hazardous or nuclear waste; recognition of the right to clean water; and value statements regarding the importance placed on protecting the environment.⁵⁵ In a handful of constitutions — Bolivia, Brazil, Colombia, Ecuador, France, Portugal, Switzerland and Venezuela — provisions related to environmental protection are relatively comprehensive.

Many constitutions authorize limits on the exercise of private property rights on the basis of protecting the public interest, which usually is not defined but generally refers to a suite

of considerations including environmental concerns. For example, Article 27(2) of the Constitution of Andorra states, "No one shall be deprived of his or her goods or rights, unless upon justified consideration of the public interest, with just compensation by or pursuant to a law."⁵⁶ At least 15 constitutions specifically restrict the use of private property when that use could cause environmental damage.⁵⁷ For example, the Constitution of Romania states, "The right to own property implies an obligation to comply with duties relating to environmental protection."⁵⁸ The inclusion of both property rights and the right to a healthy environment in a constitution will create conflicts that require careful balancing by legislatures, bureaucracies and courts. However, constitutions that explicitly authorize environmental constraints on the use of private property are designed to overcome the historical propensity to favour property rights.

A handful of nations, employing a very different constitutional model, spell out environmental policies in extensive detail, closer to what would ordinarily be found in environmental legislation in a nation like Canada. For example, Switzerland's Constitution includes specific provisions about zoning, water, forests, nature reserves, fishing, hunting, protecting alpine ecosystems, energy policy and biotechnology.⁵⁹ Among the many environmental clauses in Ecuador's new Constitution are a prohibition on genetically modified organisms; reversal of the legal burden of proof so that those accused of causing environmental harm must prove that their actions caused no such harm; a mandate that uncertainties regarding the interpretation of environmental laws be resolved in favour of nature; and a requirement for the promotion of non-motorized forms of transport in urban areas, particularly through the building of cycling routes.⁶⁰

Some constitutions specifically require legislation, planning processes or budgets intended to adequately protect the environment. Brazil's Constitution requires "a prior environmental impact study, which shall be made public, for the installation of works or activities which may cause significant degradation of the environment."⁶¹ In Argentina, the Constitution requires the federal government to "dictate laws containing a minimum budget necessary for protecting the environment."⁶² Portugal's Constitution requires the government to ensure "that tax policy renders development compatible with the protection of the environment and the quality of life."⁶³

Many African nations have provisions in their constitutions dealing with environmental issues unique to their history or ecology. For example, Benin, Chad, the Democratic Republic of the Congo and Niger each have provisions prohibiting the importation of toxic or hazardous waste.⁶⁴ Uganda and Malawi have specific references to the protection of biological diversity.⁶⁵ Several Oceanic nations (e.g., Micronesia and Palau) have specific sections prohibiting nuclear testing or the deployment of nuclear weapons within their territories.⁶⁶

Latin America has been a leader in constitutional innovation, with numerous novel provisions related to environmental protection. In Brazil, Colombia and several other nations, the constitution empowers an independent agency, the Ministerio Público (Public Ministry), to protect collective interests, including the environment. In effect, these agencies function as public prosecutors, at arm's-length from the state, to whom the public can turn to enforce environmental laws and prevent actions that could cause ecological damage or violate the right to a healthy environment. Constitutions throughout Latin America provide for expedited forms of legal action, known variously as the amparo, writ of protection, and tutela. While the precise procedure varies from nation to nation, they have in common a relaxation or simplification of the legal process that lowers costs, reduces delays and dramatically increases access to the judicial system in constitutional cases.⁶⁷ The right of amparo dates back to the Mexican Constitution of 1857, and has been adopted in almost every Spanish-speaking nation in Latin America.⁶⁸

In 2008, Ecuador became the first nation in the world to provide explicit constitutional recognition of rights of nature, followed by Bolivia in 2009.⁶⁹ Ecuador's Constitution states:

Chapter Seven: Rights of Nature

Article 71. Nature or Pachamama, where life plays and performs, is entitled to full respect, existence, and the maintenance and regeneration of its vital cycles, structure, functions, and evolutionary processes. Any person, community, or nation may require the public authority to comply with the rights of nature. The principles enshrined in the Constitution will be used to apply and interpret these rights, as appropriate. The State will encourage individuals, legal persons, and collective entities to protect nature and promote respect for all the elements that form an ecosystem.

Article 72. Nature is entitled to restoration. This restoration is independent of the obligation of the State and persons or companies to compensate individuals and groups that depend on affected natural systems. In cases of severe or permanent environmental impact, including those linked to the exploitation of nonrenewable natural resources, the State shall establish the most effective mechanisms to achieve the restoration, and take appropriate measures to eliminate or mitigate adverse environmental consequences.

Article 73. The State will apply precautionary and restrictive measures to activities that could lead to species extinction, destruction of ecosystems, or the permanent alteration of natural cycles. The import of organisms and organic and inorganic material that may ultimately alter the national genetic heritage is prohibited.

Article 74. Individuals, communities, peoples and nations are entitled to benefit from the environment and natural resources that allow them to live well. Environmental services are not subject to appropriation; their production, delivery, use and development are regulated by the state.

Whether and to what extent granting legal rights to nature will have practical consequences remains to be seen, although it does address concerns raised by some ecologists that rights-based approaches are unduly anthropocentric.⁷⁰ Canada's Constitution has been criticized for its failure to recognize the rights of non-human forms of life.⁷¹

More than 40 nations include constitutional references to the rights, health or well-being of future generations.⁷² Almost all of these references appear in the context of provisions dealing with environmental concerns.⁷³ For example, in Brazil's Constitution, "the Government and the community have a duty to defend and preserve the environment for present and future generations."⁷⁴ The constitutions of Bhutan and Portugal refer to the closely related concept of intergenerational equity.⁷⁵

Finally, a growing number of constitutions address the right to an adequate supply of clean water. South Africa is perhaps best known for incorporating this right into its constitution, as follows:

27. Health care, food, water, and social security

(1) Everyone has the right to have access to—

...

(b) sufficient food and water

...

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.⁷⁶

Constitutional requirements for the protection and/or provision of clean water are found in at least 20 nations.⁷⁷

The Enforceability of Environmental Provisions in National Constitutions

Enforceability is an essential aspect of constitutional provisions, for it ensures accountability when rights are violated or responsibilities go unfulfilled. A simple definition of enforceability is the ability of an individual, group or other organization to access the legal system to resolve a constitutional complaint.⁷⁸ In most cases, the authorization or prohibition of legal redress relates to broader aspects of the constitution but applies equally to the environmental provisions. In Canada, the Charter clearly grants any person the right to go to court when

their constitutional rights have been infringed or denied.⁷⁹ In some cases, the authorization or prohibition of legal action is specifically linked to a constitution's environmental provisions. An example is found in Chile's Constitution:

Article 20. ...

The action for the protection of fundamental rights (recurso de protección) shall always lie in the case of numeral 8 of Article 19, when the right to live in an environment free from contamination has been affected by an illegal act or omission imputable to an authority or specific person.⁸⁰

Conversely, an example of an explicit limit on enforceability is found in Nepal's Constitution. Article 35(5) of the Nepalese Constitution imposes extensive duties on the government to protect the environment.⁸¹ However, Article 36 makes it clear that these duties are not enforceable:

36. Questions not to be Raised in Courts: (1) No questions shall be raised in any court as to whether provisions contained in this Part are implemented or not.⁸²

In the absence of enforceability, governments may evade their responsibility to protect the environment, and affected individuals may be deprived of a remedy for violations of their right to a healthy environment. Although unenforceable provisions are toothless tigers, they may retain normative value, influence interpretation and decision-making and offer moral, symbolic and educational value.

Both internal and external factors affect the enforceability of constitutional provisions. Internal factors refer to explicit guarantees or limits within the text of a constitution. External factors encompass a broad range of legal, social, political, economic and cultural considerations. For example, conservative rules regarding standing (as in many jurisdictions where direct injury to a person, either physical or financial, is required) are a legal limit on enforceability.⁸³ Another external limit is that lack of financial resources may act as a *de facto* bar to enforceability for poor communities, who are likely to suffer a disproportionate share of the pollution burden.⁸⁴ A nation's judiciary may be extremely conservative or even unfamiliar with judicial review of government action. For example, judicial review was introduced into Japan's legal system by the post-World War II rewriting of the Japanese Constitution but continues to have limited effect due to societal and judicial conservatism.⁸⁵

The vast majority of constitutional provisions entrenching the right to live in a healthy environment and government's duty to protect the environment are, *prima facie*, enforceable. Some nations (e.g., Belarus) go even further than authorizing enforcement of human rights by

individuals and groups, providing constitutional guarantees of legal aid (free legal assistance) for efforts to protect rights.⁸⁶

In 13 nations, certain rights, including the right to a healthy environment, may only be invoked according to specific conditions that must be set forth in legislation. This is described as a constitutional provision that is not “self-executing.” For example, in Spain, the right to a healthy environment is among the principles set forth in Chapter III, so the following restriction applies:

Art. 53 (3) Recognition, respect and protection of the principles recognized in Chapter III shall guide legislation, judicial practice and actions by the public authorities. They may only be invoked before the ordinary courts in accordance with the legal provisions implementing them.⁸⁷

In other words, Article 53(3) of the Spanish Constitution limits the ability of citizens and NGOs to file lawsuits based directly on their constitutional right to a healthy environment.

In 15 nations, enforceability of government duties to protect the environment appears to be explicitly precluded.⁸⁸ Each of these nations has constitutional environmental provisions that are expressed in terms of “Directive Principles of State Policy.” For example, in Gambia the directive principles include protecting the environment for posterity and cooperating in preserving the global environment. However, Gambia’s Constitution explicitly states that “these principles shall not confer legal rights or be enforceable in any court.”⁸⁹ Dejo Olowu, Professor at North-West University in South Africa, describes guiding principles as “worthless platitudes because of their inherently emasculated constitutional status.”⁹⁰ The environmental provisions in the 1992 Charlottetown Accord were intended to be similar to directive principles, in that they were explicitly unenforceable.

In six developing nations, progressive implementation is another factor that could restrain the enforceability of government’s duty to protect the environment.⁹¹ Where a constitution includes this government duty but specifically states that the duty is subject to the availability of financial resources and other national priorities, it is less likely that a court will enforce the duty by substituting its policy judgment for that of the government. For example, Gabon’s Constitution provides that “the State, according to its possibilities, shall guarantee to all, notably to the child, the mother, the handicapped, to aged workers and to the elderly, ... a preserved natural environment.”⁹² It would be highly unusual to find progressive implementation in the constitution of a country such as Canada because of the level of affluence.

It is important to recognize that there can be significant differences between enforceability on paper and enforceability in practice. For example, India's Constitution contains no explicit right to a healthy environment, and the government's duties to protect the environment (Art. 48A) are found among the explicitly unenforceable "Directive Principles of State Policy."⁹³ However, courts in India have consistently and in some cases dramatically circumvented the plain words of the constitution, building a body of jurisprudence that interprets the directive principle regarding environmental protection as legally binding. Indian jurisprudence serves as a compelling example of the unpredictability of constitutional law, and a powerful reminder not to rely on abstract conclusions regarding the enforceability of particular constitutional provisions. As David Beatty, Professor Emeritus at the University of Toronto's Faculty of Law, observed, "Even though most constitutions now contain provisions guaranteeing some set of social and economic rights, it is rare that the particular way they are written in the text is the critical or determining factor in how cases are resolved."⁹⁴ Constitutional and Supreme courts in at least a dozen nations have ruled that the right to a healthy environment is an implicit and essential element of the constitutional right to life.⁹⁵ Ecojustice is currently working on a lawsuit that may rely on this argument with respect to the right to "life, liberty, and security of the person" in Canada's Charter (see Pathways for Moving Forward).

The issue of enforceability is particularly important in the Canadian context. As discussed in *The History of the Right to a Healthy Environment in Canada*, concerns about the unenforceable nature of social, economic and environmental rights were among the factors that led to their exclusion from Canada's Constitution. Other nations did not reach the same conclusion, and *Constitutional Recognition of the Right to a Healthy Environment: Making a Difference in Canada* examines how their practical experiences with implementation and enforcement of these rights may be relevant in Canadian contexts. Other countries' experiences with social, economic and environmental rights have led renowned constitutional experts to reverse their opposition to constitutional recognition of these rights.⁹⁶

Conclusion

Constitutional environmental provisions are now the norm throughout most of the world, including Western and Eastern Europe, Asia, Latin America and Africa. As of October 1, 2013, 149 out of 193 national constitutions incorporate environmental protection provisions. Canada is among the dwindling number of countries that have not greened their constitutions. The right to live in a healthy environment enjoys explicit recognition in 98 constitutions. No other social or economic right has spread as quickly through the world's constitutions.⁹⁷ For purposes of comparison, the right to health is recognized in 74 constitutions while the right to food is recognized in 21 constitutions.⁹⁸ The constitutional right to a healthy environment is now common in Latin America, Europe, Africa and, to a lesser extent, Asia, yet is absent

in North America except Mexico. In most constitutions, the right to a healthy environment is treated in much the same way as any other fundamental human right, as enforceable but subject to limitations.

While the constitutionalization of environmental protection began in the 1970s, the trend continues today. New constitutions enacted in 2010 in Kenya and the Dominican Republic include the right to a healthy environment, the right to water and extensive provisions related to environmental protection.⁹⁹ Jamaica's new Charter of Rights and Freedoms (2011) includes the right to a healthy environment, as do new constitutions in Fiji, Iceland, Morocco, Zambia and Zimbabwe.¹⁰⁰ The recent constitutional amendments in Kenya, Jamaica, Zambia and Zimbabwe carry additional importance because these nations, like Canada, are former British colonies with common law legal systems, where the right to a healthy environment has made minimal inroads to date.

Overall, these constitutional developments appear to reflect a rapid evolution of human values. The same evolution in values has occurred in Canada, yet the Canadian Constitution remains silent on the fundamental importance of environmental protection.

Appendix A.

Types of environmental protection provisions in national constitutions

Country	Substan. Envtl Right	Proced'l Envtl Right	Indiv. Envtl Resp'y	Gov't Envtl Duty
Afghanistan	N	N	N	Y
Albania	Y	Y	N	Y
Algeria	N	N	Y	N
Andorra	Y	N	N	Y
Angola	Y	N	N	Y
Antigua & Barbuda	N	N	N	N
Argentina	Y	Y	Y	Y
Armenia	Y	N	Y	Y
Australia	N	N	N	YN
Austria	N	Y	N	Y
Azerbaijan	Y	Y	Y	Y
Bahamas	N	N	N	N
Bahrain	N	N	N	Y
Bangladesh	N	N	N	N
Barbados	N	N	N	N
Belarus	Y	Y	Y	Y
Belgium	Y	N	N	Y
Belize	N	N	N	Y
Benin	Y	N	Y	Y
Bhutan	N	N	Y	Y
Bolivia	Y	Y	Y	Y
Bosnia & Herzegovina	N	N	N	N
Botswana	N	N	N	N
Brazil	Y	Y	Y	Y
Brunei Darussalam	N	N	N	N
Bulgaria	Y	N	Y	Y
Burkina Faso	Y	Y	Y	Y
Burundi	Y	N	N	Y
Cambodia	N	N	N	Y
Cameroon	Y	N	Y	Y
Canada	N	N	N	N

Country	Substan. Envtl Right	Proced'l Envtl Right	Indiv. Envtl Resp'y	Gov't Envtl Duty
Cape Verde	Y	N	Y	Y
Central African Republic	Y	N	N	Y
Chad	Y	N	Y	Y
Chile	Y	Y	N	Y
China	N	N	N	Y
Colombia	Y	Y	Y	Y
Comoros	Y	N	Y	Y
Congo-Brazzaville	Y	N	Y	Y
Congo-Democratic Republic of	Y	N	Y	Y
Costa Rica	Y	Y	N	Y
Cote d'Ivoire	Y	N	Y	Y
Croatia	Y	N	Y	Y
Cuba	N	N	Y	Y
Cyprus	N	N	N	N
Czech Republic	Y	Y	Y	Y
Denmark	N	N	N	N
Djibouti	N	N	N	N
Dominica	N	N	N	N
Dominican Republic	Y	Y	Y	
East Timor	Y	N	Y	Y
Ecuador	Y	Y	Y	Y
Egypt	Y	N	Y	Y
El Salvador	Y	N	N	Y
Equatorial Guinea	N	N	N	Y
Eritrea	N	N	N	Y
Estonia	N	N	Y	N
Ethiopia	Y	Y	Y	Y
Fiji	N	N	N	N
Finland	Y	N	Y	Y
France	Y	Y	Y	Y
Gabon	Y	N	N	Y
Gambia	N	N	Y	Y
Georgia	Y	Y	Y	Y
Germany	N	N	N	Y
Ghana	N	N	Y	Y

Country	Substan. Envtl Right	Proced'l Envtl Right	Indiv. Envtl Resp'y	Gov't Envtl Duty
Greece	Y	N	N	Y
Grenada	N	N	N	N
Guatemala	N	N	N	Y
Guinea	Y	N	N	Y
Guinea-Bissau	N	N	N	N
Guyana	Y	N	Y	Y
Haiti	N	N	Y	Y
Honduras	Y	N	N	Y
Hungary	Y	N	N	Y
Iceland	N	N	N	N
India	N	N	Y	Y
Indonesia	Y	N	N	Y
Iran	Y	N	N	Y
Iraq	Y	N	N	Y
Ireland	N	N	N	N
Israel	N	N	N	N
Italy	N	N	N	Y
Jamaica	N	N	N	N
Japan	N	N	N	N
Jordan	N	N	N	N
Kazakhstan	N	N	Y	Y
Kenya	Y	Y	Y	Y
Kiribati	N	N	N	N
Korea, North	N	N	N	Y
Korea, South	Y	Y	Y	Y
Kuwait	N	N	N	Y
Kyrgyzstan	Y	N	N	Y
Laos	N	N	Y	N
Latvia	Y	Y	N	Y
Lebanon	N	N	N	N
Lesotho	N	N	N	Y
Liberia	N	N	N	N
Libya	N	N	N	N
Liechtenstein	N	N	N	N
Lithuania	N	N	Y	Y
Luxembourg	N	N	N	Y

Country	Substan. Envtl Right	Proced'l Envtl Right	Indiv. Envtl Resp'y	Gov't Envtl Duty
Macedonia	Y	N	Y	Y
Madagascar	N	N	Y	Y
Malawi	Y	N	N	Y
Malaysia	N	N	N	N
Maldives	Y	N	Y	Y
Mali	Y	N	Y	Y
Malta	N	N	N	Y
Marshall Islands	N	N	N	N
Mauritania	Y	N	N	Y
Mauritius	N	N	N	N
Mexico	Y	N	N	Y
Micronesia	N	N	N	N
Moldova	Y	Y	Y	Y
Monaco	N	N	N	N
Mongolia	Y	N	Y	Y
Montenegro	Y	Y	Y	Y
Morocco	N	N	N	N
Mozambique	Y	N	Y	Y
Myanmar	N	N	Y	Y
Namibia	N	N	N	Y
Nauru	N	N	N	N
Nepal	Y	N	N	Y
Netherlands	Y	N	N	Y
New Zealand	N	N	N	N
Nicaragua	Y	N	N	Y
Niger	Y	N	Y	Y
Nigeria	N	N	N	Y
Norway	Y	Y	N	Y
Oman	N	N	N	Y
Pakistan	N	N	N	N
Palau	N	N	N	Y
Panama	Y	N	Y	Y
Papua New Guinea	N	N	Y	N
Paraguay	Y	N	N	Y
Peru	Y	N	N	Y

Country	Substan. Envtl Right	Proced'l Envtl Right	Indiv. Envtl Resp'y	Gov't Envtl Duty
Philippines	Y	N	N	Y
Poland	Y	Y	Y	Y
Portugal	Y	Y	Y	Y
Qatar	N	N	N	Y
Romania	Y	N	Y	Y
Russia	Y	Y	Y	Y
Rwanda	Y	N	Y	Y
Saint Kitts & Nevis	N	N	N	N
Saint Lucia	N	N	N	N
Saint Vincent & the Grenadines	N	N	N	N
Samoa	N	N	N	N
San Marino	N	N	N	Y
Sao Tome & Principe	Y	N	Y	Y
Saudi Arabia	N	N	N	Y
Senegal	Y	N	N	Y
Serbia	Y	Y	Y	Y
Seychelles	Y	N	Y	Y
Sierra Leone	N	N	N	N
Singapore	N	N	N	N
Slovakia	Y	Y	Y	Y
Slovenia	Y	N	Y	Y
Solomon Islands	N	N	N	N
Somalia	N	N	Y	Y
South Africa	Y	N	N	Y
Spain	Y	N	Y	Y
Sri Lanka	N	N	Y	Y
Sudan	Y	N	Y	Y
Suriname	N	N	N	Y
Swaziland	N	N	Y	Y
Sweden	N	N	N	Y
Switzerland	N	N	N	Y
Syrian Arab Republic	N	N	Y	N
Tajikistan	N	N	Y	Y
Tanzania	N	N	Y	Y

Thailand	Y	Y	Y	Y
Togo	Y	N	N	Y
Tonga	N	N	N	N
Trinidad & Tobago	N	N	N	N
Tunisia	N	N	N	N
Turkey	Y	N	Y	Y
Turkmenistan	Y	N	N	Y
Tuvalu	N	N	N	N
Uganda	Y	N	Y	Y
Ukraine	Y	Y	Y	Y
United Arab Emirates	N	N	N	Y
United Kingdom	N	N	N	N
United States	N	N	N	N
Uruguay	N	N	Y	Y
Uzbekistan	N	N	Y	Y
Vanuatu	N	N	Y	N
Venezuela	Y	Y	Y	Y
Vietnam	N	N	Y	Y
Yemen	N	N	Y	Y
Zambia	N	N	N	Y
Zimbabwe	N	N	N	N
Total Environmental Provisions in Constitutions	89	30	81	136

Y=Yes

N=No

Endnotes

¹For further information, see Boyd, D. R. 2012. *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment*. Vancouver: UBC Press.

²Grubb, M. 1993. *The Earth Summit Agreements: A Guide and Assessment*. London: Earthscan.

³There are some disagreements among geographers as to what continent some countries belong to, with Russia being an obvious example. See www.worldatlas.com/cntycont.htm

⁴Algeria, Angola, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Cote d'Ivoire, Congo (Brazzaville), Congo (Democratic Republic), Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Somalia, South Africa, South Sudan, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia and Zimbabwe.

⁵Afghanistan, Bangladesh, Bahrain, Bhutan, Cambodia, China, East Timor, Fiji, India, Indonesia, Iran, Iraq, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Maldives, Mongolia, Myanmar, Nepal, North Korea, Oman, Philippines, Qatar, Saudi Arabia, South Korea, Sri Lanka, Syrian Arab Republic, Tajikistan, Thailand, Turkey, Turkmenistan, United Arab Emirates, Uzbekistan, Vietnam and Yemen.

⁶Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland and Ukraine.

⁷Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela.

⁸Belize, Cuba, Dominican Republic, Haiti and Jamaica.

⁹Palau, Papua New Guinea and Vanuatu.

¹⁰The 44 nations without environmental protection provisions in their constitutions include Antigua and Barbuda, Australia, Bahamas, Barbados, Bosnia and Herzegovina, Botswana,

Brunei Darussalam, Canada, Cyprus, Denmark, Djibouti, Dominica, Grenada, Guinea-Bissau, Ireland, Israel, Japan, Jordan, Kiribati, Lebanon, Liberia, Libya, Liechtenstein, Malaysia, Marshall Islands, Mauritius, Micronesia, Monaco, Nauru, New Zealand, Pakistan, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sierra Leone, Singapore, Solomon Islands, Tonga, Trinidad and Tobago, Tunisia, Tuvalu, the United Kingdom and the United States.

¹¹ The 27 former British colonies (including nations that were part of British colonies) are Antigua and Barbuda, Australia, Bahamas, Barbados, Botswana, Brunei Darussalam, Canada, Cyprus, Dominica, Grenada, Ireland, Kiribati, Malaysia, Mauritius, New Zealand, Pakistan, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sierra Leone, Singapore, Solomon Islands, Tonga, Trinidad and Tobago, Tuvalu and the United States.

¹² The 23 small island nations are Antigua and Barbuda, Bahamas, Barbados, Brunei Darussalam, Cyprus, Dominica, Grenada, Ireland, Kiribati, Marshall Islands, Mauritius, Micronesia, Nauru, New Zealand, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Singapore, Solomon Islands, Tonga, Trinidad and Tobago and Tuvalu.

¹³ The U.S., Canada, Antigua and Barbuda, the Bahamas, Barbados, Dominica, Grenada, Saint Kitts, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago.

¹⁴ Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela.

¹⁵ Juriglobe—World Legal Systems Research Group. 2009. University of Ottawa.
<http://www.juriglobe.ca/eng/syst-onu/rep-sys-juridique.php#syst1>

¹⁶ The only common law mono-systems with environmental provisions in their constitutions are Belize, Jamaica and Palau.

¹⁷ Olowu, D. 2006. "Human Rights and the Avoidance of Domestic Implementation: The Phenomenon of Non-Justiciable Constitutional Guarantees." *Saskatchewan Law Review* 69: 39-78.

¹⁸ The only civil law mono-systems without environmental provisions in their constitutions are Bosnia and Herzegovina, Denmark, Liechtenstein and Monaco.

¹⁹ The only mixed civil and customary law nations without environmental provisions in their constitutions are Guinea-Bissau and Japan.

²⁰ The exception is Muslim mono-systems, as all three nations in this category (Afghanistan, Maldives and Saudi Arabia) have environmental provisions in their constitutions.

²¹ Soveroski, M. 2007. "Environment Rights versus Environmental Wrongs: Forum over Substance?" *Review of European Community and International Environmental Law* 16, 3: 261-73; Shelton, D. 2001. "Environmental Rights." In *Peoples' Rights*, edited by P. Alston, 185-258. Oxford: Oxford University Press; Taylor, P. 1998. *An Ecological Approach to International Law: Responding to Challenges of Climate Change*. London: Routledge, 204.

²² Constitution Review Group, All-Party Oireachtas Committee on the Constitution. 1996.

²³ Citizens Information Board (Government of Ireland). 2009. "Irish Constitution." www.citizensinformation.ie/categories/government-in-ireland/irish-constitution-1

²⁴ Antigua and Barbuda, Bahamas, Barbados, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Canada, Cyprus, Djibouti, Dominica, Grenada, Guinea-Bissau, Ireland, Israel, Jordan, Kiribati, Lebanon, Liberia, Libya, Liechtenstein, Malaysia, Marshall Islands, Mauritius, Monaco, Pakistan, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sierra Leone, Singapore, Solomon Islands, Tonga, Trinidad and Tobago, Tunisia, Tuvalu and Yemen.

²⁵ Wolfrum, R. and R. Grote. 2005. "The French Republic: Introductory Notes." In *Constitutions of the Countries of the World*, ed. R. Wolfrum and R. Grote. New York: Oceana Law.

²⁶ Constitution of Portugal. See Wolfrum, R. and R. Grote, eds. 2011. *Constitutions of the Countries of the World*. New York: Oceana Law.

²⁷ Belgium, Central African Republic, Comoros, and Senegal.

²⁸ Hohfeld, W.N. 1923. *Fundamental Legal Concepts as Applied in Judicial Reasoning*. New Haven, CT: Yale University Press.

²⁹ Constitution of Norway. See Wolfrum, R. and R. Grote, eds. 2011. *Constitutions of the Countries of the World*. New York: Oceana Law.

³⁰ Art. 34, Constitution of El Salvador. See Wolfrum, R. and R. Grote, eds. 2011. *Constitutions of the Countries of the World*. New York: Oceana Law.

³¹ Art. 19, Constitution of Burundi. See Wolfrum, R. and R. Grote, eds. 2011. *Constitutions of the Countries of the World*. New York: Oceana Law; *African (Banjul) Charter on Human and People's Rights*. 1982.

³² There are some disagreements among geographers as to what continent some countries belong to, with Russia being an obvious example. See www.worldatlas.com/cntycont.htm

³³ Angola, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Cote d'Ivoire, Congo (Brazzaville), Congo (Democratic Republic), Egypt, Ethiopia, Gabon, Guinea, Kenya, Madagascar, Malawi, Mali, Mauritania, Morocco, Mozambique, Niger, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Somalia, South Africa, South Sudan, Sudan, Togo, Uganda, Zambia and Zimbabwe.

³⁴ East Timor, Fiji, Indonesia, Iran, Iraq, Kyrgyzstan, Maldives, Mongolia, Nepal, Philippines, South Korea, Thailand, Turkey and Turkmenistan.

³⁵ Albania, Andorra, Armenia, Azerbaijan, Belarus, Belgium, Bulgaria, Croatia, Czech Republic, Finland, France, Georgia, Greece, Hungary, Iceland, Latvia, Macedonia, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovak Republic, Slovenia, Spain and Ukraine.

³⁶ Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela.

³⁷ Dominican Republic and Jamaica

³⁸ The total of descriptive words and phrases adds up to more than 86 because many constitutions use more than one word or phrase to describe the right to an environment.

³⁹ Albania (Art. 17), Angola (52), Armenia (43, 83.5), Belarus (23), Bulgaria (57), Burundi (19, 47), Cape Verde (16), Chile (19(26)), Croatia (16), Czech Republic (4), East Timor (24), Greece (25), Guinea (22), Honduras (62, 64), Hungary (8(2)), Indonesia (28I, 28J), Iraq (46), Kyrgyzstan (17), Malawi (44), Maldives (16), Moldova (54), Montenegro (24), Mozambique (96), Poland (31), Portugal (18), Romania (53), Russia (55(3)), Rwanda (43), Sao Tome and Principe (18), Serbia (18, 20), Slovak Republic (13), Slovenia (15), South Africa (36), South Korea (37), Thailand (29), Togo (10), Turkey (13) and Uganda (43, 44).

⁴⁰ Albania (Articles 170, 175), Andorra (42), Angola (52), Armenia (44), Azerbaijan (71), Belarus (63), Cape Verde (25), Chad (87), Colombia (214), Congo—Democratic Republic of (61, 143), Croatia (17), East Timor (25), Ethiopia (93), Finland (23), Georgia (46), Honduras (187), Hungary (8(4)), Macedonia (54), Maldives (253-255), Mexico (29), Mongolia (19(2)), Montenegro (25), Mozambique (106), Nepal (143), Nicaragua (185-86), Panama (55), Peru (137), Poland (228, 233), Portugal (19), Romania (53), Russia (56), Sao Tome and Principe (18), Sen-

egal (70), Seychelles (41, 43), Slovenia (16), South Africa (37), Spain (55), Sudan (211), Turkey (15), Turkmenistan (47), Uganda (46), Ukraine (64) and Venezuela (337).

⁴¹ Central African Republic (Article 9), Gabon (Art. 1(8)), Malawi (Art. 13), Maldives (Art. 23), South Africa (Art 27(2)) and Turkey (Art. 65).

⁴² Wolfrum, R. and R. Grote, eds. 2011. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁴³ Arts. 9(d) and 23, Constitution of the Maldives, See Wolfrum, R. and R. Grote, eds. 2011. *Constitutions of the Countries of the World*. New York: Oceana Law; Grote, R. 2011. "The Republic of Maldives: Introductory Note." In *Constitutions of the Countries of the World*, ed. R. Wolfrum and R. Grote. New York: Oceana Law; US Department of State. 2009. Report on International Religious Freedom – Maldives. Washington, DC: Department of State.

⁴⁴ Angola, Armenia, Azerbaijan, Belarus, Belgium, Benin, Bolivia, Bulgaria, Burundi, Chad, Chile, Congo-Brazzaville, Cote d'Ivoire, Ecuador, Finland, Gabon, Georgia, Greece, Guinea, Guyana, Honduras, Indonesia, Kyrgyzstan, Latvia, Maldives, Mali, Mexico, Moldova, Mongolia, Montenegro, Mozambique, Nepal, Netherlands, Niger, Panama, Paraguay, Peru, Romania, Russia, Rwanda, Senegal, Serbia, Seychelles, Slovakia, South Africa, South Korea, Thailand, Togo, Turkmenistan, Uganda, Ukraine and Venezuela.

⁴⁵ Albania, Andorra, Burkina Faso, Cape Verde, Costa Rica, Croatia, Czech Republic, East Timor, El Salvador, Ethiopia, Iraq, Macedonia, Nicaragua, Poland, Portugal, Sao Tome and Principe and Turkey.

⁴⁶ Brazil, Central African Republic, Hungary, Iran, Malawi, Norway, Philippines, Slovenia, Spain and the Sudan.

⁴⁷ Wolfrum, R. and R. Grote, eds. 2011. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁴⁸ Shemshuchenko, Y. 1995. "Human Rights in the Field of Environmental Protection in the Draft of the New Constitution of the Ukraine." In *Environmental Rights: Law, Litigation and Access to Justice*, edited by S. Deimann and B. Dyssli, 33-40. London: Cameron May.

⁴⁹ Articles 191-194, Constitution of El Salvador. See Wolfrum, R. and R. Grote, eds. 2010. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁵⁰ Art. 91, Constitution of Namibia. See Wolfrum, R. and R. Grote, eds. 2011. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁵¹ Constitution of France. See Wolfrum, R. and R. Grote, eds. 2011. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁵² Algeria, Estonia, Laos, Papua New Guinea, Syrian Arab Republic and Vanuatu.

⁵³ Monahan, P.J. 2006. *Constitutional Law*. 3rd ed. Toronto: Irwin Law, p. 3

⁵⁴ Article 220, Constitution of the Gambia. See Wolfrum, R. and R. Grote, eds. 2011. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁵⁵ Art. 3, Constitution of Croatia, See Wolfrum, R. and R. Grote, eds. 2011. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁵⁶ The Constitution of Andorra is not in *Constitutions of the Countries of the World* but can be found online at http://www.andorramania.com/constit_gb.htm

⁵⁷ Armenia (Art. 31), Belarus (Art. 44(6)), Chile (Art. 24), Croatia (Art. 50), Czech Republic (Art. 11(3) of the Charter), Mexico (Art. 27), Moldova (art. 46(5)), Romania (Art. 44(7)), Russia (Art 36(2)), Slovak Republic (Art. 20(3)), Slovenia (Art. 67), Thailand (Art. 42), Ukraine (Art. 41), Uzbekistan (Art. 54) and Serbia (Arts. 83 and 88).

⁵⁸ Art. 44(7), Constitution of Romania. See Wolfrum, R. and R. Grote, eds. 2010. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁵⁹ Wolfrum, R. and R. Grote, eds. 2011. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁶⁰ Ecuador Constitution, Arts. 395(4), 397(1), 401, and 415.

⁶¹ Art. 225(1)(V), Constitution of Brazil. See Wolfrum, R. and R. Grote, eds. 2010. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁶² Art 41(3), Constitution of Argentina. See Wolfrum, R. and R. Grote, eds. 2010. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁶³ Article 66(2)(h), Constitution of Portugal. See Wolfrum, R. and R. Grote, eds. 2010. *Constitu-*

tions of the Countries of the World. New York: Oceana Law.

⁶⁴ Wolfrum, R. and R. Grote, eds. 2010. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Brewer-Carias, A.R. 2009. *Constitutional Protection of Human Rights in Latin America: A Comparative Study of Amparo Proceedings*. Cambridge: Cambridge University Press.

⁶⁸ Grote, R. 2011. "The United Mexican States: Introductory Note." *In Constitutions of the Countries of the World*, ed. R. Wolfrum and R. Grote. New York: Oceana Law.

⁶⁹ Ecuador Constitution, Art. 71, Bolivia Constitution, Art. 33.

⁷⁰ Redgwell, C. 1996. "Life, the Universe and Everything: A Critique of Anthropocentric Rights." In Boyle and Anderson, eds. *Human Rights Approaches to Environmental Protection*. Oxford: Clarendon Press, 71-87; Pallemmaerts, M. 1994. "International Environmental Law from Stockholm to Rio: Back to the Future?" *In Greening International Law*, ed. P. Sands, 1-19. London: Earthscan.

⁷¹ J. McKenzie. 2002. *Environmental Politics in Canada: Managing the Commons into the Twenty-First Century*. Don Mills: Oxford University Press, p. 22.

⁷² Albania, Andorra, Argentina, Armenia, Bhutan, Bolivia, Brazil, Burundi, Cuba, Czech Republic, East Timor, Ecuador, Eritrea, France, Gambia, Georgia, Germany, Ghana, Guyana, Iran, Lesotho, Madagascar, Malawi, Maldives, Moldova, Namibia, Norway, Papua New Guinea, Poland, Portugal, Qatar, Russia, Seychelles, South Africa, Swaziland, Sweden, Switzerland, Tajikistan, Uganda, Uzbekistan, Vanuatu, Venezuela and Zambia.

⁷³ The exceptions, which include generic references to the interests of future generations or "posterity" include Moldova, Russia, Seychelles, Tajikistan and Uzbekistan.

⁷⁴ Art. 225, Constitution of Brazil. See Wolfrum, R. and R. Grote, eds. 2010. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁷⁵ Bhutan's Constitution Article 5(4), Portugal's Constitution Article 66(2)(d). See See Wol-

frum, R. and R. Grote, eds. 2010. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁷⁶ Art. 225(1)(V), Constitution of Brazil. See See Wolfrum, R. and R. Grote, eds. 2010. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁷⁷ Bolivia (Art. 16(I)) Colombia (Art. 366), the Democratic Republic of Congo (Art. 48), Ecuador (Art. 12), Ethiopia (Art. 90(1)), Gambia (Art. 216(4)), the Maldives (Art. 23), Panama (Arts. 110 and 118), Swaziland (Art. 215), Switzerland (Art. 76), Uganda (Arts. XIV(b) and XXI), Uruguay (Art. 47), Venezuela (Arts. 127 and 304) and Zambia (Art. 112(d)).

⁷⁸ Intergovernmental Working Group for the Elaboration of a Set of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. 2004. *Justiciability of the Right to Food*. Rome: FAO.

⁷⁹ *Canadian Charter of Rights and Freedoms*, Art. 24.

⁸⁰ Wolfrum, R. and R. Grote, eds. 2010. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁸¹ Constitution of Nepal Article 35(5).

⁸² Wolfrum, R. and R. Grote, eds. 2010. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁸³ *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

⁸⁴ Bullard, R.D., ed. 2005. *The Quest for Environmental Justice: Human Rights and the Politics of Pollution*. San Francisco: Sierra Club Books; Hofrichter, R., ed. 2002. *Toxic Struggles: The Theory and Practice of Environmental Justice*. Salt Lake City: University of Utah Press.

⁸⁵ Takahashi, K. 2002. "Why Do We Study Constitutional Laws of Foreign Countries, and How?" In *Defining the Field of Comparative Constitutional Law*, edited by V.C. Jackson and M. Tushnet, 35-59. Westport, CT: Praeger Publishers.

⁸⁶ Constitution of Belarus, Art. 62.

⁸⁷ Wolfrum, R. and R. Grote, eds. 2010. *Constitutions of the Countries of the World*. New York: Oceana Law.

⁸⁸ Government duties to protect the environment are not directly enforceable because they are framed as Directive Principles of State Policy in Gambia, Ghana, Lesotho, Malawi, Malta, Namibia, Nigeria, Spain, Sri Lanka, Sudan, Swaziland, Tanzania and Zambia.

⁸⁹ Constitution of Gambia, Article 211.

⁹⁰ Olowu, D. 2006. "Human Rights and the Avoidance of Domestic Implementation: The Phenomenon of Non-Justiciable Constitutional Guarantees." *Saskatchewan Law Review* 69: 56.

⁹¹ Armenia, Central African Republic, Gabon, Malawi, Maldives, South Africa, and Turkey.

⁹² Constitution of Gabon, Art. 1(8).

⁹³ Constitution of India, Arts. 37, 48A.

⁹⁴ Beatty, D.M. 2004. *The Ultimate Rule of Law*. Oxford: Oxford University Press, 137.

⁹⁵ D.R. Boyd. 2011. "The Implicit Constitutional Right to a Healthy Environment." *Review of European Community and International Environmental Law* 20, 2: 171-79.

⁹⁶ C. Sunstein. 2001. *Designing Democracy: What Institutions Do*. Oxford: Oxford University Press; D.M. Davis. 2008. "Socioeconomic Rights: Do They Deliver the Goods?" *International Journal of Constitutional Law* 6, 3-4: 687-711.

⁹⁷ D.S. Law and M. Versteeg. 2011. "The Evolution and Ideology of Global Constitutionalism." *California Law Review* 99, 5: 1163-1257.

⁹⁸ Kinney, E.D., and B.A. Clark. 2004. "Provisions for Health and Health Care in the Constitutions of the Countries of the World." *Cornell International Law Journal* 37, 2: 285-355; UN Food and Agriculture Organization. n.d. *Right to Food Project*. http://www.fao.org/righttofood/portal_en.htm

⁹⁹ D.R. Boyd. 2012. *The Right to a Healthy Environment: Revitalizing Canada's Constitution*. Vancouver: UBC Press.

¹⁰⁰ *Ibid.*