

EXECUTIVE SUMMARY

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

Soon after, on 28 July 2022, the United Nations General Assembly followed suit and adopted resolution 76/300 by a resounding vote of 161-0-8. This was one of the most widely supported UNGA resolutions, with 95.3 per cent support from the international community, and provided further political weight to the recognition that everyone, everywhere has the right to live in a clean, healthy and sustainable environment. The UN Secretary General welcomed the resolution as a ‘landmark development’² and the Executive Director of the UNEP hailed it as a ‘victory for people and the planet.’³

Notwithstanding, some States have emphasized the legally non-binding nature of HRC and UNGA resolutions and expressed concern that the scope and legal content of the right have not been clearly defined, arguing that it has neither been established in customary nor conventional international law and must therefore be the object of intergovernmental negotiations before the right can have true meaning for rights-holders and duty-bearers. This report aims to address these objections and concerns, by demonstrating the extent to which R2HE has been the object of increasing legislative and jurisprudential developments at national and regional levels. These, in turn, continue to inform the legal content of the right at the international level. They also showcase how global recognition increasingly serves as a catalyst for systemic and transformative change, in a similar manner to how past UN resolutions, such as the one recognizing the right to water,⁴ resulted in a ‘cascade of

positive changes that have improved the lives of millions of people’.⁵

The fact that the foundational human rights instruments, i.e. the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights (1966) do not explicitly recognize the right to a healthy environment is not a matter of substance but rather of timing,⁶ as these instruments were drafted before the emergence of the modern environmental movement. Indeed, the first explicit international recognition of the intersection between environmental protection and human rights came with the first UN Conference on the Environment, held in 1972 in Stockholm (Stockholm Conference). The Stockholm Declaration proclaimed that the natural environment was ‘essential’ for the enjoyment of basic human rights, including the right to life itself. Its first principle indeed recognized the necessity of ‘an environment of a quality that permits a life of dignity and well-being.’⁷

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

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

Rights-based approaches to environmental litigation have become particularly prominent in climate change litigation, notably after the recognition of the human rights dimensions of climate change in the Paris Agreement of 2015 bolstered a ‘rights-turn’ in climate litigation.⁸ Prior to 2015, studies recorded 19 rights-based climate cases whereas between 2015 and 2021, 148 climate cases were recorded involving rights language or arguments across 38 national jurisdictions and 11 international judicial or quasi-judicial bodies (amounting to a 778% increase).⁹

Moreover, at least 42 of these climate cases invoke the right to a healthy environment, seemingly pointing to the catalysing effects that international developments can have on litigation strategies, given the many examples of international law influencing national court decisions relating to R2HE. For example, the Stockholm Declaration influenced decisions of the Supreme Court of India protecting the implicit constitutional R2HE.¹ In another example, R2HE in the African Charter led Kenyan and Nigerian courts to make important rulings finding R2HE to be an essential part of the constitutional right to life (even though it is not explicitly articulated as such in either the Kenyan nor Nigerian Constitutions).¹ Likewise, Costa Rican and Colombian courts have cited the San Salvador Protocol in cases involving R2HE.¹ This also makes strategic sense as the right to a healthy environment is known to reduce costs, decrease delays

and minimise risks associated with pursuing other judicial remedies.

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

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



Ashaninka children watch the Ene River in front of their village of Boca Sanibeni, in an area that would be flooded by Pakitzapango Dam, Peruvian Amazon. April 2012.

Photo by Tomás Muñita, Flickr.

levels of carbon emission.¹⁰ In a demonstration of how the greening of human rights have also affected quasi-judicial international bodies, such as the human rights treaty bodies, the final 15.7% correspond to international jurisprudence.

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

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

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

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

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

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

These cross-cutting principles include:

1. The precautionary principle
2. The prevention principle
3. The principle of non-regression
4. The polluter pays principle
5. Sustainable development
6. Intergenerational equity and responsibility
7. Ecocentrism and the intrinsic value of nature
8. Gender equity
9. Consistency with the best available science
10. Respecting Local and Indigenous wisdom
11. Transboundary Harm and Extraterritoriality

The report continues by discussing the steps that both courts and legislatures have taken according to their specific roles and functions to improve the implementation of the right to a healthy environment and ensure it has material impact on the ground and within communities.

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

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

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

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

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



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