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Constituting Fundamental Environmental Rights Worldwide

JAMES R. MAY*

Constitutions provide a framework for social order. They also reflect a paradox. While constitutions are usually the product of a convulsive event of majoritarian democracy, most contain anti-majoritarian features designed to protect so-called fundamental rights against the tyranny of the majority. Traditional fundamental rights, such as those found in the Bill of Rights to the Constitution of the United States, include protecting for its citizens free speech, religious exercise and voting rights. Does a fundamental, enforceable, individual right to a clean and healthy environment belong in the pantheon of fundamental constitutional rights? This article discusses the extent to which nations worldwide have constituted such “fundamental environmental rights” (FERs).

On March 1, 2005, France—a country whose constitution derives from the third oldest constitution of the modern age¹—amended its constitution to incorporate “the rights and obligations defined by the *Charter of the Environment of 2004*”:² “Each one

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1. See EMILE BOUTMY, *STUDIES IN CONSTITUTIONAL LAW* 2 (E.M. Dicey trans., 1891) (“The English Constitution is undoubtedly the first of all free constitutions in age, in importance, and in originality. It existed, with all its main features, four hundred years earlier than any other constitution. It has served more or less as the model for all existing constitutions.”). Comparing the English, U.S. and French constitutions, and presaging the events of 2005, Boutmy observed:

[The distinctions] proceed in part from the fact that, while all three nations are influenced by a common democratic movement, the progress of this movement has, in the case of England and of the United States, been delayed, whilst in France it has been hurried on, so that France has reached a more advanced stage of the movement than the other two countries.

Id. at 175.

2. 1958 FR. CONST. pmbl.

has the right to live in a balanced and respectful environment of health."³ Although the Western press widely reported the amendment as a clarion event,⁴ France in fact joins a growing, if still limited, ensemble of countries—the most recent of which is Iraq—with constitutions that recognize a substantive fundamental right to a clean environment.⁵ The growth in this ensemble is due primarily to two phenomena: the proliferation of new constitutions in new constitutional democracies in Eastern Europe, sub-Saharan Africa, the Middle East, and Latin and Central America, and the trend toward internationalization of constitutional rights.⁶

For many countries, enacting a constitution is a singular achievement.⁷ Most of the world's 250 nations have accomplished this feat, with the majority of them doing so during the last thirty years.⁸

Although the constitutions of many nations specifically address the environment, few embody FERs. Rather, most reflect legislative or procedural environmental policies, such as a general governmental charge to consider environmental impacts or to allow for public notice and comment concerning projects that significantly affect the environment. Indeed, of the 130 constitutions that address the environment, only about sixty grant individuals what may be fairly characterized as a fundamental right to a "clean," "healthful," or "favorable" environment.⁹ More importantly, of these sixty, only a handful have earned judicial imprimatur as being enforceable by affected individuals. Yet because

3. Charter of the Environment, 2004.

4. *E.g.*, David Case, *Liberty, Egalite, Environment?*, GRIST MAG. 14, July 17, 2005, <http://www.grist.org/news/maindish/2005/07/14/case-france/>.

5. Carl Bruch et al., *Constitutional Environmental Law: Giving Force to Fundamental Principles in Africa*, 26 COLUM. J. ENVTL. L. 131, 133 (2001) ("With heightened environmental awareness in recent decades, the environment has become a higher political priority, and many constitutions now expressly guarantee an [environmental right], as well as the procedural rights necessary to implement and enforce this right.").

6. See NORMAN DORSEN ET AL., *COMPARATIVE CONSTITUTIONALISM* 2 (2003).

7. *Id.* at 1 ("Making a constitution, a special and rare political activity, is possible only at certain extraordinary moments in a nation's history, and its success or failure can have profound and lasting consequences for the nation and its people.").

8. CONSTITUTION MAKERS ON CONSTITUTION MAKING: THE EXPERIENCE OF EIGHT NATIONS vii (Robert A. Goldwin & Art Kaufman eds., 1988) ("[O]f the 160 or so national written constitutions in the world, more than half have been written since 1974.").

9. For the earliest comprehensive account of constitutional environmental rights, see EDITH BROWN WEISS, IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY AND INTERGENERATIONAL EQUITY app. B (1989).

most FERs are less than a decade old, their transformative repercussions are only beginning to be detected.

This article has four parts and purposes. Part I explains the concept of constituting FERs. It examines the threshold questions of whether constitutionalism is right for FERs and vice versa, and concludes that FERs are no less susceptible to constitutionalism than other, more traditional fundamental rights. Part II surveys and discusses the international trend of constituting environmental policy and bestowing FERs worldwide. Part III discusses those nations with constituted FERs that have been found to be enforceable thus far. Part IV concludes the article.

I. Constituting Fundamental Environmental Rights

The following sections address two questions: (1) whether constitutionalism is right for FERs, and (2) whether FERs are right for national constitutions. As to the first question, this part explains the underpinnings of how much of liberal democratic constitutionalism is designed not only to provide a rule of law, but also to protect non-economic interests and people who are underrepresented in the body politic. Thus, it reasons that constitutionalism and environmentalism are, to an extent, well matched. As to the second question, this part examines the suitability of FERs for national constitutions. It recounts the arguments for and against constituting FERs and concludes that constituting FERs is most warranted where the paradigmatic international and domestic legal architecture designed to protect the environmental interests of individuals is underdeveloped.

A. Is Constitutionalism Right for Fundamental Environmental Rights?

There comes a time when memorializing society's rules is necessary.¹⁰ Environmental norms can be "constitutionalized" in one of three ways, any of which can provide useful societal tools for environmental stewardship:¹¹ (1) as statements of policy, (2) as

10. JAMES BRYCE, *CONSTITUTIONS* 37-38 (1905).

Forms of government are causes as well as effects, and give an intellectual and moral training to the peoples that live under them, as the character of a parent affects the children of the household [W]hen a nation has reached the point at which its law begins to be scientific, the law and the constitution become teachers

Id.

11. Bruch, *supra* note 5, at 132 ("Constitutional provisions offer broad and powerful tools for protecting the environment").

working procedural norms, or (3) as fundamental environmental rights. Each of the roughly 130 national constitutions listed in Appendix B contains statements of policy, many of which contain concomitant procedures. Policy-related provisions usually aim to influence decision-making, and are neither substantive nor enforceable.¹² The basic shortcoming with policy statements is that they are not enforceable by citizens who are aggrieved by environmental degradation.¹³ Some constitutions contain heightened procedural safeguards for environmental interests, including freedom of association; access to information; public participation; access to courts, opinion, expression and the press;¹⁴ and advanced notification.¹⁵ Of course, as valuable as these prophylactic features are, they do not protect substantive rights. It is the third of these—a fundamental environmental right—that empowers individuals to protect an inalienable human right to a healthy environment, and which is the subject of Appendix A and of this paper.

The threshold question of whether to constitute FERs begs the value of constitutionalism. Constitutionalism has been around since antiquity.¹⁶ As one noted scholar has observed, “we are all

12. Ernest Brandl & Hartwin Bungert, *Constitutional Entrenchment of Environmental Protection: A Comparative Analysis of Experiences Abroad*, 16 HARV. ENVTL. L. REV. 1, 82, tbl.I (1992) (discussing constitutional environmental policies of Germany, Austria, Switzerland, the Netherlands, Spain, Greece, Portugal, Turkey, and Brazil).

13. *Id.* at 32 (“[A]lthough the existence of a statement of public policy must be given some consideration in a constitutional [claim], only a fundamental right grants the individual the legal remedy of a constitutional complaint.”).

14. Bruch, *supra* note 5, at 176-204 (discussing procedural environmental rights in Africa and elsewhere).

15. See, e.g., Gyula Bandi, *The Right to Environment in Theory and Practice: The Hungarian Experience*, 8 CONN. J. INT’L L. 439, 450-65 (discussing the Hungarian Constitution’s public participation provisions).

16. Gordon J. Schochet, *Introduction to CONSTITUTIONALISM* 1, 1-2 (J. Roland Penock & John W. Chapman eds., 1979). Schochet maintains:

The veneration of ‘constitutionalism’ is among the enduring and probably justified vanities of liberal democratic theory. Struggles for personal freedoms and for escape from arbitrary political rule have been among the conspicuous features of the history of Western Europe and America since the sixteenth century. Constitutionalism’s fundamental principles of limited government and the rule of law . . . emerged as the operative ideals of these struggles.

The *tradition* of constitutionalism is much older, extending through the Middle Ages to antiquity . . . The ‘constitution’—in all its historical forms—has always been a standard of legitimacy, for it has been seen as embodying the defining character of its civil society . . . [Constitutions are] related to conceptions of human nature, for the constitution can never be divorced from human capacities, needs, and deficiencies.

Id.

constitutionalists”¹⁷ The import of constitutionalism lies in the underlying supposition that traditional and long-acknowledged constraints have, somehow, failed to prevent political overreaching, and, by implication, that the nation now needs to reexamine the prospects for some nontraditional constitutional limits, whether these be procedural or substantive in nature.¹⁸

Constitutions reflect human nature, inseparable from human capacities, needs, and deficiencies. A constitution is “the expression of the sovereign will of the nation.”¹⁹ A constitution is the “fundamental and paramount law of the nation,”²⁰ its priorities of rights, obligations, and responsibilities,²¹ and “in all its historical forms—has always been a standard of legitimacy.”²²

According to Algeria’s constitution,

The Constitution is, above all, the fundamental law that guarantees the rights and the individual and collective liberties, protects the rule of free choice of the people and confers legitimacy on the exercise of powers. It permits to assure the juridical protection and the control of action by the public powers in a society in which legality reigns and permits the development of man in all dimensions.²³

And as Charles Borgeaud summed up more than a century ago:

A CONSTITUTION is the fundamental law according to which the government of a state is organized and the relations of individuals with society as a whole are regulated. . . .

. . . .
 . . . To-day . . . [t]hey are the great pages in the life of the nations
 If we attempt to institute comparisons, to contrast the fundamental laws of one country with those of another, without

17. James M. Buchanan, *Why Do Constitutions Matter?*, in *WHY CONSTITUTIONS MATTER* 1, 12 (Niclas Berggren et al. eds., 2002).

18. *Id.* at 5.

19. CHARLES BORGEAUD: *ADOPTION AND AMENDMENT OF CONSTITUTIONS IN EUROPE AND AMERICA* 35 (Charles D. Hazen trans., 1895) (“The typical written constitution, as conceived by those who adopted it as the basis of the modern state, is democratic, the expression of the sovereign will of the nation.”).

20. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803); see also FINER ET AL., *COMPARING CONSTITUTIONS* 1 (1995) (“Constitutions are codes of norms which aspire to regulate the allocation of powers, functions, and duties among the various agencies and officers of government, and to define the relationship between these and the public.”).

21. Bruch, *supra* note 5, at 138.

22. Schochet, *supra* note 16, at 1-2.

23. ALG. CONST. pmbl.

having thoroughly investigated their origin, we run the risk of making the strangest blunders.²⁴

Whether constituting FERs marks the turn of “great pages” or “strange blunders” is the subject of the next section.

B. Are Fundamental Environmental Rights Right for National Constitutions?

Should national constitutions reflect a fundamental right to a clean, healthful environment?²⁵ This section examines the cases for and against recognizing constitutional fundamental rights as a matter of first principles, and then takes a harder look at the cases for and against constituting a specific fundamental right to a clean and healthy environment in national constitutions worldwide.

1. Whether to Constitute Fundamental Rights

Fundamental rights are the rights that matter most in legal institutions: They reflect the rights society deems most salient.²⁶ While some quibble about the need to commit to writing that which is naturally indelible and inalienable,²⁷ constitutionally entrenched fundamental rights are more indestructible than statements of policy or procedural norms, enjoy the highest level of legal norms, are less subject to political whims, and tend to be better understood by both the polity and citizenry.²⁸ They protect

24. BERGEAUD, *supra* note 19, at xv-xviii.

25. “If the naïve evolutionist norm that everything that exists is efficient is rejected, then constitutional reform becomes a subject matter for critical and continuing discourse.” Buchanan, *supra* note 17, at 13.

26. John Hart Ely describes the U.S. Constitution as “not one of trying to set forth some governing ideology . . . but rather one of ensuring a durable structure for the ongoing resolution of policy disputes.” JOHN HART ELY, *DEMOCRACY AND DISTRUST* 90 (1980).

27. For a helpful discussion of natural law and constitutionalism, see WILLIAM G. ANDREWS, *CONSTITUTIONS AND CONSTITUTIONALISM* 14-18 (3d ed. 1968).

28. Brandl and Bungert argue in favor of constituting environmental rights. They contend:

[E]nvironmental protection in a constitution offers several advantages over statutory law. Constitutional implementation enables environmental protection to achieve the highest rank among legal norms, a level at which a given value trumps every statute, administrative rule or court decision. For instance, environmental protection might be considered a fundamental right retained by the individual and thus might enjoy the protected status accorded other fundamental rights. In addition, addressing environmental concerns at the constitutional level means that environmental protection need not depend on narrow majorities in legislative

abjured rights of the underrepresented,²⁹ and grant to “the individual a subjective, or personal, guarantee.”³⁰ They can be hortatory, rules laden, or in between,³¹ and stand on equal footing with other fundamental rights like life, liberty, and property.³²

In addition, constituting substantive rights offers some “repose”³³ because these rights can be self-executing and enforceable. While they can be either procedural or substantive,³⁴ Nobel Lau-

bodies. Rather, environmental protection is more firmly rooted in the legal order because constitutional provisions ordinarily may be altered only pursuant to elaborate procedures by a special majority, if at all.

In addition, as supreme law of the land, constitutional provisions promote a model character for the citizenry to follow, and they influence and guide public discourse and behavior. On a practical level, the public tends to be more familiar with constitutional provisions than specific statutory laws. Citizens tend to identify with, and in turn are identified by, the form of their national constitution.

Thus, establishing some form of environmental protection in a national constitution results in the identification of environmental protection with expressions of national pride and character. The establishment process itself further informs the nation’s consciousness Thus, constitutional enactment of environmental goals offers an opportunity to promote environmental concerns at the highest and most visible level of legal order, where the impact on laws and the public could prove to be quite dramatic.

Brandl & Bungert, *supra* note 12, at 4-5.

29. See, e.g., Gary C. Bryner, *Constitutionalism and the Politics of Rights*, in *CONSTITUTIONALISM AND RIGHTS* 7, 8 (Gary C. Bryner & Noel B. Reynolds eds., 1987).

30. Brandl & Bungert, *supra* note 12, at 9-15 (explaining classical-liberal, institutional, value-oriented or objective, democratic, and social theories supporting fundamental rights).

31. Professor J.B. Ruhl describes the U.S. Constitution as “heavy on institutional decision-making rules and light on what form the finished product of those decisions should take.” J.B. Ruhl, *The Metrics of Constitutional Amendments: And Why Proposed Environmental Quality Amendments Don’t Measure Up*, 74 *NOTRE DAME L. REV.* 245, 245 (1999).

32. Brandl and Bungert note:

The strongest argument in favor of an environmental fundamental right is that such a right is a mechanism for resolving conflicts Inclusion of environmental rights in the constitution amounts to a declaration that such rights stand on an equal footing with other fundamental rights and freedoms [It] indicates that a nation bestows upon environmental protection the same respect it grants the right to life and physical integrity.

Brandl & Bungert, *supra* note 12, at 87.

33. Richard S. Kay, *American Constitutionalism*, in *CONSTITUTIONALISM* 16, 27 (Larry Alexander ed., 1998) (“Central to constitutionalism, as I have defined it, is security. Effective liberty requires assurance as to its duration and extent. Put another way, constitutionalism aims to invest at least some aspects of life with a promise of psychological repose.”) See, e.g., FINER ET AL., *COMPARING CONSTITUTIONS* 1 (1995) (questioning value of comparative constitutionalism).

34. Buchanan, *supra* note 17, at 4. Buchanan writes:

reate James M. Buchanan argues that substantive rights are necessary to offset action taken without the consent of underrepresented individuals or interests.³⁵

General arguments against constituting a fundamental right of any stripe include that it is undemocratic to restrict the majority, that rules may be unjust, that constraints may be achievable through other means, and that constraints must be changeable.³⁶ Moreover, pre-selected rules can be ineffective, and societal and economic costs can be steep.³⁷ Furthermore, constituting fundamental rights is unnecessary because what is most essential to orderly society is a matter of intuition, not composition.³⁸ Indeed, as Grant Gilmore has intoned, "The better the society, the less law

[T]here are two basic forms or types of constraints, both of which may be described under the constitutional rubric.

Procedural constraints . . . operate directly on the means through which choices are made, while not directly impinging on the set of options

. . . .
Substantive constraints, by comparison, act directly on the set of options around which selections are to be made. A constitution may specify that some physically feasible outcomes are simply "out of bounds," regardless of the procedures through which they may be reached.

Id.

35. *Id.* at 3. Buchanan says:

Support for the imposition of constraints on the operation of the political process may stem exclusively from the fear that a coalition of other persons may act, in the name of the collective unit with powers of enforceability, in ways that harm her own interests. Constitutional constraints are, in this setting, aimed at limiting the range and scope of actions that may be taken by others without the consent of the person in question but actions to which the person is locked in by the fact of collective unity.

This reason for rules arises in any collective organization that allows actions to be taken without any explicit consent of the individuals who are affected.

Id. at 3.

36. See Aleksander Peczenik, *Why Constitutions? What Constitution? Constraints on Majority Rule*, in *WHY CONSTITUTIONS MATTER* 17, 21-50 (Niclas Berggren et al. eds., 2002).

37. See Buchanan, *supra* note 17, at 14. Buchanan responds:

I have made no effort to respond to the simplistic claim that constitutions cannot matter because preselected rules can never prove to be enforceable against the emerging interests, whether those of an individual or of a dominant political coalition. Constitutional rules have the effect of increasing the costs of taking certain actions

Constitutional structure and strategy must be informed, first, by a definition of those patterns of outcomes that are deemed undesirable, and second, by an implementation of limits on the procedures or results designed to forestall such patterns.

Id.

38. Borgeaurd provides four other reasons to reject constitutionalism:

I. The roots of political constitutions exist before all written laws.

there will be. In Heaven there will be no law, and the lion will lie down with the lamb In Hell there will be nothing but law, and due process will be meticulously observed.”³⁹

Sound counterarguments, all. The response to general complaints about constituting fundamental rights begins with accepting that written constitutional responses to societal challenges matter most when fatigue with other legal responses to societal shortcomings descends: “In one sense, constitutions must be seen to matter because, otherwise, we find ourselves, willy nilly, in a setting of constitutional drift, where inattention to rules and rules’ structures may allow patterns of results to emerge that are preferred by no one, then, now, and in the future.”⁴⁰

2. The Case for Constituting Fundamental Environmental Rights

The right to a clean and healthful environment seems to possess the hallmarks of traditional fundamental rights. Environmental rights naturally lean toward substance and share features with other constituted rights that protect the underrepresented, such as free speech, religion and assembly, and equal protection.⁴¹ Constituting environmental rights with other basic fundamental human rights⁴² makes them “less susceptible to . . . political airs,”⁴³ and more likely to endure due to inertia against constitutional reform.⁴⁴ As Professor Brooks explains,

II. A constitutional law is only and can only be the development or the sanction of the pre-existing unwritten law.

III. That which is most essential, most intrinsically constitutional and really fundamental, is never written, nor can it be.

IV. The weakness and fragility of a written constitution vary directly as the number of its articles.

BORGEAUD, *supra* note 19, at 36-37.

39. GRANT GILMORE, *THE AGES OF AMERICAN LAW* 111 (1977).

40. Buchanan, *supra* note 17, at 13.

41. For a helpful introduction about the extent to which international law recognizes the existence of a substantive individual right to a healthy environment, see Marc Pallemarts, *The Human Right to a Healthy Environment as a Substantive Right*, in *HUMAN RIGHTS AND THE ENVIRONMENT* 11, 11-21 (Maguelonne DéJeant-Pons & Marc Pallemarts eds., 2002).

42. See Bruch, *supra* note 5, at 133: “A nation’s constitution is more than an organic act establishing governmental authorities and competencies: the constitution also guarantees citizens basic fundamental human rights such as the . . . right to a clean and healthy environment.”

43. *Id.* at 134.

44. *Id.*

The fundamental purpose of a constitutional right to a healthful environment is to frame the description of the pollution event in terms of a public assault upon an individual's substantive right to life and health. [These] values are nationally shared. From this point of view, a federal constitutional right to a healthful environment makes sense.⁴⁵

The need to entrench fundamental rights in a national constitution is especially important when extant international, national, and subnational legal mechanisms do not protect the right. This is so with FERs.

a. Shortcomings in International Law

International law generally does not provide for environmental rights.⁴⁶ First, there is no international "Environmental Rights" Treaty. International accords that bespeak environmental rights, such as the 1972 Stockholm Declaration,⁴⁷ and the Rio Declaration,⁴⁸ are not enforceable. Regardless, FERs are preferable to international, multilateral, or bilateral treaties if, for no other reason, than that treaties must usually be ratified by the country's legislature, and then must often be implemented by domestic legislation.⁴⁹

45. Richard O. Brooks, *A Constitutional Right to a Healthful Environment*, 16 VT. L. REV. 1063, 1109 (1992).

46. See Iveta Hodkova, *Is There a Right to a Healthy Environment in the International Legal Order?*, 7 CONN. J. INT'L L. 65, 66 (1991); Melissa Thorne, *Establishing Environment As a Human Right*, 19 DENV. J. INT'L L. & POL'Y 301, 317 (1991).

47. The Stockholm Declaration provides: "Both aspects of a man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights and the right to life itself." United Nations Conference on the Human Environment, June 5-16, 1972, *Stockholm Declaration of the United Nations Conference on the Human Environment*, ¶ 2, U.N. Doc. A/CONF.48/14/rev.1 (June 16, 1972).

48. The Rio Declaration reads, in pertinent part: "States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply." United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development*, Principle 11, U.N. Doc. A/CN.17/1997/8 (1992).

49. For example, the European Court of Human Rights (ECHR) has interpreted the European Convention on Human Rights as providing a right to a healthy environment. See Ben Pontin, *Environmental Rights Under the UK's "Intermediate Constitution"*, 17 NAT. RESOURCES & ENV'T 21 (2002) (discussing *Lopez Ostra v. Spain*, 20 Eur. Ct. H.R. 277 (1995), in which the court held that the ECHR's protection of human rights includes a right to a healthy environment). The UK has incorporated this interpretation to a certain extent through domestic legislation. *Id.* at 22-23 (discussing the UK Human Rights Act's incorporation of the ECHR).

Second, international legal customs and norms do not provide an enforceable FER. The protection of fundamental human rights is the closest international law comes to protecting fundamental rights to the environment. Indeed, the extent to which human rights include FERs has engendered ample commentary.⁵⁰ Some contend that existing international human rights treaties include FERs.⁵¹ Yet few nations recognize FERs as fundamental human rights.⁵²

A leading commentator notes that:

The late twentieth century has witnessed an unprecedented increase in legal claims for both human rights and environmental goods. Never before have so many people raised so many demands relating to such a wide range of environmental and human matters. And never before have legal remedies stood so squarely in the centre of wider social movements for human and environmental protection . . . Like human rights, environmental law houses a hidden imperial ambition: both potentially touch upon all spheres of human activity, and claim to override or trump other considerations.⁵³

While some question whether applying existing human rights to environmental challenges is effective,⁵⁴ most conclude the point academic because international human rights do not include FERs.⁵⁵ To be sure, of the two human rights treaties that equate

50. See Michael R. Anderson, *Human Rights Approaches to Environmental Protection: An Overview*, in *HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION* 1, 1-24 (Alan J. Boyle & Michael R. Anderson eds., 1998); Alan Boyle, *The Role of International Human Rights Law in the Protection of the Environment*, in *HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION*, *supra*, at 43, 43-70.

51. For a discussion of such rights, see Robin Churchill, *Environmental Rights in Existing Human Rights Treaties*, in *HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION*, *supra* note 50, at 89, 89-108.

52. For a discussion of the variety of ways to reconcile environmental and human rights in concept, see J.G. Merrills, *Environmental Protection and Human Rights: Conceptual Aspects*, in *HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION*, *supra* note 50, at 25, 25-42.

53. Anderson, *supra* note 50, at 1.

54. Dinah Shelton, *Human Rights, Environmental Rights, and the Right to the Environment*, 28 *STAN. J. INT'L L.* 103, 112-113, 116 (1991) (noting "the scope of protection for the environment based on existing human rights norms remains narrow because environmental degradation is not itself a cause for complaint, but rather must be linked to an existing right.").

55. DORSEN ET AL., *supra* note 6, at 1313-14 ("[I]nternational human rights systems do not include any direct right to a healthy or satisfactory environment. In fact, most important human rights treaties were put into force prior to the institution of environmental protection nationally or globally.").

human and environmental rights, one is not in force and the other “suffers from weak institutional and compliance mechanisms.”⁵⁶

Third, general principles of international environmental law fall short of protecting fundamental environmental rights, including those involving environmental procedural rights⁵⁷ and notions of intergenerational equity.⁵⁸

b. Most Legal Systems Do Not Protect Fundamental Environmental Rights

The existing constitutional, statutory, and common law legal architectures of many countries do not protect an individual's right to a clean and healthy environment.⁵⁹ Where these mechanisms fail, constituting FERs provides a “safety net” for addressing environmental issues,⁶⁰ can be an efficient and effective national mechanism for inculcating environmental ethics,⁶¹ and can be the last best hope for protecting both basic human rights and biodiversity.⁶² But hope comes in drips, despair in drabs. Regardless of the legal apparatus—international, national, or subnational—environmental rights run into some basic inertial truisms: Economic concerns usually trump environmental concerns,⁶³ and property rights usually prevail over environmental rights.⁶⁴

First, the majority of national constitutions do not reflect environmental rights, and attempts to amend are often cast asun-

56. *Id.* at 1319. For a discussion of the attenuated link between international human and environmental rights, see *id.* at 1317.

57. See, e.g., Maguelonne Dejeant-Pons, *Human Rights to Environmental Procedural Rights*, in HUMAN RIGHTS AND THE ENVIRONMENT, *supra* note 41, at 23, 23-46.

58. For an argument that all nations can accept environmental human rights, at least for intergenerational equity, see Richard P. Hiskes, *The Right to a Green Future: Human Rights, Environmentalism, and Intergenerational Justice*, 27 HUM. RTS. Q. 1346-64 (2005).

59. Bruch, *supra* note 5, at 134 (“Even countries with advanced environmental protection systems find that their laws do not address all environmental concerns; this problem is more pronounced in nations that are still developing environmental laws and regulations.”).

60. Bruch, *supra* note 5, at 134.

61. ALDO LEOPOLD, A SAND COUNTY ALMANAC 224-25 (stating that something is “right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise”).

62. Edward O. Wilson, *The Current State of Biodiversity*, in BIODIVERSITY 3, 12-13 (Edward O. Wilson ed., 1988) (noting that humans have multiplied current rates of species extinction by 1,000 to 10,000 times the pre-human-intervention rate).

63. Bruch, *supra* note 5, at 134.

64. For a multi-dimensional discussion about the relationship between property and land use of commons on an international scale, see RIGHTS TO NATURE (Susan S. Hanna et al. eds., 1996).

der. For example, all efforts—from the 1960s to present—to amend the U.S. Constitution to provide a substantive right to a clean environment have met dead ends.⁶⁵ Some who advocate for an amendment to the U.S. Constitution believe environmental rights are fundamental, and, failing implicit recognition, warrant explicit treatment.⁶⁶ Others are skeptical, maintaining that environmental rights do not measure up to the Constitution's other rights.⁶⁷ Other countries have been more inclined to amend their constitutions to recognize FERs or include them as an initial construct.⁶⁸

The constitutional springboard for FERs may be implicit.⁶⁹ Many countries without constitutional environmental rights nonetheless interpret constitutional “right to life” provisions to include FERs.⁷⁰ Most notable of these thus far is India, perhaps the first country to interpret a constitutional right to life as including a fundamental right to a healthy environment.⁷¹ On the other hand, all efforts to infer fundamental environmental rights in the United States and Europe have failed. Arguments that the U.S. Constitution provides an implied or penumbral right to a clean

65. J.B. Ruhl notes that of “over ten thousand proposed amendments to the Constitution . . . [o]nly a handful have [succeeded,] and hence . . . there is little chance that an [environmental quality amendment] will ever find its way into the Constitution.” Ruhl, *supra* note 31, at 250-51.

66. See, e.g., Robin Craig, *Should There Be a Constitutional Right to a Clean/Healthy Environment?*, 34 *Envtl. L. Rep. (Envtl. Law Inst.)* 11,013 (2004).

67. J.B. Ruhl is skeptical about proposals to add an “Environmental Quality Amendment” (EQA) to the U.S. Constitution. Ruhl, *supra* note 31, at 245-50. He says:

[E]very [proposal to add environmental rights] in the past and being put on the table today is an absolute failure in the sense of approaching what makes a sound amendment to the Constitution. Indeed, no commentator or legislator who has proposed an EQA has endeavored to explain why an EQA amendment would be *constitutionally* sound, as opposed to being good for the environment. The latter proposition is debatable, but the former is not a close call. EQA does not belong in the Constitution.

Id. at 250 (emphasis in original; internal citation omitted). Ruhl concludes: “[A]ny EQA attempting to capture a normative statement about the environment and plug it into the United States Constitution is simply a bad idea.” *Id.* at 252. For a helpful discussion of efforts to constitute environmental rights in the United States, see Brooks, *supra* note 45.

68. See, e.g., Brandl & Bungert, *supra* note 12, at 23-52 (discussing proposed environmental rights amendments in Germany and Austria).

69. Bruch, *supra* note 5, at 133-34.

70. See *id.* at 166-76 (discussing constitutional interpretation in Tanzania, India, Pakistan, Bangladesh, Nepal, Columbia, Ecuador, Costa Rica, and some countries in Africa).

71. *Id.* at 167-70.

environment burned first hot, and then out, in the 1970s.⁷² Instead, environmental protection laws in the United States draw their energy primarily from the Commerce Clause.⁷³

Some Western European countries, however, have declined to elevate constitutional procedural rights into fundamental environmental rights. The Supreme Court of Switzerland, for example, declined to read a constitutional passage that the “federal legislature enacts laws concerning the protection of man and his natural environment against detrimental or burdensome influences” as one that confers a fundamental environmental right.⁷⁴ Courts in other countries, including the Netherlands (“It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment”),⁷⁵ and Greece (“The protection of the natural and cultural environment constitutes a duty of the State”),⁷⁶ have declined to infer fundamental rights into constitutional provisions requiring sound environmental policy.

Second, while many countries have robust statutory environmental protection laws, litigants must still satisfy a retinue of procedural or constitutional requirements (such as standing), and demonstrate that a matter is justiciable.⁷⁷ And while some countries, particularly those in the EU, recognize fundamental environmental rights as a matter of natural law, such common law measures are subject to legislative preemption.⁷⁸

72. See, e.g., Harry W. Pettigrew, *A Constitutional Right of Freedom from Ecocide*, 2 ENVTL. L. 1-41 (1971); Ronald E. Klipsch, *Aspects of a Constitutional Right to a Habitable Environment: Towards an Environmental Due Process*, 49 IND. L.J. 203 (1974).

73. For a helpful discussion of some of the constitutional bases for environmental law in the United States, particularly those invoking “federalism,” see CLIFFORD RECHTSCHAFFEN & DAVID L. MARKELL, *REINVENTING ENVIRONMENTAL ENFORCEMENT & THE STATE/FEDERAL RELATIONSHIP* 36-45 (2003).

74. See Brandl & Bungert, *supra* note 12, at 52-53.

75. *Id.* at 56.

76. *Id.* at 57-60.

77. Many countries already support a mature legal architecture to carry out environmental laws and regulations, including Australia, Austria, Belarus, Bermuda, Canada, China, the Czech Republic, France, India, Jamaica, Italy, Japan, Mexico, the Netherlands, Poland, Russia, Singapore, South Korea, Ukraine, the United Kingdom, the United States, and the European Union (EU) nations. See generally INTERNATIONAL ENVIRONMENTAL LAW AND REGULATION (Schlickman et al. eds., 1996) (discussing the national environmental statutory and regulatory laws in these countries).

78. The UK Constitution’s “principle of legality” envelopes common law “natural” rights, and is applied on a case-by-case basis. Pontin, *supra* note 49, at 21. Indeed, the UK has enacted a Human Rights Act that embraces rights provided under the ECHR, including a right to a healthy environment. *Id.* at 21-23, 64-65. The HRA, however, “preserves the Parliament’s discretion to authorize any interference with environ-

Third, while some contend that the constitutions of state subdivisions make the best home for FERs, such rights often prove the least enforceable.⁷⁹ At least thirty states in the United States address environmental issues.⁸⁰ Of these, five explicitly, and eleven implicitly, recognize a right to a clean environment.⁸¹ Yet the reach of the constituted FERs of political subdivisions of some countries, including some in the United States, Canada,⁸² and Germany, have proved limited.⁸³

3. The Case Against Constituting Fundamental Environmental Rights

Specific arguments against constituting FERs in particular are five-fold. First, reducing a right that is innate to the human condition—such as the right to a clean environment—trivializes it.⁸⁴ Yet although it can take forms silent or plaintiff, Thomas Paine himself “would admit nothing to be a constitution but a written document which he could fold up in his pocket, or file away in a pigeon-hole”⁸⁵—meaning that a constitution must be written.

Second, FERs could have the invidious counter-anti-majoritarian effect of elevating individual rights of the majority

mental rights.” *Id.* at 64. The extent to which the EU incorporates the Human Rights Act remains to be seen. See S. Douglas-Scott, *Environmental Rights in the European Union: Participatory Democracy or Democratic Deficit?*, in *HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION*, *supra* note 50, at 109-28.

79. For a discussion of the interconnectedness between human rights and the environment at the subnational level, see generally *ENVIRONMENTAL RIGHTS: LAW, LITIGATION & ACCESS TO JUSTICE* (Sven Deinman & Bernard Dyssli eds., 1995).

80. See John C. Tucker, *Constitutional Codification of an Environmental Ethic*, 52 *FLA. L. REV.* 299 (2000) (discussing development in Florida).

81. See EDITH BROWN WEISS ET AL., *INTERNATIONAL ENVIRONMENTAL LAW AND POLICY* 416 (1998) (identifying Illinois, Hawaii, California, Florida, Massachusetts, Montana, Pennsylvania, Rhode Island, and Virginia). For a discussion of judicial application of FERs in state constitutions in the United States, see Tucker, *supra* note 80, at 315-24. For an argument for devolving FERs to the states, see Brooks, *supra* note 45, at 1063-1110.

82. For a discussion of Ontario’s approach to FERs, see Sandra Walker, *The Ontario Environmental Bill of Rights*, in *ENVIRONMENTAL RIGHTS: LAW, LITIGATION & ACCESS TO JUSTICE*, *supra* note 79, at 20, 20-32.

83. Brandl & Bungert, *supra* note 12, at 38-44 (discussing German constitutions, particularly Bavaria’s constitution).

84. See A.V. DICEY, *INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION* (10th ed., 1959).

85. O.A. BROWSON, LL. D., *THE AMERICAN REPUBLIC: ITS CONSTITUTION, TENDENCIES, AND DESTINY* 151 (1866), available at <http://www.hti.umich.edu/m/oagrp/> (updated Nov. 15, 2005).

over the interests of the "polluting minority."⁸⁶ Yet as Peczenik maintains, democracy is not the same as majority rule: Rules are inevitable, justification is possible by recourse to normative moral theory, and deliberation serves as a bulwark against oppression.⁸⁷

Third, the amount of light each fundamental constitutional right catches is inversely proportional to how many other fundamental rights the constitution confers; the more "rights" there are, the less enforced each becomes.⁸⁸ Yet this seems to apply equally to all constituted rights. If constitutions are "a set of instructions for making decisions about the design and operation of society," you either have rules or not.⁸⁹ Moreover, to the extent a constitution reflects national values, it is of some utility for a constitution to provide FERs, even if it cannot, perhaps yet, determine how to make them enforceable.

Fourth, FERs can create unintended "spillover" effects that curtail free use of private property.⁹⁰ True enough, yet it is the free use of property that often feeds the need for FERs to protect those who are disproportionately affected by improvident property use, including the underrepresented and underprivileged.

Last, FERs can paralyze relativistic colloquy about environmental policy and incite a backlash of political dissonance.⁹¹ Yet importantly "[a] failure to think that 'constitutions matter' can

86. A principal criticism is "that it represents power given to the majority against a polluting minority, rather than a guarantee of minority rights." Brandl & Bungert, *supra* note 12, at 88.

87. Peczenik, *supra* note 36, at 21-22. Peczenik notes "[I]t can be said that constitutions can, should and often do include rules making it difficult for the parliamentary representation of the majority to restrict political and human rights. Such rules are the constraints on the power of the majority." *Id.*

88. J.B. Ruhl relays the following tale:

A woman is seated in a restaurant in Moscow, during Soviet rule, and is handed a menu. After a few minutes she orders the roast pork, but is told they no longer serve that dish. She orders the chicken and is told it has sold out. She orders the fish and is told it has gone bad. She orders the beef and is told it has been overcooked. Exasperated, she asks whether she has been handed the menu or the constitution.

Ruhl, *supra* note 31, at 245.

89. Ruhl, *supra* note 31, at 245.

90. Professor Sax says environmental rights involve two related principles: First, even one's legitimate activity has spillover effects on the rights of others that limit its scope and nature. And second, the limit of one's rights is measured by the ability of his neighbor to make a reasonably productive use of his own property.

JOSEPH L. SAX, DEFENDING THE ENVIRONMENT: A STRATEGY FOR CITIZEN ACTION 159 (1971).

91. Professor Lazarus expresses the perils of constitutionalizing environmental rights this way:

only produce attitudes of permissiveness that have proved damaging over far too many dimensions of modern social existence.⁹² In short, the rights worth safeguarding are worth memorializing.⁹³

II. Constituting Fundamental Environmental Rights in National Constitutions Worldwide

As detailed in Appendix B, about 130 countries have constitutional provisions that expressly address environmental norms.⁹⁴ About sixty of these, listed in Appendix A, contain FERs.⁹⁵ Most of national environmental rights provisions have been enacted during the last thirty years, and of these, a majority during the last fifteen years. Furthermore, FERs have been adopted across the four corners of the globe. Countries with the longest standing FERs include the Western European nations of Belgium,⁹⁶ Portugal,⁹⁷ and Spain.⁹⁸ Nearly every emerging democracy of the former Eastern Bloc, Middle Eastern, and Soviet-influenced

[T]here are individuals on both sides of the environmental protection debate who summarily reject any characterization of environmental law-making as the attempt to balance competing economic interests. Each camp views their position as being supported by absolute, not relative, rights. The right to human health. The right to a healthy environment. The rights of nature itself. The right to private property. The right to individual liberty and freedom from the will of the majority . . . Each side tends to view the other as beginning from an unacceptable moral premise.

RICHARD J. LAZARUS, *THE MAKING OF ENVIRONMENTAL LAW* 28 (2004).

92. Buchanan, *supra* note 17, at 14.

93. Borgeaud responds to criticism of constituting fundamental rights this way: [T]he error [with arguments against constitutionalism] . . . that there is any incompatibility between what is fundamental and what is written When a people frame for itself a constitution, it formulates its public law . . . so as to render it a real safeguard against all attempts to undermine popular liberties.

BORGEAUD, *supra* note 19, at 37-38.

94. See Appendix B.

95. See Appendix A.

96. BELG. CONST. tit. II, art. 23(4) ("Everyone has the right to lead a life worthy of human dignity [including] the right to enjoy the protection of a sound environment.").

97. PORT. CONST. pt. 1, tit. 2, ch. 2, art. 52(3).

To all is conferred—personally or through associations that purport to defend the interests in issue—the right of popular action in the cases and under the conditions specified by law, including the right to advocate on behalf of the aggrieved party or parties . . . to promote the prevention, the suppression and the prosecution of offenses against . . . the preservation of the environment

Id.

98. SPAIN CONST. tit. I, ch. III, art. 45(1) ("Everyone has the right to enjoy an environment suitable for the development of the person").

countries has constituted FERs since the fall of the Soviet Union, including Afghanistan,⁹⁹ Azerbaijan,¹⁰⁰ Albania,¹⁰¹ Belarus,¹⁰² Bulgaria,¹⁰³ Croatia,¹⁰⁴ Chechnya,¹⁰⁵ Estonia,¹⁰⁶ Georgia,¹⁰⁷ Hungary,¹⁰⁸ Kyrgyzstan,¹⁰⁹ Macedonia,¹¹⁰ Russia,¹¹¹ Mongolia,¹¹² Moldova,¹¹³ Poland,¹¹⁴ the Slovak Republic,¹¹⁵ Slovenia,¹¹⁶ Tur-

99. AFG. CONST. pmbi. (“[A] prosperous life and a sound environment for all those residing in this land . . .”).

100. AZE. CONST. pt. II, ch. III, art. 39(I) (“Every person shall have the right to live in a healthy environment.”).

101. ALB. CONST. pt. two, ch. IV, art. 56 (“[E]veryone has the right to be informed for the status of the environment and its protection.”).

102. BELR. CONST. sec. II, art. 46 (“[E]veryone shall be entitled to a pleasant environment . . .”).

103. BULG. CONST. ch. II, art. 55 (“Citizens have the right to a healthy and favorable environment . . .”).

104. CROAT. CONST. ch. II, pt. III, art. 69 (“Everyone shall have the right to a healthy life . . . The State shall ensure conditions for a healthy environment. Everyone shall be bound . . . to pay special attention to the protection of human health, nature and the human environment.”).

105. CHECHNYA CONST. art. 39 (“Everyone has the right to favorable environmental surroundings, reliable information about its condition and compensation for damage caused to his/her health or property through violations of the law.”). CHECHNYA CONST., translated in A. Tschentscher (ed.), *International Constitutional Law*, http://www.oefre.unibe.ch/law/icl/cc0000_html (last modified Jan. 2004).

106. EST. CONST. art. 53 (“Everyone shall be obligated to preserve the human and natural environment . . .”).

107. GEOR. CONST. ch. 2, art. 37(3) (“Everyone shall have the right to live in a healthy environment and enjoy natural and cultural surroundings.”).

108. HUNG. CONST. ch. I, art. 18 (“The Republic of Hungary recognizes and shall implement the individual’s right to a healthy environment”); ch. XII, art. 70(D)(2) (“The Republic of Hungary shall implement this right through . . . the protection of the urban and natural environment.”).

109. KYRGYZ REP. CONST. sec. I, ch. II, third sec., art. 35(1) (“Citizens of the Kyrgyz Republic shall have the right to a favorable and healthy natural environment . . .”).

110. MACED. CONST. sec. II, ch. II, art. 43 (“Everyone has the right to a healthy environment to live in.”).

111. RUSS. CONST. sec. I, ch. II, art. 42 (“Everyone shall have the right to a favorable environment . . .”).

112. MONG. CONST. ch. II, art. 16 (“The citizens of Mongolia shall enjoy . . . [t]he right to a healthy and safe environment and to be protected against environmental pollution and ecological imbalance.”).

113. MOLD. CONST. tit. II, ch. II, art. 37(1) (“Every human being has the right to live in an environment that is ecologically safe for life and health, to obtain healthy food products . . .”).

114. POL. CONST. ch. II, art 86.

1. Public authorities shall pursue policies ensuring the ecological safety of current and future generations.

2. The protection of the environment is the duty of public authorities.

3. Everyone has the right to be informed of the condition and protection of the environment.

4. Public authorities shall support the activities of citizens to protect and improve the quality of the environment.

key,¹¹⁷ Ukraine,¹¹⁸ and Yugoslavia (Serbia and Montenegro).¹¹⁹ During this same timeframe, a dozen South and Central American countries adopted constitutional FERs, including Argentina,¹²⁰ Brazil,¹²¹ Chile,¹²² Columbia,¹²³ Costa Rica,¹²⁴ Ecuador,¹²⁵ El Salvador,¹²⁶ Guatemala,¹²⁷ Honduras,¹²⁸ Nicaragua,¹²⁹ Paraguay,¹³⁰ and Venezuela.¹³¹

Id. For a brief account of Poland's constitutional environmental provisions, see Tucker, *supra* note 80, at 315.

115. SLOVK. REP. CONST. pt. two, ch. .six, art. 44(1) ("Every person has the right to an auspicious environment.").

116. SLOVN. CONST. sec. III, art. 72 ("Everyone has the right in accordance with the law to a healthy living environment.").

117. TURK. CONST. pt. II, ch. three, sec. VIII, pt. A, art. 56 ("Everyone has the right to live in a healthy, balanced environment.").

118. UKR. CONST. ch. II, art. 50 ("Everyone has the right to an environment that is safe for life and health . . .").

119. FED. REPUBLIC OF YUGO. (SERB. & MONT.) CONST. sec. II, art. 52 ("Man has the right to a healthy environment . . .").

120. ARG. CONST. first pt., ch. II, art. 41 ("All inhabitants enjoy the right to a healthful, balanced environment fit for human development, so that productive activities satisfy current needs without compromising those of future generations . . .").

121. BRAZ. CONST. tit. II, ch. I, art. 5, para. LXXIII ("[A]ny citizen has standing to bring a popular action to annul an act injurious to the public patrimony or the patrimony of an entity in which the State participates . . . to the environment . . ."). For a discussion of the extensive reach of Brazil's constitutional environmental provisions, see Tucker, *supra* note 80, at 313-14.

122. CHILE CONST. ch. III, art. 19(8) ("The right to live in an environment free from contamination.").

123. COLOM. CONST. tit. II, ch. III, art. 79 ("Every individual has the right to enjoy a healthy environment.").

124. COSTA RICA CONST. tit. V, art. 50 (as reformed June 10, 1994) ("Every person has the right to a healthy and ecologically balanced environment . . .").

125. ECUADOR CONST. tit. III, ch. 5, sec. 2, art. 86 ("The State shall protect the right of the population to live in a healthy and ecologically balanced environment, that guarantees sustainable development.").

126. EL SAL. CONST. tit. II, ch. II, first sec., art. 34 ("Every child has the right to live in familial and environmental conditions that permit his integral development, for which he shall have the protection of the State.").

127. GUAT. CONST. tit. II, ch. II, sec. VII, art. 93 ("The right to health is a fundamental right of the human being without any discrimination.").

128. HOND. CONST. tit. III, ch. VII, art. 145 ("The right to the protection of one's health is hereby recognized.").

129. NICAR. CONST. tit. IV, ch. III, art. 60 ("Nicaraguans have the right to live in a healthy environment.").

130. PARA. CONST. pt. I, tit. II, ch. I, sec. I, art. 7 ("Everyone has the right to live in a healthy, ecologically balanced environment.").

131. VENEZ. CONST. tit. III, ch. IX, art. 127 ("Every person has a right to individually and collectively enjoy a life and a safe, healthy and ecologically balanced environment.").

In the last decade, the wildfire that is nationalized FERs has spread to a majority of countries in Africa, including Algeria,¹³² Angola,¹³³ Cameroon,¹³⁴ Chad,¹³⁵ Congo,¹³⁶ Ethiopia,¹³⁷ South Africa,¹³⁸ Mozambique,¹³⁹ and Niger.¹⁴⁰ It has also sparked modest reform in Indonesia and Southeast Asia countries, including East Timor¹⁴¹ and South Korea.¹⁴²

Embers have sparked constitutional FERs in nearly a dozen other countries, including Bénin,¹⁴³ Burkina Faso,¹⁴⁴ Cape Verde,¹⁴⁵ Comoros,¹⁴⁶ Mali,¹⁴⁷ Norway,¹⁴⁸ Sao Tome,¹⁴⁹ Sey-

132. ALG. CONST. tit. I, ch. V, art. 66 ("Every citizen has the duty to protect public property and the interests of the national collectivity and to respect the property of others.").

133. ANGL. CONST. pt. II, art. 24(1) ("All citizens shall have the right to live in a healthy and unpolluted environment.").

134. CAMEROON CONST. pmb. ("[E]very person shall have a right to a healthy environment.") (Pt. XII, para. 65 provides that the "Preamble shall be part and parcel of this Constitution.").

135. CHAD CONST. tit. II, ch. I, art. 47 ("Every person has the right to a healthy environment.").

136. REP. CONGO CONST. (Dec. 22, 2001) tit. II, art. 35 ("Every citizen has the right to a healthy satisfying and durable environment and the duty to defend it. The State watches over the protection and conservation of the environment."). *See also* CONST. TRANSITION DEM. REP. CONGO (2003) tit. III, art. 54 ("Every Congolese shall have the right to a healthy environment that is favorable to his development.").

137. ETH. CONST. ch. III, pt. II, art. 44(1) ("All persons have the right to a clean and healthy environment.").

138. S. AFR. CONST. ch. 2, art. 24 ("Everyone has the right (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures . . .").

139. MOZAM. CONST. pt. II, ch. I, art. 72 ("All citizens shall have the right to live in . . . a balanced natural environment.").

140. NIGER CONST. tit. II, art. 27 ("Each person has the right to a healthy environment.").

141. E. TIMOR CONST. pt. II, tit. III, art. 61(1) ("All have the right to a humane, healthy, and ecologically balanced environment and the duty to protect it and improve it for the benefit of the future generations.").

142. REP. KOREA CONST. ch. II, art. 35(1) ("All citizens shall have the right to a healthy and pleasant environment.").

143. BÉNIN CONST. tit. II, art. 27 ("Every person has the right to a healthy, satisfying and lasting environment and has the duty to defend it.").

144. BURK. FASO CONST. tit. I, ch. IV, art. 29 ("The right to a healthy environment is recognized; the protection, the defense and the promotion of the environment are a duty for all."), art. 30 ("Every citizen has the right to initiate an action or to join a collective action under the form of a petition against the acts . . . affecting the environment or the cultural or historic patrimony.").

145. CAPE VERDE CONST. pt. II, tit. III, art. 70(1) ("Everyone shall have the right to a healthy, ecologically balanced environment . . .").

146. COMOROS CONST. pmb. ("[There is] the right of all Comorans to health . . .").

147. MALI CONST. tit. I, art. 15 ("Every person has the right to a healthy environment.").

chelles,¹⁵⁰ and Togo.¹⁵¹ And in 2005, France and Iraq became the latest nations to constitute FERs.¹⁵²

III. Enforcing Nationally Constituted Fundamental Environmental Rights

An unenforceable right is hardly a right at all. While predicting judicial receptivity to newly minted FERs is folly,¹⁵³ what can be learned from comparative analysis is that national courts are reluctant to uphold FERs as self-executing and enforceable.¹⁵⁴ While most national constitutions with FERs have yet to be tested in court, including intriguing provisions in the constitutions of many African countries enacted in the last decade,¹⁵⁵ those that have been adjudicated have been found enforceable about as often as not.

148. NOR. CONST. pt. E, 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.”).

149. SÃO TOMÉ & PRÍNCIPE CONST. pt. II, tit. III, art. 48(1) (“All have the right to housing and to an environment of human life and the duty to defend it.”).

150. SEY. CONST. ch. III, pt. I, art. 38 (“The State recognises the right of every person to live in and enjoy a clean, healthy and ecologically balanced environment . . .”).

151. TOGO CONST. tit. II, subsec. I, art. 41 (“Anyone has the right to a healthy environment.”).

152. CHARTER OF THE ENVIRONMENT OF 2004 (FRANCE), art. 1 (“Everyone has the right to live in a balanced and health-friendly environment.”). IRAQ CONST. art. 33(1) (“Every individual has the right to live in correct environmental atmosphere”), available at <http://www.voanews.com/english/archive/2005-08/2005-08-24-voa39.cfm?CIFD=17134607&CFTOKEN=35125000> (last visited March 25, 2006).

153. For a compilation profiling the extent of constitutional review by national courts, see generally A. MAVCIC, *THE CONSTITUTIONAL REVIEW* (2001).

154. DORSEN ET AL., *supra* note 6, at 1 (“[O]ur natural curiosity prompts us to compare our experiences, beliefs, customs, traditions, and natural and institutional settings with those of others far and near. Consistent with this, the study of law, naturally, should be drawn to—and benefit from—comparative analysis in general and comparative constitutional analysis in particular.”).

155. Bruch, *supra* note 5, at 140 (“[T]he near total absence of African court cases interpreting these provisions suggests that it could be productive to consider how courts in other countries implement [FERs].”). For more about the South African constitutional reform, see Jan Glazewski, *Environmental Rights and the New South African Constitution*, in *HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION*, *supra* note 50, at 177, 177-98.

A. Enforceable Fundamental Environmental Rights

Enforceable FERs are rare.¹⁵⁶ National courts have thus far found enforceable only a handful of the roughly sixty constitutions with FERs, mostly in South America. Portuguese courts have found actionable that “[everyone shall] have the right to a healthy and ecologically balanced human environment and the duty to defend it.”¹⁵⁷ Argentinean courts have interpreted a similar provision as self-executing and enforceable: In *Alberto Sagarday*, the court upheld citizens’ rights to enforce constitutional environmental rights without first having to exhaust administrative remedies.¹⁵⁸ Argentinean courts have also interpreted the provision broadly to include even the right to enjoy an ocean view.¹⁵⁹

Columbian courts have interpreted “[e]very individual[’s] . . . right to enjoy a healthy environment” to be enforceable.¹⁶⁰ The Columbian Constitutional Court explained the right to the environment as “conceived as a group of basic conditions surrounding man, which define his life as a member of the community and allow his biological and individual survival”¹⁶¹ Thus in Columbia, FERs equate with other fundamental human rights: FERs exist “side by side with fundamental rights such as liberty, equality and necessary conditions for people’s life [W]e can state that the right to the environment is a right fundamental to the existence of humanity.”¹⁶²

156. Bruch, *supra* note 5, at 134 (“Constitutional provisions that enumerate substantive individual rights have not always been directly enforceable by citizens, and even now do not always create an affirmative right. However, a consistent and increasingly universal trend leans toward giving force to these provisions.”).

157. PORT. CONST. pt. I, tit. III, ch. II, art. 66(1). See Brandl & Bungert, *supra* note 12, at 65-69 (saying provision “is to be seen primarily as a fundamental right” because, inter alia, it is a constitutional “Social right[] and duty[]” enforceable in the Portuguese Constitutional Court). Argentina’s constitution also links environmental rights to sustainable development: “All inhabitants enjoy the right to a healthful, balanced environment fit for human development, so that productive activities satisfy current needs without compromising those of future generations” ARG. CONST. first pt., cht. II, art. 41.

158. See Adriana Fabra & Eva Arnal, *Review of Jurisprudence on Human Rights and the Environment in Latin America* 3 (Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, Background Paper No. 6, 2002), available at <http://www.unhchr.ch/environment/bp6.html>.

159. *Id.*

160. COLOM. CONST. tit. II, ch. III, art. 79.

161. Fabra & Arnal, *supra* note 158, at 3.

162. *Id.* at 3-4.

Costa Rican courts have interpreted a constitutional “right to a healthy and ecologically balanced environment”¹⁶³ as fundamental, self-executing, and enforceable.¹⁶⁴ In *Carlos Roberto Garcia Chacon*, the Costa Rican Supreme Court stated that the right is one that “all citizens possess to live in an environment free from contamination. This is the basis of a just and productive society.”¹⁶⁵

Brazil’s constitution, with its aim to protect the Amazonian Rain Forest,¹⁶⁶ has among the most detailed environmental provisions of all national constitutions.¹⁶⁷ It remains to be seen whether its promise that “Everyone has the right to an ecologically balanced environment, which is a public good for the people’s use and is essential for a healthy life,”¹⁶⁸ will be enforceable; its enforceability, however, is doubtful.¹⁶⁹ Making matters worse, Brazil’s environmental constitutional provisions face special challenges, given the country’s high foreign debt and reliance on timber, crop, and cattle farming.¹⁷⁰ For similar reasons, the enforcement of FERs in Ecuador has thus far proved elusive.¹⁷¹

Finally, the Indian Constitution allows aggrieved individuals to challenge state action or inaction concerning the environment.¹⁷² Pakistan and Bangladesh have largely followed suit.¹⁷³

163. COSTA RICA CONST. tit. V, art. 50 (as reformed June 10, 1994).

164. Fabra & Arnal, *supra* note 158, at n.5 (listing cases describing right as a “fundamental human right”).

165. *Id.* at 4.

166. James Bruinsma, *Environmental Law: Brazil Enacts New Protections for the Amazon Rain Forest*, 30 HARV. INT’L L.J. 503-05 (1989).

167. Brandl & Bungert, *supra* note 12, at 77-81 (discussing panoply of provisions).

168. BRAZ. CONST. tit. VIII, ch. VI, art. 225.

169. Brandl & Bungert, *supra* note 12, at 78 (“[t]he subjective, or individually enforceable, character of [this provision] is very weak.”) See also Keith S. Rosenn, *Brazil’s New Constitution: An Exercise in Transient Constitutionalism for a Transitional Society*, 38 AM. J. COMP. L. 773, 796-97 (1990).

170. BROWN WEISS ET AL., *supra* note 81, at 417. For further discussion of developments in Brazil, see Edesio Fernandes, *Constitutional Environmental Rights in Brazil*, in HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION, *supra* note 50, at 265, 265-84.

171. For a discussion of environmental rights in Ecuador, see Adriana Fabra, *Indigenous Peoples, Environmental Degradation and Human Rights: A Case Study*, in HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION, *supra* note 50, at 245, 245-264.

172. See Sanjay Chubai, *Environmental Law of India*, in INTERNATIONAL ENVIRONMENTAL LAW AND REGULATION, *supra* note 77, at Ind-1, § 2.2. For a helpful discussion of these environmental rights in India, see Michael Anderson, *Individual Rights to Environmental Protection in India*, in HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION, *supra* note 50, at 199, 199-226. For a discussion of how India pro-

B. Non-enforceable Fundamental Environmental Rights

Some national courts have found that their country's FERs are not self-executing and enforceable.¹⁷⁴ For example, while the Spanish Constitution gives "[e]veryone the right to enjoy an environment suitable for the development of the person," this right falls outside the "rights" the constitution guarantees, and is not actionable.¹⁷⁵ The Hungarian Constitutional Court has construed a passage that "recognizes and . . . implement[s] the individual's right to a healthy environment"¹⁷⁶ to provide only procedural rights.¹⁷⁷ The Turkish Constitutional Court has interpreted the statement that "Everyone has the right to live in a healthy, balanced environment"¹⁷⁸ as permitting solely facial challenges to legislation, notwithstanding its orbit with other "Social and Economic Rights and Duties."¹⁷⁹

With the exception of South Africa, most African FERs provisions have yet to be found enforceable. Cameroon's provision is not enforceable because citizens are not allowed to appeal to the country's constitutional court.¹⁸⁰ Namibia's FER can only be enforced by an ombudsman.¹⁸¹ Likewise, although former communist countries that previously denied FERs now constitute them,¹⁸² FERs are likely to lie dormant due to countervailing economic and social issues and legacy pollution.¹⁸³

tects FERs under constitutional "right to life" provisions, see *supra* note 71 and accompanying text.

173. For discussion of environmental rights in Pakistan, see Martin Lau, *Islam and Judicial Activism: Public Interest Litigation and Environmental Protection in the Islamic Republic of Pakistan*, in HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION, *supra* note 50, at 285, 285-302.

174. Bruch, *supra* note 5, at 138.

175. Brandl & Bungert, *supra* note 12, at 61-63 (noting that the provision "is not enforceable through a constitutional complaint brought by an individual," but must be brought by a state-appointed ombudsman).

176. HUNG. CONST. ch. I, art. 18.

177. Gyula Bandi, *The Right to Environment in Theory and Practice: The Hungarian Experience*, 8 CONN. J. INT'L L. 439, 449 ("[T]he right to an environment may serve as a possible basis for legal action only in the procedure of the Constitutional Court. Only the court is authorized to revise legal provisions based upon constitutionality. The general courts rarely use a constitutional right as a reference in cases.").

178. TURK. CONST. pt. II, ch. three, sec. VIII, pt. A, art 56.

179. Brandl & Bungert, *supra* note 12, at 72-74.

180. Bruch, *supra* note 5, at 139.

181. BROWN WEISS ET AL., *supra* note 81, at 417.

182. *Id.* at 416.

183. *Id.* For a discussion of Ukraine's approach to FERs, see Y. Shemshuchenko, *Human Rights in the Field of Environmental Protection in the Draft of the New Con-*

IV. Conclusion

Of all facets of constitutional environmental protection, fundamental environmental rights are the most salient. Incorporating fundamental environmental rights into national constitutions holds some hope to address the environmental challenges that affect individuals most acutely. However, although the constitutions of nearly one-quarter of the world contain fundamental environmental rights, only a handful have been held to be self-executing and enforceable by affected individuals. Thus, while the wildfire of constituting FERs continues to burn, they will need to mature into enforceable norms to realize their potential and provide warmth and the means for responding to national environmental challenges around the globe.

stitution of the Ukraine, in ENVIRONMENTAL RIGHTS: LAW, LITIGATION & ACCESS TO JUSTICE, supra note 79, at 33, 33-44.

APPENDIX A: NATIONAL CONSTITUTIONS THAT RECOGNIZE ENVIRONMENTAL RIGHTS¹⁸⁴

Afghanistan, Islamic Republic of

Preamble, Paragraph 10: “[E]nsuring a prosperous life and a sound environment for all those residing in this land”

Albania

Part Two, Chapter IV, Article 56: “Everyone has the right to be informed for the status of the environment and its protection.”

Algeria

Title I, Chapter V, Article 66: “Every citizen has the duty to protect public property and the interests of the national collectivity and to respect the property of others.”

Angola

Part II, Article 24(1): “All citizens shall have the right to live in a healthy and unpolluted environment.”

Argentina

First Part, Chapter II, Article 41: “All residents enjoy the right to a healthy, balanced environment which is fit for human development and by which productive activities satisfy current necessities without compromising those of future generations”

Azerbaijan

Second Part, Chapter III, Article 39(I): “Everyone has the right to live in a healthy environment.”

Belarus

Section II, Article 46: “Everyone is entitled to a wholesome environment and to compensation for loss or damage caused by violation of this right.”

184. Unless otherwise noted, all quotations are per CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Oceana Publications), <http://www.oceanalaw.com>.

Belgium

Title II, Article 23(4): “Everyone has the right to lead a life worthy of human dignity . . . [including] the right to enjoy the protection of a healthy environment.”

Bénin, Republic of

Title II, Article 27: “Every person has the right to a healthy, satisfying and lasting environment and has the duty to defend it.”

Brazil

Title II, Chapter I, Article 5, Paragraph LXXIII: “[A]ny citizen has standing to bring a popular action to annul an act injurious to the public patrimony or the patrimony of an entity in which the State participates . . . to the environment”

Title VII, Chapter VI, Article 225: “All persons are entitled to an ecologically balanced environment, which is an asset for the people’s common use and is essential to a healthy life”

Bulgaria

Chapter Two, Article 55: “Citizens have the right to a healthy and favorable environment”

Burkina Faso

Title I, Chapter IV, Article 29: “The right to a healthy environment is recognized; the protection, the defense and the promotion of the environment are a duty for all.”

Title I, Chapter IV, Article 30: “Every citizen has the right to initiate an action or to join a collective action under the form of a petition against the acts . . . affecting the environment or the cultural or historic patrimony.”

Cameroon

Preamble: “[E]very person shall have a right to a healthy environment.”

Part XII, Article 65: “The Preamble shall be part and parcel of this Constitution.”

Cape Verde

Part II, Title III, Article 70(1): "Everyone shall have the right to a healthy, ecologically balanced environment, and the duty to defend and conserve it."

Chad, Republic of

Title II, Chapter I, Article 47: "Every person has the right to a healthy environment."

Chechnya

Section I, Chapter 2, Article 39: "Everyone has the right to favorable environmental surroundings, reliable information about its condition and to compensation for damage caused to his/ her health or property through ecological violations of the law."¹⁸⁵

Chile

Chapter III, Article 19(8): "The right to live in an environment free from contamination."

Colombia

Title II, Chapter III, Article 79: "Every individual has the right to enjoy a healthy environment."

Comoros

Preamble: "[There is] the right of all Comorans to health"

Congo, Republic of the

Title II, Article 35: "Every citizen has the right to a healthy satisfying and durable environment and the duty to defend it. The State watches over the protection and conservation of the environment."

Costa Rica

Title V, Article 50 (as reformed June 10, 1994): "Every person has the right to a healthy and ecologically balanced environment"

185. CHECHNYA CONST., translated in A. Tschentscher (ed.), *International Constitutional Law*, http://www.oefre.unibe.ch/law/icl/cc00000_html (last modified Jan. 2004).

Croatia

Chapter II, Section III, Part III, Article 69: “Everyone shall have the right to a healthy life The State shall ensure conditions for a healthy environment. Everyone shall be bound . . . to pay special attention to the protection of human health, nature and the human environment.”

Democratic Republic of Congo

Title III, Article 54 to Draft Constitution (Constitution of the Transition of the Democratic Republic of Congo): “Every Congolese shall have the right to a healthy environment that is favourable to his development.”

East Timor

Part II, Title III, Article 61(1): “All have the right to a humane, healthy, and ecologically balanced environment and the duty to protect it and improve it for the benefit of the future generations.”

Ecuador

Title III, Chapter 5, Section 2, Article 86: “The State shall protect the right of the population to live in an environment that is healthy and ecologically balanced, and that guarantees sustainable development.”

El Salvador

Title II, Chapter II, First Section, Article 34: “Every child has the right to live in familial and environmental conditions that permit his integral development, for which he shall have the protection of the State.”

Ethiopia

Chapter III, Part II, Article 44(1): “All persons have the right to a clean and healthy environment.”

France

Charter of the Environment of 2004, Article 1: “Everyone has the right to live in a balanced and health-friendly environment.”

Georgia

Chapter Two, Article 37(3): “Everyone shall have the right to live in a healthy environment and enjoy natural and cultural surroundings.”

Guatemala

Title II, Chapter II, Section VII, Article 93: “The right to health is a fundamental right of the human being without any discrimination.”

Honduras, Republic of

Title III, Chapter VII, Article 145: “The right to the protection of one’s health is hereby recognized.”

Hungary

Chapter I, Article 18: “The Republic of Hungary recognizes and shall implement the individual’s right to a healthy environment.”

Chapter XII, Article 70/D: “(1) Everyone living in the territory of the Republic of Hungary has the right to the highest possible level of physical and mental health. (2) The Republic of Hungary shall implement this right through . . . the protection of the . . . natural environment.”

Korea, Republic (South)

Chapter II, Article 35(1): “All citizens have the right to a healthy and pleasant environment.”

Iraq

Article 33(1): “Every individual has the right to live in a correct environmental atmosphere.”¹⁸⁶

Kyrgyz Republic

Section I, Second Chapter, Third Section, Article 35(1): “[C]itizens of the Kyrgyz Republic have the right to a favorable and healthy natural environment and to compensation for the damage caused to health or property by the activity in the area of nature exploitation.”

186. IRAQ CONST., available at <http://www.voanews.com/english/archive/2005-08/2005-08-24-voa39.cfm?CIFD=17134607&CFTOKEN=351250000> (last visited March 25, 2006).

Macedonia

Chapter II, Part 2, Article 43: “Everyone has the right to a healthy environment to live in.”

Mali

Title I, Article 15: “Every person has the right to a healthy environment.”

Moldova

Title II, Chapter II, Article 37(1): “Every person (*om*) has the right to an environment that is ecologically safe for life and health as well as to safe food products and household goods.”

Mongolia

Chapter II, Article Sixteen (1): “The citizens of Mongolia shall enjoy . . . the right to a healthy and safe environment and to be protected against environmental pollution and ecological imbalance.”

Mozambique, Republic of

Part II, Chapter I, Article 72: “All citizens shall have the right to live in . . . a balanced natural environment.”

Nicaragua

Title IV, Chapter III, Article 60: “Nicaraguans have the right to live in a healthy environment.”

Niger, Republic of

Title II, Article 27: “Each person has the right to a healthy environment.”

Norway, Kingdom of

Section E, Article 110 b: “Every person has a right to an environment that is conducive to health and to natural surrounding whose productivity and diversity are preserved.”

Paraguay

Part I, Title II, Chapter I, Section II, Article 7: “Everyone has the right to live in a healthy, ecologically balanced environment.”

Poland, Republic of

Chapter II, Article 74:

1. Public authorities shall pursue policies ensuring the ecological safety of current and future generations.
2. The protection of the environment is the duty of public authorities.
3. Everyone has the right to be informed of the condition and protection of the environment.
4. Public authorities shall support the activities of citizens to protect and improve the quality of the environment.

Portugal (Portuguese Republic)

Part I, Title II, Article 52(3):

To all is conferred—personally or through associations that purport to defend the interests in issue—the right of popular action in the cases and under the conditions specified by law, including the right to advocate on behalf of the aggrieved party or parties . . . to promote the prevention, the suppression and the prosecution of offenses against . . . the preservation of the environment

Russian Federation

Chapter II, Article 42: “Everyone shall have the right to a favorable environment, reliable information about its condition, and to compensation for the damage caused to his or her health or property by ecological violations.”

São Tomé & Príncipe, Democratic Republic of

Part II, Title III, Article 48(1): “All have the right to housing and to an environment of human life”

Seychelles, Republic of

Chapter III, Part I, Article 38: “The State recognises the right of every person to live in and enjoy a clean, healthy and ecologically balanced environment”

Slovak Republic

Part Two, Chapter Six, Article 44(1): “Every person has the right to a favorable environment.”

Slovenia

Section III, Article 72: “Everyone has the right in accordance with the law to a healthy living environment.”

South Africa

Chapter 2, Article 24: “Everyone has the right (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures”

Spain

Title I, Chapter III, Article 45(1): “Everyone has the right to enjoy an environment suitable for the development of the person”

Togo

Title II, Subsection I, Article 41: “Anyone has the right to a healthy environment.”

Turkey

Part II, Chapter Three, Section VIII, Part A, Article 56: “Everyone has the right to live in a healthy, balanced environment.”

Ukraine

Chapter II, Article 50: “Everyone has the right to an environment that is safe for life and health”

Venezuela, Bolivarian Republic of

Title III, Chapter IX, Article 127: “Every person has a right to individually and collectively enjoy a life and a safe, healthy and ecologically balanced environment.”

Yugoslavia, Federal Republic of (Serbia and Montenegro)

Section II, Article 52: “Man has the right to a healthy environment”

APPENDIX B: NON-ENVIRONMENTAL-RIGHTS CONSTITUTIONAL PROVISIONS THAT RELATE TO ENVIRONMENTAL PROTECTION¹⁸⁷

Afghanistan, Islamic Republic of

Chapter One, Article Fifteen: “The State is obligated to adopt necessary measures for . . . proper exploitation of natural resources and the improvement of ecological conditions.”

Albania

Part Two, Chapter V, Article 59 (1)(e)-(f):

The State, within its constitutional powers and the means at its disposal, aims to supplement private initiative and responsibility with . . . (e) a healthy and ecologically adequate environment for the present and future generations; (f) and rational exploration of forests, waters, pastures and other natural resources on the basis of the principle of sustainable development.

Algeria

Title II, Chapter II, Article 122(19)-(25):

The Parliament legislates in the domains attributed to it by the Constitution as well as the following fields: . . .

- (19) General rules relating to the environment and the standard of life and land management;
- (20) General rules relating to the protection of the fauna and flora;
- (21) The protection and safeguarding of the cultural and historic patrimony;
- (22) The general system of forests and pasture lands;
- (23) The general water system;
- (24) The general system of mines and hydrocarbons;
- (25) Real estate

Andorra

Preamble:

187. Unless otherwise noted, all quotations are per CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Oceana Publications), <http://www.oceanalaw.com>.

The Andorran People, with full liberty and independence, and in the exercise of their own sovereignty . . . Willing to bring their collaboration and effort to all the common causes of mankind, and especially to those of preserving the integrity of the Earth and guaranteeing an environment fit for life for the coming generations, . . . Approve the present Constitution, in the exercise of their sovereignty.

Title II, Chapter V, Article 31:

The State has the task of ensuring the rational use of the soil and of all the natural resources, so as to guarantee a befitting quality of life for all and, for the sake of the coming generations, to restore and maintain a reasonable ecological balance in the atmosphere, water and land, as well as to protect the autochthonous flora and fauna.

Angola

Part II, Article 24(2): “The State shall take the requisite measures to protect the environment and national species of flora and fauna throughout the national territory and maintain ecological balance.”

Part II, Article 24(3): “Acts that damage or directly or indirectly jeopardize conservation of the environment shall be punishable by law.”

Argentina

First Part, Chapter II, Article 41: “All residents enjoy the right to a healthy, balanced environment which is fit for human development and by which productive activities satisfy current necessities without compromising those of future generations”

Australia

Chapter IV, Section 100: “The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters or rivers for conservation or irrigation.”

Armenia

Chapter 1, Article 8: “The right to property may not be exercised so as to cause damage to the environment”

Chapter 1, Article 10: “The State shall ensure the protection and reproduction of the environment and the rational utilization of natural resources.”

Chapter 5, Article 89(5): “The Government . . . shall ensure the implementation of state policies in the area[] of . . . environmental protection.”

Austria, Republic of

Chapter I, Part A, Article 10(1):

Legislation and its implementation is a Federal concern (*Bundessache*) in the following matters:

. . . .

10. mining; forestry, including timber floating (*Triftwesen*); water law, regulation and maintenance of waters for the safe diversion of floods or for the purpose of shipping and rafting operations; control of wild streams; construction and maintenance of waterways

. . . .

12. [m]easures to defend the environment against dangerous stresses (*Belastungen*) which originate from the violation of the emission limits

Chapter IV, Part C, Article 118(9): “Particularly entrust[ing] to the care of the Municipality in its own operational area . . . local spatial planning.”

Azerbaijan Republic

Second Part, Chapter III, Article 39(I): “Everyone has the right to live in a healthy environment.”

Second Part, Chapter III, Article 39(II): “Everyone has the right to collect information on the environmental situation and to get compensation for damage rendered to the health and property due to the violation of ecological rights.”

Bahrain, Kingdom of

Chapter II, Article 11: “All natural wealth and resources are State property. The State shall safeguard them and exploit them properly, while observing the requirements of the security of the State and of the national economy.”

Belarus, Republic of

Section II, Article 46: “Everyone is entitled to a wholesome environment and to compensation for loss or damage caused by violation of this right.”

Section II, Article 44: “The exercise of the right of property must not . . . be harmful to the environment”

Section II, Article 34: “Citizens are guaranteed the right to receive, store and disseminate complete, reliable, and timely information . . . on the state of the environment.”

Section II, Article 55: “It is the duty of everyone to protect the environment.”

Belgium

Title II, Article 23(4): “Everyone has the right to lead a life worthy of human dignity . . . [including] the right to enjoy the protection of a healthy environment.”

Belize

Commencement (e): “Whereas the People of Belize . . . require policies of state . . . which protect the environment”

Bénin, Republic of

Title II, Article 27: “Every person has the right to a healthy, satisfying and lasting environment, and has the duty to defend it. The State shall watch over the protection of the environment.”

Annex to the Constitution of the Republic of Bénin, Part I, Chapter I, Article 24: “All peoples have the right to a general satisfactory environment favourable to their development.”

Bolivia

Part Three, Title Three, Article 170: “The State shall regulate the system of exploitation of renewable natural resources, with provisions for their conservation and increment.”

Part Three, Title I, Chapter II, Article 137: “Assets in patrimony of the nation constitute public property which is inviolable, and it is the duty of every inhabitant of the national territory to respect and protect it.”

Brazil

Title II, Chapter I, Article 5, Paragraph LXXIII: “[A]ny citizen has standing to bring a popular action to annul an act injurious to the public patrimony or the patrimony of an entity in which the State participates . . . to the environment”

Title III, Chapter II, Article 23, Paragraphs VI-VII: “The Union, States, Federal District and Counties, shall have joint powers to . . . (VI) protect the environment and combat pollution in any of its forms; (VII) preserve the forests, fauna and flora”

Title III, Chapter II, Article 24, Paragraph VI-VIII:

The Union, States and Federal District shall have concurrent power to legislate on . . . (VI) forests, hunting, fishing, fauna, preservation of nature, defense of the soil and natural resources, protection of the environment and pollution control; (VII) protection of the historic, cultural, artistic, touristic, and scenic patrimony; (VIII) liability for damages to the environment, consumers, property and rights of artistic, aesthetic, historic, tourist, and scenic value

Title VII, Chapter I, Article 170, Paragraph VI:

The economic order, founded on the appreciation of the value of human labor and free enterprise, is intended to assure everyone a dignified existence, according to the dictates of social justice, observing . . . environmental protection, including through differentiated treatment in accordance with the environmental impact of the products and services and the processes by which they are elaborated and rendered

Title VII, Chapter I, Article 174, Section 3: “The State shall favor organization of cooperatives for prospecting and placer-mining activity, taking into account protection of the environment and the socio-economic promotion of the prospectors and miners.”

Title VIII, Chapter VI, Article 225:

Everyone has the right to an ecologically balanced environment, which is a public good for the people’s use and is essential for a healthy life. The Government and the community have a duty to defend and to preserve the environment for present and future generations.

Section 1. To assure the effectiveness of this right, it is the responsibility of the Government to:

I - preserve and restore essential ecological processes and provide for ecological management of species and ecosystems;

II - preserve the diversity and integrity of the Country's genetic patrimony and to supervise entities dedicated to research and manipulation of genetic material;

III - define, in all units of the Federation, territorial spaces and their components that are to be specially protected, with any change or suppression permitted only through law, prohibiting any use that compromises the integrity of the characteristics that justify their protection;

IV - require, as provided by law, a prior environmental impact study, which shall be made public, for installation of works or activities that may cause significant degradation of the environment;

V - control production, commercialization and employment of techniques, methods and substances that carry a risk to life, the quality of life and the environment;

VI - promote environmental education at all levels of teaching and public awareness of the need to preserve the environment;

VII - protect the fauna and the flora, prohibiting, as provided by law, all practices that jeopardize their ecological functions, cause extinction of species or subject animals to cruelty.

Section 2. Those who exploit mineral resources are obligated to restore any environmental degradation, in accordance with technical solutions required by the proper governmental agencies, as provided by law.

Section 3. Conduct and activities considered harmful to the environment shall subject the infractors, be they individuals or legal entities, to criminal and administrative sanctions, irrespective of the obligation to repair the damages caused.

Section 4. The Brazilian Amazonian Forest, the Atlantic Forest, the Serra do Mar, the Pantanal of Mato Grosso, and the Coastal Zone are part of the national patrimony, and they shall be utilized, as provided by law, under conditions assuring preservation of the environment, including use of natural resources.

Section 5. Lands necessary to protect natural ecosystems, which are vacant or which have reverted to the States through discriminatory actions are inalienable.

Section 6. Power plants with nuclear reactors shall be located as defined in federal law and may not be installed otherwise.

Bulgaria

Chapter Two, Article 55: "Citizens have the right to a healthy and favorable environment"

Chapter 1, Article 15: "[The State must] ensure the protection and conservation of the environment, the sustenance of animals and the maintenance of their diversity, and the sensible utilization of the country's natural wealth and resources."

Burkina Faso

Title I, Chapter IV, Article 29: "The right to a healthy environment is recognized; the protection, the defense and the promotion of the environment are a duty for all."

Title I, Chapter IV, Article 30: "Every citizen has the right to initiate an action or to join a collective action under the form of a petition against the acts . . . affecting the environment or the cultural or historic patrimony."

Burundi, Republic of

Title III, Part 2, Article 49: "Public property is sacred and inviolable. Every [person] has the duty to respect it scrupulously and protect it."

Cambodia, Kingdom of

Chapter V, Article 59: "The State shall protect the environment and balance of abundant natural resources and establish a precise plan of management of land, water, air, wind, geology, ecological system, mines, energy, petrol and gas, rocks and sand, gems, forests and forestry products, wildlife, fish and aquatic resources."

Cameroon

Preamble: "[E]very person shall have a right to a healthy environment. The protection of the environment shall be the duty of every citizen. The State shall ensure the protection and improvement of the environment"

Part XII, Paragraph 65: "The Preamble shall be part and parcel of this Constitution."

Canada

Chapter VI, Article 92A(1): "In each province, the legislature may exclusively make laws in relation to (a) exploration for non-renew-

able natural resources in the province; [and] (b) development, conservation and management of non-renewable natural resources and forestry resources in the province”

Cape Verde

Part I, Title I, Article 7(j): Fundamental duties of the state include “To protect the land, nature, natural resources, and environment, as well as the historical-cultural and artistic national heritage”

Part II, Title III, Article 70(1): “Everyone shall have the right to a healthy, ecologically balanced environment, and the duty to defend and conserve it.”

Part II, Title III, Article 70(2): “The state and municipalities, with the cooperation of associations for environmental protection, shall adopt policies for the protection and conservation of environment.”

Part II, Title III, Article 70(3): “The State shall stimulate and support the creation of associations for the protection of the environment and protect natural resources.”

Chad, Republic of

Title II, Chapter I, Article 47: “Every person has the right to a healthy environment.”

Title II, Chapter I, Article 48: “The State and the Decentralized Territorial Collectivities must see to the protection of the environment.”

Title II, Chapter II, Article 52: “Every citizen has the duty to respect and protect the environment.”

Chechnya

Section I, Chapter 2, Article 33:

- (1) Citizens and their associations have the right to own land.
- (2) The ownership, usage and disposition of land and other natural resources is to be realized freely if it does not inflict damage on the surrounding environment and does not violate the law and legal interests of other people.
- (3) The terms and procedures for the use of land are determined on the basis of federal laws.

Section 1, Chapter 2, Article 39: “Everyone has the right to a decent environment, reliable information about its condition and

compensation for damage caused to their health or property as a result of violation of ecological violations of the law.”

Section 1, Chapter 2, Article 55: “Everyone is obliged to preserve nature and prevent damages, as well as to be careful with removing natural riches.”¹⁸⁸

Chile

Chapter III, Article 19:

The Constitution guarantees to all persons . . .

. . .

(8) The right to live in an environment that is free from contamination.

. . .

(24) The right of property in its different forms in respect of all classes of material and immaterial property. Only the law may establish the manner in which property is acquired, used, enjoyed and disposed of, and the limitations and obligations derived from its social function. This includes, to the extent required by the general interests of the Nation, national security, public utility and public health and the conservation of the environmental patrimony.

Chapter III, Article 20:

Anybody who, due to arbitrary or illegal actions or omissions, suffers privation, disturbance or threats in the legitimate exercise of the rights and guarantees established in Article 19 . . .

(24) . . . may . . . approach the respective Court of Appeal which shall immediately adopt the measures that it deems necessary to re-establish the rule of law and to ensure the due protection of the affected person without prejudice to other rights which he/she might invoke before the competent authorities or courts. The action of 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.

188. CHECHNYA CONST., translated in A. Tschentscher (ed.), *International Constitutional Law*, http://www.oefre.unibe.ch/law/icl/cc00000_.html (last modified Jan. 2004).

China, People's Republic of

Chapter I, Article 9: “The state ensures the rational use of natural resources and protects rare animals and plants. The appropriation or damage of natural resources by any organization or individual by whatever means is prohibited.”

Chapter I, Article 26: “The state protects and improves the living environment and the ecological environment, and prevents and remedies pollution and other public hazards. The state organizes and encourages forestation and the protection of forests.”

Colombia

Title II, Chapter III, Article 79:

Every individual has the right to enjoy a healthy environment. The law will guarantee the community's participation in the decisions that may affect it. It is the duty of the State to protect the diversity and integrity of the environment, to conserve the areas of special ecological importance, and to foster education for the achievement of these ends.

Title II, Chapter III, Article 80:

The State will plan the handling and use of natural resources in order to guarantee their sustainable development, conservation, restoration, or replacement. Additionally, it will have to caution and control the factors of environmental deterioration, impose legal sanctions, and demand the repair of any damage caused. In the same way, it will cooperate with other nations in the protection of the ecosystems located in the border areas.

Title V, Chapter V, Article 95(8): “[Every individual must] protect the country's cultural and natural resources and to keep watch that a healthy environment is being preserved.”

Comoros

Preamble: “[There is] the right of all Comorans to health”

Congo, Democratic Republic of

Title III, Article 54: “Every Congolese shall have the right to a healthy environment that is favorable to his development.”

Congo, Republic of the

Title II, Article 35: "Every citizen has the right to a healthy satisfying and durable environment and the duty to defend it. The State watches over the protection and conservation of the environment."

Title VI, Article 111: "The Law shall also regulate the fundamental principles . . . of agriculture, husbandry, fishing and of waters and forests."

Costa Rica

Title V, Article 50 (as reformed June 10, 1994):

Every person has the right to a healthy and ecologically balanced environment. Due to this, the person is justified to denounce those acts which infringe this right and to claim reparation for harm caused. The State shall guarantee, defend and preserve this right. The law will determine the corresponding responsibilities and sanctions.

Croatia

Chapter II, Section III, Part III, Article 69: "Everyone has the right to a healthy life. The State shall ensure conditions for a healthy environment. Everyone shall be bound . . . to pay special attention to the protection of human health, nature and the human environment."

Cuba

Chapter I, Article 27:

The State protects the environment and natural resources of the country. It recognizes their close link with the sustainable economic and social development for making human life more sensible, and for ensuring the survival, welfare, and security of present and future generations. It corresponds to the competent organs to implement this policy. It is the duty of the citizens to contribute to the protection of the water and the atmosphere, and to the conservation of the soil, flora, fauna and all the rich potential of nature.

East Timor

Part II, Title III, Section 61(1): “All have the right to a humane, healthy, and ecologically balanced environment and the duty to protect it and improve it for the benefit of the future generations.”

Part II, Title III, Section 61(2): “The State recognizes the need to preserve and rationalize natural resources.”

Part II, Title III, Section 61(3): “The State shall promote actions aimed at protecting the environment and safeguarding the sustainable development of the economy.”

Ecuador

Title III, Chapter 5, Section 2, Article 86: “The State shall protect the right of the population to live in a healthy and ecologically balanced environment, that guarantees sustainable development.”

El Salvador

Title II, Chapter II, First Section, Article 34: “Every child has the right to live in familial and environmental conditions that permit his integral development, for which he shall have the protection of the State.”

Title II, Chapter II, Fourth Section, Article 69: “[T]he State shall control the quality of food products and the environmental conditions that may affect health and well-being.”

Equatorial Guinea

Part Article 6: “The State shall . . . ensure the conservation of nature”

Eritrea

Chapter II, Article 8(2): “The State shall work to bring about a balanced and sustainable development throughout the country, and shall use all available means to enable all citizens to improve their livelihood in a sustainable manner, through their participation.”

Chapter II, Article 8(3): “[T]he State shall be responsible for managing all land, water, air and natural resources and for ensuring their management in a balanced and sustainable manner; and for creating the right conditions to secure the participation of the people in safeguarding the environment.”

Estonia

Chapter II, Article 34:

All persons who are legally sojourning in Estonia shall have the right to freedom of movement and choice of residence. The right to freedom of movement may be restricted only in the cases and in accordance with procedures established by law for the protection of the rights and liberties of others, in the interest of national defence, in the event of a natural disaster or a catastrophe, or in order to prevent the spread of infectious diseases, *to protect the environment . . .* [emphasis added]

Chapter II, Article 53: "Everyone shall be obligated to preserve the human and natural environment and to compensate for damages caused by him or her to the environment."

Ethiopia

Chapter III, Part II, Article 44(1): "All persons have the right to a clean and healthy environment."

Chapter III, Part II, Article 44(2): "All persons who have been displaced or whose livelihoods have been adversely affected as a result of State programmes have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance."

Chapter X, Article 92(1): "Government shall endeavor to ensure that all Ethiopians live in a clean and healthy environment."

Chapter X, Article 92(2): "The design and implementation of programmes and projects of development shall not damage or destroy the environment."

Chapter X, Article 92(3): "People have the right to full consultation and to the expression of views in the planning and implementations of environmental policies and projects that affect them directly."

Chapter X, Article 92(4): "Government and citizens shall have the duty to protect the environment."

Finland

Chapter 2, Section 20:

Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone. The public authori-

ties shall endeavor to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.

France

Charter of the Environment of 2004:

The French people *recognizing* that the natural resources and their balance have been the prerequisite for the emergence of mankind; that the future and the very existence of mankind cannot be separated from its natural environment; that the environment is the common heritage of human beings; that man exercises a growing influence on the conditions of life and on his own evolution; that biological diversity, the free development of the individual and the progress of human societies are affected by certain patterns of consumption or protection and by the excessive exploitation of natural resources; that the preservation of the environment must be pursued in the same way as the other fundamental interests of the Nation; that in order to achieve sustainable development, the choices made to meet the needs of the present shall not compromise the capacity of future generations and of other peoples to satisfy their own needs, *proclaim*

Article 1

Everyone has the right to live in a balanced and health-friendly environment.

Article 2

Everyone is obliged to take part in the preservation and improvement of the environment.

Article 3

Everyone shall, subject to the conditions defined by the law, avoid any disturbance which he or she is likely to cause to the environment or, if that is not possible, limit its consequences.

Article 4

Everyone shall contribute to the reparation of the damages which he or she caused to the environment, subject to the conditions defined by the law.

Article 5

Where the occurrence of a damage, even if it is uncertain in the light of scientific knowledge, could gravely and irreversibly affect the environment, the public authorities make sure, through application of the precautionary principle and within their respective fields of competences, that risk assessments are carried

out and provisional and proportionate measures are adopted in order to prevent the occurrence of the damage.

Article 6

The public policies shall promote sustainable development. To this effect, they reconcile protection and utilization of the environment, economic development and social progress.

Article 7

Everyone has the right, subject to the conditions and within the limits defined by the law, to have access to the information relating to the environment held by the public authorities and to participate in the making of public decisions which have an impact on the environment.

Article 8

Education and training on the environment shall contribute to the exercise of the rights and obligations defined by this Charter.

Article 9

Research and innovation shall assist the preservation and utilization of the environment.

Article 10

This Charter inspires the action of France at the European and international level.

Gambia

Chapter XX, 218: "The State and all the people of The Gambia shall strive to protect, preserve and foster the . . . natural . . . heritage of The Gambia."

Georgia

Chapter Two, Article 37(3): "Everyone shall have the right to live in a healthy environment and enjoy natural and cultural surroundings."

Chapter Two, Article 37(4): "With a view to ensuring a safe environment, in accordance with the ecological and economic interests of society and with due regard to the interests of the current and future generations, the State shall guarantee the protection of the environment and the rational use of natural resources."

Chapter Two, Article 37(5): "A person shall have the right to receive complete, objective and timely information on the state of his/her working and living environment."

Germany, Federal Republic of

II, Article 20a: “Mindful also of its responsibility toward future generations, the State protects also the natural bases of life and the animals within the framework of the constitutional order by legislation, and in accordance with law and justice, by executive and judicial power.”

Ghana, Republic of

Chapter VI, Article 36(9): “The State shall take appropriate measures needed to protect and safeguard the national environment for posterity; and shall seek co-operation with other states and bodies for purposes of protecting the wider international environment for mankind.”

Chapter VI, Article 41(k): “[I]t shall be the duty of every citizen to: . . . protect and safeguard the environment.”

Greece

Part Two, Article 24(1):

The protection of the natural and cultural environment constitutes a duty of the State and a right of every person. The State is bound to adopt special preventive or repressive measures for the preservation of the environment in the context of the principle of sustainability. Matters pertaining to the protection of forests and forest expanses in general shall be regulated by law. The compilation of a forest register constitutes an obligation of the State. Alteration of the use of forests and forest expanses is prohibited, except where agricultural development or other uses imposed for the public interest prevail for the benefit of the national economy.

Guatemala, Republic of

Title II, Chapter II, Section VII, Article 93: “The right to health is a fundamental right of the human being without any discrimination.”

Title II, Chapter II, Section VII, Article 97:

The State, the municipalities, and the inhabitants of the national territory are obliged to promote social, economic, and technological development that would prevent the contamination of the environment and maintain the ecological balance. It will issue all the necessary regulations to guarantee that the

use of the fauna, flora, land, and water may be realized rationally, obviating their depredation.

Guinea-Bissau

Title I, Article 15: "The object of public health shall be to . . . encourage [the people's] balanced integration into the social ecological sphere in which they live."

Guyana, Co-operative Republic of

Part I, Chapter II, Article 36: "In the interests of the present and future generations, the State will protect and make rational use of its land, mineral and water resources, as well as its fauna and flora, and will take all appropriate measures to conserve and improve the environment."

Haiti, Republic of

Title VIII, Chapter II, Article 253: "[A]ny practices that might disturb the ecological balance are strictly forbidden."

Title VIII, Chapter II, Article 258: "No one may introduce into the country wastes or residues of any kind from foreign sources."

Title VIII, Chapter II, Article 254: "The State shall organize the enhancement of natural sites to ensure their protection and make them accessible to all."

Title VIII, Chapter II, Article 257: "The law specifies the conditions for protecting flora and fauna, and punishes violations thereof."

Honduras, Republic of

Title III, Chapter VII, Article 145: "The right to the protection of one's health is hereby recognized The State shall maintain a satisfactory environment for the protection of everyone's health."

Hong Kong

Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, Chapter IV, Section 5, Article 97:

District organizations which are not organs of political power may be established in the Hong Kong Special Administrative Region, to be consulted by the government of the Region on district administration and other affairs, or to be responsible for

providing services in such fields as culture, recreation and environmental sanitation.

Chapter V, Section 1, Article 119: “The Government of the Hong Kong Special Administrative Region shall formulate appropriate policies to promote and co-ordinate the development of various trades such as manufacturing, commerce, tourism, real estate, transport, public utilities, services, agriculture and fisheries, and pay regard to the protection of the environment.”

Hungary

Chapter I, Article 18: “The Republic of Hungary recognizes and shall implement the individual’s right to a healthy environment.”

Chapter XII, Article 70/D: “(1) Everyone living in the territory of the Republic of Hungary has the right to the highest possible level of physical and mental health. (2) The Republic of Hungary shall implement this right through . . . the protection of the . . . natural environment.”

India

Part IV, Article 48A: “The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”

Part IVA, Article 51A(g): “It shall be the duty of every citizen of India . . . to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures”

Iran, Islamic Republic of

Chapter IV, Article 50:

The preservation of the environment, in which the present as well as the future generations have a right to flourishing social existence, is regarded as a public duty in the Islamic Republic. Economic and other activities that inevitably involve pollution of the environment or cause irreparable damage to it are therefore forbidden.

Iraq

Article 33(2): "The state guarantees protection and preservation of the environment and biological diversity."¹⁸⁹

Iroquois Nations

THE GREAT BINDING LAW, GAYANASHAGOWA:

7. Whenever the Confederate Lords shall assemble for the purpose of holding a council, the Onondaga Lords shall open it by expressing their gratitude to their cousin Lords and greeting them, and they shall make an address and offer thanks to the earth where men dwell, to the streams of water, the pools, the springs and the lakes, to the maize and the fruits, to the medicinal herbs and trees, to the forest trees for their usefulness, to the animals that serve as food and give their pelts for clothing, to the great winds and the lesser winds, to the Thunderers, to the Sun, the mighty warrior, to the moon, to the messengers of the Creator who reveal his wishes and to the Great Creator who dwells in the heavens above, who gives all the things useful to men, and who is the source and the ruler of health and life. Then shall the Onondaga Lords declare the council open. The council shall not sit after darkness has set in.

73. The soil of the earth from one end of the land to the other is the property of the people who inhabit it. By birthright the Ongwehonweh (Original beings) are the owners of the soil which they own and occupy and none other may hold it. The same law has been held from the oldest times. The Great Creator has made us of the one blood and of the same soil he made us and as only different tongues constitute different nations he established different hunting grounds and territories and made boundary lines between them.¹⁹⁰

Italy

Part II, Title V, Article 117(s): "The state has exclusive legislative power with respect to . . . the protection of the environment, [and] the ecosystem"

189. IRAQ CONST., available at <http://www.voanews.com/english/archive/2005-08/2005-08-24-voa39.cfm?CIFD=17134607&CFTOKEN=35125000> (last visited March 25, 2006).

190. IROQUOIS CONST., translated in the University of Oklahoma Law Center, <http://www.law.ou.edu/iroquois.html> (last visited Mar. 3, 2006).

Kazakhstan

Section II, Article 31(1): “The State sets objectives for the protection of the environment favorable for the life and health of the people.”

Section II, Article 38: “Citizens . . . are obligated to preserve nature and protect natural resources.”

Section II, Article 31(2): “Officials are held accountable . . . for the concealment of facts and circumstances endangering the life and health of the people.”

Korea, Democratic People’s Republic of (North)

Chapter 3, Article 57: “The State shall adopt measures to protect the environment in preference to production, preserve and promote the natural environment and prevent environmental pollution so as to provide the people with a hygienic environment and working conditions.”

Kuwait

Part II, Article 21: “Natural resources and all revenues therefrom are the property of the State. It shall ensure their preservation and proper exploitation”

The Kyrgyz Republic

Section I, Second Chapter, Third Section, Article 35(1): “[C]itizens of the Kyrgyz Republic have the right to a favorable and healthy natural environment and to compensation for the damage caused to health or property by the activity in the area of nature exploitation.”

Section I, Second Chapter, Third Section, Article 35(2): “Careful treatment of the environment, natural resources and historical monuments is the sacred duty of every citizen.”

Laos (Lao People’s Democratic Republic)

Chapter II, Article 17: “All organization and citizens must protect the environment and natural resources: land, underground, forests, fauna, water sources and atmosphere.”

Latvia

Chapter VIII, Article 115: “The State shall protect the right of everyone to live in a benevolent environment by providing informa-

tion about environmental conditions and by promoting the preservation and improvement of the environment.”

Liberia, Republic of

Chapter II, Article 7: “The Republic shall, consistent with the principles of individual freedom and social justice enshrined in this Constitution, manage the national economy and the resources of Liberia”

Lithuania

Chapter 4, Article 53: “The State and each individual must protect the environment from harmful influences.”

Chapter 4, Article 54:

The State shall concern itself with the protection of the natural environment, its fauna and flora, separate objects of nature and particularly valuable districts, and shall supervise the moderate utilization of natural resources as well as their restoration and augmentation. The exhaustion of land and entrails of the earth, the pollution of waters and air, the production of radioactive impact, as well as the impoverishment of fauna and flora shall be prohibited by law.

Macedonia

Chapter II, Part 2, Article 43: “Everyone has the right to a healthy environment to live in.”

Chapter I, Article 8: Regarding “proper urban and rural planning to promote a congenial human environment, as well as ecological protection and development.”

Chapter II, Part 2, Article 43: “Everyone is obliged to promote and protect the environment.”

Madagascar, Republic of

Title II, Sub-title II, Article 35: “The Fokonolona can take the appropriate measures tending to oppose acts susceptible to destroy their environment, dispossess them of their land, claim the traditional spaces allocated to their herds of cattle or claim their ceremonial heritage, unless these measures may undermine the general interest or public order.”

Title II, Sub-title II, Article 37: “The State guarantees the freedom of enterprise within the limits of respect for the general interest, the public order and the environment.”

Title II, Sub-title II, Article 39: “Everyone shall have the duty to respect the environment. The State, with the participation of the autonomous provinces, assures the protection, the conservation and the improvement [*valorisation*] of the environment through appropriate means.”

Malawi

Chapter III, Article 13(d):

The State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at . . . manag[ing] the environment responsibly in order to (i) prevent the degradation of the environment, (ii) provide a healthy living and working environment for the people of Malawi, (iii) accord full recognition to the rights of future generations by means of environmental protection and the sustainable development of natural resources, and (iv) conserve and enhance the biological diversity of Malawi.

Malaysia

Part VI, Chapter V, Article 92(3): “In this Article, ‘development plan’ means a plan for the development, improvement, or conservation of the natural resources of a development area, the exploitation of such resources, or the increase of means of employment in the area.”

Mali

Title I, Article 15: “Every person has the right to a healthy environment. The protection, defense and promotion of the environment are an obligation for all and for the State.”

Malta

Chapter II, Article 9: “The State shall safeguard the landscape . . . of the Nation.”

Mauritania, Islamic Republic of

Title IV, Article 57: "The following shall be the domain of the law . . . general regulation of water, mines and hydro-carbons, fishing and the merchant marine, fauna, flora and the environment"

Mauritius

Chapter II, Section 8(4)(a): Making exceptions to the constitution's prohibition against the compulsory taking of property when:

(v) by reason of its being in a dangerous state or injurious to the health of human beings, animals, trees or plants . . . [or] (vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out on it (A) of work of soil conservation or the conservation of other natural resources; or (B) of agricultural development or improvement that the owner or occupier of the land has been required, and has, without reasonable and lawful excuse, refused or failed to carry out

Mexico

First Title, Chapter I, Article 27: "The Nation shall . . . [take] necessary measures . . . to prevent the destruction of natural resources."

Micronesia, Federated States of

Preamble: "[W]e affirm our common wish . . . to preserve the heritage of the past, and to protect the promise of the future."

Moldova

Title II, Chapter II, Article 37(1): "Every person (*om*) has the right to an environment that is ecologically safe for life and health as well as to safe food products and household goods."

Title II, Chapter II, Article 37(4): "Physical and juridical persons are responsible for damages caused to the health and property of a person as a result of an ecological contravention."

Title II, Chapter II, Article 46(5): "The right to private property obligates (*obliga*) the observance of requirements regarding the protection of the environment and maintenance of good neighborly relations as well as to the observance of other requirements, which are placed upon the owner according to the law."

Title II, Chapter III, Article 59: “The protection of the environment [and] the preservation and protection of historical and cultural monuments are the duty of every citizen.”

Title II, Chapter II, Article 37(2): “The State guarantees every person the right of free access to truthful information regarding the state of the natural environment, the living and working conditions and the quality of food products and household goods.”

Mongolia

Chapter Two, Article Sixteen (1): “The citizens of Mongolia shall enjoy . . . the right to a healthy and safe environment and to be protected against environmental pollution and ecological imbalance.”

Chapter One, Article Six (1): “The land, its subsoil, forests, water, fauna and flora and other natural resources shall be subject to national sovereignty and State protection.”

Chapter One, Article Six (4):

The State shall have the right to hold responsible the landowners in connection with the manner the land is used, to exchange or take it over with compensation on the grounds of special public need, or confiscate the land if it is used in a manner adverse to the health of the population, the interests of environmental protection and national security.

Chapter Two, Article Seventeen (2): “Working, protecting his/her health, bringing up and educating his/her children and protecting nature and the environment shall be a sacred duty for every citizen.”

Chapter Three, Part III, Article Thirty-Eight (2)(4): “Carrying out the State laws and directing the economic, social and cultural development of the country, the Government shall exercise the following powers . . . To undertake measures on the protection of the environment and on the rational use and restoration of natural resources”

Mozambique, Republic of

Part II, Chapter I, Article 72: “All citizens shall have the right to live in, and the duty to defend, a balanced natural environment.”

Part I, Chapter VI, Article 37: “The State shall promote efforts to guarantee the ecological balance and the conservation and preser-

vation of the environment for the betterment of the quality of life of its citizens.”

Myanmar (The Socialist Republic of the Union of Burma)

Chapter II, Article 18:

The State (a) is the ultimate owner of all natural resources above and below the ground, above and beneath the waters and in the atmosphere, and also of all the lands; [and] (b) shall develop, extract, exploit and utilize the natural resources in the interest of the working people of all the national races.

Namibia, Republic of

Chapter 11, Article 95(1):

The State shall actively promote and maintain the welfare of the people by adopting, *inter alia*, policies aimed at . . . maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future. . . . [T]he Government shall provide measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory.

Nepal, Kingdom of

Part 4, Article 26(4):

The State shall give priority to the protection of the environment and also to the prevention of its further damage due to physical development activities by increasing the awareness of the general public about environmental cleanliness, and . . . [to] make arrangements for the special protection of the rare wildlife, the forests and the vegetation

Netherlands, Kingdom of

Chapter 1, Article 21: “It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment.”

Nicaragua

Title IV, Chapter III, Article 60: “Nicaraguans have the right to live in a healthy environment.”

Title VI, Chapter I, Article 102: “The natural resources are national patrimony. The preservation of the environment, and the conservation, development and rational exploitation of the natural resources are responsibilities of the State”

Niger, Republic of

Title II, Article 27:

Each person has the right to a healthy environment. Everyone is obligated to the preservation and amelioration of the environment where he/she lives. The stocking, handling and evacuation of toxic or polluted waste from factories or other industrial or “artisanal” units settled in the national territory shall be regulated by the law. The transit, importation, stocking, burying, pouring in the national territory of foreign toxic or polluted waste as well as any agreement concerning such matters shall constitute a crime against the Nation punished by the law.

Norway, Kingdom of

Section E, Article 110 b:

Every person has a right to an environment that is conducive to health and to natural surrounding 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. In order to safeguard their right [to a healthy environment],” the Constitution establishes the right of citizens “to be informed of the state of the natural environment and of the effects of any encroachments on nature that are planned or commenced.

Oman

Chapter II, Article 11:

All natural resources and revenues therefrom shall be the property of the State which will preserve and utilize them in the best manner taking into consideration the requirements of the State’s security and the interests of national economy. No concession or investment in any of the public resources of the coun-

try may be granted except by virtue of a law and for a limited period, provided the national interests are safeguarded.

Palau, Republic of

Article VI: "The national government shall take positive action to . . . conserv[e] a beautiful, healthful and resourceful natural environment"

Palestine

Chapter One, Article (15): "The state strives to achieve a clean, balanced environment whose protection shall be an official and societal responsibility. Tampering with it is punishable by law."¹⁹¹

Panama, Republic of

Title III, Chapter 7, Article 114: "The State has the fundamental obligation to guarantee that its population lives in a healthy environment, free of contamination (pollution), and where air, water, and foodstuffs satisfy the requirements for proper development of human life."

Title III, Article 115: "The State, and all the inhabitants of the national territory, have the obligation of promoting economic and social development that prevents environmental contamination, maintains ecological balance, and avoids the destruction of ecosystems."

Title III, Article 116: "The State shall regulate, supervise, and apply, at the proper time, the measures necessary to guarantee rational use of, and benefit from, land, river and sea life, as well as forests, lands and waters, to avoid their misuse, and to ensure their preservation, renewal, and permanence."

Title III, Article 117: "Benefits gained from non-renewable natural resources shall be regulated by law, to avoid social, economic and environmental abuses that could result."

Papua New Guinea, Independent State of

Chapter No. 1, Preamble, Section 4:

We declare our fourth goal to be for Papua New Guinea's natural resources and environment to be conserved and used for the

191. CONST. STATE OF PALESTINE, Third Draft (Mar. 7, 2003, revised Mar. 25, 2003), available at <http://www.jmcc.org/documents/palestineconstitution-eng.pdf>.

collective benefit of all and be replenished for the benefit of of future generations. We accordingly call for

- (1) wise use to be made of natural resources and the environment . . . in the interests of development and in trust for future generations; and
- (2) the conservation and replenishment, for the benefit of ourselves and posterity, of the environment and its sacred, scenic, and historical qualities; and
- (3) all necessary steps to be taken to give adequate protection to our valued birds, animals, fish, insects, plants and trees.”

Chapter No. 1, Preamble, Section 5, Basic Social Obligations (d): “[A]ll persons in [Papua New Guinea] have the . . . basic obligations . . . to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations”

Paraguay

Part I, Title II, Chapter I, Section II, Article 7: “Everyone has the right to live in a healthy, ecologically balanced environment The preservation, recovery, and improvement of the environment, as well as efforts to reconcile these goals with comprehensive human development, are priority objectives”

Part I, Title II, Chapter I, Section II, Article 8:

Those activities that are likely to cause environmental changes will be regulated by law. Similarly, the law may restrict or prohibit those activities that are considered hazardous.

. . . .

A law will define and establish sanctions for ecological crimes. Any damage to the environment will entail an obligation to restore and to pay for damages.

Peru, Republic of

Title III, Chapter II, Article 67: “The State determines national environmental policy. It promotes the sustainable use of its natural resources.”

Philippines, Republic of

Article II, Section 16: “The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”

Poland, Republic of

Chapter II, Article 74:

1. Public authorities shall pursue policies ensuring the ecological safety of current and future generations.
2. The protection of the environment is the duty of public authorities.
3. Everyone has the right to be informed of the condition and protection of the environment.
4. Public authorities shall support the activities of citizens to protect and improve the quality of the environment.

Portugal (Portuguese Republic)

Part I, Section II, Chapter I, Article 9(e): "Fundamental responsibilities of the State shall be . . . To protect and enhance the cultural heritage of the Portuguese people, to protect nature and the environment, to conserve natural resources and to ensure the proper development of the national territory"

Part I, Section II, Chapter II, Article 52(3):

To all is conferred—personally or through associations that purport to defend the interests in issue—the right of popular action in the cases and under the conditions specified by law, including the right to advocate on behalf of the aggrieved party or parties . . . to promote the prevention, the suppression and the prosecution of offenses against . . . the preservation of the environment

Part I, Section III, Chapter II, Article 66(1): "Everyone has the right to a healthy and ecologically balanced human environment and the duty to defend it."

Qatar

Chapter II, Article 33: "The State endeavors to protect the environment and its natural balance, to achieve comprehensive and sustainable development for all generations."

Romania

Title IV, Article 135(2)(e): "The State is expected to ensure . . . the restoration and protection of the environment, as well as the preservation of ecological balance."

Title II, Chapter II, Article 44(6): “The right to own property implies an obligation to comply with duties related to environmental protection . . .”

Russian Federation

Chapter II, Article 42: “Everyone shall have the right to a favorable environment, reliable information about its condition, and to compensation for the damage caused to his or her health or property by ecological violations.”

Chapter I, Article 9(1): “The land and other natural resources are utilized and protected in the Russian Federation as the basis of the life and activity of the peoples living on their respective territories.”

Chapter II, Article 58: “Everyone is obligated to preserve nature and the environment, and care for natural wealth.”

São Tomé and Príncipe, Democratic Republic of

Part II, Title III, Article 48(1): “All have the right to housing and to an environment of human life and the duty to defend it.”

Part II, Title III, Article 49(2): “[I]t is incumbent upon the State to promote the public health which has as objectives the physical and mental well-being of the populations and their balanced fitting into the socio-ecological environment in which they live.”

Saudi Arabia

The Basic System of the Consultative Council (Decree A/90), 1992, Chapter 5, Article 32: “The State works toward protecting and improving the environment, as well as keeping it from being harmed.”

Seychelles, Republic of

Chapter III, Part I, Article 38:

The State recognises the right of every person to live in and enjoy a clean, healthy and ecologically balanced environment. and with a view to ensuring the effective realisation of this right the State undertakes—(a) to take measures to promote the protection, preservation and improvement of the environment; (b) to ensure a sustainable socio-economic development of Seychelles by a judicious use and management of the resources of Sey-

chelles; (c) to promote public awareness of the need to protect, preserve and improve the environment.

Chapter III, Part II, Article 40(e): " It shall be the duty of every citizen of Seychelles . . . to protect, preserve and improve the environment"

Slovak Republic

Part Two, Chapter Six, Article 44:

- (1) Every person has the right to favorable environment.
- (2) Every person has a duty to protect and improve the environment and foster cultural heritage.
- (3) No person shall imperil or damage the environment, natural wealth and cultural heritage beyond the limits set by law.
- (4) The State sees to the economical use of the natural resources and the economical balance and active care of the life environment and safeguards the protection of certain kinds of plants and freely living animals.
- (5) The details concerning the rights and duties pertaining to paragraphs (1) to (4) are established by law.

Slovenia

Section III, Article 72:

Everyone has the right in accordance with the law to a healthy living environment. The state promotes a healthy living environment. To this end, the conditions and manner in which economic and other activities are pursued are established by law. The law shall establish under which conditions and to what extent a person who has damaged the living environment is obliged to provide compensation. The protection of animals from cruelty shall be regulated by law.

Section III, Article 73: "Everyone is obliged . . . to protect natural points of interest and rarities and cultural monuments."

South Africa

Chapter 2, Article 24:

Everyone has the right—

- (a) to an environment that is not harmful to their health or well-being,

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—

(i) prevent pollution and ecological degradation,

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

South Korea, Republic of (South)

Chapter II, Article 35(1): “All citizens have the right to a healthy and pleasant environment.”

Chapter IX, Article 120(2): “The land and natural resources shall be protected by the State, and the State shall establish a plan necessary for their balanced development and utilization.”

Spain

Title I, Chapter III, Article 45(1): “Everyone has the right to enjoy an environment suitable for the development of the person”

Title I, Chapter III, Article 45(2): “The public authorities shall concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment”

Title I, Chapter III, Article 45(3): “For those who violate the provisions of the foregoing paragraphs, penal or administrative sanctions . . . shall be established and they shall be obliged to repair the damage caused.”

Sri Lanka

Chapter VI, Article 27(14): “The State shall protect, preserve and improve the environment for the benefit of the community.”

Suriname, Republic of

Chapter III, Article 6(g): “The social objectives of the State shall aim at . . . creating and improving the conditions necessary for the protection of nature and for the preservation of the ecological balance.”

Sweden

The Instrument of Government, 1974 (As Amended to 2002), Chapter 1, Article 2: "The public institutions shall promote sustainable development leading to a good environment for present and future generations."

Switzerland (Swiss Confederation)

Title III, Chapter 2, Section 3, Article 65(1): "The Confederation collects the necessary statistical data concerning the status and evolution of . . . the environment in Switzerland."

Title III, Chapter 2, Section 3, Article 74(1): "The Confederation legislates on the protection of humans and the natural environment against damaging and harmful influences."

Taiwan (Republic of China)

Chapter XIII, Section 6, Article 169:

The State shall actively undertake and foster the development of education, culture, communications, water conservancy, public health, and other economic and social enterprises among the various ethnic groups in the frontier regions. With respect to land utilization, the State shall, in the light of climatic conditions, nature of the soil, and the life and habits of the people, adopt measures for its protection and assist in its development.

Tajikistan, Republic of

Second Chapter, Article 38: "The State adopts measures for improvement of the environment, development of mass sport, physical culture, and tourism."

Second Chapter, Article 44: "Protection of the nature, historical, and cultural monuments is an obligation of everyone."

Tanzania, United Republic of

Chapter I, Part II, Article 9(1)(c):

[t]he state authority and all its agencies are obliged to direct their policies and programmes towards ensuring . . . that public affairs are conducted in such a way as to ensure that the national resources and heritage are harnessed, preserved and applied for the common good and also to prevent the exploitation of one person by another

Chapter I, Part III, Article 27(1): “Every person has the duty to protect the natural resources of the United Republic, the property of the state authority, all property collectively owned by the people, and also to respect another person’s property.”

Section I, Part III, Article 27(2):

All persons shall be required by law to safeguard the property of the state authority and all property collectively owned by the people, to combat all forms of waste and squander, and to manage the national economy assiduously with the attitude of people who are masters of the destiny of their nation.

Thailand, Kingdom of

Chapter V, Section 79:

The State shall promote and encourage public participation in the preservation, maintenance and balanced exploitation of natural resources and biological diversity and in the promotion, maintenance and protection of the quality of the environment in accordance with the persistent development principle as well as the control and elimination of pollution affecting public health, sanitary conditions, welfare and quality of life.

Chapter IV, Section 69: “Every person shall have a duty to . . . conserve natural resources and the environment”

Togo

Title II, Subsection I, Article 41: “Anyone has the right to a healthy environment. The State shall take care of the protection of the environment.”

Turkey

Part II, Chapter Three, Section VIII, Part A, Article 56: “Everyone has the right to live in a healthy, balanced environment.”

Part II, Chapter Three, Section III, Part B, Article 44: “The state takes the necessary measures to maintain and develop efficient land cultivation, to prevent its loss through erosion, and to provide land to farmers with insufficient land of their own, or no land.”

Turkmenistan

Section I, Article 10: "The State is responsible for preserving . . . the environment"

Uganda, Republic of

Preamble, XIII: "The State shall protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda."

Preamble, XXVII:

(i) The State shall promote sustainable development and public awareness of the need to manage land, air, water resources in a balanced and sustainable manner for the present and future generations.

(ii) The utilization of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of present and future generations of Ugandans; and in particular, the State shall take all possible measures to prevent or minimise damage and destruction to land, air and water resources resulting from pollution or other causes.

(iii) The State shall promote and implement energy policies that will ensure that people's basic needs and those of environmental preservation are met.

Ukraine

Chapter II, Article 50:

Everyone has the right to an environment that is safe for life and health, and to compensation for damages inflicted through the violation of this right. Everyone is guaranteed the right of free access to information about the environmental situation . . . and also the right to disseminate such information.

United Arab Emirates

Chapter II, Article 23: "The natural resources and wealth in each Emirate shall be considered the public property of that Emirate. Society shall be responsible for the protection and proper exploitation of such natural resources and wealth for the benefit of the national economy."

Uruguay, Oriental Republic of

Section II, Chapter II, Article 47: “The protection of the environment is of common interest. Persons should abstain from any act that may cause the serious degradation, destruction, or contamination of the environment.”

Uzbekistan

Part III, Chapter 12, Article 55: “The land, its mineral, fauna and flora, as well as other natural resources shall constitute the national wealth, and shall be rationally used and protected by the state.”

Part III, Chapter 12, Article 54: “An owner shall possess, use and dispose of his property. The use of any property must not be harmful to the ecological environment, nor shall it infringe on the rights and legally protected interests of citizens, juridical entities or the state.”

Part II, Chapter 11, Article 50: “All citizens shall protect the environment.”

Vanuatu, Republic of

Chapter 2, Part II, Article 7(d): “Every person has the . . . fundamental duties to himself and his descendants and to others . . . to protect the Republic of Vanuatu and to safeguard the national wealth, resources and environment in the interests of the present generation and of future generations.”

Venezuela, Bolivarian Republic of

Title III, Chapter IX, Article 127: “It is a fundamental obligation of the State . . . to guarantee that the population develops in an environment free of contamination, where the air, the water, the coasts, the climate, the ozone layer, the living species are especially protected in conformity with the law.”

Vietnam, Socialist Republic of

Chapter II, Article 29: “State organs, units of armed forces, economic organizations, and individuals have the duty to implement state regulations on the rational use of natural resources and protection of the environment. All acts of likely to bring about exhaustion of and cause damage to the environment are strictly prohibited.”

Yugoslavia, Federal Republic of (Serbia and Montenegro)

Section II, Article 52:

Man has the right to a healthy environment and timely information about its condition. It is everyone's duty to protect the environment and make use of it in a rational manner. The state is charged with maintaining a healthy human environment and to this end prescribes the conditions and manner of the performance of economic and other activities.

Zambia, Republic of

Preamble:

WE, THE PEOPLE OF ZAMBIA . . . PLEDGE to ourselves that we shall ensure that the State shall respect the rights and dignity of the human family, uphold the laws of the State and conduct the affairs of the State in such manner as to preserve, develop, and utilise its resources for this and future generations
. . . .