Editorial

The Right to a Clean, Healthy, and Sustainable Environment Across Regions: Implementation, Enforcement, and Future Directions

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1. Introduction

Contributions in this special issue are the outcome of the *Workshop on the Right to a Clean, Healthy, and Sustainable Environment Across Regions: Implementation, Enforcement, and Future Directions*, held on 24–25 April 2025 at the Southampton Law School in the United Kingdom. Jointly organised by Southampton Law School, the Stockholm Environmental Law and Policy Centre, and the Global Network for Human Rights and the Environment, the workshop convened scholars, practitioners, litigators, policymakers, and advocates from diverse regional and disciplinary backgrounds. Its animating purpose was to generate a comparative dialogue that may open space for reflections on both the emancipatory promise and the limitations of the right to a healthy environment as an approach to environmental protection.

Several developments in the recognition and consolidation of the right to a clean, healthy, and sustainable environment provided the impetus for the workshop and for the contributions assembled here. Foremost among these is the consolidation of the right as one of the most significant developments in contemporary human rights law. It consolidation is evident in how the right is now firmly embedded within the domestic legal frameworks of many nations, a phenomenon that has been termed an "environmental rights revolution."[1] At the regional level, it is explicitly enshrined in instruments such as the African Charter on Human and Peoples' Rights and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol).[2] Furthermore, the right is

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[1] David R Boyd, The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment (UBC Press 2012).

[2] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1521 UNTS 217 (African Charter) art 24; Additional Protocol to the American Convention on Human Rights in the Area of

recognized as international soft law through landmark resolutions by the United Nations Human Rights Council and the United Nations General Assembly.[3]

Concurrently, courts have played a growing role in operationalising environmental rights in new and innovative ways to advance accountability for environmental harm and protect communities at risk of or affected by such harm. At the domestic level, the courts have applied the right to hold public and private actors accountable for environmental harm[4] and as a basis for innovative remedies such as constitutional compensatory remedies[5] and structural interdicts in the face of environmental harm.[6]

At the African regional level, the right to a healthy environment has been used to challenge government failures to protect communities from corporate pollution and to protect indigenous people against state policies seeking to separate communities from their ancestral lands and resources.[7] Likewise, within the Inter-American human rights system, environmental rights have played a pivotal role in compelling states to adopt concrete measures to prevent environmental harm and protect affected communities.[8] These developments have happened in tandem with the expanding normative scope of the right to accommodate urgent environmental protection concerns such as the protection of a healthy environment through jurisprudence developed by the Inter-

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Economic, Social and Cultural Rights (Protocol of San Salvador) (adopted 17 November 1988, entered into force 16 November 1999) OAS Treaty Series No 69, art 11.

[3] UNHRC Res 48/13 (8 October 2021) UN Doc A/HRC/RES/48/13; UNGA Res 76/300 (28 July 2022) UN Doc A/RES/76/300.

[4] See for example, Caiphas B. Soyapi, 'Environmental Protection in Kenya's Environment and Land Court' (2019) 31(1) Journal of Environmental Law 151. Brian Sang YK, 'Tending Towards Greater Eco-Protection in Kenya: Public Interest Environmental Litigation and Its Prospects Within the New Constitutional Order' (2013) 57(1) Journal of African Law 29.

[5] See for example, Export Processing Zone Authority & 10 others (Suing on their own behalf and on behalf of all residents of Owino-Uhuru Village in Mikindani, Changamwe Area, Mombasa) v National Environment Management Authority & 3 others [2024] KESC 75 (KLR), affirming KM & 9 others v Attorney General & 7 others [2020] KEELC 1680 (KLR) where the Environment and Land Court awarded damages for loss of life and personal injury for harm suffered as a result of the violation of the right to healthy environment.

[6] See for example, South African Human Rights Commission v Msunduzi Local Municipality & Others (8407/2020P) [2021] ZAKZPHC 35 (17 June 2021)

[7] Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria (2001) AHRLR 60 (ACHPR 2001); Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (2009) AHRLR 75 (ACHPR 2009); African Commission on Human and Peoples' Rights v Republic of Kenya (Ogiek Case) App No 006/2012 (ACtHPR 26 May 2017).

[8] See for example, Inhabitants *of La Oroya v. Peru (Preliminary Exceptions, Merits, Reparations, and Costs)*, Judgment of November 27, 2023, Inter-Am. Ct. H.R. (Ser. C) No. 511 (The Courts construed the right as encompassing substantive and procedural elements); *Case of the Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina. Judgment of February 6, 2020. Series C No. 400.)* (The Court applied the right to a healthy environment to protect indigenous peoples' rights).

American Court of Human Rights.[9] By contrast, the European Court of Human Rights has relied on a "greening" approach, whereby environmental protection is mediated through the reinterpretation of pre-existing rights.[10] This approach has, in some respects, served the same functional role as the right to a healthy environment particularly where it has been applied to require member states to take measures to protect human wellbeing from environmental harm.[11]

A further impetus for the conference arose from the observation that the widespread legal recognition and judicial articulation of the right stand in stark contrast to the accelerating realities of ecological breakdown in the form of the worsening climate crisis, biodiversity loss, and numerous incidences of pollution. The disjunction between juridical articulation of the right and ecological reality suggests that our current legal frameworks, no matter how innovative, may still be overmatched by the scale and speed of environmental destruction they purport to address. Moreover, consolidation at the level of formal recognition should not be mistaken for coherence in conceptualisation or implementation. The right to a clean, healthy, and sustainable environment is neither uniformly understood nor consistently operationalised across jurisdictions, institutions, or legal cultures. This fragmentation generates the risk that certain interpretive and implementation practices may, diminish the transformative potential of the right, even as others seek to advance it.

Contributions to this special issue of *Environmental Rights Review* engages directly with this dual tension. They examine how the right to a clean, healthy, and sustainable environment is being interpreted, operationalised, and contested across diverse legal and political contexts to address contemporary and urgent environmental challenges. To this end, they explore doctrinal developments, judicial practice, and governance challenges, offering comparative insights into how the right to a healthy environment functions in different institutional settings.

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[9] Inter-American Court of Human Rights. (2017). *Advisory Opinion OC-23/17 of November 15, 2017, Requested by the Republic of Colombia*. (The Court construed the right to a healthy environment to encompass the right to a healthy climate).

[10] Elinor Buys and Bridget Lewis, 'Environmental Protection through European and African Human Rights Frameworks' (2022) 26(6) *The International Journal of Human Rights* 949.

[11] See for example, López Ostra v Spain App no 16798/90 (ECtHR, 9 December 1994) ECHR 1994-VI, paras 51–58. Verein KlimaSeniorinnen Schweiz and Others v Switzerland App no 53600/20 (ECtHR, Grand Chamber, 9 April 2024), paras 412–519.

2. Faultlines in the juridical construction of the right to a healthy environment

The first two contributions reveal divergences in the juridical imagination of the right to a healthy environment, shaped by differing conceptions of global justice and varied institutional practices. This finding aligns with broader critical human rights law scholarship, which argues that the inclusion of environmental rights in constitutional texts and human rights treaties does not exhaust the meaning of the right. Instead, interpretation, institutional context, and political choice continue to shape what the right can do in practice, confirming that it remains normatively unsettled and continually negotiated.[12]

Waswa's analysis of written submissions to the ICJ advisory proceedings on climate change discloses a striking disjunction in how states conceptualise the right to a healthy environment. While there is broad rhetorical convergence on the proposition that climate change impacts human rights negatively, this apparent consensus dissolves at the level of juridical grounding. Northern states, most prominently the United States and the United Kingdom, insisted upon a tightly delimited account in which obligations are said to emanate exclusively from the UN climate regime, thereby resisting any substantive incorporation of international human rights law as an operative source of climate responsibility. By contrast, a coalition of Southern states, including Vanuatu and the African Union, articulated a more expansive reading of the right that would include climate obligations. These divergences, argues Waswa, reflect a deeper geopolitical division, particularly over historical responsibility, CBDR, and the extent to which equity and development considerations should shape climate obligations.

Waswa's assessment reveals that the imagination of the right to a healthy environment is open to differing interpretation rooted in competing visions of global justice. Northern states seek to confine climate responsibility within the UN climate regime, potentially limiting redistributive implications, while Southern states in large part, wish to mobilise human rights law to articulate claims grounded in equity, historical responsibility, and common but differentiated responsibilities.

A parallel disjunction in the way the right is construed is discernible in the comparative jurisprudence of regional human rights adjudication forums, which is the crux of the analysed by Amor and Amor-Juergenssen. According to the authors, the Inter-American Court of Human

[12] See for example, Rosemary Mwanza, 'Framing the Normative Role of the Right to a Healthy Environment: Thinking with Internormativity, Embodiment and Emergence' (2022) 13 *Journal of Human Rights and the Environment* 349.

Rights articulates the right to a healthy environment as autonomous, justiciable, and simultaneously individual and collective in character, grounded in Article 26 of the American Convention. Its jurisprudence gestures towards an expansive reading of the right to encompass procedural safeguards, access to water, right to a stable climate system and an expanded ecological sensibility one that unsettles the exclusivity of the human subject by requiring states to adopt legal frameworks for the protection of nature as a subject of rights.

By contrast, the European Court of Human Rights remains largely confined within an anthropocentric and fragmentation, in which environmental harm becomes legally legible only through its translation into infringements of established Convention rights, most notably Articles 2 and 8, and only where thresholds of direct, personal, and serious harm are satisfied. Even where recent climate litigation, such as *KlimaSeniorinnen*, appears to signal a loosening of locus standi for associations,[13] Amor and Amor-Juergenssen caution against reading this as a substantive departure from the Court's established approach. As they explain, the persistence of stringent victim-status requirements for individuals, alongside the maintenance of a conceptual separation between cases concerning climate change and environmental harm (as exemplified in *Cannavacciuolo*[14]), suggests instead a jurisprudence is simultaneously responsive and resistant. If climate issues are treated as "distinct from environmental ones" for the purpose of standing, as the ECtHR suggests, then the "right to a healthy environment" risks becoming bifurcated. It therefore remains to be seen what direction future jurisprudence will take in clarifying, or potentially further fragmenting, its scope and coherence.

3. Constraints and opportunities in judicial and non-judicial adjudication forums

The next two contributions demonstrate how full realisation may be constrained by challenges that arise when the right to a healthy environment and related environmental rights are adjudicated in both judicial and non-judicial forums. At the same time, they also highlight the opportunities that these forums present for advancing environmental protection and accountability.

Wa Nciko Laetitia analysis is contextualised within the renewed efforts by the Government of Kenya to displace the Ogiek people from the Mau Forest, in order to clear space for the

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[13] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* App no 53600/20 (ECtHR, Grand Chamber, 9 April 2024), paragraphs 489-503.

[14] *Cannavacciuolo and Others v Italy* Apps nos 51567/14 and 39742/14 (ECtHR, 30 January 2025).

development of carbon credit schemes. Through a close reading of the Ogiek litigation before the African human rights system, the analysis discloses a troubling instability at the heart of environmental rights-based adjudication. Even where authoritative judgments have affirmed violations against the Ogiek, the continuing cycle of evictions signals the limited durability of such victories when they confront deeply entrenched forms of extractive environmental governance.

Within this context, wa Nciko Laetitia identifies the East African Court of Justice, the judicial arm of the East African Community, tasked with the obligation of interpreting the East African Community Treaty, as a comparatively more receptive and responsive site for the pursuit of environmental and indigenous justice. This responsiveness is attributed to its more flexible approach, which integrates procedural and substantive dimensions of justice and enables the issuance of stronger remedies, including injunctive relief capable of restraining state–corporate projects that threaten indigenous territorial self-determination under the banner of climate action.

Overall, wa Nciko Laetitia's contribution exposes the precariousness of rights-based environmental protection when it is confronted with the converging force of capital-backed climate governance and the coercive power of the state. This entanglement significantly curtails the emancipatory potential of judicial pronouncements where their implementation depends upon state authorities whose political and economic commitments are aligned with capital.

Davanyaam's contribution underscores the constraints of non-judicial accountability mechanisms within global governance architectures, particularly in contexts where corporate actors operate across jurisdictions and beyond the effective reach of traditional regulatory enforcement. More specifically, the analysis draws attention to the limitations of non-judicial forums designed to address corporate human rights violations, highlighting the difficulties of securing accountability where enforcement mechanisms remain weak or dependent on voluntary compliance. Specifically, it engages how the OECD National Contact Points (NCPs), established under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, to addresses environmental concerns that emerge within the complaints it deals with. The study is based on an examination of 28 selected cases, which, as the author explains, were deliberately chosen to sharpen and systematise the analysis.

Davaanyam's findings yield two principal insights. First, procedural rights, particularly access to information, public participation, and meaningful stakeholder engagement are often

marginalised within the NCP complaints procedure. This marginalisation, in turn, constrains both the identification and effective redress of associated human rights and environmental impacts. Second, NCP outcomes remain predominantly forward-looking, with comparatively limited attention to remediation for past and ongoing environmental harm.

In light of these findings, Davaanyam recommends a stronger integration of both substantive and procedural environmental rights within NCP practice, alongside more robust remedial approaches capable of delivering effective redress. This recommendation has important implications for the evolving normative content of the right to a healthy environment, insofar as complaints framed around environmental degradation, such as pollution or land degradation, may function as an indirect but significant pathway for its protection in non-judicial forums. At the same time, it alerts us to the limitations soft-law, non-judicial accountability mechanisms in operationalising the right to a healthy environment, particularly where procedural guarantees are weak and remedial outcomes are prospective rather than reparative. This tension reflects a broader governance gap in transnational corporate accountability, where normative advances in environmental rights outpace the institutional capacity of mechanisms such as NCPs to deliver effective remedies.

4. Governance and policy choices in the operationalisation of the right to a healthy environment

The final contribution shifts the focus from doctrinal articulation of the right to a healthy environment to its practical operationalisation through governance approaches and policy choices designed to advance substantive aspects of the right. Focusing on the aspect of water, Szabelk applies a PRIMUS 2020-guided analyses of 41 case studies to assess the governance of water reuse strategies. This empirical analysis yields the finding that while water reuse is increasingly promoted as a response to global water scarcity and as a central component of sustainability and climate adaptation strategies, its governance regimes often overlook core justice concerns. These include equitable access to reused water, procedural fairness in decision-making processes, recognition of diverse forms of knowledge, and the protection of vulnerable and marginalised groups. As Szabelka emphasises, this governance gap means that the lived realities of affected

communities are routinely absent from formal regulatory and policy frameworks, even where such frameworks are presented as technically rational or environmentally progressive.

Szabelka's analysis has direct implications for the content and effectiveness of the right to a healthy environment, particularly in how that right is operationalised through governance. First, if affected communities are routinely absent from decision-making processes, then core procedural dimensions of the right to a healthy environment, such as access to information, participation, and accountability, are weakened. This turns the right into something declared about people rather than exercised by them. Second, the neglect of recognitional justice (whose knowledge counts, whose experiences matter) suggests that the right risks being implemented in a way that can reproduce existing inequalities, particularly for indigenous peoples, rural communities, and other vulnerable groups whose lived experiences of environmental harm are not captured in formal governance systems. In that sense, water reuse governance becomes a useful stress test which shows that the right to a healthy environment depends not only on recognition, but on whether governance systems meaningfully incorporate equity, participation, and lived experience into environmental decision-making.

Szabelka's contribution reveal that the continuing normative expansion of the right to a healthy environment into substantive domains does not, in itself, overcome the enduring problem of realisation. In this particular context, the incorporation of water within the ambit of the right cannot be read as self-executing legal progress. On the contrary, the right acquires transformative potential only where governance arrangements and policy choices are consciously designed and operationalised to centre equity, participation, and lived experience.

5. Future directions

The contributions to this special issue generate significant insights with far-reaching implications for the evolving evolution of the right to a healthy environment. First, the evident divergences in how this right is construed by diverse actors underscore the necessity of sustained critical vigilance. Such plurality cannot be unreflectively celebrated where it risks diluting or displacing the right's formative aim, which is the protection of human wellbeing against diverse and often unevenly distributed harms of environmental degradation. Second, while litigants ought

to seek to maximise the strategic opportunities that adjudication may offer, particularly where such fora appear to adopt a more expansive, even maximalist, operationalisation of the right, it is nevertheless essential to remain attentive to the inherent limitations that attend both judicial and non-judicial adjudicatory processes. These limitations caution against any uncritical or simplistic treatment of human rights adjudication as a self-sufficient, or exhaustively determinative, locus of transformative environmental justice. Finally, the right should be operation through governance and policy measures that correct for inequality (redistributive justice), exclusion (participatory justice), and for misrecognition and epistemic marginalisation (recognition justice). Without those elements, the right risks being weak in practice.

Acknowledgements

As Guest Editor of this special issue of *Environmental Rights Review*, I write from a situated scholarly position within the Global South, where questions of environmental harm are not abstract concerns but lived and politically charged realities. My own engagement with the right to a clean, healthy, and sustainable environment has developed over a sustained period of critical scholarly inquiry, attentive to both the limitations and the emancipatory potential of the right as a legal and normative instrument for addressing corporate environmental harm in Kenya. This background directly informs my approach to this collection, which was conceived with the hope of creating space for the articulation of diverse voices, perspectives, and epistemic standpoints through which the right to healthy environment may be understood, contested, and reimagined. This commitment resonates with the *Environmental Rights Review*'s broader ambition to serve as a platform for plural, critical, and geographically diverse engagements with environmental rights. I believe that the contributions gathered here have meaningfully advanced this objective.

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