The Right to a Healthy Environment

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SUMMARY

The momentum for recognizing the human right to a healthy environment has grown significantly over the past several decades. It has been recognized by national, local and international jurisdictions around the world, but in the U.S., only three states have integrated it into their constitutions. The right can be achieved through litigation, decarbonization policies and securing the rights of nature.

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I. Local, Regional and International Recognition

Every individual, regardless of the differences they may have from another, is endowed to certain, basic rights such as the right to life and right to education. Today, the right to a clean and healthy environment is recognized by more than 80% of member states of the United Nations and within several states in the United States as a fundamental human right.[1] It is a testament to the realization that the stability and sustainability of ecosystems affects the existence of humanity.

Attempts to acknowledge the right to a healthy environment have spanned decades. It was not included in the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948. As environmental issues progressively became a global concern, the right to a healthy environment was increasingly advocated for by organizations, UN representatives and member-states. The first reference was in the 1972 Stockholm Declaration, which contained 26 principles that underscored the need for humans to understand, reflect and reform their environmental impacts, and the connections between economic growth, environmental health and human welfare.[2] The 1st principle states, "Man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being..."[3] It wasn't until 2021 that the UN Human Rights Council made the first formal recognition of the right at a global level.[4] Finally, the right to a clean, healthy and sustainable environment was unanimously adopted by the UN General Assembly on July 28th, 2022 (161 votes in favor, zero against).[5; 6]

Although human rights may be readily acknowledged, they are not always upheld. The resolution that recognizes the right to a healthy environment as a basic, universal human right (or the Universal Declaration of Human Rights for that matter is not legally binding and the phrase is up to interpretation. However, when inserted into

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>
> **1st Principle of the 1972 Stockholm Declaration**

constitution, it can serve as the basis for legal action for young people, land rights defenders and environmental justice communities. Despite being a vague phrase, the right does not need further legislation to be enacted because fundamental rights are self-executing.[7] The rights are inherent and enforceable once recognized; individuals do not need to wait for legislation to be passed before seeking protection or redress.

It also fills in regulatory gaps for when there is no existing environmental regulation.[8] It has been integrated into many national constitutions around the world, particularly in the Global South. Within the US, the right — also called the "green amendment"—is only recognized in Pennsylvania, Montana and New York so far.[9]

I. Youth Montana Case Utilizes Right for Climate Action

The green amendment in Montana was put to the test when 16 youth faced the state in court over its environmental policies and its misalignment with the right. Court papers for Held v. Montana were filed in March 2020. Although many youth lawsuits have been based on the right to a healthy environment, the 2023 trial marked the first time a youth-led climate lawsuit went to trial. The plaintiffs, ranging from ages 5 to 22, claimed that the state was violating the clause in the state constitution that endowed present and future generations with "a clean and healthful environment" due to the implementation of policies that encouraged the use of fossil fuels.[10] The state constitution, which was ratified in 1972, included this right to reduce the home-grown corporate influences of the copper and coal industries.

Montana's economy has long been synonymous with mining—so much so that its nickname is the "Treasure State." When gold was discovered in western Montana in the 1800s, it attracted an influx of hopeful miners.[11] Silver mining also became very popular. However, once the supply of metals dwindled, most of the areas that were booming during the gold rush could not retain their residents; miners moved away and the once-bustling communities became ghost towns. The types of materials mined have changed over time, but the importance of extracting resources for Montana's economy has remained consistent. Despite its diminishing annual growth rate in GDP and conflict with growing sectors like tourism, mining is part of the state's history and culture.[12] Today, Montana ranks as the fifth largest producer of coal, the most carbon intensive fossil fuel, and the 12th-largest producer of oil in the United States.[13]

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To continue prioritizing extractive industries, Montana changed the Montana Environmental Policy Act in 2011 to prevent the state from considering “actual or potential impacts beyond Montana’s borders… [or] actual or potential impacts that are regional, national, or global in nature.”[14] This language effectively limits any environmental review from considering climate change. While the lawsuit was underway, lawmakers passed House Bill 971 to restrict state agencies from evaluating “greenhouse gas emissions and corresponding impacts to the climate in the state or beyond the state’s borders.”[15] 95% of the more than 1,000 comments submitted by the public opposed House Bill 971.

The right to a healthy environment has become a rallying cry for those—young people in particular—discontented with government actions. This has become increasingly prevalent as today’s youth walk into a future rendered dramatically uncertain due to climate change.

The degree to which climate change affects the entirety of the environment, humans included, cannot be underestimated. The increase of greenhouse gases in the atmosphere caused by the burning of fossil fuels leads to effects that are widely seen, from the melting of glaciers and destruction caused by more violent hurricanes, to less noticeable changes like interference with the nitrogen cycle that affect soil and plant health. Changes both above and beneath the earth’s surface disrupt activities and livelihoods important to the plaintiffs and their families, such as harvesting crops, outdoor camping, hunting and fishing.[16]

Furthermore, the plaintiffs claim stress and even despair resulting from the climate crisis. As their environment changes

drastically, familial and cultural traditions oriented toward the land become less viable. As a result, their connections to their family and culture are threatened. Economic instability, climate migration and the magnitude of climate disruptions now seem inevitable. Children are uniquely vulnerable to the impacts of climate change. They have their entire lives ahead of them, and if the status quo continues, their lives will be defined by the consequences of climate change. Since many of the plaintiffs were too young to vote, seeking legal recourse was one of the few alternatives to voice their concerns.

Montana's constitution distinctly recognizes the state's obligation to maintain a clean and healthful environment. Protecting and restoring the environment will give future generations, who will inherit the environment, the opportunity to prosper. Advocating for future generations is becoming a priority for civil society organizations: the Parliament of the World's Religions supports appointing a Special Advocate for Future Generations and repurposing the UN's Trusteeship Council.[17]

Ultimately, the court ruled in the plaintiffs favor, stating that the state government was violating the plaintiffs' rights by exacerbating the risks of climate change through policies favoring fossil fuels interests. Because the ruling set a precedent in the US, its full impact is yet to be realized. Having this right enshrined in the Montana constitution enabled residents adversely affected by climate change to demand that the government assess the climate impact of projects.

III. Human Right to a Healthy Environment Inextricably Linked to Rights of Nature

It is well established that all human rights are interrelated and interdependent.[18] Each one is equally important and fundamental to ensuring human dignity. The right to a healthy environment intersects with other human rights because without a clean, healthy environment, it is impossible to fully exercise all other human rights. For instance, the right to education is enshrined in Article 26 of the Universal Declaration of Human Rights.[19] As greenhouse gas emissions continue to fuel more frequent and extreme weather events, individuals face more arduous challenges in accessing educational facilities and resources. Individuals in marginalized and overburdened communities or in countries that are disproportionately affected by climate change will be impacted most. In this respect, the health of the environment is directly linked to whether or not they can access their basic human right to education.

The right to a healthy environment stretches beyond human rights. The human right to a healthy environment hinges on whether nature is flourishing. In what the World Health Organization conceptualizes as "One Health," a conclusion emerges: human health is inextricably tied to the health of the environment.[20] For instance, biodiversity loss is linked to the spread of infectious diseases, and natural ecosystems help protect humans from disaster risk. For example, coastal wetlands help filter pollutants from surface water and act as a buffer from storm surge and flooding When natural systems are disrupted or degraded, human health and well-being decline. This goes far beyond physical health, profoundly impacting the connections individuals have with each other, their history and their culture. Although environmental degradation may result in short-term economic gain, the longer-term effects are detrimental. Currently, scientists have found that many of the earth's vital signs, such as

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global tree cover and sea levels, are being pushed to the brink, which is evidence that "life on planet earth is under siege."[21] To change this, greater protection for the environment must be implemented.

The rights of nature is one novel legal tool to better protect the environment.[22] It posits that nature has inherent rights and a legal right to exist, thrive and regenerate. More often than not in the U.S., the environment is only protected as a means to protect us, rather than having its own right to exist and prosper. The rights of nature reflects a necessary, broader societal shift to view nature through an ecocentric lens rather than one of exploitation, and it seeks to amend the anthropocentric view that nature is nothing more than property.

Tamaqua Borough, a township in Pennsylvania, was the first place in the world to recognize that ecosystems should be considered "persons" in 2006.[23] Ecuador became the first country to recognize the rights of nature in its constitution in 2008.[24] As environmental degradation has accelerated, the movement for the rights of nature has grown dramatically. The Universal Declaration of the Rights of Mother Earth was developed at the World People's Conference on Climate Change and the Rights of Mother Earth in 2010, and the Ganga and Yamuna rivers in India were granted legal personhood in 2017.[25; 26] The rights of nature is even referenced in Section C of the 2022 Kunming-Montreal Global Biodiversity Framework: "The framework recognizes and considers these diverse value systems and concepts, including, for those countries that recognize them, rights of nature and rights of Mother Earth, as being an integral part of its successful implementation."[27]

The rights of nature has roots in one of the most influential legal cases in the context of U.S. environmental law, *Sierra Club v Morton*.[28] In 1972, Sierra Club challenged the recreational development of the Mineral King Valley, an undeveloped part of the Sequoia National Forest. Injunctions were granted, but later overturned when the Court of Appeals for the Ninth Circuit adjudicated that the Sierra Club did not prove that they would be directly affected by development and thus did not have standing to sue under the Administrative Procedure Act. The Supreme Court agreed in a 4-3 decision that the Sierra Club did not have the right to sue, stating that having general interest in a potential problem is not sufficient to establish that they have been impacted.

The verdict essentially left a major question unanswered: if an environmental organization could not represent nature, then who or what could? In his dissenting opinion, Associate Justice William O. Douglas raised the idea that "Contemporary public concern [*742] for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation... This suit would therefore be more properly labeled as Mineral King v. Morton."[29] He further explained that nature having legal rights is not an abstract concept. Under the law, inanimate objects include nature, corporations and ships. However, both corporations and ships—inanimate, non-sentient objects—are considered legal persons who can be legally represented by a human guardian. As such, nature's voice should also be heard in the court of law. Individuals, communities or organizations with an intimate relationship with the ecosystem should, according to Justice Douglas, represent it as a guardian of its best interest. Not only would the voice of the landform be heard, but also the voices of all the species that depend on it as a source of vitality. Despite the incorporation of the rights of nature laws in U.S. localities, it has yet to be upheld when litigated.[30]

III. Policy Changes Needed

Initiatives to advance the right to a healthy environment and the rights of nature can be achieved by incorporating them into national or state constitutions, as well as through decarbonization measures. This is exemplified through the 2022 Inflation Reduction Act (IRA), the largest climate package passed in the U.S. It aims to help the country rapidly decarbonize by spurring private investment domestically and disbursing energy rebates, grants and tax incentives. The package is estimated to allocate $369 billion in climate investments across the U.S., but its reach could be much greater because of the tax incentives. The amount will largely be determined by how quickly cities, counties, states, businesses and individuals take action.

The IRA complements investments in infrastructure, transportation, climate resilience and other programs made in the Bipartisan Infrastructure Law (BIL), which was passed the year prior.[31] In accordance with the Justice40 initiative, 40% of the overall benefits of the climate and clean energy investments will go to environmental justice communities.[32] IRA provisions are designed to remove the financial burden of transitioning to clean energy—an obstacle that prevents many low-income households from making the switch.

These bills are extremely influential not only because they make unprecedented investments that can be adopted at state, local and individual levels, but also because they primarily embrace incentives. A myriad of tax credits, consumer rebates and grants the IRA delivers help:

- Individuals to lower their energy costs while switching to cleaner energy, such as heat pumps, energy efficient home appliances and electric vehicles[33]
- The U.S. to scale up manufacturing, generation and distribution of clean energy and electric vehicles[34]
- Mitigate pollution and improve public health and climate resiliency[35]
- Non-profit organizations, like faith institutions or municipal utilities, that were previously exempt from benefiting from tax credits access the financial opportunities through a direct pay option[36]
- Promote the development of greenhouse gas reduction plans by states, tribes, municipalities and air pollution control agencies[37]
- Increase more conservation stewardship and sustainable agriculture practices[38]
- New solar or wind energy become cheaper than 99% of U.S. coal plants[39]

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In addition to the incentives, the IRA imposes some restrictions on the fossil fuel industry. It reinstates the Petroleum Superfund Tax and raises the tax rate, permanently extends the excise tax rate increase on coal production that would support the Black Lung Disability Trust Fund, and introduces a methane fee that increases incrementally.[40; 41] The IRA is expected to reduce carbon emissions by roughly 40% below 2005 levels by 2030.[42]

However, some IRA provisions may hinder its own decarbonization goals. It offers tax credits for projects that could be used for greenwashing, namely carbon capture and storage. Although the Intergovernmental Panel on Climate Change (IPCC) and the International Energy Agency recognized that carbon capture and storage technology is a useful tool, about 60% of the carbon captured annually has gone towards enhanced oil recovery.[43; 44; 45] Enhanced oil recovery is a process by which the sequestered carbon is used to extract more oil instead of being stored in the ground; one of the primary ways this is done is by injecting carbon dioxide into the oil well to force it towards the surface. At the largest carbon capture facility in the nation, which is owned by oil giant Exxon Mobil, most of the carbon dioxide it captures is sold for enhanced oil recovery. Certain IRA provisions inadvertently continue to subsidize oil production, further threatening the health of the environment and the human right to a healthy environment.

The Biden Administration also launched the American Climate Corps program.[46] Inspired by the the Civilian Conservation Corps, a New Deal program that employed millions of young men to improve public lands, forests and parks, this new program aims to train more than 20,000 diverse, young leaders in solar and wind production. This will improve natural disaster risk resilience, and land and water restoration and conservation in its first year.

CONCLUSION

Support for the right to a healthy environment has become a powerful, diverse and broad-reaching movement. Pending litigation aims to defend this right around the world. These cases emphasize that climate change is not just an environmental issue, but a social one too. However, seeking legal recourse is often a cumbersome process, and not all countries or states have included the right to a healthy environment in their constitutions. Policy changes that support a just energy transition would facilitate a more proactive approach. Although decarbonization will not reverse the harm that has already been done to our environment, it will help to cultivate a clean and healthy environment by preventing further harm.

To learn more about rights of nature initiatives around the world, check out Eco Jurisprudence Monitor and Harmony with Nature.

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