

The Right to a Healthy Environment in Practice: A Decade Before the Courts (2015–2025)





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Coral reef in Palau, Micronesia.
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Abbreviations

ACRAG	African Centre for Rights and Governance
EJA	Environmental Justice Australia
GHG	Greenhouse gas
HRC	United Nations Human Rights Council
IACtHR	Inter-American Court of Human Rights
ICJ	International Court of Justice
ITLOS	International Tribunal for the Law of the Sea
PIL	Public interest litigation
R2HE	Right to a healthy environment
TERRA	Earth Rights Research and Action
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNEP	United Nations Environment Programme

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Foreword

Patricia Kameri-Mbote, United Nations Environment Programme

As we grapple with the complexity of today’s environmental challenges, the continued recognition of the right to a healthy environment in legal frameworks worldwide is a reflection of this pressing need. The expansion of this right and its embedment in juridical systems has been furthered through another group of crucial players—courts.



The unique position of courts across the world in interpreting and enabling the enforcement of this right is contributing to the momentum built around the right to a healthy environment (R2HE), including its recognition by the United Nations Human Rights Council and the United Nations General Assembly. This report tracks the contribution of courts through an analysis of over one hundred judicial pronouncements, identifying emerging trends over the last decade and potential trend signals that may be observed. These cases not only illustrate the application of the right through real-world examples but are also shaping the future scope and realization of the right through its precedents.

This report, in conjunction with the curated R2HE Toolkit, a first-ever database of its kind, sheds light on the right’s association with other emerging legal principles and evolving standards of environmental protection across the world. This would aid us in understanding the right in regional and domestic landscapes as well as its contribution to the ever-growing body of transnational environmental jurisprudence.

As the United Nations Environment Programme continues to work toward fostering climate stability, living in harmony with nature, and forging a pollution-free future while supporting the achievement of all 17 SDGs, this report emphasizes how anchoring the right to a healthy environment within legal jurisprudence will reinforce and guide our efforts.

I would like to acknowledge the outstanding support of the Earth Rights Research and Action (TERRA) Program at the New York University School of Law. Our collaboration in producing *The Right to a Healthy Environment in Practice: A Decade Before the Courts (2015–2025)* would not have been possible without their dedication and commitment.

Nairobi, July 2025

A handwritten signature in black ink that reads "PKameri". The signature is written in a cursive, flowing style.

Patricia Kameri-Mbote
Director of the Law Division
United Nations Environment Programme

Foreword

César Rodríguez-Garavito, NYU TERRA Program

As I write this foreword, two of the top international courts have recently handed down landmark decisions that categorically recognize the right to a healthy environment (R2HE). The International Court of Justice (ICJ), in its advisory opinion on climate change, concluded that “under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights.”¹ In doing so, the ICJ joined the global trend toward recognizing the right in domestic, regional, and international law and jurisprudence. Importantly, it cogently framed the R2HE as a fundamental precondition for other rights and the flourishing of life on Earth.



A similar, and even bolder, ecological turn is evident in the advisory opinion of the Inter-American Court of Human Rights (IACtHR) on climate and human rights. In addition to strongly endorsing the justiciability of the R2HE, the IACtHR reiterated its view that the R2HE protects “the components of the environment, such as forests, rivers and seas, as legal interests in themselves.”² The Court convincingly framed this recognition of the rights of nature as “a contemporary expression of the principle of the interdependence between human rights and the environment.”³

Given the importance and visibility of these decisions, it is tempting to view them as completely novel developments. However, they are the culmination of several decades of gradual legal evolution, spearheaded by countless civil society organizations, courts, litigants, judges, government officers, and intergovernmental agencies worldwide. In the specific realm of climate change, the ICJ’s and the IACtHR’s advisory opinions capped a two-decade process that included nearly 500 rights-based legal actions before judicial and quasi-judicial bodies—from domestic and international courts to United Nations’ human rights committees—through which litigants and courts updated human rights and international law to address the existential challenge of global warming.⁴

As a result, the legal status of the R2HE has moved from that of an emergent norm to that of a well-established tool that can be leveraged to advance urgent actions to protect human and more-than-human life in the face of nature loss, toxic pollution, climate instability, and other ecological emergencies. This report locates itself within that trajectory and that mission. It delves into the ten-year period when courts have been most active in fleshing out the content and practical implications of the R2HE. It also distills the lessons from some of the most consequential court rulings for future law, policy, and advocacy.



Ice cap in Antarctica. © Wirestock / iStock

The report is part of a broader, ongoing project that tracks the evolution of the R2HE. Undertaken by the Earth Rights Research and Action (TERRA) Program at New York University School of Law, in collaboration with the United Nations Environment Programme (UNEP), the project includes an [online toolkit](#) that regularly publishes updates and analysis on relevant court decisions and other legal developments on the R2HE.

I want to end by thanking the UNEP for the partnership and support that made this project possible. We invite you to use and disseminate this report and its accompanying toolkit and to join the effort to make the R2HE real for the present and future generations of humans and nonhumans alike.

New York, July 2025

César Rodríguez-Garavito

Professor of Law

Founding Director, NYU TERRA Program



Executive Summary

Since its initial articulation in the early 1970s, the sphere of legislative and judicial practices regarding the right to a healthy environment (R2HE) has evolved substantially. This report identifies and examines trends and developments in the interpretation of the R2HE over a decade (2015–2025) through an analysis of the advancement of the right in thirty jurisdictions, including international and regional human rights bodies.

This report is accompanied by the [R2HE Toolkit](#), the first-ever database charting over one hundred real-world examples of the recognition of the global R2HE and caselaw analysis. The report primarily identifies four key trends that have emerged over the last decade:

- (1) *The mutually reinforcing recognition and jurisprudential development of the R2HE:* The recognition of the R2HE by twelve additional countries over the last decade, coupled with the Escazú Agreement, has provided a renewed impetus for domestic and regional courts, as well as quasi-judicial mechanisms, to leverage the right's international recognition for enforcement in their respective jurisdictions.
- (2) *The expansion of the R2HE's scope and content:* Embedded in the international consensus achieved through the Paris Agreement, courts have reaffirmed the centrality of the climate system for the recognition and sustenance of the R2HE. The normative interpretation of the right has also proven instrumental in shifting the trends of judicial reasoning toward more ecocentric perspectives.
- (3) *The employment of the R2HE by new actors:* Through an emphasis on the intergenerational equity principle and recognition of State responsibility toward those not yet born, the use of the R2HE has expanded beyond traditional actors to include children and youth. With governments also utilizing the right as a defense and justification for enforcing their environmental obligations, an interesting, counterbalanced approach toward the application of the right has also been observed.
- (4) *The use of the R2HE to relax access to justice criteria:* With the aid of many doctrinal and statutory tools, courts have utilized the R2HE as a central justification for expanding access to justice and challenging traditional notions of standing to access justice through legal processes.

Building on these ongoing trends, this report also highlights three additional signals of change that could gain legal relevance and visibility in the years ahead: first, the potential transition of the R2HE from a third-generation right to customary international law or *jus cogens*; second, the application of the R2HE in new ecological and legal contexts, such as ocean ecosystems and migration and displacement; and third, the harmonization of the R2HE and economic considerations by assigning greater weight to environmental protection.

This analysis of over one hundred judicial decisions underscores that the scope of the R2HE is well established in law and its interpretations, while continuing to undergo transformation. As we navigate the three planetary environmental crises of climate change, nature, land, and biodiversity loss, and pollution and waste, the R2HE will remain an important legal instrument—not only for addressing present harms but also for guiding efforts to protect the future.



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Introduction



The human right to a clean, healthy, and sustainable environment (the “right to a healthy environment” or “R2HE” for short)⁵ is not a new human right. Its foundations lie in various Indigenous legal systems, and countries around the world have recognized the right at both national and subnational levels since the early 1970s.



On the Guaporé-Itenez River, Vale do Guaporé Indigenous Land, Rondonia, Brazil. © Pedro Carrilho / iStock

This means that efforts to implement and improve compliance with the right are not starting from scratch, and that a vast, complex, and growing universe of legislative and judicial practice surrounds the right.

In this context, the [R2HE Toolkit](#) is the first-ever database of recognition of the global R2HE and caselaw analysis.⁶ Rather than serving as a comprehensive repository of all R2HE-related jurisprudence, the R2HE Toolkit curates significant caselaw—defined as decisions by domestic, regional, and international judicial or quasi-judicial bodies that have made notable contributions to the doctrinal development of the right. This includes decisions that advance, limit, or otherwise engage substantively with the right. The database encompasses a wide range of legal systems, including both common law and civil law jurisdictions, and covers cases from subnational, national, and international levels across Africa, the Americas, the Asia-Pacific region, and Europe.

1. Methodology

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[E]fforts to
implement and
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starting from scratch.”

In light of the profound environmental transformations of the past decade, this report draws from the [R2HE Toolkit](#) to examine trends and developments in the interpretation of the R2HE between January 2015 and July 2025. The analysis includes over one hundred decisions selected according to qualitative criteria of legal significance, particularly their relevance to defining or shaping the evolving understandings of the scope and content of the right.

The dataset spans over thirty countries and includes decisions from a range of international and regional human rights bodies. While the scope is global, the report notes the prominent role played by jurisdictions in the Global South in advancing legal interpretations of the right. Petitioners in these cases represent a diverse array of actors, including civil society organizations and Indigenous Peoples, as well as children and youth. Respondents are primarily governments and private sector actors.

The report further employs a mixed-methods approach that combines legal analysis with elements of futures thinking. This approach is used to identify both current trends and possible trajectories for the future development of the right. In particular, the report distinguishes between the following:

- Emerging trends: repeated legal developments across jurisdictions that suggest the consolidation of a broader shift in how the right is interpreted; and
- Signals of change: early-stage developments or innovations that may influence future interpretations of the right.⁷

Specifically, the report identifies emerging trends and signals of change in the recognition and judicial interpretation of the right, with a focus on how courts have employed the right to more effectively address the triple planetary crisis of climate change; nature, land, and biodiversity loss; and pollution and waste.

The first part of the report identifies and explores four key consistent trends observed over the last decade:

- (1) The mutually reinforcing recognition and jurisprudential development of the R2HE;
- (2) The expansion of the R2HE's scope and content;
- (3) The employment of the R2HE by new actors; and
- (4) The use of the R2HE to relax access to justice criteria.

The second part of the report highlights three signals of change that may gain legal relevance and visibility in the years ahead:

- (1) The R2HE's potential transition from a third-generation right to customary international law or *jus cogens*;
- (2) The application of the R2HE in new ecological and legal contexts; and
- (3) The harmonization of the R2HE and economic considerations by assigning greater weight to environmental protection.

The findings of this report underscore the transformative ability of the R2HE to reshape both itself and traditional legal concepts. In documenting recent developments involving the right, this report also identifies emerging legal and normative opportunities that can enhance the effective adjudication and implementation of the right. Against the backdrop of a rapidly warming and increasingly uncertain world, this report highlights the potential of the right as a tool for courts, governments, communities, and practitioners to craft innovative, actionable measures that will ensure the realization of fundamental protections for both people and the planet.



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Polar bear in the Russian arctic.
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Emerging Trends



Trend #1

The Mutually Reinforcing Recognition and Jurisprudential Development of the R2HE in the Last Decade

A. Strides in R2HE Recognition

Today, an unprecedented **165 countries recognize the right to a clean, healthy, and sustainable environment**. They have done so by amending their constitutions, passing national legislation, and/or ratifying international and regional treaties.⁸ Legal recognition of the right requires States to adopt, implement, and enforce laws, regulations, and standards aimed at preventing environmental degradation.



Hills of Escazú. © Dennis Alberto Gonzalez Salas / iStock

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Today, an unprecedented 165 countries recognize the right to a clean, healthy, and sustainable environment. They have done so by amending their constitutions, passing national legislation, and/or ratifying international and regional treaties.”

Over the last decade, twelve countries have newly recognized the right, with regional environmental treaties playing an important role in such recognition.⁹ Signed in 2018 and entering into force in 2021, the Regional Agreement on Access to Information, Public Participation, and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement) represents the latest and most comprehensive normative tool in this context.¹⁰ Building upon the principles and obligations established by caselaw and earlier international agreements, such as the 1972 Declaration of the United Nations Conference on the Human Environment,¹¹ the 1992 Rio Declaration on Environment and Development,¹² and the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention),¹³ the Escazú Agreement provides detailed and robust guidance on the procedural elements of the R2HE. Going beyond the Aarhus Convention, which is considered the cornerstone of international treaties for procedural environmental protection, **the Escazú Agreement unambiguously recognizes the R2HE as a human right with corresponding positive State obligations**. These obligations require affirmative steps from States to, for example, adopt necessary measures in domestic law to guarantee the implementation of the Agreement and facilitate access to



Flags outside of the UN building in Manhattan.
© Andy Kazie / iStock

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The status of the R2HE was also significantly advanced in the past decade by the adoption of groundbreaking resolutions by the United Nations Human Rights Council (HRC) in 2021 and the United Nations General Assembly (UNGA) in 2022. These resolutions marked the first formal recognition of the right as an *international* human right.”

information and public participation by providing environmental information to the public and ensuring that environmental decision-making processes are participatory, particularly for those in vulnerable situations.¹⁴ The Escazú Agreement is also the first treaty in the world to explicitly provide protections for human rights defenders in environmental matters.¹⁵

As with other regional treaties that enshrine the R2HE, namely, the African Charter, the San Salvador Protocol, and the Arab Charter, the Escazú Agreement has provided States with another avenue for recognizing the right. In other words, it has established binding standards that apply even in the absence of domestic recognition.¹⁶ This is exemplified by countries such as Antigua and Barbuda, Belize, and Dominica which, in the last ten years, have ratified the Escazú Agreement in the absence of constitutional or legislative provisions enshrining the right.¹⁷

The status of the R2HE was also significantly advanced in the past decade by the adoption of groundbreaking resolutions by the United Nations Human Rights Council (HRC) in 2021 and the United Nations General Assembly (UNGA) in 2022. These resolutions marked the first formal recognition of the right as an *international* human right.¹⁸ Additionally, in 2023, the HRC adopted a resolution, by consensus, calling upon States to implement the right by providing “for effective remedies for human rights violations and abuses, including those relating to the enjoyment of the human right to a clean, healthy and sustainable environment, in accordance with their international obligations.”¹⁹

While United Nations (UN) resolutions are not legally binding upon Member States, such determinations are not to be taken lightly. Indeed, since the UNGA adopted the Universal Declaration of Human Rights in 1948, it has added a limited number of rights to the list of fundamental human rights, with an even smaller subset recognized as autonomous rights.²⁰ In recognizing the independent R2HE, the UNGA included it in an exclusive category of rights with a high level of international recognition. This recognition was achieved with an overwhelming vote of 161 in favor, with no States opposed and eight abstentions.²¹

The resolutions have also provided momentum for the inclusion of the right in diverse international environmental instruments and multilateral processes, particularly at the UN level. Since 2022, the right and the UNGA resolution have been expressly referenced in the decisions of the Conference of the Parties to the Convention on Biological Diversity, including Decision 15/4 on the Kunming–Montreal Global Biodiversity Framework,²² and incorporated in the outcomes of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC).²³ Since 2023, the International Conference on Chemicals Management has also explicitly referenced the right and the UNGA resolution in the Bonn Declaration for a Planet Free of Harm from Chemicals and Waste,²⁴ and in Annex II to the Global Framework on Chemicals – For a Planet Free of Harm from Chemicals and Waste.²⁵

B. Jurisprudence Advances Recognition and Vice Versa

The largely successful efforts by civil society organizations, institutional experts, and academics to increase recognition of the R2HE have built upon the robust body of jurisprudence concerning the right that has developed since the 1990s. To this point, the Papua New Guinea National Court of Justice observed that “[r]ecent developments internationally, has [sic] built on such jurisprudence and has resulted in a recognition of a right to a healthy environment as a matter of law.”²⁶ This is also evidenced by discussions on the international recognition of the right, in which States refer to the right’s position in their respective domestic legal frameworks and caselaw to justify and support its international recognition.²⁷ When discussing the draft HRC resolution, the Philippine delegation, for example, reasoned that “Philippine landmark jurisprudence on environmental cases set positive examples of government leadership in ensuring access to justice and effective remedies in order to truly operationalize this right. [...] We believe that there is a wealth of best practice in different national settings that could inform the Council’s constructive consideration of rights-based and holistic approaches to environment policy and climate action. [...] The Philippines fully supports L.23/rev.1 and calls on all delegations to do likewise.”²⁸ Commenting on the UNGA resolution, Pakistan similarly explained, “we support the right to a clean, healthy and sustainable environment. Pakistan’s Constitution and our domestic policies recognize the protection and promotion of the right to a healthy environment as fundamental to the exercise of the basic rights to life and health.”²⁹

In the UNGA resolution discussions, even Member States that abstained from voting underscored the importance of the right at the domestic level, while also calling for stronger international consensus on its meaning and a clearer delineation of the respective responsibilities of developed and developing States in its implementation.³⁰ The former UN Special Rapporteur on the human right to a clean, healthy, and sustainable environment³¹ has urged such States to build upon their domestic courts’ good practices on the R2HE to “accelerate their efforts to recognize, respect, protect and fulfil the right to a safe, clean, healthy and sustainable environment” and ultimately adopt the resolution on the right.³² Today, practitioners and experts continue to encourage those States that have not yet recognized the right at the international level to align their actions with their domestic jurisprudence.

At the same time, the recognition and attention that the R2HE has received in the last decade at all levels have provided a renewed impetus for its jurisprudential development. In particular, this has prompted domestic, regional, and international courts to reinforce the right’s fundamental status and legal weight, encouraging courts to interpret the right’s scope and content in accordance with progressive international environmental developments and discourse. **As recently as July 2025, for example, both the International Court of Justice (ICJ) and the Inter-American Court of Human Rights (IACtHR) issued landmark advisory opinions addressing State human rights obligations in the context of climate change.** Responding to a request from the UNGA, the ICJ examined States’ duties under international law, while the IACtHR, at the request of Chile and Colombia, focused on obligations grounded in regional and international human rights law. In both opinions, the R2HE

served as a central normative foundation for elaborating States' obligations in the context of the climate emergency and the triple planetary crisis more broadly. In articulating the obligations of States under international human rights law, the ICJ devoted a section of its opinion to the R2HE. In doing so, it established the legal relevance and weight of the right by observing that "several regional human rights instruments recognize, in variously worded provisions, the right to a clean, healthy and sustainable environment."³³ The Court further emphasized that the significance of the R2HE "is underscored by the fact that over one hundred States have, in variously worded provisions, enshrined this right in their constitutions or domestic legislation" and, accordingly, that several regional and national courts have made pronouncements on the R2HE.³⁴ In addition, the Court referenced the UNGA and HRC resolutions, as well as States' treatment of the right in other UN processes, as evidence of "the significance that States attach to this right."³⁵ This widespread adoption and recognition led the Court to draw on the language of the UNGA resolution in concluding that "under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights."³⁶

Regional courts have also utilized the recent resolutions and recognition of the R2HE in delineating the scope and content of the right. The IACtHR, for its part, has cited the resolutions when elaborating on the duties that the right entails for Inter-American System Member States.³⁷ Most recently, in its 2025 advisory opinion, the IACtHR drew upon both resolutions to underscore the significance of the R2HE for the Inter-American system and the obligations of States in the context of the climate crisis.³⁸ Additionally, despite the lack of an explicit R2HE in the European Convention on Human Rights, the European Court of Human Rights has acknowledged international developments on the right to determine State duties. In justifying the obligation of Member States to protect the climate vis-à-vis a harmonious interpretation of the Convention with international developments, the Court reasoned in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* that:

Over the past decade, a wide range of judicial, quasi-judicial and other institutions at the national, regional and international level had recognised the significant impact that climate change was already having, and would have in future, on the enjoyment of a wide range of human rights, including the rights to life and health. In this respect, the UN General Assembly Resolution 76/300 was to be seen as a major and recent development at the international level which explicitly recognised "the right to a clean, healthy and sustainable environment as a human right." All the Contracting States had voted in favour of this Resolution.³⁹

This consensus has been increasingly invoked by advocates encouraging the Council of Europe to codify the right through an additional binding protocol to the European Convention on Human Rights. To date, the Court's environmental jurisprudence has evolved in a more fragmented manner, primarily through the interpretation of existing rights—most notably, the right to life and the right to respect for private and family life. While this approach has allowed the Court to address significant environmental harms, its "function is limited by the series of rights explicitly recognized by the Convention."⁴⁰ Formal recognition of the right in the Convention could, therefore, provide a firm legal foundation for the European Court to make environmental remedies more easily accessible and further develop cohesive environmental jurisprudence, facilitating the right's practical implementation.

At the domestic level, the Constitutional Court of Colombia explained that:

[T]he concept of the Ecological Constitution incorporates some of the most important legal developments for environmental protection that have emerged within the framework of international law over the past decades [...] the influence of international law on national constitutions concerning environmental matters has become evident. According to recent

estimates, this has materialized in the express recognition of the right to a healthy environment ... and its constitutional enshrinement in at least 120 constitutions [...].⁴¹

Citing the UNGA resolution, the Constitutional Court of Costa Rica has similarly observed that “the United Nations General Assembly, in A/RES/76/1-A/RES/76/300 of July 28, 2022, affirmed that the right to a healthy and ecologically balanced environment has the nature of a human right. This significantly contributes to its formal recognition, leading to its technical understanding as a ‘fundamental right.’ Furthermore, it strengthens the notion that environmental protection is an ‘autonomous’ human right [...]”⁴² The Supreme Court of India likewise concluded that aligning environmental policy with human rights in its decisions “resonates deeply with the burgeoning recognition of the right to a healthy environment as a fundamental human right within the global discourse on environmental protection and sustainability.”⁴³

Beyond the courts, quasi-judicial mechanisms have also referred to developments pertaining to the right’s recognition and jurisprudence to advance its status and meaning. In affirming children’s R2HE for the first time, the UN Committee on the Rights of the Child noted the following:

The Committee is mindful of efforts of relevance to its interpretation, including: (a) the recognition of the human right to a clean, healthy and sustainable environment by the General Assembly and the Human Rights Council; (b) the framework principles on human rights and the environment; (c) the existing and evolving norms, principles, standards and obligations under international environmental law [...]; (d) the legal developments and jurisprudence at the regional level recognizing the relationship between human rights and the environment; and (e) the recognition of some form of the right to a clean, healthy and sustainable environment in international agreements, the jurisprudence of regional and national courts, national constitutions, laws and policies by a vast majority of States.⁴⁴

The above advances showcase how courts are uniquely positioned to leverage the right’s newly elevated status in the pantheon of international human rights. In many jurisdictions, courts can enhance rights-based environmental protections by incorporating regional and international developments on the right into their caselaw. This practice facilitates the convergence of increasingly cohesive and progressive norms and interpretations of the R2HE. So far, this has enabled the right to serve as a malleable legal instrument and a means for redefining legal concepts to better address the triple planetary crisis. The remainder of this report will explore how courts have employed the right to achieve this.

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Trend #2

Courts Expand the Scope and Content of the R2HE

Courts have served as one of the primary arenas where the R2HE and its associated obligations are clarified. This is largely by design, as the R2HE has often been broadly framed in domestic constitutions as well as in regional and international instruments. Courts have, therefore, played a central role in imbuing the right with meaning and elaborating its normative content through decades of jurisprudential development.

Jurisprudence at the domestic, regional, and international levels has progressively delineated the R2HE, resulting in a well-defined framework of substantive and procedural elements. Substantive elements refer to the specific environmental conditions the right protects, whereas procedural elements guarantee the means by which individuals and communities can exercise and enforce the right. Today, the substantive elements are understood to include clean air; safe and sufficient water and adequate sanitation; healthy and sustainably produced food; nontoxic environments in which people can live, work, study, and play; healthy ecosystems and biodiversity; and a safe and livable climate.⁴⁵

The current elements have emerged, in part, from courts' efforts to interpret the right within the context of rapidly evolving ecological challenges.⁴⁶ Over the past decade, this has resulted in the consolidation of "a healthy climate system" as a substantive element of the right across global jurisprudence. Similarly, while not considered a standalone substantive element, the R2HE has also been increasingly used to establish and protect the rights of nature. This section will analyze the judicial approaches that have shaped and supported these emerging trends.

A. Courts Uphold "A Healthy Climate System" as an Element of the R2HE

The three planetary environmental crises of climate change, nature, land, and biodiversity loss, and pollution and waste are now widely accepted as having far-reaching and profound implications for the protection and enjoyment of human rights. Among these interconnected crises, climate change has emerged as the most prominent within the international human rights discourse. This recognition was partly formalized with the adoption of the Paris Agreement under the UNFCCC, the first binding international climate treaty to explicitly acknowledge the link between climate change and human rights.⁴⁷

The recognition of this connection has also led to a sharp rise in rights-based climate litigation—legal actions that invoke human rights frameworks to hold States or private actors accountable for climate harms.⁴⁸ Rights-based climate litigation typically argues that insufficient mitigation or adaptation measures, or policies that contribute to climate degradation, violate internationally or constitutionally protected rights, such as the right to life, health, or a healthy environment.⁴⁹ Since the signing of the Paris Agreement in 2015, the number and scope of such cases have expanded rapidly, reflecting a growing judicial willingness to interpret climate obligations through a human rights lens.

In this context, in the past decade, **numerous court decisions have affirmed that the integrity of the climate system is crucial for sustaining a healthy environment.** These courts have reasoned that without a climate system that is predictable, balanced, and not prone to extreme changes or events that harm the ecosystem and human health, the panoply of substantive and procedural elements encompassed by the R2HE would be threatened or cease to exist altogether. Building on this premise, these courts have concluded that a "healthy climate system," or similar formulations of the concept, is a precondition for the fulfillment of the R2HE and, therefore, belongs among the repertoire of the right's substantive elements. The growing worldwide recognition of "a healthy climate system" as a substantive element of the R2HE has become so prevalent that the former



Montana Supreme Court.
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UN Special Rapporteur on the human right to a clean, healthy, and sustainable environment asserted that “a safe climate is a vital element of the right to a healthy environment and is absolutely essential to human life and well-being.”⁵⁰

By 2015, a pioneering case explicitly linked climate change to the R2HE and emphasized the importance of expanding the right in this direction. In *Asghar Leghari v. Federation of Pakistan et al.*, the Lahore High Court of Pakistan explained that “existing environmental jurisprudence has to be fashioned to meet the needs of something more urgent and overpowering i.e., Climate Change.”⁵¹ Similarly, emphasizing the potential for the evolution of the constitutional R2HE and other environmental rights in the face of the climate crisis, the Constitutional Court of Colombia explained a year later that this adaptability made “the relationship between the Constitution and the environment dynamic and constantly evolving.”⁵²

In another case in the United States of America that leveraged the right’s flexibility, the Montana Supreme Court affirmed that Montana’s environmental life support system, which is the object of protection of the R2HE, “is all-encompassing, including but not limited to air, water, and land; and whatever interpretation is afforded this phrase by the Legislature and courts, there is no question that it cannot be degraded.”⁵³ According to the Court, the fact that climate change was not foreseen by the drafters of the Montana constitution did not prevent the constitution from evolving to consider it. It followed that “Montana’s right to a clean and healthful environment and environmental life support system includes a stable climate system, which is clearly within the object and true principles of the Framers inclusion of the right to a clean and healthful environment.”⁵⁴ Similarly, the Hawai’i Supreme Court held that the R2HE “encompasses the right to a life-sustaining climate system,”⁵⁵ which “is not just affirmative; it is constantly evolving.”⁵⁶

In India, the Supreme Court stated that “[w]ithout a clean environment which is stable and unimpacted by the vagaries of climate change, the right to life [and its implicit right to a healthy environment] is not fully realised.”⁵⁷

This trend has also been mirrored in recent processes undertaken to clarify State obligations in relation to the climate crisis. As the ICJ noted in its July 2025 advisory opinion, the submissions presented by States to the ICJ and the IAcTHR in the context of their respective advisory proceedings on climate change underscored the profound interconnection between climate-related harms and States’ obligation to fulfill the R2HE.⁵⁸ For instance, the Federated States of Micronesia emphasized in its submission to the ICJ “the failure by States to discharge all relevant obligations to prevent, minimize, mitigate, or otherwise address the harmful effects of anthropogenic emissions of greenhouse gases on the climate system and other parts of the natural environment, is a violation of the human right to a clean, healthy, and sustainable environment that all members

of the international community are obligated to uphold.”⁵⁹ In light of the widespread invocation of the R2HE in State submissions, the ICJ prominently featured the right as a key source of State obligations under international human rights law in the context of climate change.⁶⁰ The Court concluded that “[t]he duty to prevent significant harm to the environment also applies to the climate system, which is an integral and vitally important part of the environment and which must be protected for present and future generations.”⁶¹

The IACtHR elaborated on this perspective in its advisory opinion, explaining that “[t]he environment is composed of inextricably interrelated elements and systems. The protection of each of them necessarily contributes to the protection of the equilibrium that makes present and future life possible. The Court notes that, consequently, the individual and collective dimensions of the right to a healthy environment protect both the environment as a whole and the diverse systems and elements that compose it.”⁶² Consequently, not only did the Court recognize that “[c]limate protection has been recognized as a substantive element of the right to a healthy environment” by various international institutions,⁶³ but it further declared that “derived from the right to a healthy environment, is also the right to a healthy climate which protects the component of the environment that is directly affected in the context of the climate emergency, that is, the global climate system.”⁶⁴ The recognition of an autonomous right to a healthy climate, derived from the R2HE, marks a groundbreaking development in environmental jurisprudence, as few courts have explicitly articulated this right in the past. As the Supreme Court of India had aptly observed in 2024, “[d]espite a plethora of decisions on the right to a clean environment, some decisions which recognise climate change as a serious threat, and national policies which seek to combat climate change, it is yet to be articulated that the people have a right against the adverse effects of climate change.”⁶⁵ The leadership of these apex international and regional courts go a long way toward filling this gap, serving as a decisive catalyst for domestic courts to continue to adopt and enforce this right within their own jurisdictions.

i. Courts clarify the contours of R2HE-based climate duties

Courts around the world have utilized the R2HE’s newly established climate element to hold that State action that fails to actively preserve “a healthy climate system” constitutes a violation of the right. In *Morua v. China Harbour Engineering Company Ltd.*, the Papua New Guinea National Court of Justice said as much. Citing the growing body of global jurisprudence holding that the right imposes a positive duty—requiring affirmative steps—on States to address climate change, it explained that “it should follow therefore that a failure of states to take adequate steps to address climate change may constitute a violation of the right to a healthy environment.”⁶⁶ Similarly, the Supreme Court of Brazil concluded in *PSB et al. v. Brazil* that, pursuant to the R2HE, “environmental protection does not fall within the realm of political judgment, convenience, or discretion of the Chief Executive. It is an obligation to which they are bound.”⁶⁷ Courts worldwide, from South Africa to Pakistan, have repeatedly reaffirmed this proposition.⁶⁸

While the exact content of the climate duties mandated by the R2HE is context specific, commonalities transcend jurisdictions. This is explained in large part by the fact that the content of such duties has been driven and shaped by the consolidation of the contemporary international climate regime under the auspices of the UNFCCC, by which States committed to avoid dangerous anthropogenic interference with the Earth’s climate system. This framework has imbued the term “a healthy climate system” with scientific and political meaning. By ratifying the Paris Agreement, the Parties uniformly defined “the concept of a safe climate as ‘well below’ a 2°C increase in the average global temperature, and ideally limited to a 1.5°C increase.”⁶⁹ This international consensus rests upon the premise that warming above this temperature—primarily due to unmitigated greenhouse gas (GHG) emissions—poses too great a risk of triggering cascading impacts that would threaten the integrity of the global climate system. The ICJ echoed this when it explained



The south face of Mt. Machapuchre in Nepal is typically blanketed in snow at this time of year. © Yunish Gurung / iStock

that while “[t]he determination of what is required by due diligence ultimately ‘calls for an assessment *in concreto*’ of what is reasonable under the specific circumstances in which a State finds itself [...] [t]his does not exclude the identification of a required standard of conduct at a general level [...] because the specific character of the risk of significant harm to the climate system is indisputably established.”⁷⁰ Reflecting this, **courts worldwide have held that State action or inaction that fails to respect this temperature limit cannot be considered as preserving “a healthy climate system,” potentially constituting a violation of the R2HE.**

Courts have applied this understanding to various situations. In *EarthLife Africa Johannesburg v. Minister of Environmental Affairs and Others*, for example, the High Court of South Africa cited the State’s commitments under the Paris Agreement, among others, to support its conclusion that climate change was a relevant consideration for the environmental review of a coal-fired project, whose proper execution was necessary to fulfill the R2HE. Because the review approved by the Minister of the Environment effectively ignored climate change, making it impossible for South Africa to meet its climate commitments under the Paris Agreement, the Court held it to be invalid.⁷¹ More recently, in *Africa Climate Alliance et al. v. Minister of Mineral Resources & Energy et al.*, the High Court ruled that the State violated the R2HE by again including new coal-fired power in its energy plan without assessing the decision’s impact on children’s health and well-being, considering alternatives, or providing a participatory decision-making process.⁷²

In *Shrestha v. Office of the Prime Minister et al.*, the Supreme Court of Nepal ordered the government to enact a new law to mitigate climate change, among other objectives. The Court specifically issued a *writ of mandamus*—a court order to properly fulfill government official duties or correct an abuse of discretion—and ordered the government to implement a new climate law to effectuate Nepal’s commitments under the Paris Agreement and its constitution.⁷³ Calling upon the Paris Agreement, the Supreme Court of India, for its part, explained that “States owe a duty of care to citizens to prevent harm and to ensure overall well-being. The right to a healthy and clean environment is undoubtedly a part of this duty of care. States are compelled to take effective measures to mitigate climate change and ensure that all individuals have the necessary capacity to adapt to the climate crisis.”⁷⁴ The Court proceeded to order the establishment of an expert committee tasked with exploring the impact of electric power lines on an endangered

bird species as a means of determining how to use energy resources in accordance with this duty of care while ensuring the species' long-term survival and recovery. These cases contrast with the approach taken by India's National Green Tribunal, which has been cautious about using international law as a basis for incorporating "a healthy climate system" into the R2HE. In *Ridhima Pandey v. Union of India*, for example, a nine-year-old petitioner argued that India's climate policies failed to meet its domestic and international obligations, particularly under the Paris Agreement.⁷⁵ The Tribunal dismissed the case, reasoning that existing environmental assessments prescribed by the 1986 Environment Protection Act already accounted for climate change and that India's policies sufficiently reflected its international commitments, thereby avoiding direct reliance on international law to expand environmental rights.⁷⁶ The youth plaintiff has appealed the case.⁷⁷

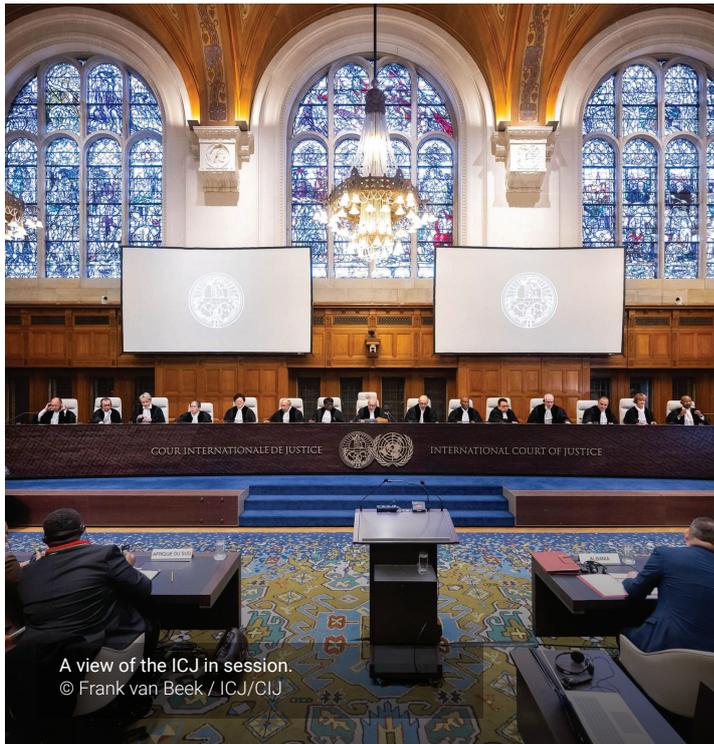
In *Future Generations v. Ministry of the Environment and Others*, the Supreme Court of Colombia noted that "in the aforementioned 2015 Paris Agreement under the United Nations Framework Convention on Climate Change, Colombia, among other responsibilities, committed to reducing 'deforestation in the Colombian Amazon,'"⁷⁸ and ordered the State to implement a plan to protect the Amazon Forest, thereby complying with its duty to protect the R2HE.⁷⁹

In *Nuestros Derechos al Futuro y Medio Ambiente Sano et al. v. Mexico*, a Mexican District Court also drew on the Paris Agreement to determine that climate duties under the right include mitigation, namely to "prevent the increase in global temperatures, enhance the State Party's own capacity to adapt to the adverse effects of climate change, and ensure that global greenhouse gas (GHG) emissions peak as soon as possible, followed by a rapid reduction of these emissions in accordance with the best available scientific information."⁸⁰ The Court ultimately held that Mexico's amendments to its Electric Industry Law violated the Paris Agreement and the R2HE by favoring the generation of electricity through fossil fuels.⁸¹

In *PSB et al. v. Brazil*, the Supreme Court of Brazil found the State had violated the R2HE due to its abrupt paralysis of the national fund designed to combat climate change. The Court explained that such retrogressive measures "indicate that the country is, in fact, moving in the opposite direction of its commitments [made in the Paris Agreement] and efforts to mitigate climate change."⁸² The Court further declared that the Paris Agreement is a type of human rights treaty with "supralegal" status, meaning that it prevails over ordinary laws while remaining subordinate to the Constitution.⁸³ Accordingly, the Court ordered the State to reactivate the fund and has since maintained its stance, deciding several cases along the same lines.⁸⁴

As noted above, the central purpose of the 2025 advisory opinions issued by both the ICJ and the IACtHR was to clarify the scope and content of States' obligations in the face of the climate crisis. The ICJ, in particular, concluded that States have obligations under both customary international law and key climate treaties—including the UNFCCC, the Kyoto Protocol, and the Paris Agreement—to protect the climate system from anthropogenic GHG emissions. The Court explained that these obligations, which it grouped broadly into mitigation, adaptation, and cooperation, must be fulfilled in accordance with principles of international law.⁸⁵ Similarly, the IACtHR identified a broad range of obligations, including general human rights duties, obligations arising from human rights law principles, procedural guarantees, and duties flowing from various substantive rights affected by climate harms. Among these, the Court specifically recognized that the R2HE, along with its derivative right to a healthy climate system, gives rise to obligations requiring: "(i) actions to address the causes of climate change and, in particular, mitigation of GHG emissions, [...] (ii) the protection of Nature and its components, and (iii) gradual progress towards sustainable development."⁸⁶

The IACtHR further elaborated on the legal obligations derived from environmental and international law principles that often guide the implementation of the R2HE. Among these, the



A view of the ICJ in session.
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“ This, coupled with the 2025 groundbreaking pronouncements of regional and international courts, means that regardless of potential setbacks in the international climate regime or the stalling of voluntary political commitments, the protection of this fundamental right will continue to require the preservation of a healthy climate system.”

principle of prevention—which requires States and other actors to take proactive measures to avoid environmental harm before it occurs—featured prominently. The Court emphasized that “[t]he obligation to guarantee rights and, specifically, the duty of prevention, acquires a specific content in relation to the right to a healthy environment.”⁸⁷ Relatedly, it affirmed that protecting the ecological balance necessary for healthy life on the planet is essential to the realization of fundamental human rights already safeguarded by international law, including non-derogable rights. In this context, the Court reasoned that if international law did not prohibit human actions that cause irreversible damage to the planet’s vital ecological equilibrium, it would undercut the very conditions required to uphold these fundamental rights. Accordingly, the IACtHR declared that the obligation not to cause irreversible environmental damage is a *jus cogens* norm of international law—that is, a highest-order peremptory duty that cannot be abrogated, derogated from, or reserved upon.⁸⁸ It concluded that “[g]iven the nature of *jus cogens* norms, the Court finds that all States should cooperate to end conducts that violate the prohibitions derived from peremptory norms of general international law that protect a healthy environment.”⁸⁹ Although not explicitly based on the R2HE, the ICJ reached a similar conclusion when it affirmed that the duty to prevent significant harm to the environment forms part of customary law—rendering it binding on all States, irrespective of treaty ratification or the existence of specific treaty provisions. It further concluded that, under this duty, “the standard of due diligence for preventing significant harm to the climate system is stringent.”⁹⁰

The growing number of climate judgments based on the R2HE reflects the efforts to translate the Paris Agreement into a legally binding commitment at the domestic level.⁹¹ Early research has identified this trend as promising, noting that courts tend to rule in favor of applicants more often than not when the R2HE is invoked.⁹² This, coupled with the 2025 groundbreaking pronouncements of regional and international courts, means that regardless of potential setbacks in the international climate regime or the stalling of voluntary political commitments, the protection of this fundamental right will continue to require the preservation of a healthy climate system. In the collective pursuit of a livable planet, courts have consistently affirmed that States bear the responsibility to act in accordance with this imperative.

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B. Courts Use the R2HE to Advance the Rights of Nonhumans and Nature

Over the past decade, the scope and content of the R2HE have continued to evolve in another manner: the use of the right as a legal vehicle for expanding legal subjectivity beyond the human realm. In particular, **courts and advocates have increasingly invoked the R2HE to advance the recognition and protection of the rights of nonhumans—ranging from rivers to animal species—and of nature more broadly.** They have primarily done so by recognizing them as “legal persons.” In this context, legal personhood means that these entities are treated as subjects of rights under the law, capable of holding rights and having those rights defended in court. The Supreme Court of Pakistan has observed that “[t]he approach of personifying the environment in order to protect and preserve nature and its objects is one of the latest evolutions in environmental law.”⁹³

This expansion of legal personhood has been pursued through a range of legal strategies, including constitutional amendments, statutory provisions, and judicial decisions. In the context of the latter, the R2HE has emerged as a particularly influential tool. Courts and advocates in several jurisdictions have drawn upon the right—either as a primary conceptual foundation or in combination with other rights—to extend protection to nonhumans and nature more broadly. These developments can be grouped into three categories. First, in jurisdictions where the rights of nature or nonhuman entities have already been recognized in national or subnational constitutions, laws, or regulations, courts have utilized the right to reinforce and give effect to these rights. Examples include cases from Brazil,⁹⁴ Ecuador,⁹⁵ India,⁹⁶ and Panama.⁹⁷ Second, in jurisdictions where such rights have not yet been codified at the national or local level, courts have employed the R2HE as a foundational legal basis to recognize the rights of nonhumans and/or of nature for the first time. In these instances, the R2HE has served as a conceptual bridge, facilitating the judicial articulation of the rights of nonhumans and nature in the absence of explicit legislative or constitutional provisions. Examples include decisions in Argentina,⁹⁸ Bangladesh,⁹⁹ Brazil,¹⁰⁰ Colombia,¹⁰¹ India,¹⁰² Pakistan,¹⁰³ and Peru.¹⁰⁴ Third, even in contexts where courts have not formally recognized the rights of nature or nonhuman entities, the right has proven instrumental in shifting judicial reasoning toward more ecocentric perspectives. This emerging line of reasoning is evident in decisions from Costa Rica,¹⁰⁵ Mexico,¹⁰⁶ Pakistan,¹⁰⁷ Portugal,¹⁰⁸ and the Inter-American Human Rights System,¹⁰⁹ which may pave the way for the formal recognition of these rights in the future.

While much of this jurisprudence stops short of explicitly identifying nonhumans and nature as holders of the R2HE, or of defining their rights as substantive elements of the R2HE, its practical implications are the same. Fulfilling the right requires the recognition and effective protection of the rights of nonhumans and nature.

i. Courts invoke the R2HE’s ecocentric nature to advance the rights of nonhumans and nature

Across jurisdictions, courts have concluded that the R2HE requires the protection of the rights of nonhumans and nature by grounding their reasoning in the former’s ecocentric dimension. As emphasized by the former UN Special Rapporteur on the human right to a clean, healthy, and sustainable environment in 2024, “a fascinating recent development is the eco-centric interpretation of the human right to a healthy environment [...]”¹¹⁰ Ecocentrism is a worldview “based on an ecologically informed philosophy of internal relatedness, according to which all organisms are not simply interrelated with their environment but also constituted by those environmental interrelationships. [...] According to this picture of reality, the world is an intrinsically dynamic, interconnected web of relations in which there are no absolutely discrete entities and no absolute dividing lines between the living and the nonliving, the animate and the inanimate, or the human and the nonhuman.”¹¹¹ This and similar perspectives have long been embraced by Indigenous Peoples and traditional communities, serving as a powerful conceptual force behind the current movement to recognize the rights of nature in Western legal systems. In *Sentencia No.*

22-18-IN/21 (On Mangroves), a concurring judge of Ecuador’s Constitutional Court explained, “this is the wisdom found in many Indigenous Peoples and traditional communities around the world, and it is also the conclusion reached by the most advanced developments in scientific knowledge, the humanities, and the social sciences.”¹¹² Through this focus, the human R2HE is contributing to a broader shift away from the traditionally anthropocentric orientation of human rights, which have historically prioritized human interests while excluding other species and natural entities.¹¹³

One way in which courts have drawn on the R2HE’s ecocentric principles to recognize the rights of nonhumans and nature more broadly is by emphasizing the fundamental interconnectedness between humans and the natural world, dismantling hierarchical and conceptual divisions between the human and nonhuman domains. In *Future Generations v. Ministry of the Environment and Others*, the Colombian Supreme Court explained that “[t]his conception is the fundamental essence on which the concept of the intrinsic value of the environment is based: respect for oneself inherently implies ‘respect for the part of oneself that is made up of nature, which will, in turn, include future generations’”¹¹⁴ and proceeded to grant the Colombian portion of the Amazon rainforest legal personality.¹¹⁵ Similarly, the Ecuadorian Constitutional Court, which in 2021 invoked the R2HE as a basis for imbuing the Los Cedros Forest with legal personality, affirmed that the right “reconceptualize[s] the health, balance, and sustainability of the environment, understanding, correctly, the human being to be part of the same [...]”¹¹⁶ The Supreme Court of Bangladesh also invoked the constitution’s implicit R2HE to support the idea that humanity is a part of nature rather than separate from it when recognizing the rights of the Turag River and extending this status to all rivers across Bangladesh.¹¹⁷

While less ecocentric in focus, an Argentine Provincial Court explained that improving the conditions of Cecilia, a chimpanzee held in captivity, through her recognition as a nonhuman legal person and a subject of law would benefit the general interest of society and, therefore, fulfill Argentine citizens’ R2HE. “[I]f we focus on her well-being, it will not be Cecilia who owes us a debt of gratitude, but rather we who must thank her for the opportunity to grow as a community and to feel a little more human,” the Court explained.¹¹⁸ While the Court focused on the benefits that recognizing Cecilia as a subject of rights had for human society vis-à-vis fulfilling the human R2HE, it emphasized that the “collective good” protected by the right was “embodied in the well-being of Cecilia.”¹¹⁹

Some courts have also advanced the rights of nonhumans and nature by invoking another pillar of the R2HE’s ecocentrism—the proposition that natural ecosystems must be protected and preserved for their intrinsic worth and significance. Indeed, a cornerstone of ecocentrism is that “[e]cocentric individuals value nature for its own sake and, therefore, judge that it deserves protection because of its intrinsic value.”¹²⁰ Along these lines, a number of courts have reasoned that the obligation to respect nature is untethered from the instrumental value it offers human beings. The Constitutional Court of Colombia stated that nature and a healthy environment’s “importance lies, of course, in their connection to the human beings who inhabit them and the necessity of a healthy environment to lead a dignified life in conditions of well-being, however, it also extends to other living organisms with whom we share the planet, recognizing them as beings deserving of protection in their own right.”¹²¹ The Court further declared that the value of nature lies not “merely [in] the material, genetic, or productive utility they may represent for humanity, but because, as a living entity composed of multiple forms of life and cultural representations, they are subjects of identifiable rights, this recognition establishes them as a new imperative for comprehensive protection and respect by states and societies.”¹²² As a result, the Court made a first-of-its-kind ruling that a local river was the subject of rights based on the ecocentric dimension of the R2HE,¹²³ and further reaffirmed that “[t]he foundation of the obligation of direct solidarity with nature is built upon the inherent value of nature itself [...]”¹²⁴ The Colombian Supreme Court

has recognized numerous other rivers, national parks, and the Colombian portion of the Amazon rainforest as rightsholders.¹²⁵

Recently, the Supreme Court of Panama did away with anthropogenic interpretations of the R2HE, explaining that Panama's recent legislation declaring nature as a subject of rights "implies that the Panamanian State must have the necessary public policies in place to ensure 'the best interests of nature,' now based on its intrinsic value and independently of the utilitarian value it may have for human beings."¹²⁶

Additionally, the Punjab and Haryana High Court and the Uttarakhand High Court of India accorded the status of "legal person or entity" to animals in their regions, granting them the "corresponding rights, duties and liabilities of a living person."¹²⁷ The Courts supported their logic with a rich body of precedent that interpreted the right to life—and its implicit R2HE—to reason that "so far as animals are concerned, 'life' means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity."¹²⁸

Although these developments may appear paradoxical, they showcase that the R2HE can be increasingly understood as an ecocentric human right. This was first exemplified by the IACtHR's Advisory Opinion No. 23 of 2017, in which the court spelled out its understanding of the R2HE. In the opinion, the Court broadened its traditional anthropocentric approach, in which environmental damage could only be brought to its attention if human interests were affected. The Court did this by recognizing that "as an autonomous right, the right to a healthy environment, unlike other rights, protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals."¹²⁹ In a groundbreaking opinion, this human rights court affirmed that a State may violate the *human* R2HE through environmental degradation in the absence of direct harm to human beings.¹³⁰ In 2025, the IACtHR reiterated this holding, explaining "[t]hus, recognition of Nature as a subject of rights does not introduce content that is alien to the Inter-American *corpus iuris* but rather represents a contemporary expression of the principle of the interdependence between human rights and the environment."¹³¹ Building on this basis, the Court held that States have the positive obligation to adopt measures to guarantee the protection, restoration, and regeneration of ecosystems.¹³² The significance of an international human rights court reasoning through environmental obligations in an ecocentric rather than anthropocentric manner cannot be overstated. Indeed, the IACtHR recognized the intrinsic value of nonhuman entities and ecosystems instead of making their value a function of how useful they are to humans. In doing so, the Court not only recognized that rights of nature are *compatible* with human rights law but that, in fact, the two movements are mutually reinforcing.¹³³

This departure from traditional human rights law, which premises legal protection on individual human injury, encapsulates the R2HE's unique potential as a human right that may further ecocentric approaches and lead to future recognition of the rights of nature.¹³⁴ Indeed, courts, such as the Constitutional Court of Costa Rica and Mexico's Supreme Court, have also advanced ecocentric perspectives in cases that do not bestow legal personality on nonhumans or nature.¹³⁵

More fundamentally, the invocation of the R2HE by practitioners and courts has begun to challenge the anthropogenic principles upon which our society is premised. In particular, it has raised the question of whether an anthropocentric approach remains tenable given the rapidly worsening environmental challenges. By giving force to the R2HE, some courts have already answered in the negative.

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The R2HE has been broadly interpreted as a universal human right—one that entitles any natural or legal person to seek its enforcement through the courts. Over the past decade, however, a discernible shift has occurred in the profile of those invoking the right. Most notably, its use has **expanded beyond traditional actors to include children and youth, as well as governments seeking to safeguard environmental interests**. This section examines this emerging trend and considers its substantive implications for the evolving interpretation and application of the right. While this section focuses on youth and governmental actors due to their prominence in bringing R2HE-based cases, the increasing visibility of the disparate impacts that the triple planetary crisis poses suggests that other constituencies—such as women or the elderly—may increasingly organize to assert their R2HE in the courtroom.

A. An Uptick in Youth- and Children-Led Cases

Younger and future generations—comprising children, youth, and those not yet born¹³⁶—will bear the long-term consequences of our environmental choices.¹³⁷ Despite being the least able to influence today's decisions, these generations will experience the brunt of the compounding and lock-in environmental impacts of the triple planetary crisis. Perhaps unsurprisingly, children and youth around the world have taken a leading role in environmental mobilization. In the words of the UN Committee on the Rights of the Child, “[c]hild human rights defenders, as agents of change, have made historic contributions to human rights and environmental protection.”¹³⁸ This is particularly true of the last decade, in which young activists have increasingly turned to human rights frameworks to accelerate climate and other environmental action.¹³⁹

The generational implications and inequities of current environmental harm for younger and future generations have, thus, been increasingly put on the stand in the growing number of cases brought by young people and children. In this context, both practitioners and courts have increasingly turned toward the forward-looking nature and collective dimension of the R2HE—in particular its incorporation of the intergenerational equity principle—to safeguard the interests of younger and future generations.¹⁴⁰

i. Courts reaffirm younger and future generations as R2HE holders

The proposition that younger and future generations are R2HE holders is not new. Indeed, *Minors Oposa v. Secretary of the Department of Environment and Natural Resources* confirmed this in 1993, when the Supreme Court of the Philippines warned that without fulfillment of the R2HE, “the day would not be too far when all else would be lost not only for the present generation, but also for those to come – generations which stand to inherit nothing but parched earth incapable of sustaining life.”¹⁴¹ The ICJ recalled in its 2025 advisory opinion that, by 1996, it had similarly reached the conclusion that “the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn.”¹⁴² As cases that place the intergenerational implications of the triple planetary crisis at the center stage have increased in frequency, courts worldwide have reaffirmed the expansive scope of the R2HE to include and protect younger and future generations.

For many courts, reaching this conclusion has not been difficult, as the R2HE is often explicitly written in domestic constitutions and statutes to apply to all present and future individuals. For example, Fiji's Constitution states that “[e]very person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures.”¹⁴³ Similarly, the 1995 Mongolian



Demonstrators protesting climate change. © Alessandro Biascioli / iStock

Environmental Protection Law protects the “human right to live in a healthy and safe environment, an ecologically balanced social and economic development, the protection of the environment for present and future generations, the proper use of natural resources and the restoration of available resources.”¹⁴⁴ And in 2023, the 1999 Canadian Environmental Protection Act was amended to include the R2HE and to mandate that the Government of Canada “uphold principles such as principles of environmental justice – including the avoidance of adverse effects that disproportionately affect vulnerable populations – the principle of non-regression and the principle of intergenerational equity.”¹⁴⁵ In the United States of America, the Montana Supreme Court recently affirmed, in a case brought by sixteen youths, that “[t]he language of the constitutional provisions guaranteeing a clean and healthful environment speak for themselves. They apply to all persons of the state, including ‘present and future generations.’”¹⁴⁶

Other courts have reaffirmed the status of younger and future generations as R2HE holders by framing the issue as part of the collective dimension of the R2HE. Individually, the R2HE grants substantive and procedural guarantees that protect people from harms associated with environmental degradation and destruction, and ensures their access to a clean, healthy, and sustainable environment in which they can live and satisfy their individual needs. Collectively, the right provides the same guarantees to groups, communities, and future generations. In the latter dimension, **some courts have emphasized the inclusion of both present and future generations as part of the collective protected by the R2HE.** The IACtHR has, for example, noted in multiple occasions that “[t]he human right to a healthy environment has been understood as a right that has both individual and collective connotations. In its collective dimension, the right to a healthy environment constitutes a universal value that is owed to both present and future generations.”¹⁴⁷ Building on the R2HE’s collective nature, the Court emphasized that protection of the R2HE is essential to Indigenous Peoples’ preservation and transmission of their cultural identity, spiritual connection to land, and traditional knowledge across generations.¹⁴⁸ Similarly, a Mexican Collegiate Court in *Youth v. Government of Mexico* affirmed fifteen youth petitioners’ R2HE. When the Court sent the case to the Mexican Supreme Court for a ruling on the merits, the former explained that “in any case aimed at ensuring the human right to a healthy environment, it must be understood that

the paradigm of this right is based on a concept of complex, and even imperceptible, interaction between humans and nature, which takes into account the individual and collective effects, both present and future, of human actions.”¹⁴⁹

a. *Courts solidify the application of the intergenerational equity principle*

Together with courts’ affirmation that younger and future generations are R2HE holders, particularly in youth- and children-led cases, has come the more frequent application of the intergenerational equity principle. The intergenerational equity principle, which is often applied in tandem with the R2HE, holds that “every generation holds the Earth in common with members of the present generation and with other generations, past and future. The principle articulates a concept of fairness among generations in the use and conservation of the environment and its natural resources [...]”¹⁵⁰ Put more starkly by the Environment and Land Court in Kenya, “[a] polluted river of death spewing poison is not what the principle of intergenerational equity expects the present generation to bequeath to future generations.”¹⁵¹

A number of courts throughout the world have underscored the necessity of applying the intergenerational equity principle by highlighting the distinct vulnerabilities faced by younger and future generations. **They have particularly pointed to the disproportionate effects that environmental degradation has on children and youth, as well as the disenfranchisement of younger and future generations in relation to decisions with lock-in implications for the future.** In *Youth Verdict v. Waratah Coal*, for example, the Land Court of Queensland stressed that “[t]he importance of the rights of children lies in the special vulnerabilities of children and their inability to control the decisions that affect them.”¹⁵² The Court highlighted “the significance of this generation making decisions that could lock-in climate trajectories, the impacts of which will be felt by future children”¹⁵³ as well as the “intergenerational imbalance in the effects of climate change itself.”¹⁵⁴ Similarly, in reaching a settlement agreement with youth plaintiffs that recognized and protected their R2HE, the State of Hawai’i emphasized in *Navahine F. v. Hawai’i Department of Transportation* that “children are uniquely vulnerable to the impacts of climate change because of the natural physiology of their developing and growing bodies, and that climate change impacts experienced during childhood can have lifelong consequences.”¹⁵⁵

Also in relation to climate change, the IACTHR noted that “[c]limate change has greater effects on those who, today, are very young and who must live their whole lives in a climate environment that is increasingly adverse.”¹⁵⁶ The Court explained that “the concept of intergenerational equity has been developed owing to the increasing medium- and long-term implications of these challenges, and efforts have been undertaken to penalize conducts that give rise to massive and long-lasting damage to our ecosystems at the national and international level.”¹⁵⁷ It then proceeded to delineate special State obligations owed to children in the context of the climate crisis.¹⁵⁸ For its part, the ICJ observed on intergenerational equity that “its relevance for the obligations in respect of climate change is undisputable.”¹⁵⁹ Additionally, in *D.G. Khan Cement Company Ltd. v. Government of Punjab*, the Supreme Court of Pakistan emphasized the need for the judiciary to act on behalf of future generations’ right to life, which has been interpreted by the Court to include the R2HE, since “tomorrow’s generations aren’t here to challenge this pillaging of their inheritance. The great silent majority of future generations is rendered powerless and needs a voice.”¹⁶⁰

When applying the intergenerational equity principle, numerous judicial and quasi-judicial bodies have invoked the forward-looking approach that the fulfillment of the R2HE necessitates. In doing so, they have emphasized State responsibilities toward those not yet born. The UN Committee on the Rights of the Child, for example, has stated that “while the rights of children who are present on Earth require immediate urgent attention, the children constantly arriving are also entitled to the realization of their human rights to the maximum extent. Beyond their immediate obligations

under the Convention with regard to the environment, States bear the responsibility for foreseeable environment-related threats arising as a result of their acts or omissions now, the full implications of which may not manifest for years or even decades.”¹⁶¹ Similarly, the IACtHR has explained that “the line separating future generations from current children shifts every time another baby is born. Therefore, it is essential that debates on future generations take into account the rights of children who are continually being born or who are already here [...] those whose future lives will be shaped by our actions today: they are already among us.”¹⁶² In its 2025 advisory opinion, the Court reiterated that “[t]aking into account that human generations exist within an unbroken continuum that is continually renewed and redefined as untold new members join the living human community, their protection requires the adoption of measures that ensure equity in both the effective enjoyment of rights by present generations, and in their transmission to future generations.”¹⁶³ Therefore, the ICJ concluded in its advisory opinion, “[d]ue regard for the interests of future generations and the long-term implications of conduct are equitable considerations that need to be taken into account where States contemplate, decide on and implement policies and measures in fulfilment of their obligations under the relevant treaties and customary international law.”¹⁶⁴

Courts around the world have additionally applied the principle in concert with other forward-looking concepts commonly used to guide the application of the right, including: sustainable development, which dictates that development must meet the needs of the present without compromising the ability of future generations to meet their own needs;¹⁶⁵ the public trust doctrine, a legal principle that asserts certain natural “resources” are held in trust by the government for the benefit of the public;¹⁶⁶ the precautionary principle, which holds that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;¹⁶⁷ and the prevention principle—which, as defined above, provides that States and other actors must take meaningful steps to avoid environmental harms before they occur.¹⁶⁸ Encapsulating this, in *Asgar Leghari v. Federation of Pakistan et al.*, the Lahore High Court explained that “fundamental rights, like the right to life (Article 9) which includes the right to a healthy and clean environment and right to human dignity (Article 14) read with constitutional principles of democracy, equality, social, economic and political justice include within their ambit and commitment, the international environmental



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“

It is essential that debates on future generations take into account the rights of children who are continually being born or who are already here [...] those whose future lives will be shaped by our actions today: they are already among us.”

principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine.”¹⁶⁹ Echoing this, the IACtHR has explained that the intergenerational equity principle “[...] is closely related to the principles of prevention, precaution and progressivity.”¹⁷⁰

Similarly, in explaining the content of the right in *EarthLife Africa Johannesburg v. Minister of Environmental Affairs and Others*, the High Court of South Africa explained that “[s]ustainable development is at the same time integrally linked with the principle of intergenerational justice requiring the state to take reasonable measures [to] protect the environment ‘for the benefit of present and future generations’ and hence adequate consideration of climate change.”¹⁷¹ The Supreme Court of India, in *M K Ranjitsinh et al. v. Union of India*, explained that “[b]y recognizing the right to a healthy environment and the right to be free from the adverse effects of climate change, states are compelled to prioritize environmental protection and sustainable development, thereby addressing the root causes of climate change and safeguarding the well-being of present and future generations.”¹⁷²

Those decisions that have upheld the principle of intergenerational equity share a common outcome: the actions of present generations must be aligned with safeguarding the rights and freedoms of generations to come. In *Future Generations v. Ministry of the Environment and Others*, the Supreme Court of Colombia spelled this out clearly, explaining the environmental rights of future generations—including the R2HE—require “a limitation on the freedom of action for present generations, who consequently assume additional environmental responsibilities. This framework implicitly requires current generations to adopt a stance of care and stewardship toward natural resources and the future human world.”¹⁷³ Recognizing that the rampant and accelerating deforestation of the Amazon is a serious violation of current and future fundamental rights, the Court ordered the Colombian State to formulate and implement an “Intergenerational Pact for the Life of the Colombian Amazon” to address this challenge in collaboration with youth petitioners.¹⁷⁴

Despite the increased use of the R2HE by children and youth to advocate for future generations, a number of jurisdictions have yet to expressly recognize the distinct impacts of environmental degradation on present-day children and youth. For example, in dismissing a youth-led case despite upholding the right’s application to future generations, the Supreme Court of Mexico held that “regarding the environmental services linked to reducing global warming, the right to a healthy environment does not specifically protect younger generations. This right belongs equally to both present and future generations—without exclusions or distinctions. Therefore, it cannot be asserted that young people hold a superior prerogative or enjoy greater or special protection. Although young people may, in fact, experience the impacts of global warming for a longer duration, this does not imply a legally relevant differentiated situation. In reality, the entire global population suffers from the effects of climate change due to its inherently global nature.”¹⁷⁵ As courts increasingly address the claims of those compelled to inhabit a damaged world, however, they will be called upon to address specific challenges and vulnerabilities faced by younger and future generations.

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B. An Uptick of Government Reliance on the R2HE in Defending Environmental Policies

Much of the jurisprudence on the R2HE has centered on its use by petitioners—typically individuals, communities, and civil society organizations—to compel government action. Increasingly, however, governments at all levels have invoked their obligation to respect, protect, and fulfill the R2HE as a legal justification for enacting and upholding environmental regulations in the face of anti-regulatory legal challenges. Courts have largely accepted this rationale, affirming the legitimacy of environmental measures grounded in human rights obligations. This trend highlights the role of the **R2HE not only as a mechanism for advancing environmental protection but also as a defensive legal tool that enables governments to withstand deregulatory pressures and maintain oversight over corporate actors.**

This approach has been particularly prevalent in response to the increase in cases brought by the plastic industry over the last decade.¹⁷⁶ Corporate and industry petitioners in such cases have alleged that municipal or local regulatory bodies lack the authority to introduce measures directed against plastic pollution and that such measures conflict with federal policies or the rights of businesses. In response, government defendants and courts have relied on the R2HE as a basis for affirming that legislatures and agencies operated within their prescribed powers and pursuant to their obligations. Such interpretation has sometimes served as a gap-filler, providing lawful authority for government action where such authorization might otherwise be lacking or ambiguous.

In this context, courts have upheld the application of environmentally protective regulations from subnational jurisdictions in the face of less stringent national or international standards. In *Chennai Non Woven's Private Limited v. State of Tamil Nadu*, the plastics industry challenged state government restrictions that allegedly conflicted with India's national legislation by imposing more stringent requirements on certain plastics products. Citing precedent, the state government argued that “there is a constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment [sic] but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment.”¹⁷⁷ The Madras High Court dismissed the industry's challenge by holding that the national Plastic Waste Management Rules only set general requirements, and that states across the country could introduce more ambitious measures deemed necessary for the protection of the R2HE. The same line of reasoning has been adopted by many Indian courts in cases where the plastics industry challenged state-level restrictions on certain plastic products by claiming that they conflict with national legislation.¹⁷⁸

In *Indonesian Plastic Recycling Association v. Governor of the Province of Bali*, the Supreme Court of Indonesia dismissed a challenge by the Indonesian Plastic Recycling Association and plastic companies to Bali Province's ban on certain single-use plastic products. The Court indicated that national legislation on waste did not preclude the local government from creating regional policies to address plastic pollution and protect the R2HE, explaining that such protections were in accordance with the statutory authority of local government.¹⁷⁹

In *Union of the Plastic Material Industry of the State of São Paulo v. Mayor of São Paulo*, the plastics industry argued that a ban on plastic bags could only be introduced by State or federal authorities, not by a municipality. The Supreme Federal Court of Brazil disagreed, stating that federal and state constitutions allow municipalities to legislate in matters concerning local interest, including solid waste management, while also imposing a constitutional duty to protect the R2HE on them.¹⁸⁰ The Court also dismissed nearly identical challenges to similar bans by other municipalities.¹⁸¹



The Perito Moreno Glacier in Santa Cruz Province, Argentina. © Saiko3p / iStock

Applying this reasoning to the international level, in *State (ex parte Aero Plastic Industries Ltd) v. Director of Environmental Affairs*, a plastics manufacturer challenged the Malawian government's closure of the applicants' factories and the imposition of fines for producing banned plastics, which the applicants alleged were undertaken without due process. The manufacturers also challenged the adoption of the ban itself, alleging it was enacted without regard to looser regulations in surrounding countries and was, therefore, in violation of the Southern Africa Development Community Treaty. In response, the Supreme Court of Malawi pointed to the government's "broad plenipotentiary" to take action to protect the statutory R2HE.¹⁸² Indeed, the government "could take action against anyone violating the right," and it had properly done so.¹⁸³ Additionally, the Court clarified that "our legislature does not have to—although it may—mirror, refer, mimic or use legislation of other jurisdictions in their wider power to legislate."¹⁸⁴ In sum, the government was empowered to impose stricter standards than those found in neighboring countries or regional treaties because of its constitutional and international obligations to protect the R2HE.

Such disputes have sometimes centered on procedural grounds. In *Kenya Association of Manufacturers & 2 Others v. Cabinet Secretary – Ministry of Environment and Natural Resources & 3 Others*, the Environment and Land Court of Kenya dismissed the plastics industry's *prima facie* challenge to the validity of a legal notice announcing a national ban on the use, manufacture, and importation of plastic bags. In so doing, the Court upheld the Ministry of Environment and Natural Resource's power to issue the ban. The Court emphasized that "Kenyan courts are obliged to be guided by and promote the constitutional framework on the environment"¹⁸⁵ as both mandated and guided by constitutional and statutory environmental provisions. More specifically, the Court concluded that the constitutional R2HE, coupled with the government's constitutional duty to protect the environment and natural resources, established the authority to issue the ban.¹⁸⁶

A similar line of reasoning has been applied in other contexts. In *Barrick Exploraciones Argentinas S.A. and Others v. National State*, a mining company and a provincial government jointly challenged federal legislation protecting Argentina's glaciers. Among other arguments, the plaintiffs claimed that the federal legislature lacked the authority to protect the glaciers, and that such power belonged instead to the provincial government. This time affirming stronger federal—rather than state or local—protections, the Court found that federal legislative authority was implied in the constitutional R2HE: "At this point, it is important to recall that the power delegated to the

National State by the provinces to establish minimum environmental standards is not merely a theoretical declaration [...], but rather, the National State has been granted the authority to implement, through such laws, the means to achieve the constitutional goal of ‘a healthy, balanced environment, suitable for human development’ (Article 41).¹⁸⁷ The Court held that the provinces must remain loyal to the constitutional environmental objectives partly embodied in the right by respecting minimum standards, and that provincial legislatures are only empowered to enact more stringent legislation. In this case, the recognition that environmental matters are of constitutional importance served as the basis for judicial deference, enabling the federal legislature to enact ambitious environmental measures despite provincial opposition.¹⁸⁸

While backing the regulatory powers of governments, **courts have also seized the opportunity presented by these actions to underscore that the R2HE encompasses both a right and a duty for all governments, individuals, and corporations.** As such, the existence of government regulatory power does not absolve other duty bearers from their responsibility to safeguard the R2HE. In Mexico’s *Amparo Directo en Revisión 5452/2015*, a private company filed a direct *amparo* lawsuit—used to protect fundamental rights against actions or omissions by authorities—questioning the constitutionality of local environmental legislation and proceedings initiated against it by the Environmental Protection Attorney’s Office. The company specifically argued that the Biodiversity Code of one of Mexico’s states was unconstitutional because it transferred obligations, activities, and functions, including the protection of the R2HE and municipal powers related to waste purification, transportation, and disposal, that had been exclusive to the state, to citizens. The Supreme Court of Mexico disagreed, ruling that the constitutional R2HE required all legislative, administrative, and judicial authorities to adopt, within the framework of their competencies, all necessary measures to protect the environment. This constitutional mandate, the Court held, established a shared responsibility between states and citizens to protect and improve the environment for present and future generations.¹⁸⁹

Finally, as the R2HE has evolved to address the emerging threats of the triple planetary crisis, some courts have upheld the authority of government bodies to revisit and strengthen past policy decisions. In *In re Application of Hawai’i Electric Light Co.*, for example, energy company Hu Honua challenged the state Public Utilities Commission’s rejection of an agreement between Hu Honua and the Hawai’i Electric Light Company for the establishment of a biomass power plant. In a unanimous decision, the Hawai’i Supreme Court dismissed Hu Honua’s assertion that the Commission was barred from considering the project’s GHG emissions. Because the constitutional R2HE included a safe climate as one of its elements, the Court concluded that the Commission had a duty to evaluate the proposed agreement in light of the increasingly pressing risks posed by climate change. The Court determined that the Commission fulfilled its duty under the Hawai’i constitution to safeguard the R2HE by conducting fact finding and evaluating the information presented by Hu Honua in the agreement. The Court further affirmed that it was within the Commission’s discretion to deem the information unpersuasive. Indeed, it was the Commission’s prerogative to reassess energy projects in light of evolving climate change risks. A failure by the Commission to do would render it impossible to “perform its statutory function in a manner that fulfills the State’s affirmative constitutional obligations.”¹⁹⁰

The R2HE has thus played a crucial role in clarifying and reinforcing governmental regulatory authority in the ever-changing triple planetary crisis, particularly in the face of corporate challenges. This protective aspect of the right provides a valuable counterbalance in a world where governments are frequently taken to court for failing to adequately address environmental issues. While this function has so far primarily emerged through plastic-related caselaw, it is likely to continue gaining relevance as national and local governments strengthen climate and environmental laws and policies and as other industries devise increasingly sophisticated anti-regulatory—and environmentally harmful—strategies.

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Trend #4

Courts Leverage the R2HE to Reimagine Procedural Access to Justice

Globally, courts and legislatures have long affirmed the link between realizing the R2HE and procedural rights. Indeed, the right has long been recognized as encompassing three procedural elements:¹⁹¹ access to information—the right to seek, receive, and impart environmental information;¹⁹² public participation—the right to participate in environmental decision-making;¹⁹³ and access to justice with effective remedies—the right to a review procedure before a court of law or other independent and impartial body to challenge such a decision, act, or omission by the public authority in question.¹⁹⁴

Over the past decade, courts and institutions worldwide have continued to highlight these elements’ role in fulfilling the right, emphasizing that they are not mere formalities but essential components of substantive environmental protection. For example, the IACTHR underscored in its 2025 advisory opinion that “the effective guarantee of access to climate-related information constitutes an essential condition for the protection, inter alia, of the rights to life, personal integrity, health, a healthy environment, and a healthy climate.”¹⁹⁵ It more broadly affirmed that “the exercise of democracy facilitates the preservation and proper management of the environment.”¹⁹⁶ Further, as mentioned above, the enactment of the Aarhus Convention and, more recently, of the Escazú Agreement, which “above all... aims to combat inequality and discrimination and to guarantee the rights of every person to a healthy environment and to sustainable development,” reflects this global position.¹⁹⁷ **Courts have, therefore, also continued to find violations of the R2HE whenever one or more of its procedural elements are threatened or unfulfilled.**¹⁹⁸

In *Mohamed Ali Baadi and Others v. Attorney General*, the High Court of Kenya emphasized the essential role of the right’s procedural elements in justice and democracy building when it found



Waterfront on Lamu Island. © WLDavies / iStock

a violation based largely on the exclusion of a local community in the risk assessment phase of a cross-border transportation corridor. The Court explained that “these three access rights have the common denominator that they empower individuals to have a meaningful voice in decisions that affect them and their development.”¹⁹⁹ In *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia*, the Supreme Court of the Philippines found a violation of the R2HE and invalidated an administrative order governing the import and release of genetically modified organisms in the Philippines. The Court found the administrative order deficient in large part because it lacked provisions for meaningful, participatory, and transparent public consultation prior to field trials.²⁰⁰ More recently, the IACtHR, also finding a violation of the right, extended the concept of access to information and found a State responsible for failing its obligation of “active transparency” for the first time. Active transparency, the Court explained, not only requires States to respond to requests for environmental information but also to actively distribute and publicize this information to all stakeholders in a complete, comprehensible way, and to use accessible language.²⁰¹

A notable trend of the past decade relates to access to justice, as **courts have been increasingly called upon to confront ecological crises that challenge traditional notions of standing**—the legal capacity to initiate a lawsuit, or in plain terms, to access justice through the legal process. Although legal definitions of standing vary across jurisdictions, it is generally required that claimants have a genuine and current stake in the outcome, that the dispute be one the court is competent to resolve, and that the court have the authority to provide a remedy.²⁰² In common law systems, this typically translates to the requirements of particularized harm, imminence, and redressability. In civil law systems, it corresponds to the need for a personal, direct, and legally protected interest.

Historically, standing requirements have functioned as a gatekeeping mechanism for courts. In recent years, however, courts have adapted standing requirements, recognizing that the rigid application of traditional rules can frustrate the enforcement of fundamental rights in the context of increasingly diffuse, long-term, and collective ecological crises. The IACtHR encapsulated this approach when it explained that:

Given the serious nature of the risks arising from climate impacts and the way in which they affect particularly vulnerable individuals and groups to a greater extent, the Court

believes that the conduct of judicial proceedings relating to such risks and impacts should be guided by the application of the *pro actione* principle. According to this principle, the interpretation or application of procedural rules must not unjustifiably prevent or hinder a court from hearing and ruling on the claims submitted to it in accordance with the law, and the interpretation most favorable to access to justice must always prevail. Consequently, judicial bodies must interpret and apply the relevant rules in such a way as to effectively guarantee access to substantive justice for those who require it in the context of the climate emergency.²⁰³

This practice may gain increasing traction as courts also grow more willing to reinterpret substantive obligations in response to evolving ecological realities. For example, the ICJ recently explained that “the diffuse and multifaceted nature of various forms of conduct which contribute to anthropogenic climate change does not preclude the application of the duty to prevent significant harm to the climate system and other parts of the environment. This duty arises as a result of the general risk of significant harm to which States contribute, in markedly different ways, through the activities undertaken within their jurisdiction or control.”²⁰⁴ Under this duty, the Court explained, States must act with due diligence, a standard “which may evolve over time.”²⁰⁵

In particular, courts have reimagined the “who” and “when” of access to justice as well as the forms of redressability and remedies. In many of these cases, the R2HE has served as a central justification for expanding access to justice. Courts have particularly relied on the normative weight and collective dimensions of the right to transform standing from a gatekeeping doctrine into an enabling one. As early as 2011, the former UN Special Rapporteur on the human right to a clean, healthy, and sustainable environment observed that “a key development in access to justice has been the use of the constitutional right to a healthy environment (and legislation implementing this right) to rewrite traditional rules of standing to include collective and diffuse interests.”²⁰⁶ Since then, such reimagined conceptions of standing have become a vital gateway for the fulfillment of this and other fundamental rights in the face of the increasingly complex triple planetary crisis.

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A. Courts Reimagine the Standing Requirement of Individualized Harm

To prove standing, a plaintiff generally has to demonstrate that they have experienced individualized harm that is distinguished from harm that may be experienced by society writ large. This aspect of standing has been challenged in the last decade, as the character and scale of the triple planetary crisis have evolved to pose profound societal and planet-wide implications. In adjudicating the R2HE, courts confronted with such diffuse harms have begun developing a relatively expansive understanding of “particularized harm” as well as “personal and direct interest” in one of two ways.

More commonly, courts that have relaxed these requirements in cases on the R2HE have done so by embracing various doctrinal and statutory tools. These include public interest standing, which allows individuals or organizations to litigate on behalf of broader societal concerns,²⁰⁷ and *actio popularis*, which similarly permits any person to bring claims in defense of collective or diffuse interests, especially in areas such as environmental protection and constitutional rights.²⁰⁸ They may also include statutory provisions granting standing to NGOs or designated entities even in the absence of direct injury.²⁰⁹ In doing so, courts have leveraged the aforementioned collective dimension of the R2HE. In other words, by recognizing that potential violations of the right often affect entire communities or groups rather than individual plaintiffs alone, courts have found that the protection of the R2HE justifies the application of these tools to lower standing requirements. The IACtHR endorsed this approach when it explained that, “given the collective nature of climate issues, States should move forward with the creation of procedural mechanisms within their domestic regulations that allow for broad forms of standing, such as procedural institutions of collective, public, or popular standing, which may be used to request measures to protect the environment and the climate system, without the need to demonstrate an individual interest or impact.”²¹⁰

Following this reasoning, **courts have often held that for civil society organizations, proof that the petitioner’s organizational mission aligns with the purpose of their legal claim is sufficient for a finding of standing.** In *In re application of Maui Electric Co.*, the Supreme Court of Hawai‘i explained that “environmental plaintiffs must meet this three-part standing test but need not assert an injury that is different in kind from an injury to the public generally. [...] This lower standard that is applied when environmental rights are asserted has long been established in our law.”²¹¹ The Court proceeded to find that since Sierra Club members were R2HE holders themselves, the Sierra Club possessed a sufficient interest in the claim at hand despite the harm affecting the broader Hawai‘ian population.²¹²

Similarly, in the case regarding the chimpanzee Cecilia’s freedom, the Provincial Court of Argentina held that the Association of Officials and Lawyers for Animal Rights could bring a case on behalf of the public interest and that the law granted “broad powers to the judge overseeing the process for collective environmental damage ‘in order to effectively protect the public interest.’”²¹³ It then established that the R2HE “is a right of collective impact”²¹⁴ and determined that in the present case, “the collective good and value [is] embodied in the well-being of Cecilia, a member of the ‘community’ of individuals in our zoo. [...] Under these particular circumstances, transferring her beyond our borders appears to be the most appropriate means to ensure that a being who is now part of ‘our’ heritage can continue her life under better conditions.”²¹⁵

In *Notre Affaire à Tous v. France*, several environmental organizations brought a petition against the French State, arguing that the government had violated the R2HE, among other rights, under the French Charter for the Environment. In analyzing the admissibility of the claim, the Administrative Court observed that the organizations’ missions to combat ecological harm were sufficiently

connected to the harm alleged—the excess emission of GHGs and its attendant impacts—to render the claim admissible despite the fact that the alleged harm implicated French society as a whole.²¹⁶

The *Morua v. China Harbour Engineering Company Ltd.* decision by Papua New Guinea’s National Court of Justice reached a similar conclusion. In this case, the Court unilaterally raised a potential violation of a community’s R2HE due to corporate damage to nearby land, thereby opening the courtroom doors to the petitioners. Citing both domestic and foreign cases that recognized applicants’ standing despite their lack of financial or economic interests in the protection of disputed lands—as was the case here—the Court agreed that genuine environmental concerns satisfy the “sufficient interest” standing requirement. The Court further emphasized the need to empower public interest groups to challenge unlawful conduct and recognized that many individuals and communities lack access to justice. In the Court’s view, applying a flexible standing requirement aided in the remediation of this issue.²¹⁷

In *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*, the Supreme Court of Nigeria was also willing to “liberalize” the criteria for standing by clarifying that “every person, including NGOs, who bona fide seek the due performance of statutory functions or enforcement of statutory provisions or public laws, especially laws designed to protect human lives, public health and the environment, should be regarded as proper persons clothed with standing in law to request adjudication on such issues of public nuisance.”²¹⁸ Similarly, the Environment and Land Court of Kenya concluded in *African Centre for Rights and Governance (ACRAG) & 3 Others v. Municipal Council of Naivasha* that “it is not necessary for one to demonstrate that they have suffered loss or injury, for them to move the court when claiming that the right to a clean and healthy environment has been violated or is under threat of violation. It is not therefore a requirement for the petitioners to show that they have personally suffered or that the presence of the dumpsite has directly caused them any direct harm. It is sufficient for the petitioners to point out, that there is an ongoing, or imminent threat of harm, to the environment.”²¹⁹

Additionally, in *Sheikh Asim Farooq v. Federation of Pakistan*, the Lahore High Court concluded that “Public Interest Litigation (‘PIL’) is a powerful tool for individuals and groups for combating illegalities, injustice and social ills which promotes and protects the larger public interest in case of violation of any fundamental rights. As long as the public interest prayed for is bonafide and not based on any vested interests, the principles of *locus standi* /aggrieved person are to be interpreted liberally by the Courts.”²²⁰

While some courts have continued to demand the identification of individualized harm, as did the Supreme Court of Mexico in *Amparo en Revisión, No. 307/2016*, these courts have recognized the value of relaxing standing requirements to promote access to justice.²²¹

Other courts have liberalized the individualized harm requirement of standing by emphasizing the heightened vulnerability, and disproportionate detrimental impacts, that the triple planetary crisis poses for specific groups. This, in turn, has allowed courts to more easily justify judicial intervention and findings of standing. The aforementioned *Held v. Montana* case, for example, relied on the particular vulnerability of children and youth to climate change to recognize that mental health harms, such as climate anxiety, were cognizable injuries.²²² These harms, in turn, served as the basis for the Montana Supreme Court’s finding that the plaintiffs had sufficiently demonstrated the individualized injuries, “even though widely shared,” needed to prove standing and to ultimately rule in their favor.²²³

In *Parque Isla Salamanca*, the Supreme Court of Colombia similarly concluded that “when it comes to minors, the requirements for legal representation are more flexible. The Court has emphasized that when fundamental rights of children are being defended, the Constitution imposes an objective

obligation to protect them, so the specific qualification of the petitioner is not important and therefore, any person can request that the competent authority guarantee these fundamental rights without additional requirements. This rule even applies in cases where the protection of the rights of multiple children who have not been individually identified is sought.”²²⁴

Much less frequently, however, courts have outright denied the existence of particular vulnerability to environmental harms. In *ENVironnement JEUnesse v. Attorney General of Canada*, the Superior Court of Quebec found little basis to focus claims for climate-induced rights infringements on persons below the age of thirty-five. Ultimately, the court did not find the “rationale behind this maximum choice of 35 years” persuasive, rejecting the articulated class as “an arbitrary and therefore inappropriate choice.”²²⁵

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B. Courts Reimagine the Standing Requirement of Temporal Proximity

Temporal proximity, sometimes referred to as a standalone requirement of “imminence” or incorporated into conceptions of “direct harm,” refers to the timeframe in which a plaintiff is expected to experience a threatened harm. In general, courts require plaintiffs to demonstrate that a harm—if it has not already occurred—is likely to take place in the foreseeable future with limited possibility for intervening action in the interim. This standing requirement has been particularly contentious in the environmental context over the past decade, because the nonlinear temporality and slow-onset events of climate change and other current environmental issues have challenged the traditional conception of temporal proximity. As with individualized harm, some courts have answered this challenge by reimagining the definition of temporal proximity to make a finding of current harm, and, consequently, recognize petitioners’ standing.

With respect to the R2HE, courts that have been willing to reimagine temporal proximity have sometimes done so by anchoring their logic, to varying extents, in a manifest present harm while

noting that future harms will be irreversible and often compounding. On this basis, **courts have made rulings that curtail government action, even when the adverse environmental impacts of that action have not yet fully materialized.** In *Future Generations v. Ministry of the Environment and Others*, the Colombian Supreme Court found that youth faced sufficiently proximate harms, both as a result of current climate impacts and impacts likely to unfold in the future based on the current trajectory, and affirmed their right to bring the claim. Noting that “[e]very day, numerous news reports, articles, and studies from various sectors highlight the severe deterioration of the planet’s natural conditions,” the Court grounded its conclusion in the “imminent dangers” evident in contemporary climate impacts, including extreme weather events.²²⁶

The Supreme Court of Hawai‘i, for its part, considered the nonlinearity of climate change in *In re Hawai‘i Electric Light Co.*, where an energy company challenged the Public Utilities Commission’s refusal to authorize the construction of a biomass power plant. The Court framed the long-term effects of climate change as “immediate threats to our cultural and economic survival: sea level rise, eroding the coast and flooding the land; ocean warming and acidification, bleaching coral reefs and devastating marine life; more frequent and more extreme droughts and storms. [...] For the human race as a whole, the threat is no less existential.”²²⁷ The Court went on to note that the chance to successfully avoid such impacts dwindles with each passing year, underscoring the need for measures to be taken in the present.²²⁸

In the landmark decision *Community of La Oroya v. Peru* regarding toxic pollution, the IACtHR more generally acknowledged the blurred lines between present and future harms, asserting that “states must bear in mind that the division between present and future generations is less pronounced than often assumed. Harmful environmental consequences affecting future generations do not necessarily occur in a distant or remote future; rather, they may impact individuals who already exist today.”²²⁹

Other courts have been more hesitant to expand the concept of temporal proximity, however. In *Greenpeace Nordic Association v. Ministry of Petroleum and Energy*, for example, the Supreme Court of Norway found that the potential climate risk associated with issuing licenses for the extraction of oil and gas in the Barents Sea was too remote to constitute a “real and immediate’ risk.”²³⁰ In short, the Court noted that “the possible impact on the climate will be discernible in the more distant future,”²³¹ and held that as a result, “[a]lthough the climate threat is real, the decision does not involve” a sufficiently immediate risk of loss of life to find standing.²³²

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A polluted river in Nairobi, Kenya. © Michael Mou85 / iStock

C. Courts Reimagine the Standing Requirement of Redressability

Courts generally require that the interest asserted in a case be one that the court can effectively protect—an element often referred to as “redressability” in common law systems, and sometimes incorporated into the broader requirement of a “direct and legally protected interest” in civil law systems. For ease of reference, the term redressability will be used in this section as a short-form encompassing both formulations.

In R2HE cases, courts have often relied on the precautionary principle to support a finding of redressability. As explained above, the precautionary principle—one of the foundational norms of environmental law and a key element of the R2HE—provides that where there are threats of serious or irreversible damage, a lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.²³³ In other words, when potential harms are irreversible or likely to result in significant long-term consequences, courts have been more willing to find redressability and to intervene by requiring a precautionary approach. This orientation has also shaped the remedies courts design, which increasingly aim to prevent both further and future harm.

Courts’ willingness to use the R2HE as a bridge for adopting a more forward-looking perspective has become all the more important as the lock-in nature of the triple planetary crisis escalates and poses greater threats to human rights. In *Mohamed Ali Baadi and Others v. Attorney General*, for example, the High Court of Kenya in Nairobi rejected the respondents’ argument that the issue of environmental harm for a proposed project was not yet ripe for the courtroom since a community consultation process—that petitioners contended did not include them—was only at the beginning stages. The Court explained that “[t]his second argument harkens back to the evolution of Environmental Law from its origins [...] when Environmental Law was conceived as a reactive regime to minimise environmental damage after it has occurred or become inevitable to a proactive approach to ensure that action is taken to reduce, mitigate and manage environmental impacts before they happen. This proactive approach has come to be known as the precautionary principle in environmental governance and adjudication.”²³⁴

In *Isaiah Luyara Odando & another v. National Management Environmental Authority & Others*, for example, the Environment and Land Court at Nairobi granted interim measures to halt the development of a project until proper procedures were followed. Although a clear scientific link had not been established between industrial pollution of the local environment and the petitioners' alleged harm—increased rates of cancer, respiratory illnesses, birth defects, water-borne diseases, and eye and skin ailments—the Court reasoned that the action was needed to prevent further environmental harm before irreversible damage occurred. It noted that remedies should aim to protect the R2HE, prevent environmental harm, and ensure accountability for actions that might lead to environmental degradation.²³⁵

In *Woodlands Holdings Ltd & Anor v. Ministry of Environment Energy and Climate Change and Others*, the Seychelles Court of Appeal also adopted a proactive approach in determining the type of action the State was obliged to adopt to address pollution. Notwithstanding the seemingly voluntary wording of the Environmental Protection Act in question, the Court interpreted the Act to mean that “[w]here there is a likelihood of the occurrence of pollution, the Ministry shall take such action or measures as is necessary to prevent such pollution.”²³⁶ Failure to do so could render the State liable to its citizens for damages due to its omissions and failure to fulfill the constitutionally mandated R2HE and environmental protection more broadly.²³⁷

Other courts, however, have rejected a preventive approach to redressability, demanding more rigorous evidence of a current manifest harm. Despite other neighboring courts' opposite conclusion,²³⁸ in *Baihua Caiga et al. v. PetroOriental S.A.*, for example, the Family, Women, and Children Judicial Unit of an Ecuadorian Canton found that the plaintiffs failed to clearly demonstrate how gas flaring from the defendant's oil operations violated constitutional rights by contributing to climate change and harming local communities.²³⁹

While the concept of relaxing procedural standards to achieve justice is not new, it has gained heightened significance in light of the complex nature and scale of the triple planetary crisis, which are increasingly outpacing the capacity of traditional legal frameworks to address them. The above instances of judicial innovation and growing willingness to liberalize conventional legal requirements are promising and are likely to become ever more essential in the face of these challenges. In this context, the R2HE, with its forward-looking focus and guiding principles, has already played—and will likely continue to play—a central role in adapting the historically backward-looking framework of human rights to the demands of the present and future.

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Marine life swimming.
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IV

Signals of Change

The signals of change addressed in this section encompass several nascent yet significant shifts in the application of the R2HE over the past decade. While these developments are too premature to be classified as emerging trends, they have important potential for the future of the right and the collective effort to address ecological challenges. These preliminary observations on such signals of change additionally serve to identify gaps in existing legal frameworks and opportunities for practitioners and courts to creatively develop jurisprudence and further the implementation of the R2HE.



Village in Papua New Guinea. © Andersen Oystein / iStock

Signal of Change #1

The Potential Transition of the R2HE from a Third-Generation Right to Customary International Law or *Jus Cogens*

In the absence of a binding international treaty enshrining the R2HE, other sources of international law—including customary international law and *jus cogens* norms—represent potential avenues for its wider implementation. Customary international law consists of rules and principles that arise from the consistent and general practice of States coupled with *opinio juris*—the belief that such practices are legally obligatory. Once a norm achieves customary international law status, it is binding on all States regardless of whether they have ratified relevant treaties or whether such treaties exist and may eventually be classified as a *jus cogens* norm. *Jus cogens* norms are principles of international law that are universally recognized as non-derogable, meaning that States cannot violate them under any circumstances. Generally speaking, meeting this high threshold makes the attainment of *jus cogens* status a difficult endeavor, with only a handful of such norms—such as prohibitions against genocide, torture, and slavery—being widely recognized as such. If the R2HE were to gain either such legal status, the problematic yet somewhat prevalent classification of the right as a “third-generation right”—a category of rights ostracized for lacking clear legal frameworks and therefore often deprioritized relative to other human rights—would be largely discredited.

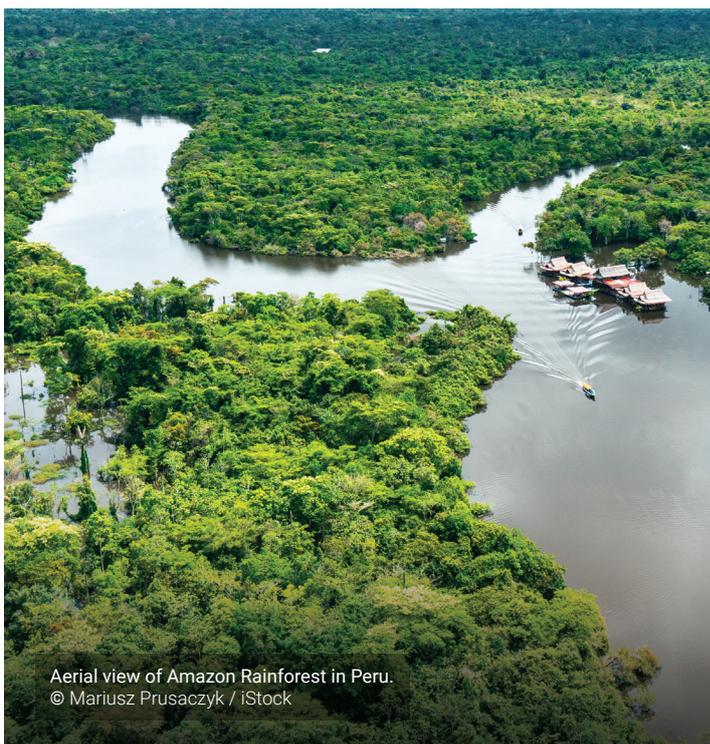
“ The signals of change addressed in this section encompass several nascent yet significant shifts in the application of the R2HE over the past decade.”

Regional and international developments—including the entry into force of the Escazú Agreement and the 2025 advisory opinion processes before the IACtHR and ICJ—may be viewed as contributing evidence that the **R2HE is evolving toward recognition as customary international law, or potentially, as a *jus cogens* norm**. Indeed, some legal experts have argued that “[i]ncreasingly, the right to a healthy environment is viewed as part of customary international law.”²⁴⁰ In the ICJ’s recent advisory opinion proceedings, for example, the legal status of the R2HE emerged as a key point of deliberation. A significant number of States and international organizations, in both their written and oral submissions, affirmed that the right is either an established or an emerging norm of customary international law. In contrast, only a limited group of States—Australia, Canada, China, Germany, Indonesia, Kuwait, New Zealand, Russian Federation, Saudi Arabia, the United Kingdom of Great Britain and Northern Ireland, and the United States of America—contested this view, expressly denying that the right forms part of customary international law.²⁴¹ Although the resulting advisory opinion did not explicitly comment on the legal status of the R2HE, the ICJ affirmed that the duty to prevent significant harm to the environment forms part of customary law.²⁴²

In the 2023 landmark decision *Community of La Oroya v. Peru*, the IACtHR made the assertion that:

States have recognized the right to a healthy environment, which entails an obligation of protection that concerns the international community as a whole. It is difficult to conceive of international obligations with greater significance than those aimed at safeguarding the environment against unlawful or arbitrary actions that cause serious, widespread, lasting, and irreversible harm to the environment, particularly in the context of a climate crisis that threatens the survival of species. In light of this, the international protection of the environment necessitates the progressive recognition of the prohibition of such conduct as a peremptory norm (*jus cogens*), gaining acceptance by the international community as a whole as a norm that permits no derogation.²⁴³

In the decision’s concurring opinion, several judges went further and asserted that the right had already met the stringent requirements necessary to become a *jus cogens* norm.²⁴⁴ In its 2025 advisory opinion, the IACtHR built upon this logic. While it did not explicitly declare that the R2HE itself constitutes a *jus cogens* norm, the Court affirmed that the obligation to preserve the



Aerial view of Amazon Rainforest in Peru.
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It is difficult to conceive of international obligations with greater significance than those aimed at safeguarding the environment against unlawful or arbitrary actions that cause serious, widespread, lasting, and irreversible harm to the environment, particularly in the context of a climate crisis that threatens the survival of species.”

ecological equilibrium of the planet in the face of anthropogenic conduct causing irreversible harm is a *jus cogens* norm.²⁴⁵ It particularly pointed to the growing body of State practice, the development of multilateral environmental treaties, UN resolutions, and the jurisprudence of regional courts as forming a process of progressive consolidation signaling an emerging juridical recognition of a non-derogable prohibition on irreversible environmental damage.²⁴⁶ On this basis, the Court concluded that all States have a duty to cooperate to put an end to actions that violate peremptory prohibitions derived from international law aimed at protecting a healthy environment.²⁴⁷

Adding to the R2HE's potential recognition as customary international law or a *jus cogens* norm is the fact that **courts worldwide have emphasized the right as indivisible from, interconnected with, and necessary for other human rights, including non-derogable rights.** In *Woodlands Holdings Ltd & Anor v. Ministry of Environment Energy and Climate Change*, for example, the Court of Appeal of Seychelles concluded that:

[A]lthough the right to live and enjoy a clean and healthy environment is referred to in academic discourses as a 'third generation right'; it is in my view one of the fundamental, if not the most fundamental right of a human being. None of the myriads of other fundamental rights, including civil and political rights, can be meaningfully exercised by a human being in the absence of a clean and healthy environment which can sustain life. Man must live to exercise any of the fundamental or human rights bestowed upon him. A clean and healthy environment is a *sine qua non* for the meaningful expression of any other fundamental right or human right.²⁴⁸

As explained earlier, the ICJ similarly concluded that:

A clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights, such as the right to life, the right to health and the right to an adequate standard of living, including access to water, food and housing. The right to a clean, healthy and sustainable environment results from the interdependence between human rights and the protection of the environment. Consequently, in so far as States parties to human rights treaties are required to guarantee the effective enjoyment of such rights, it is difficult to see how these obligations can be fulfilled without at the same time ensuring the protection of the right to a clean, healthy and sustainable environment as a human right. The human right to a clean, healthy and sustainable environment is therefore inherent in the enjoyment of other human rights. The Court thus concludes that, under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights.²⁴⁹

Should this trajectory of normative consolidation continue, the R2HE may eventually crystallize into a norm of customary international law—and potentially rise to the level of *jus cogens*. In this evolution, domestic, regional, and international courts are likely to remain central actors in shaping and affirming the right's legal status. Other experts, however, point to the emergence of a different approach—one that derives environmental obligations from existing *jus cogens* norms. This might entail, for example, the protection of the environment through the prohibition on arbitrary deprivation of the right to life in jurisdictions where the R2HE is considered part of the right to life. It might also entail protecting the environment through the prohibition of racial discrimination where such discrimination has environmental manifestations.²⁵⁰ Such a readily available approach, while more limited in scope, could be particularly valuable in addressing phenomena such as environmental racism that has resulted in the creation and perpetuation of "sacrifice zones"—zones where residents suffer devastating physical and mental health consequences and human rights

violations as a result of living in pollution hotspots and heavily contaminated areas—across the world.²⁵¹

Although progress may seem slow and recognition piecemeal, developments to date represent substantial advances for environmental protection. From a holistic perspective, each of these principles and ideas contributes to the broader acceptance of environmental norms as fundamental, thereby building a foundation for the more consistent respect and implementation of the R2HE. They also reflect a growing willingness among courts at all levels to interpret and advance legal standards in response to the escalating triple planetary crisis.

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Signal of Change #2

The R2HE is Applied in New Contexts

Given its inherent flexibility and the increasing momentum behind its recognition and implementation, many experts have predicted and encouraged employing the R2HE in a growing and diverse range of contexts. This section explores two such areas.

A. Oceans and Marine Ecosystems

The ocean environment has historically received limited attention in human rights governance and jurisprudence, often overshadowed by land-based concerns. As the current UN Special Rapporteur on the human right to a clean, healthy, and sustainable environment has observed, “while important initiatives are under way internationally, regionally and nationally, they do not necessarily reflect the interconnectedness of the ocean and human rights. [...] At the same time, there is little understanding of what a human rights-based approach entails and how to incorporate it into ocean-related efforts.”²⁵² This institutional and jurisprudential gap is further compounded by the structure of international legal bodies, such as the International Tribunal for the Law of the Sea (ITLOS) and the ICJ, which often limit the meaningful participation of actors seeking to address the intersection of marine ecosystem degradation and human rights.²⁵³

Although some promising court decisions have linked the R2HE and the protection of oceans, the application of the right in this domain remains limited. Courts have so far invoked the right to protect marine habitats for specific species, prohibit bottom trawling, issue injunctions halting coal port construction and offshore gas exploration, overturn regulations permitting destructive fishing practices, and mandate marine restoration.²⁵⁴ In addition, the IACtHR affirmed that the fulfillment of the R2HE requires States to adopt and maintain a human rights-based strategy to achieve a GHG mitigation target. As part of this obligation, the Court underscored that such a strategy must include measures to protect biodiversity and ecosystems—particularly those that play a vital role in regulating the climate system and the Earth’s natural cycles, including oceans and coastal and marine environments.²⁵⁵ After extensively addressing the relationship between climate change and the protection of the oceans and marine environment, the ICJ more generally clarified that



Schooling hammerheads at Cocos Island, Costa Rica. © Marie-Elizabeth Mali / iStock

the United Nations Convention on the Law of the Sea (UNCLOS) and relevant obligations under customary international law must be interpreted and applied in a mutually reinforcing manner. While the Court did not explicitly refer to human rights in this context, such customary obligations may be understood to include norms derived from international human rights law.²⁵⁶ Despite these developments, **the purposeful use of the R2HE as a legal tool for advancing ocean protection remains far from pervasive and lacks consistent enforcement across jurisdictions.**

This gap has prompted environmental and human rights experts—including the former UN Special Rapporteur on the human right to a clean, healthy, and sustainable environment and the current UN Special Rapporteur on the promotion and protection of human rights in the context of climate change—to affirm that “there is an urgent need to move from recognition to implementation in order to protect both current and future generations’ human right to a clean, healthy, and sustainable ocean.”²⁵⁷ In recent years, these and other experts have increasingly advocated for leveraging the R2HE to strengthen ocean action and reform ocean governance. According to these experts, the right may help catalyze the protection of marine biodiversity and increase accountability by clarifying the scope of States’ obligations related to the ocean. Moreover, they note that the procedural obligations derived from the right offer a powerful opportunity to broaden participation and ensure greater inclusiveness in ocean governance and decision-making, particularly for those most affected by the deterioration of the ocean, including vulnerable populations, ocean defenders, and traditional communities whose cultures and ways of life are closely tied to the ocean.²⁵⁸

Building on these proposals, the current UN Special Rapporteur on the human right to a clean, healthy, and sustainable environment has stated that “a healthy ocean is a fundamental part of healthy biodiversity and ecosystems, one of the substantive elements of the right to a healthy environment. The ocean also is vital to all other substantive elements of that right, including a safe climate, healthy and sustainable food and water, a non-toxic environment and clean air.”²⁵⁹ To protect this critical nexus, the Rapporteur has called on States to adopt a range of measures to prevent further severe and irreversible damage to the ocean, and has urged businesses to respect human rights obligations in relation to all ocean-related activities.²⁶⁰

Reflecting this momentum, the HRC recently adopted, by consensus, Resolution A/HRC/RES/58/16 on the human right to a clean, healthy, and sustainable environment, with a focus on ocean protection and plastic pollution.²⁶¹ The resolution calls upon States to take concrete measures to prevent, reduce, and eliminate marine pollution, particularly from plastics and microplastics, to enhance ocean-related scientific research, monitoring, and data-sharing, and to promote circular economy approaches. It also urges governments to ensure inclusive public participation in ocean governance and to safeguard the rights of communities most affected by marine degradation, including Indigenous Peoples, children, and coastal populations. Importantly, the resolution affirms the responsibility of business enterprises to align with the UN Guiding Principles on Business and Human Rights, conduct robust environmental and human rights due diligence, and establish effective grievance mechanisms in relation to the impacts of their marine activities.²⁶²

These developments underscore how the R2HE—through its evolving scope and normative content—can serve as a dynamic legal tool to address the escalating triple planetary crisis. The ocean environment is now increasingly recognized as integral to the right’s substantive element of biodiversity, marking another expansion of its scope and content. Simultaneously, the ocean is being connected to the right’s substantive element of pollution through heightened attention to plastic, chemical, and toxic contamination in marine environments. This dual linkage illustrates the right’s potential to foster more integrated and responsive legal and policy frameworks. Advancing this integration may prove essential to elevating the status of ocean ecosystems in international law and ensuring that no ocean is left behind.

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B. Migration and Displacement

The intersection between the R2HE and migration or displacement has scarcely been addressed in caselaw. However, various institutions at the domestic and international level are beginning to explore this interdependency through a general human rights lens. The UN Human Rights Committee in *Daniel Billy and Others v. Australia*, for example, emphasized that, due to rising sea levels, Indigenous inhabitants of the Australian Boigu and Masig Islands “face a real prospect of displacement and loss of culture within the next 10 years unless urgent and significant action is taken to enable the islands to withstand expected sea level rise.”²⁶³ Australia’s failure to take

timely, necessary climate adaptation measures, the Committee concluded, was a State violation of petitioners' rights under the International Covenant on Civil and Political Rights.²⁶⁴ **Some entities have more specifically acknowledged the connection between a healthy environment, climate change, and climate-driven displacement.** Prompted by the UNGA Resolution, for example, the UN Office of the High Commissioner recognized that the right encompasses protections for individuals internally and internationally displaced "due to sudden and slow-onset climate-related disasters."²⁶⁵

Against this backdrop, a few courts have explicitly invoked the R2HE in cases addressing climate-driven displacement, acknowledging that the right may protect against displacement.²⁶⁶ For instance, in *Held v. Montana*, the Montana District Court determined that Montana infringed upon the petitioners' R2HE by contributing to climate change, which caused some of them to be forcibly displaced.²⁶⁷ Likewise, the Colombian Constitutional Court ruled that the Colombian government had violated a community's R2HE by inadequately addressing the consequences of Hurricane Iota, including displacement.²⁶⁸ Additionally, both the IACtHR and the Lahore High Court of Pakistan had referenced displacement in their discussions of the R2HE.²⁶⁹ Most recently, the IACtHR emphasized that the protection of the R2HE, among other human rights, "is essential in order to prevent forced mobility or displacement that may be caused directly or indirectly by the impacts of climate change."²⁷⁰

The role of the R2HE in the context of displacement and migration remains uncertain. Nevertheless, some experts argue that the right could be instrumental in addressing the circumstances that compel individuals to leave their homes. Specifically, when homes and livelihoods are threatened by climate change and environmental degradation, the recognition and implementation of the right may serve as a protective measure.²⁷¹ Further, experts contend that the increasing global acknowledgment of the interdependence of the right with other human rights may encourage judges to consider environmental factors when evaluating the rights to life and freedom from cruel, inhuman, or degrading treatment.²⁷² More broadly, experts believe that if the right is "embedded in international instruments that influence migration," as has been recommended by the Council of Europe,²⁷³ the right may provide a conceptual framework that counters traditional notions of migration governance and encourages rights-based mobilization.²⁷⁴



Destruction as a result of cyclone Iota on the island of San Andres, Colombia.
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Effective application of the R2HE in increasingly complex contexts, such as environmentally induced migration, will require both practitioners and courts to explicitly recognize the link between environmental degradation and the conditions that force individuals to migrate or seek refuge. This must be accompanied by judicial innovation—an ingredient that, as shown in this report, has not deterred progress in other essential areas of environmental and human rights protection.

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Signal of Change #3

Courts Harmonize the R2HE and Economic Considerations by Assigning Greater Weight to Environmental Protection

It is not uncommon for the protection of the environment to be in discordance with other recognized rights and interests. Indeed, courts worldwide have long balanced the R2HE with economic and property interests. However, in light of the triple planetary crisis, courts are showing a growing inclination to assign greater weight to the R2HE than to economic and property interests.

When an environmental interest has the status of a right—as it does through the R2HE—measures aimed at protecting the environment are more easily justified, even if they result in limiting other rights and interests. Many constitutions enshrine this principle. The Constitution of Croatia, for instance, specifies that “the exercise of entrepreneurial freedom and property rights may exceptionally be restricted by law for the purposes of protecting the interests and security of the Republic of Croatia, nature, the environment and public health.”²⁷⁵ Similarly, the Constitution of Romania states that “the right to own property implies an obligation to comply with duties relating to environmental protection.”²⁷⁶ Jamaica’s 2011 Charter of Fundamental Rights and Freedoms clarifies that property rights shall not affect the making or operation of any law “reasonably required for the protection of the environment.”²⁷⁷ Other nations also share a weak constitutional provision that could authorize environmental limits on property rights.²⁷⁸ Along the same lines, the Supreme Court of Mexico has explained that the R2HE and its derivative “environmental protection



Aerial View of Amazon Rainforest, South America. © Gustavofraza / iStock

is ultimately a constitutionally significant provision that serves as a legitimate objective to justify the restriction of commercial freedom represented by a regulation prohibiting the distribution or sale of plastic bags made from non-recyclable materials.”²⁷⁹

In the context of adjudicating the R2HE, **courts have primarily relied on the concept of sustainable development as a proportionality framework for weighing and harmonizing protected interests.**²⁸⁰

While some courts regard sustainable development to be a guiding principle and others have adopted it as a legally binding right, the core definition is constant across jurisdictions: it requires that development meet present needs without compromising the ability of future generations to meet their own, balancing economic growth, environmental protection, and social equity for long-term well-being. The High Court of South Africa reaffirmed this and earlier precedent when it stated that “[e]nvironmental considerations are balanced with socio-economic considerations through the ideal of sustainable development.”²⁸¹ The Supreme Court of Pakistan has noted that “there is no conflict between environmental protection and development because our answer would be sustainable development.”²⁸² The Supreme Court of Kenya also recently explained that sustainable development “attempts to reconcile the conflicting demands of economic development and environmental protection so as to ensure that the benefit of any development outweighs its costs, including costs to the environment.”²⁸³ Acknowledging the risk that sustainability would be sidelined in the name of development, the Madras High Court in India cautioned that “[u]nder the guise of sustainable development the human should not destroy the nature. If sustainable development finishes off all our biodiversity and resources, then it is not sustainable development it is sustainable destruction.”²⁸⁴

In some of the cases that address escalating environmental challenges, these perspectives have led courts to affirm that environmental protection must be accorded more weight than economic and property interests. Some courts have reached this determination by pointing to the unsustainable nature of prevailing economic models. The Supreme Court of Colombia, for example, highlighted that “[h]umanity is primarily responsible for this scenario, its hegemonic planetary position led to the adoption of an anthropocentric and self-centered model, whose characteristic features are detrimental to environmental stability, namely: i) excessive population growth; ii) the adoption of a rapid development system driven by consumerism and current political-economic

systems; and iii) the relentless exploitation of natural resources.”²⁸⁵ The Constitutional Court of Colombia similarly stated that “[i]n the face of the environmental deterioration confronting the planet—of which humanity is an integral part—largely due to the development of extractive industries such as mining, it is essential to continue implementing measures aimed at preserving nature [...]. This calls for greater awareness, effectiveness, and rigor in environmental protection policies to counter the potential threats posed by extractive projects and development initiatives in general.”²⁸⁶

The Supreme Court of Nepal, for its part, emphasized that “[n]obody can claim to have freedom to destroy the basic form and norms of the Nature and its constituents and their norms in the name of development. The benefits resulting from development activities cannot be compared to the value of the gifts given by the Nature. So even if any significant profit is likely to accrue from physical development activities, no activity causing negative impact or destruction of the Nature and environment should be allowed to continue.”²⁸⁷ The Court then proceeded to issue a directive to reduce vehicular pollution in Kathmandu Valley.²⁸⁸ Similarly, in *Kerala Bottled Water Manufacturers Association v. State of Kerala*, in prioritizing environmental interests to uphold a local ban on single-use plastics, the Supreme Court of India emphasized that “when a situation arises by and between the individual rights conferred on the citizens under Articles 19(1)(g) and 21 of the Constitution of India, we have the definite opinion that the right conferred under Article 21 for life and liberty [which encompasses a right to a healthy environment] should have the primacy and superiority, in larger public interest.”²⁸⁹

Additionally, Panama’s Supreme Court ruled against legislation purporting to authorize a State mining concession to the company Minera Panamá partly on the grounds that it infringed upon the R2HE by prioritizing private interests over the collective public interest. The Court explained that “faced with the dilemma of weighing the human right to a healthy environment against the right to protect economic investments, the Plenary of the Supreme Court of Justice will naturally lean toward safeguarding the continuity of humankind.”²⁹⁰ The Court further clarified that the balancing act between the R2HE and economic interests should not be limited to human interests but must also consider the rights of nature.²⁹¹

Extending this discussion, the Constitutional Court of Colombia recognized that environmental principles have been granted more weight in balancing tests over time. The Court noted that “[there is] no doubt that the paradigm shift that has occurred over time has led to a redefinition of the guiding principles of environmental protection, including their strengthening and more rigorous application under the superior criterion of *in dubio pro ambiente* or *in dubio pro natura*. This principle establishes that in cases of tension between conflicting principles and rights, authorities must favor the interpretation that best aligns with the guarantee and enjoyment of a healthy environment over one that suspends, limits, or restricts it.”²⁹² Similarly, in the aforementioned *D.G. Khan Cement Company Ltd. v. Government of Punjab*, the Supreme Court of Pakistan explained that *in dubio pro natura* has evolved to mean that “in cases of doubt, all matters before courts, administrative agencies, and other decision-makers shall be resolved in a way most likely to favour the protection and conservation of the environment, with preference to be given to alternatives that are least harmful to the environment.”²⁹³

While still in their early stages, these interpretations reflect a growing global judicial willingness to assert authority in safeguarding environmental protection, ensuring it is not overshadowed by unsustainable economic development or unrestricted property interests. In the face of the triple planetary crisis, such judicial assertiveness may become all the more critical.

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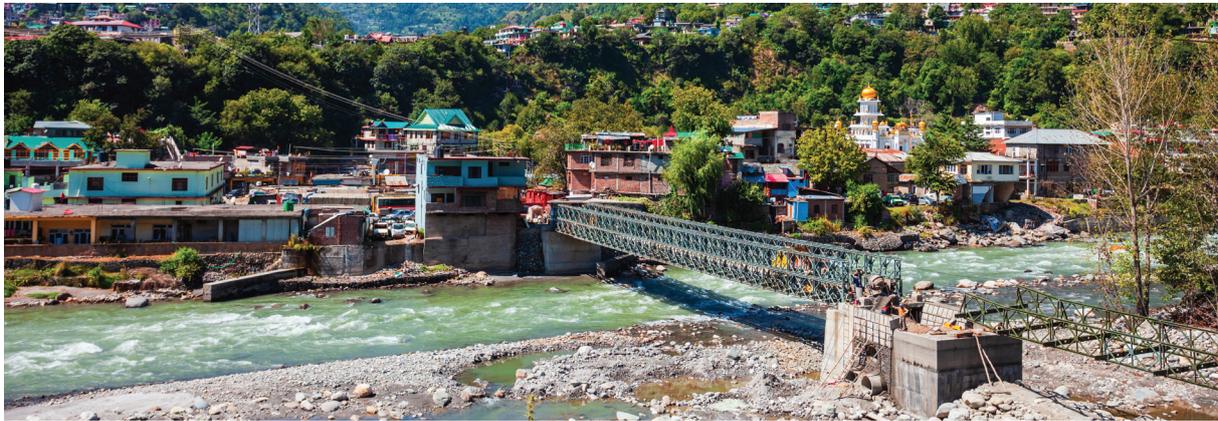


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V

Conclusion

Drawing on over one hundred judicial decisions issued between January 2015 and July 2025, this report has analyzed how domestic, regional, and international courts have interpreted the R2HE. Covering jurisprudence from over thirty countries and a range of legal systems, the report identifies four key emerging trends and three signals of change that together reveal how the right is being actively used to respond to evolving environmental, legal, and societal challenges. The jurisprudence reflects the right's ever-growing utility: courts have invoked it to reshape traditional legal concepts, accommodate new actors and claims, and adapt procedural requirements to meet the demands of ecological urgency.



Himachal Pradesh, India. © Saiko3p / iStock

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The growing body of jurisprudence referred to in the report also demonstrates that courts are not merely applying the right; they are developing it with creativity, foresight, and an acute awareness of what is at stake.”

The findings of the report underscore that while the scope and content of the R2HE are well established in law, **the right is far from static**. On the contrary, its distinctive strength lies in its ability to evolve in response to emerging challenges while retaining its normative clarity and legal force. Indeed, courts around the world have built upon this normative foundation to refine and extend the application of the right in response to worsening environmental conditions. The adaptability of the right has not diluted its legal clarity; it is, rather, a testament to its enduring relevance in the face of complexity and change.

As the world confronts the compounding three planetary environmental crises of climate change, nature, land, and biodiversity loss, and pollution and waste, **the R2HE has proven itself to be capable not only of addressing current harms but also of guiding legal responses to safeguard the conditions for life in the future**. The growing body of jurisprudence referred to in the report also demonstrates that courts are not merely applying the right; they are developing it with creativity, foresight, and an acute awareness of what is at stake. In doing so, they are contributing to a broader transformation of environmental governance rooted in justice, accountability, and care for both people and the planet.



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- ¹⁴ “Regional agreement on access to information, public participation and justice in environmental matters in Latin America and the Caribbean,” Mar. 4, 2018, art. 4(3), 5(3), and 7(4), <https://treaties.un.org/doc/Treaties/2018/03/20180312%2003-04%20PM/CTC-XXVII-18.pdf>.

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- ²⁸⁴ *A. Periyakaruppan v. The Principal Secretary to Government and Another*, Madras High Court, para. 20 (2022), https://docs.google.com/document/d/1Sf7d3UzRNK21JmLARo5thgkhrA7i5ppqZ/edit?usp=drive_link&oid=105376625800348165458&rtopf=true&sd=true.
- ²⁸⁵ *Future Generations v. Ministry of the Environment and Others*, Supreme Court of Colombia, para. 4 (2018), https://drive.google.com/file/d/1lcdiVfKonFwXXQnGCX_5UFlaCU4joT-j/view?usp=sharing.
- ²⁸⁶ *Center for Social Justice Studies v. Presidency of the Republic et al. (Atrato River Case)*, Constitutional Court of Colombia, para. 7.40 (2016), <https://drive.google.com/file/d/1lqgaZhDybkf2rf8t62fbhFgPCs0PF7IC/view?usp=sharing>.
- ²⁸⁷ *Pro Public and Others v. Godavari Marble Industries Ltd. and Others (The Godavari Marble Case)*, Supreme Court of Nepal, p. 57 of Elaw translation (2015), https://drive.google.com/file/d/1THThFflavkh2n9_0XPYjJtOVn2zJTyf/view?usp=sharing.
- ²⁸⁸ *Pro Public and Others v. Godavari Marble Industries Ltd. and Others (The Godavari Marble Case)*, Supreme Court of Nepal, p. 61 of Elaw translation (2015), https://drive.google.com/file/d/1THThFflavkh2n9_0XPYjJtOVn2zJTyf/view?usp=sharing.
- ²⁸⁹ *Kerala Bottled Water Manufacturers Association v. State of Kerala*, Kerala High Court, para. 13 (2020), <https://drive.google.com/file/d/1cVo8ZK4LdJstesQpff18YL-fa472c5fM/view?usp=sharing>. Parentheticals added. Note that in India, the R2HE derives from the right to life.
- ²⁹⁰ *Juan Ramón Sevillano Callejas v. El Estado y la Sociedad Minera Panamá*, Supreme Court of Justice of Panama, p. 217 (2023), https://drive.google.com/file/d/1ngrH7pAcGqzxQB3X_x2SKwI6PeCswj6e/view?usp=sharing.
- ²⁹¹ *Juan Ramón Sevillano Callejas v. El Estado y la Sociedad Minera Panamá*, Supreme Court of Justice of Panama, pp. 215–216 (2023), https://drive.google.com/file/d/1ngrH7pAcGqzxQB3X_x2SKwI6PeCswj6e/view?usp=sharing.

²⁹² Center for Social Justice Studies v. Presidency of the Republic et al. (Atrato River Case), Constitutional Court of Colombia, para. 7.39 (2016), <https://drive.google.com/file/d/1lqgaZhDybKF2rf8t62fbhFgPCs0PF7IC/view?usp=sharing>. Parentheticals added. For a similar interpretation of *in dubio pro natura*, see also Herrera Carrion et al. v. Ministry of the Environment et al. (Caso Mecheros), Provincial Court of Justice of Sucumbio, p. 53 (2021), https://drive.google.com/file/d/1OqwAW8c_xRNZJV13caWOXqhz7vNdUXOM/view?usp=sharing.

²⁹³ D.G. Khan Cement Company Ltd. v. Government of Punjab, Supreme Court of Pakistan, para. 16 (2019), <https://drive.google.com/file/d/17cEDPoD09Fx9Qey9ctXW1IZk56EiYfcu/view?usp=sharing>.

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