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New Directions in Earth Rights, Environmental Rights and Human Rights: Six Facets of Constitutionally Embedded Environmental Rights Worldwide

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Introduction

This essay provides an overview of the worldwide phenomenon of constitutional environmental rights. Since the Stockholm Convention, nearly 60 countries have constitutionally entrenched environmental rights, according their citizens basic rights to environmental quality in one form or another.[1] The list is diverse politically, including countries with civil, common law, Islamic, and other traditions.[2] Some of the more recent of these include Kenya in 2010,[3] Ecuador in 2007,[4] France in 2005, [5] Afghanistan in 2004,[6] and South Africa in 1996.[7]

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[1] See J. May, 'Constituting Fundamental Environmental Rights Worldwide' (2006) 23 Pace Envtl. L. Rev. 113.
[2] See generally: C. Bruch (ed.), *Constitutional Environmental Rights in Africa* (2008) Envtl. Law Inst.
[3] Constitution of Kenya (Art. 42).

As a result, domestic courts and international tribunals are enforcing constitutionally enshrined environmental rights with growing frequency,[8] reflecting basic human rights to clean water, air, land, and environmental opportunity.[9] Courts have even read environmental rights into constitutions that do not explicitly mention them or where judicial enforcement has been nominally withdrawn. Courts in Southern Asia have led the way, inferring environmental rights from other constitutionally entrenched rights, most commonly a "right to life."[10] This trend has been most notable in India,[11] Pakistan,[12] Bangladesh, and Nepal where such rights have been read in tandem with directive principles aimed at promoting environmental policy to embody substantive environmental rights.[13]

This essay addresses six facets of constitutionally embedded environmental rights. First, what is an actionable 'right' to the 'environment'? This query raises both philosophical and epistemological issues. Second, under what circumstances has an environmental right been violated? This focuses on whether the injury is general – say, to the environment or public at large – or individualized. Third, who can vindicate environmental rights? This question examines who the proponent of the right may be, and whether she may bring a generalized claim or must be among the injured. Fourth, who can be held constitutionally accountable for violating the right? In other

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[4] Constitución Política de la República del Ecuador (Title II, Ch. 2, Art. 14).
[5] 1958 Const. title XVII art. 1 (Fr.) (Charter of the Environment 2004).
[6] Constitution of Afghanistan (Preamble).
[7] Constitution of the Republic of South Africa (1996) (Article 24). See further: H. Ebrahim, *The Soul of A Nation: Constitution-making in South Africa* (1998) Oxford University Press, USA.
[8] See: J. May and E. Daly, 'Vindicating Constitutionally Entrenched Environmental Rights Worldwide' (2010) 11 Or. Rev. Int'l L. 365.
[9] See: D. Shelton, 'Human Rights and the Environment' (2002) 13 Yearbook Intl. Envtl. L. 199; and S. Kravchenko and J. Bonine, *Human Rights and the Environment: Cases, Law and Policy* (2008) Carolina Academic Press.
[10] C. Bruch et al., 'Constitutional Environmental Law: Giving Force to Fundamental Principles in Africa' (2001) 26 Colum. J. Envtl. L. 131, at 133.
[11] See: M. Anderson, 'Individual Rights to Environmental Protection in India' in A. Boyle and M. Anderson (eds), *Human Rights Approaches to Environmental Protection* (1996) OUP, at 199-225; S. Chaubey, 'Environmental Law of India' in J. Schlickman, *International Environmental Law and Regulation* (2001) Butterworth Legal Publishers, Ind-1, at § 2.2; and B. Hill et al., 'Human Rights and the Environment: A Synopsis and Some Predictions' (2004) 16 Geo. Int'l Envtl. L. Rev. 359, at 382.
[12] See: M. Lau, 'Islam and Judicial Activism: Public Interest Litigation and Environmental Protection in the Islamic Republic of Pakistan' in Boyle and Anderson (supra note 11) at 285–302.
[13] See Bruch et al. (supra note 10) at 166-67.

words, is the right vertical (i.e. actionable against the government), horizontal (actionable against other private parties), or both? Fifth, how can courts fashion appropriate remedies? Last, is the claim justiciable? That is, are the domestic courts in the country where the right resides constitutionally and politically equipped to hear and enforce it?

As we shall see, constitutionally embedded rights are both fairly ubiquitous in form, and fairly challenging in function.

What is an Actionable "Right" to the "Environment"?

Constitutional provisions protecting the environment tend to be written in broad and ambitious terms, reflecting that the environment is everything around us and essential for the enjoyment of every other right, and indeed of life itself. While poetic, this expansiveness brings considerable juridical challenges. What would be outside the ambit of a "sound living environment?" If people have a right *not* to live in a "deeply altered environment," then almost every governmental action could constitute a violation because anything can alter the environment. But no constitutional system can survive if every action can be challenged; and no government can survive if every action is subject to judicial review. Because constitutional texts rarely provide limiting principles, it often falls to the courts to limit what constitutes an actionable violation of the right to a healthy environment.

What is an Actionable Violation of an Environmental Right?

Given the potential breadth of environmental rights, courts must ask what constitutes an actionable violation. Is it the dumping of toxic chemicals causing a higher-than-expected incidence of cancer in a local community? Or is it in the rise in the ocean's salinity that will cause changes in the marine population? The problem is not only broad, but deep: whereas every other constitutional right is designed to benefit people – the holders of constitutional rights – environmental rights may also be understood to protect flora and fauna, and even the biosphere itself. This is the only constitutional right that not only encompasses enjoyment of all things, but that can be

understood to protect all things, living and non-living, such as aquatic systems, forests, mountains, and the atmosphere. The Indian Constitution makes this clear: the state is required to "endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."[14] Do the human plaintiffs in environmental rights cases then need to show that harm has occurred or will occur to them, or is it enough to show damage to their local environment, or that the planet's fragile eco-system is under threat?

The Supreme Court of Chile seems to have recognized that harm to the environment itself is sufficient to trigger the court's jurisdiction. *In Pedro Flores v. Corporación del Cobre, Codelco, Division Salvador*, the Court found judicially cognizable harm in:

> [T]he daily accumulation of thousands of tons of contaminants by whose fast and silent chemical action the ecology, along the coast, is destroyed, producing the ecological destruction of all forms of marine life in hundreds of square kilometers . . . a devastation that blossoms over the whole coastal area of the National Park Pan de Azucar, with which dies a piece of Chile.[15]

Recognition of this kind of damage increases the plaintiffs' likelihood of success, and reduces their costs, as it is much less onerous to show that the defendant's actions caused harm to the environment than that they injured the specific plaintiff. For instance, it requires fewer experts and less evidence to prove damage to the mountain than to prove that mining polluted the water which caused the plaintiff's cancer. This approach therefore encourages more claims. Where the court does not recognize harm to the environment as an actionable injury, lack of evidence and limited resources may preclude enforcement of constitutionally protected environmental rights.

In the alternative, some Latin American courts, have allowed a loose showing of personal injury where judicial intervention seemed the only way to protect against severe environmental damage. This approach was utilized by the Chilean court in

[14] Indian Constitution, amended by the Constitution Forty-second Amendment Act, 1976 (Art 48A).
[15] *Pedro Flores v. Codelco, División Salvador, Rol. 2.052* (Sup. Ct. Chile, June 23, 1988) in C. Bohorquez (trans.) (1989*)* 2 Geo. Int'l Envtl. L. Rev. 251, at 253. See further May and Daly (supra note 8) at 392.

what is commonly referred to as the *Trillium* decision. Here, the court held that the Chilean government's approval of the Rio Condor Project, a U.S.-based Trillium Corporation's $350 million project to log 270,000 hectacres of pristine forests in Tierra del Fuego, violated the constitutional environmental "right to live in an environment free from contamination."[16] The Court said that this provision required "the maintenance of the original conditions of natural resources" and was designed to keep "human intervention to a minimum."[17]

Similarly, in *Arco Iris v. Instituto Ecuatoriano de Mineria*, a court in Ecuador concluded that the company's degradation of Podocarpus National Park "is a threat to the environmental human right of the inhabitants of the provinces of Loja and Zamora Chinchipe to have an area which ensures the natural and continuous provision of water, air humidity, oxygenation and recreation."[18] In similar fashion, the Hungarian Constitutional Court in *Case 28/1994*,[19] held that the legislature's efforts to sell formerly nationalized forested lands for cultivation would be unconstitutional, violating constitutional environmental rights.[20] These cases exemplify some courts' willingness to hear constitutional claims even absent evidence of harm to the specific plaintiffs.

Who Can Vindicate a Violation?

Constitutional and other limits can restrict the pool of potential claimants. For example, Namibia's environmental rights provision may only be enforced by an ombudsman,[21] and citizens of Cameroon may not pursue environmental rights before

[16] The "Trillium Case," Decision No. 2.732-96, at 8, Sup. Ct. of Chile, (Mar. 19, 1997), at http://www.elaw.org/node/1310 accessed 16 January 2011. See further: O. Houch, *Taking Back Eden: Eight Environmental Cases that Changed the World* (2009) Island Press, at 151-74; and May and Daly (supra note 8) at 392.
[17] Ibid.
[18] *Case No. 224/90, Arco Iris v. Instituto Ecuatoriano de Mineria*, [Constitutional Court of Ecuador] Judgment No. 054-93-CP, translated in Bruch et al. (supra note 10) at 26.
[19] MK. Case No. 1994/Decision 28 (Hung. Const. Ct. 1994), available at http://www.mkab.hu/admin/data/file/749_28_1994.pdf.
[20] See: S. Stec, 'Ecological Rights Advancing the Rule of Law in Eastern Europe' (1998) 13 J. Envtl. L. & Litig. 275, at 320–21; and S. Kravchenko, 'Citizen Enforcement of Environmental Law in Eastern Europe' (2004) 10 Widener L. Rev. 475, at 484.
[21] E. Brown Weiss et al., *International Environmental Law and Policy* (1998) Aspen Law & Business, 1st edn, at 417.

the country's Constitutional Court.[22] In other jurisdictions, it is not standing that limits litigation, but judicial interpretation of constitutional rights. For example, the Constitutional Court of Turkey has interpreted the constitutional provision that "[e]veryone has the right to live in a healthy, balanced environment,"[23] to permit solely facial challenges to legislation as enacted but not as applied,[24] and Spain's "right to enjoy an environment suitable for the development of the person,"[25] is viewed as falling outside the actionable private "rights" that the constitution guarantees.[26] Other courts are more willing to expand the class of potential plaintiffs precisely to enhance the control that the people have over the government. In many Latin American countries, courts have allowed *amparo* or similar actions, which permit any citizen to enforce constitutional rights.[27] As discussed above, some courts, including those in India, Pakistan, and Bangladesh, provide a form of open standing to vindicate environmental harms on behalf of the public interest under the auspices of other constitutional rights, including a "right to life." These courts exemplify a willingness to open the class of plaintiffs to give full effect to expansive constitutional language.

Who Is Constitutionally Accountable?

Most significant environmental claims result from a combination of public and private actions, and often exhibit transnational dimensions. These facts complicate the attribution of liability in domestic constitutional courts. In *Eurogold*, the Turkish government allowed a giant French mining conglomerate to use cyanide heap-leaching in its operations in a centuries-old olive growing region.[28] After government-paid loggers began to remove olive trees, farmers successfully claimed

[22] Bruch et al. (supra note 10) at 139.
[23] Turkish Republic Constitution (Pt. II, Ch. III, Art 56).
[24] E. Brandl and H. Bungert, 'Constitutional Entrenchment of Environmental Protection: A Comparative Analysis of Experiences Abroad' (1992) 16 Harv. Envtl. L. Rev. 1, 72.
[25] Constitución (Title I, Ch. III, Art. 45).
[26] See: Brandl and Bungert (supra note 24) at 65; and A. Herrero de la Fuente, in J. Ebbesson (ed.) *Access to Justice in Environmental Matters in the EU* (2002) Kluwer Law International) at 442.
[27] *An accion de amparo* is a cause of action to enforce constitutional rights, used widely throughout the Spanish-speaking world (Houck (supra note 16) at 306). See for example: *Proterra v. Ferroaleaciones San Ramon S.A.*, Judgment No. 1156-90 (Sup. Ct. Peru, Nov. 19, 1992), cited in Bruch et al.(supra note 10) at 27. See further May and Daly (supra note 8) at 393 (discussing rights of *amparo)*.
[28] A. Sachs, 'What Do Human Rights Have To Do With Environmental Protection? Everything' (1997) Nov-Dec, *Sierra Magazine* (available at http://www.sierraclub.org/sierra/199711/humanrights.asp).

that the government's license contravened Turkey's new constitutional environmental right "to live in a healthy, balanced environment"[29] and Turkey's highest administrative court stopped the operation by assigning responsibility to the government.[30]

Courts have also held private parties accountable for violations of constitutionally embedded environmental rights provisions. For example, a court in Costa Rica invoked the country's fundamental environmental rights provision to stop a transnational banana company from clear-cutting approximately 700 hectares near the Tortuguero National Park that includes nesting habitat for the endangered green macaw.[31] This case settled with an agreement to institute measures to protect the habitat.[32] Indeed, many constitutional environmental cases are settled because, even when the environmental violation has been identified, it is difficult for the courts to fashion and enforce remedies that are sufficiently effective to satisfy the claimants and alleviate environmental damage, but also sufficiently practical to ensure compliance by the defendants.

What Remedies Are Available?

In some environmental cases, as in non-environmental cases, the court can order the defendant to cease or to pay damages to compensate the victim for the costs of medical care or lost employment. But most environmental cases are more challenging for courts to remedy. In one Colombian case, where toxic fumes emanated from an open pit, it was not enough to pay for past damage: defendants were required "to remediate the site and to pay past and future medical expenses to those who became sick",[33] raising questions of the duration and extent of the defendant's obligations and of the court's jurisdiction.

[29] Turkish Republic Constitution (Pt. II, Ch. III, Art. 56).
[30] See Sachs (supra note 28).
[31] See further: Bruch et al (supra note 10) at 26; Environment Law Alliance Worldwide (E-Law), 'Valuing Biodiversity in Costa Rica' (1999) July (available at http://www.elaw.org/node/866); and May and Daly (supra note 8) at 394.
[32] Ibid.
[33] Corte Constitucional, Chamber of Civil and Agrarian Appeals, Nov. 19, 1997, 'Castrillon Vega v. Federación Nacional de Algodoneros y Corporacion Autonoma Regional del Cesar' (CORPOCESAR) / Acción de Tutela Case No. 4577 (Colom.), discussed in Kravchenko and Bonine (supra note 9) at 70.

Even more challenging are the more common environmental cases where the harm is irremediable: if the toxic chemicals have already been dumped, it may not be enough to stop dumping and pay a fine. Remedial relief may also require cleanup and developing and implementing a government program to prevent future damage. For example, the Nepalese Supreme Court prohibited the use of diesel trucks through Kathmandu in the name of environmental rights.[34] Similarly, in Bangladesh, the court banned two-stroke engines in the city of Dhaka.[35] In *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, the Philippine Supreme Court upheld a request for multifaceted injunctive relief to prevent massive pollution discharges from choking Manila Bay and to clean and protect it for the benefit of future generations.[36]

These examples are rare, however, because many courts are wary of entering this environmental thicket. Designing an effective remedy often requires nuanced line-drawing by the court as well as ongoing oversight. But should a court even be making these subtle determinations which often stray into policy matters and which may require the allocation of resources toward one set of goals, invariably at the expense of other social needs? In one early Nepalese case, the Supreme Court prohibited the government from leasing an important archeological site to a medical college. "The environment is an integral part of human life," the Court said, and therefore environmental resources should be protected in order to prevent degradation and maintain a pollution-free environment. But should the courts be deciding whether preserving the archeological site is more important than a medical college? Vindicating environmental rights almost invariably mean burdening industry, diminishing revenue and employment, and imposing higher costs on private enterprises and individuals, whether due to greener production or the cost of cleanup. In another example, the Indian Supreme Court ordered the conditional closure of tanneries, recognizing that "closure of tanneries may bring unemployment

[34] *Advocate Kedar Bhakta Shrestha v. HMG, Dep't of Transp. Mgmt.*, Writ No. 3109 of 1999 (Nepal), in UNEP, *Compendium of Summaries of Judicial Decisions in Environment-Related Cases* (2005) 90, at 134.
[35] See P. Hassan and A Azfar, 'Securing Environmental Rights Through Public Interest Litigation in South Asia' (2004) 22 Va. Envtl. L.J. 215, 244.
[36] *Metro. Manila Dev. Auth. v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48 (Phil. S.C., Dec. 18, 2008).

[and] loss of revenue." Nonetheless, it made the policy judgment that "life, health, and ecology have greater importance to the people,"[37] even though those who rely on the tanneries for their livelihood may not have made the same calculation.[38] Because environmental cases almost invariably present difficult and far reaching policy choices that are ill-suited to judicial resolution, courts often decline to fashion the remedial plan themselves, instead ordering the political branches to progressively realize the right and sometimes maintaining jurisdiction to ensure compliance.

Justiciability: Are Courts Receptive to Constitutional Environmental Rights?

The challenge of fashioning remedies is rooted in the fundamental fact that environmental rights are not absolute but always need to be balanced with other societal needs.[39] As indicated by the language of the Supreme Court of Nepal: "It is beyond doubt that industry is the foundation of development of the country. Both the country and society need development; however it is essential to maintain an environmental balance along with industry."[40] While protecting the environment can help preserve the way of life for some, it can impair the way of life of others. Furthermore, for the government, the cost is felt twice, once in compliance and clean up, and again in the diminution in taxes, fees, and other costs associated with increased regulation.

The judgment of how to balance the competing claims is one that should typically be done politically and not judicially. As the Hong Kong Court has said: "How … can this court decide that this decision fails to reach a fair balance between the duty Government has to protect the right to life and the duty it has to protect the social and economic well-being of the Territory? It cannot do so …"[41]. Nonetheless, "sketchy

[37] *M.C. Mehta v. Union of India, A.I.R.* (1987) 4 S.C.C. 463 (India).
[38] Yogi Narahari Nath & Others v. Honourable Prime Minister Girija Prasad Koirala & Others, 33 N.L.R. 1955 (S.C. Nepal) in *UNEP Summaries* (supra note 34) at 134.
[39] The Philippines Constitution (1987) explicitly requires that: "The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature" (Art. II(16)).
[40] *Dhungel v. Godawari Marble Indus.*, WP 35/1992 (S.C. Nepal, Oct. 31, 1995) (en banc), reprinted in Kravchenko and Bonine (supra note 9) at 96-97.
[41] Clean Air Found. Ltd. & Another v. Gov't of H.K., 2007 WL 1824740 [2007] HKEC 1356, HCAL 35/2007 (CFI) 42.

input from the legislature, and laxity on the part of the administration"[42] means that it often falls to the courts to protect environmental interests.

Some courts are reluctant to favor the environment at the expense of the individuals before them, or to protect the abstract value of a clean environment over immediate needs for sustenance or jobs. Others have drawn the line where the environmental degradation seems neglectful[43] or vindictive.[44] Still others want to avoid having to make the decision, attributing it to the Executive, which may result in continued environmental deterioration, as it did in *Ng Ngau Chai v. Town Planning Bd.*[45] Courts have been more willing to step in where they have found that environmental degradation implicates other constitutional rights, most commonly the right to life. The Supreme Court of India was one of the first to find that a "right to life"[46] embeds a right to a quality environment.[47] In *Subhash Kumar v. State of Bihar*, the plaintiffs sought to stop tanneries from discharging into the Ganges River.[48] While the Court dismissed the action for lack of standing, it found that the pollutant discharges were sufficient to make the river unfit for drinking and irrigation, which could violate the constitutionally protected "right to life" [49] that "includes the right of enjoyment of pollution-free water and air for full enjoyment of life."[50] Subsequently in *M.C. Mehta v. Union of India*, as noted above, the Court ordered the tanneries to shut down unless effluent was first subjected to pretreatment processes approved by the governing environmental agency.

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[42] B.N. Kirpal, Chief Justice, Supreme Court of India, M.C. Bhandari Memorial Lecture: Environmental Justice in India (2002), in 7 S.C.C. 1 (2002), (available at http://www.ebc-india.com/lawyer/articles/2002v7a1.htm).

[43] See, for example: *Defensoria de Menores Nro 3 v. Poder Ejecutivo Municipal*, Agreement 5, Superior Justice Court. Neuquen. March 2, 1999. (Arg.).

[44] See, for example: *Soc. and Econ. Rights Action Ctr. v. Nigeria, Commc'n 155/96*, African Commission on Human and Peoples' Rights (Oct. 27, 2001), available at http://www.cesr.org/downloads/AfricanCommissionDecision.pdf.

[45] *Ng Ngau Chai v. Town Planning Bd.*, [2007] HCAL 64/2007 (H.K), quoted in *Clean Air Found. et al. v. Gov't of Hong Kong SAR*, [2007] HKEC 1356, HCAL 35/2007 (C.F.I.), at 2007 WL 1824740.

[46] Indian Constitution (Art. 21).

[47] *Bandhua Mukti Morcha v. Union of India*, (1984) 3 S.C.C. 161 and *Charan Lal Sahu v. Union of India, A.I.R.,* 1990 S.C. 1480 discussed in D Shelton and A. Kiss, *Judicial Handbook on Environmental Law* (2005) UNEP, at 8.

[48] *Subhash Kumar v. State of Bihar, A.I.R.*, 1991 S.C. 420. See May and Daly (supra note 8) at 400.

[49] Subash Kumar, A.I.R. 1991 S.C. 420, in *UNEP Summaries* (supra note 34) at 104.

[50] Ibid, cited in Shelton and Kiss (supra note 47) at 8.

The Supreme Court of Pakistan has also held that environmental rights are embedded in the constitutional "right to life." In *In re: Human Rights Case* (Environment Pollution in Balochistan), the Court took judicial notice of a newspaper report that private interests were seeking to buy coastal land for dumping nuclear and highly hazardous waste[51] and ordered the environmental regulator to monitor land allocation in the area and forbid such use.[52] In *West Pakistan Salt Miners v. Directors of Industries and Mineral Development*, the Court upheld a claim that the right to life included a right to water free from contamination from mining activities."[53]

In *Mohiuddin Farooque v. Bangladesh*, the petitioners alleged that the implementation of a substantial flood control plan would so disrupt the affected community's life, property, and environmental security as to violate the right to life.[54] While the Court held that the constitutional right to life included environmental rights, it dismissed the action, reasoning that petitioners were not "person[s] aggrieved" within the meaning of Constitution.[55] The Court has been more receptive to the claim in a series of petitions by the Bangladesh Environmental Lawyers Association (BELA) to enjoin dumping of wastes in a flood zone,[56] to prevent cutting forests for a cement factory,[57] to curtail pollution caused by a polyurethane recycling factory,[58] and to stop operation of a confectionary and party shop in a residential area.[59]

The trend has now spread to other regions. The Constitutional Court of Colombia has read a constitutional "right to life" as encompassing a substantive right to a healthy environment.[60] In *Maria Elena Burgos v. Municipality of Campoalegre (Huila),* the Court upheld a lower court's order to destroy pig stalls that caused neighbors to fall ill

[51] Human Rights Case No. 31-K/92(Q), P.L.D. 1994 S. C. 102 (1992), in UNEP, *Compendium of Judicial Decisions in Matters Related to Environment: National Decisions* (1998) I, at 280.
[52] Ibid, at 281.
[53] 1994 S.C.M.R. 2061 (S.C. Pak.), in *UNEP Compendium* (supra note 51) at 282. See also *Ms. Shehla Zia et al. v. WAPDA*, P.L.D. 1994 S.C. 693, in *UNEP Compendium* (supra note 51) at 323.
[54] *Dr. Mohiuddin Farooque v. Bangladesh,* 48 Dir 1996 (S.C. Bangl. App. Div., Civ.), in *UNEP Summaries* (supra note 34) at 90.
[55] Ibid. See further Hassan and Azfar (n 35) at 242.
[56] See *BELA v. Bangladesh*, (2006) Writ. Pet. 7465.
[57] See *BELA v. Bangladesh*, (2006) Writ. Pet. 2020.
[58] See *BELA v. Bangladesh*, (2006) Writ. Pet. 11594.
[59] See *BELA v. Bangladesh*, (2006) Writ. Pet. 6097.
[60] The Colombian Constitution (1991) now reads: "Every individual has the right to enjoy a healthy environment" (Title II, Ch. III, Art. 79).

with respiratory distress and fever, finding the claims constituted an actionable violation of the country's fundamental environmental right encompassed in a right to life.[61] In so doing, the Court has conceived the right to the environment as "a group of basic conditions surrounding man, which define his life as a member of the community and allow his biological and individual survival,"[62] existing, "side by side with fundamental rights such as liberty, equality and necessary conditions for people's life … [W]e can state that the right to the environment is a right fundamental to the existence of humanity."[63]

It is appropriate to conclude this article with perhaps the most sweeping endorsement of justiciability of constitutionally embedded environmental rights. In the celebrated case of *Minors Oposa v. Factoran*, the Philippine Constitutional Court announced that rights to a quality environment are enforceable whether or not they are constitutionally expressed because they "exist from the inception of humankind"[64] and:

> these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, 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.[65]

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[61] *María Elena Burgos v. Municipality of Campoalegre* (Huila) (Const. Ct. Colom. Feb. 27, 1997) in *UNEP Summaries* (n 33) 79. See May and Daly (supra note 8) at 403-04.
[62] See A. Fabra and E. Arnal, 'Review of Jurisprudence on Human Rights and the Environment in Latin America' (2002) Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, Background Paper No. 6 (available at http://www2.ohchr.org/english/issues/environment/environ/ bp6.htm).
[63] Ibid.
[64] *Minors Oposa v. Factoran*, G.R. No. 10183, 224 S.C.R.A. 792 (July 30, 1993). (Phil.), reprinted in [1994] 33 *I.L.M.* 173, at 187.
[65] Ibid.

Conclusion

There is a discernible trend for nations to constitutionally entrench fundamental rights to the environment and for courts to take them seriously. The six facets involving form, depth, scope, parties, remedies, and justiciability make constitutional environmental rights inherently complex. Nonetheless, courts in an increasing number of countries have been willing to recognize and enforce the fundamental importance of constituted environmental rights.