

The Fight for the Right to a Healthy Environment

It only seems reasonable that everyone on this earth has the right to breathe clean air and drink clean water, to live with a stable climate free from constant extreme weather events, to be a part of thriving, intact ecosystems.

Not only reasonable, but essential. Not only essential, but absolutely fundamental to life.

And yet, the human right to a healthy environment is not guaranteed. But we're getting there.

The right to a healthy environment has its foundations in the general concept of human rights. International human rights date back to the 1948 Universal Declaration of Human Rights, which was adopted shortly after the creation of the United Nations (UN) in 1945. The Declaration, which was drafted by a Human Rights Commission chaired by Eleanor Roosevelt, comprises a number of rights, like freedom of religion and freedom of expression, as well as economic, social, and cultural rights like the right to education. However, the modern environmental movement had yet to begin, and the Universal Declaration of Human Rights did not include the right to a healthy environment.

Over the past few decades, many nations added the right to a healthy environment to their constitutions. "Since the 1960s, it is the most popular right to be added to constitutions," says environmental law expert Professor John Knox. "It's now included in at least 100 national constitutions." Moreover, several US states have included the right in their state constitutions. But despite the rising popularity and critical importance of the right to a healthy environment, the UN had never adopted this right, and some countries—including the United States—do not recognize it in their domestic law. Professor Knox has devoted much of his career to remedying this.





In 2012, the UN Human Rights Council, which appoints independent experts called special rapporteurs to investigate and report on important global issues, asked Professor Knox to be a special rapporteur on the relationship of human rights and the environment. Professor Knox spent the next three years mapping how human rights bodies regarded the environment vis-a-vis human rights. He eventually determined and reported that even in the absence of a global human right to a healthy environment, many tribunals and other bodies had applied other human rights to environmental issues. In other words, states are obligated not to create or allow environmental problems that interfere with people's ability to enjoy their other rights, such as rights to life and health. "For example, if a state could reasonably foresee an environmental threat—say, a mudslide—and took no action to protect people from it, so that it wiped out a village, it would have violated its obligation to protect human rights," says Professor Knox. He referred to this application of human rights to environmental issues as "greening human rights."

The relationship between human rights and environmental protection is interdependent. In an article he wrote about greening human rights, Professor Knox stated, "The exercise of human rights helps to protect the environment, which in turn enables the full enjoyment of human rights. In recent years, it has become equally clear that the converse is also true: the exercise of human rights is necessary, or at the very least highly important to, the enjoyment of a healthy environment."

In 2015, Professor Knox was reappointed as special rapporteur, but the UN added a new directive to his mandate—one that would not come without its challenges: to promote implementation of the rights relating to a healthy environment. With this command, Professor Knox visited countries and interacted with government officials to try and push them toward greater compliance. "States were often interested in talking with me because they needed guidance on how to implement the rights," he says. "But sometimes, my job was to essentially 'name and shame.' In other words, call them out on their noncompliance."

In his last report for the UN, Professor Knox presented his Framework Principles on Human Rights and the Environment, where he outlined 16 principles related to human rights and the environment that are based on existing work of the human rights system. He also called on the UN to recognize formally, for the first time, the human right to a healthy environment.

Although his second term as special rapporteur ended in 2018, the UN renewed the mandate and appointed Professor David Boyd of the University of British Columbia to continue what Professor Knox started. Professor Boyd championed the issue, writing reports and making arguments to countless audiences. Professor Knox continued to play a supporting role, constantly espousing the need to codify the right to a healthy environment.

After the pandemic, the campaign for the UN to adopt the right to a healthy environment ramped up and gained momentum. A group of 15 heads of UN agencies issued a joint statement supporting the right. "It was unusual for them to take such a strong advocacy position," says Professor Knox. Finally, in October 2021, the Human Rights Council voted 43-0 with 4 abstentions to recognize the right to a healthy environment. The abstentions came from China, Russia, Japan, and India.



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The US, although not a member of the Human Rights Council at the time (President Trump had recently resigned from it), worked against the adoption of this right. "The US tends to ignore international human rights law," says Professor Knox. "Environmental justice advocates in the United States instead focus on what can be argued in a US court—and US courts are unfortunately not friendly to international human rights claims."

With strong support from the Human Rights Council, the countries that were in favor of adopting the right moved cautiously toward the next step: UN General Assembly approval.

This was no easy task, as very few rights have been added to the list of rights in the Universal Declaration of Human Rights since its creation. Professor Knox and Professor Boyd participated in a major effort to convince the General Assembly to adopt the

resolution recognizing the right to a healthy environment. The countries that took the lead on the effort were Costa Rica, Maldives, Morocco, Slovenia, and Switzerland. "It was an interesting group," says Professor Knox. "While these countries are fairly small, they are all well-respected within their regions."

This contingent went about their work very carefully, conducting many consultations with other countries and waiting to amass support—all with the goal that the resolution would pass with an overwhelming vote. They met with governments to explain what exactly this right was and what the consequences of not adopting the right would be. Nearly 1500 NGOs signed the petition in favor of UN recognition, and many governments got on board as well. In the US, Professor Knox and Professor Boyd met with congressional staff members, the American Bar Association wrote a letter in favor of the resolution, and other entities vocalized their support.



Finally, on July 28, 2022, the General Assembly adopted a resolution recognizing the right to a healthy environment with a vote of 161-0, and only 8 abstentions. “This resolution sends a message that nobody can take nature, clean air and water, or a stable climate away from us—at least, not without a fight,” said Inger Andersen, executive director of the UN Environment Programme (UNEP), after the resolution had passed. Perhaps most surprising was that Japan, India, and the US—all nations which had previously been against it—voted in favor of the resolution. The largest countries to abstain were China and Russia.

“It truly was a global effort,” says Professor Knox. “There were thousands of people involved—from UN experts and agency heads, to governments, to NGO leaders, and more. Like-minded people came together and put their weight behind it. That’s the only way we could succeed.”

But the fight is far from over. “Even though it’s not legally binding, it’s politically catalytic,” says Professor Knox. “The adoption of the resolution sets a global standard that countries can try and achieve—with bodies like the UN holding them accountable.” The hope is that the adoption of the resolution will have a trickle-down effect.

And in fact, the recognition of the right has led to efforts to add the right to the European Convention on Human Rights, a regional treaty that is legally binding. In September 2022, Professor Knox attended a governmental working group meeting to discuss whether to draft an amendment to the European Convention. National courts have begun to cite the right in their own laws. Concurrently, there have been efforts to try and clarify what the right to a healthy environment really means. The framework principles that Professor Knox developed in 2018 provide context to the right and set a minimum standard for countries to comply with.

The right to a healthy environment is part of a broader movement that is reinvigorating the overall environmental justice movement, which centers around the people who are “left behind.” “The whole way we should approach environmental issues is by focusing on those who are most impacted—racial minorities and people who are low-income” says Professor Knox. “Are

we doing enough to propel environmental justice forward? No. But at least there is now a lot of effort to bring more attention to underserved communities that are especially harmed by environmental threats and degradation.”

Indeed, one of the ways in which communities are marginalized is that they are made to bear the brunt of environmental deterioration. Professor Knox cites sacrifice zones—areas that are so environmentally degraded that people’s human rights are violated just by the sheer fact that they live there. Take, for example, Cancer Alley in Louisiana, which is made up of mostly Black residents and accounts for 25% of the petrochemical production in the US.

“Even though some view environmental justice as a separate issue from the right to a healthy environment, they are in fact part and parcel of the same issue,” says Professor Knox. “It would be beneficial to everyone if these two movements came together and built connections between them.”

Professor Knox posits that using rights-based thinking and language is a powerful step in effecting change. “US government leaders using rights-based rhetoric is relatively new and truly demonstrates the relevance of the human rights movement.” He believes the strength of the human rights movement is that it doesn’t just use a legal framework and legal language. “It’s political and social and aspirational,” he says. “It’s okay to start off with political statements and declarations and then eventually write those political aspirations into the law. The Universal Declaration of Human Rights started off just like that. A call to justice is a statement of how the world should be—and the law follows that.”

Professor Knox recognizes that it’s a slow process, and when it comes to the environment, the need to legislate around the right to a healthy environment is urgent and vital. As we know, “the arc of the moral universe is long, but it bends toward justice.” With environmental and human rights advocates working together, we can only hope the bend is in sight.