
The Right to a Healthy Environment, the Rights of Future Generations, and Climate Change

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The universal recognition of the human right to a clean, healthy and sustainable environment (R2HE) changed the pantheon of human rights. It is now recognized that a healthy environment is essential to the realization of a vast array of human rights. Given the multiple environmental threats facing humanity and nature, urgent action is required: the time to act is now. R2HE is the path forward. Among other things, R2HE is the essence of environmental justice and provides a framework for analyzing and responding to the immediate and long-term threats posed by climate change. By looking at both today and the future, R2HE has the potential to guide the realization of the rights of present and future generations.

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HUMAN RIGHT TO A CLEAN, HEALTHY, AND SUSTAINABLE ENVIRONMENT

The universal recognition of the human right to a clean, healthy and sustainable environment (R2HE) by the United Nations General Assembly on July 28, 2022¹ transformed the pantheon of human rights.² By adding an environmental right for the first time, the General Assembly filled a gap in the human rights regime. Environmental consciousness did not exist in 1948 when the Universal Declaration of Human Rights was finalized.³ However, scientific and conceptual advances since then have meant that the gap is no longer tenable.

On the scientific front, the identification of the many essential functions performed by ecosystem services – the things that nature provides humankind for free⁴ – led to the realization that nature is the true infrastructure of human society. Examples of ecosystem services are food, fuel, fiber, purification of water and air, pollination, erosion control, soil formation, and spaces for recreation and religious and spiritual experience. On the conceptual front, the elucidation of the relationship between human rights and the environment conducted over decades by many people—particularly by the first UN Independent Expert and subsequent Special Rapporteur on human rights and environment, John H. Knox⁵—led to the realization that there is a reciprocal interdependence between the two areas. It is now recognized that a healthy environment is essential to the realization of human rights such as the rights to life, health, and culture; and protecting the environment requires the exercise of human rights such as the rights to participate and to freedoms of expression, association, and assembly.

The 2007 Malé Declaration on the Human Dimension of Global Climate Change described R2HE as “an environment capable of supporting society and the full enjoyment of human rights.”⁶ The second Special Rapporteur on human rights and environment, David R. Boyd, further elaborated the contents of R2HE: people have the rights to “...clean air, safe and sufficient water, healthy and sustainably produced food, non-toxic environments where they can live, work, study and play, healthy ecosystems and biodiversity and a safe climate.”⁷ As per the Framework Principles prepared by Special Rapporteur Knox, R2HE (like other human rights) is accompanied by access rights such as the rights to access to information, freedom of opinion, freedom of expression, and assembly, and includes the obligation not to discriminate.⁸ Indeed, R2HE is the often unspoken assumption of environmental justice.

Besides these parameters, R2HE also implicitly impacts other rights.

For instance, R2HE protects the rights of Indigenous peoples and vulnerable groups.⁹ Also implicit is that such efforts must be based on science and meaningful community involvement, as is demonstrated by the three nature-based solutions (wetlands restoration, “horizontal levees,” and mini-floodplains) being used to protect shoreline infrastructure in the San Francisco Bay Area from inundation due to rising sea level and storm surges, which are based on careful scientific studies and funded by taxes expressly approved for this purpose by voters in several jurisdictions in the Bay Area.¹⁰ R2HE also has implications for international labor laws. The nearly simultaneous addition in 2022 by the International Labour Organization (ILO) of occupational health and safety (R2OHS) to its Declaration of Fundamental Principles and Rights at Work is an element of the broader R2HE. This addition makes clear that R2HE applies in the workplace and that environmental health and safety are as important as the other fundamental principles and rights in the Declaration, and it has the potential to harness the ILO’s considerable processes and institutions to ensure R2OHS is given effect. Coordinating actions to achieve R2HE and R2OHS would strengthen both efforts.¹¹

Finally, the fact that R2HE cannot be achieved without protecting nature, combined with the interdependence of natural elements (including humans), makes it imperative that the international community acts today. The increased pressure on the biosphere that will result from population increase¹² and the multiple, serious environmental threats facing humans and the planet¹³ require a rebalancing and revitalization of humans’ relationship with nature. The human-supremacism of this relationship that has dominated over the past few centuries has humanity heading for effective oblivion. Thus, even disregarding the strong ethical reasons supporting a balanced relationship between humankind and the rest of nature, humans cannot continue with the current anthropocentric approach to environmental analysis and governance. Instead, humankind ought to uphold strong ethical reasons for supporting a balanced relationship between humankind and the rest of nature by enacting effective legislation, conducting environmental protection, and carrying out eco-centric advocacy campaigns for change.

As shown below, R2HE provides a framework for what this new path can look like. Its shape should be influenced by both the rights of future generations and the human rights aspects of climate change.

RIGHTS OF FUTURE GENERATIONS

Because R2HE makes it imperative that humankind change paths, it has direct implications for the rights of future generations. The obligation

to respect the rights of future generations is contained in Principle 1 of the Stockholm Declaration on the Human Environment, which was the first proclamation of the human right to a healthy environment. Principle 1 reads:

Man [sic] has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.¹⁴

This obligation has been the subject of significant scholarship. In 1972, John Passmore identified ecological problems as social problems that require political solutions.¹⁵ Yet, the habit of viewing what are now referred to as ecosystem services as free and unlimited has caused political systems to struggle with solutions. Passmore called for conservation despite the uncertainty of what future needs would be: "...[w]e love, and in virtue of that fact we are prepared to make sacrifices for the future and are not prepared to take risks, arising out of uncertainties, which would otherwise strike us as being rational."¹⁶ Ultimately, he concluded that conventional morality mandates stopping pollution, the depletion of natural resources, and the destruction of species and wilderness in order to protect people in the present and the future.¹⁷

Edith Brown Weiss elaborated on the theory of intergenerational equity in 1989. According to Brown Weiss, the theory "...calls for a minimum level of equality among generations."¹⁸ Drawing from the conceptions of justice of John Locke and John Rawls, she proposes that each generation has an obligation to leave behind a planet that is at least as good as the one it inherited,¹⁹ i.e., to receive the planet in a condition as good as that inherited by the past generation is the right of future generations.²⁰ William MacAskill makes a case for long-termism, which he describes as "...the idea that positively influencing the long-term future is a key moral priority of our time."²¹ Morally, according to MacAskill, future generations are just as important as the present one. Indeed, he argues that humans need to "...abandon [...] the tyranny of the present over the future."²² It is the duty of the present generation to take actions that will ensure a bright future for future generations, despite the risk of working with the unknown.²³

Changing paths to ensure the rights of future generations might seem like the obvious choice. Yet, critics of these rights are likely to disagree. Among the critiques, four are of particular interest concerning R2HE. First, the lack of reliable information about the future means that it is difficult, if not impossible, to predict the needs of future generations. How,

then, should decision-makers today know which actions to implement for the sake of future generations? Second, as conditions on Earth change, the needs and wants of future generations will change. Just over a century ago, States fought wars over salt; now, they fight over oil.²⁴ Third, even if the present generation could know the preferences of future generations, how should they be prioritized – should generations that are closer in time have priority over ones further in the future, or vice versa? Fourth, anything the present generation does now will alter who is born in the future, so how can one say the present generation is protecting the rights of those who would otherwise have been born but now will not be as a result of its actions?²⁵

Importantly, R2HE provides answers to each of these critiques. The responses to the first three critiques boil down to the fact that, at the very minimum, any generation will need “a livable earthly home.”²⁶ Hence, we can predict what future generations will need, i.e., they will need and have the right to a healthy environment. We can know this even when conditions on Earth change because respecting the human right to a healthy environment will necessarily involve reacting to changes on a continuous basis. Similarly, we do not need to prioritize among different generations because they will all share that minimum need. Edith Brown Weiss writes that “... every generation has the responsibility to set criteria for defining the actions that infringe upon these rights.”²⁷ R2HE is an answer to this for all generations to come.

There are different responses to the fourth criticism. For one, taking action to fulfill R2HE is imperative to individuals who are already alive, especially those who have just been born, some of whom might live for a century. Inaction for the sake of hypothetical, unborn individuals will harm right-holders already alive.²⁸ This is not an option. In addition, Brown Weiss argues that intergenerational rights are group rights, not individual rights. As such, “[t]hey exist regardless of the identity and the number of individuals making up each generation.”²⁹ R2HE addresses the environment with a collective focus, obviating the need to address specific individuals. R2HE thus provides a seamless framework for protecting the rights of people living now and those of future generations.

MacAskill mentions five possible objections to his preferred approach of “long-termism,” which are worth addressing briefly in terms of R2HE for the purpose of completeness. MacAskill writes that some economists argue that future people will be better off than current ones, so their interests should be discounted.³⁰ Even assuming future people are better off (which is not evident, especially given the environmental and other threats facing humanity), they will nevertheless have R2HE, which should not

be ignored on account of wealth. He also raises the argument that future people can take care of their own problems and thus, present generations do not need to consider their interests. He points out that this argument fails to consider situations where there is a permanent catastrophe or an extinction (or if R2HE is ignored), which future people will not be able to cope with. Moreover, he states that it is often easier to prevent a problem than it is to fix it (“it’s easier to avoid burning coal than it is to suck carbon dioxide out of the atmosphere”).³¹ In any event, this argument does not consider that future generations have R2HE, which is not dependent on whether they can take care of their own problems.

Another counterargument MacAskill raises is that chasing tiny probabilities of enormous amounts of value is not wise.³² This is a fair question in the abstract, and there may not be a satisfactory answer in the abstract. But environmental threats to humanity (and thus to R2HE) typically are not of a tiny probability – certainly, the ones facing society now are not – so this argument does not oppose the continuous effort to respect R2HE. A fourth counterargument MacAskill raises is that there are constraints on present-day activities such that they do not violate rights in the future.³³ This argument is inapposite to our situation, where the entire effort is to respect a human right—i.e., R2HE—in the future. A final argument raised by MacAskill is that taking account of the future is too demanding.³⁴ The approach of respecting R2HE on a continuous basis answers that question. This is, first, because failing to respect the environment has proven to create threats with enormous costs that are typically greater than the cost of preventing the threats would have been. Second, protecting R2HE of future generations will also safeguard R2HE of current ones (although chronologically the process is reversed—protecting R2HE for present generations flows seamlessly into protecting R2HE of future ones, as described above).

With inaction not an option for current and future generations, humankind can build on the framework of the principle of intergenerational equity proposed by Brown Weiss. Its three components are options, quality, and access.³⁵ Intergenerational equity requires that future generations have comparable options to fulfill their well-being and comparable quality of and access to the environment. Notably, Brown Weiss did not have R2HE to serve as a basis for her conclusions. Since R2HE was recognized, the requirement is no longer only that the present generation leaves the Earth no worse than or comparable to how it found it. What is required is that the present generation passes a healthy Earth to the next generation, which requires successfully addressing current environmental problems and thereby improving the quality of the environment.

CLIMATE CHANGE

Climate change has both immediate and long-term impacts, as is well known, implicating a wide array of human rights such as the rights to life, culture, health, and property. Establishing the relationship between human rights and those impacts required many years. Milestones included: the Inuit case against the United States in the Inter-American Commission on Human Rights (2005); the Malé Declaration on the Human Dimension of Global Climate Change (2007); resolutions of the UN Human Rights Council (e.g., 2008, 2009, 2011, 2015); a resolution of the Conference of the Parties of the UN Framework Convention on Climate Change (2010); the Paris Agreement on climate change, 11th Preambular Paragraph (2015); *Urgenda Foundation v. The Netherlands* (2019); *Torres Strait Islanders v. Australia* (Human Rights Committee 2022); and the establishment of a UN Special Rapporteur on the promotion and protection of human rights in the context of climate change (2021).³⁶

Although insights will undoubtedly result from the work of the new Special Rapporteur on climate change, it is already clear that climate change and human rights interact in three ways: (1) States must respect, protect, and fulfill human rights when taking action to mitigate or adapt to climate change; (2) States must respect, protect, and fulfill the human rights of refugees (including those whose movement is induced by climate change) and persons living in territories through which refugees move or in which they settle if they do not return home; and (3) climate change impacts the realization of human rights and thus the obligations of States regarding climate change.³⁷

R2HE is relevant to each of these levels. R2HE must be observed regarding the first two aspects, just as all other human rights must. The third aspect has been the most controversial but is supremely evident in the existential threats facing the Inuit in the Arctic (whose lives, culture, property, and entire way of life are threatened by warming temperatures) and residents of the Republic of the Maldives in the tropics (whose islands, homes, and water supplies are threatened by rising sea levels). These two examples from widely different geographical conditions demonstrate that anthropogenic climate change is threatening the realization of the human rights of current and future generations. And because human activities within States are causing climate change, States have human rights obligations to protect against those threats.

Using R2HE as a framework for analyzing and responding to the threats posed by climate change has the potential to address both immediate

and longer-term dangers, as described in Part II. R2HE might also serve as a framework for climate security at the UN Security Council. Moreover, using R2HE as a framework for approaching the human rights aspects of climate change can counter the unfortunate and all-too-common tendency to ignore other serious environmental threats when thinking about climate change. Importantly, as is evident from the human rights obligations to respect, protect, and fulfill, States cannot fulfill their human rights obligations passively but rather must take affirmative, constructive action to do so.

THE PATH FORWARD

The human right to a clean, healthy, and sustainable environment (R2HE) provides a framework for moving forward to protect the rights of both current and future generations. Decision-makers should approach R2HE, climate change, and the rights of future generations together. The realities of climate change dictate the need for government action today, because otherwise R2HE will not be fulfilled for present and future generations.

Although the basic parameters of R2HE are clear, its application in specific situations will require careful analysis and appropriate measures. To work towards the realization of R2HE, at a minimum, the Human Rights Council should include R2HE in its Universal Periodic Review process. Although the UN Environment Programme (UNEP) will presumably be a leader in effectuating R2HE, each of the other fourteen UN agencies that signed the 2021 declaration supporting universal recognition of R2HE should immediately include R2HE in their work programs and relevant monitoring processes. Other global intergovernmental organizations (including the International Labour Organization regarding occupational health and safety), relevant regional intergovernmental organizations, national human rights organizations and other relevant national bodies, domestic and international nongovernmental organizations (NGOs), and charitable organizations should follow suit. Businesses should be required to respect R2HE and should commit to respecting R2HE on their own accord. Institutions and individuals involved in efforts to combat climate change and other environmental threats should also strive to give effect to R2HE.

Respecting, protecting, and promoting the human right to a clean, healthy, and sustainable environment will not be easy, but humanity and nature's future depends on it. *f*

ENDNOTES

- 1 UN General Assembly Resolution A/RES/76/300, July 28, 2022.
- 2 Adopted by a recorded vote of 161 in favor, 0 against, and 8 abstentions, with 117 countries co-sponsoring the resolution. This is the most overwhelming endorsement of a human right in the history of the General Assembly.
- 3 UN General Assembly Resolution A/RES/217A, December 10, 1948.
- 4 See, e.g., *Millennium Ecosystem Assessment – Ecosystems and Human Well-Being: Synthesis* (Washington, DC: UNEP & World Resources Institute, 2005), 40.
- 5 E.g., John H. Knox, *Framework Principles of Human Rights and Environment*, UN Human Rights Council document A/HRC/37/59, January 24, 2018; John H. Knox, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, Mapping Report*, UN Human Rights Council document A/HRC/25/53, December 30, 2013.
- 6 *Malé Declaration on the Human Dimension of Global Climate Change*, signed by members of the Alliance of Small Island Developing States, Nov. 14, 2007, https://www.ciel.org/Publications/Male_Declaration_Nov07.pdf.
- 7 David R. Boyd, “The Transformative Potential of the right to a healthy Environment,” in *The People’s Environment Narrative* (UN Environment Programme, forthcoming 2023).
- 8 Knox, A/HRC/37/59.
- 9 See, e.g., John H. Knox, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, Preliminary Report*, UN Human Rights Council document A/HRC/22/43, December 24, 2012.
- 10 See, e.g., Terry Young, “Nature, Science and Community-Based Solutions,” in *The People’s Environment Narrative* (UN Environment Programme, forthcoming 2023).
- 11 This topic is addressed in the essay by Halshka Graczyk & Lacye Groening, “The Future World of Work: A Rights-Based Paradigm Shift for Occupational Safety and Health?,” in *The People’s Environment Narrative* (UN Environment Programme, forthcoming 2023).
- 12 E.g., Miriam Siemes, “The More the Merrier?, How the Right to a Healthy Environment Can Guide Decision-Makers in Tackling Population Growth,” in *The People’s Environment Narrative* (UN Environment Programme forthcoming 2023).
- 13 One often hears reference to the “triple environmental crisis of climate change, biodiversity loss and pollution.” This may be useful shorthand, but it seriously understates the environmental threats facing humanity. These threats also include antimicrobial resistance (which is already resulting in the deaths of an estimated 5 million people per year), deforestation (which has many detrimental effects beyond those relating to the “triple threat”), freshwater scarcity (approximately 1.1 billion people lack access to freshwater), vanishing food security (roughly 900 million people were starving in 2020), wildlife depletion (e.g., 70% decrease in the number of birds in North America from 1970-2014), and outer space debris (on a path to make low Earth orbits essential to communications and geographic-locational systems unusable). See generally: Daniel Magraw & Li Lin, *The Web of Life and Rights: Environmental Rights, Human Rights and Environmental Justice*, in *The People’s Environment Narrative* (UN Environment Programme, forthcoming 2023).
- 14 *Declaration on the Human Environment (the Stockholm Declaration)*, UN Doc. A/CONF.48/INF.5/Rev.1, Principle 1 (June 5-16, 1972).
- 15 John Passmore, *Man’s Responsibility for Nature. Ecological Problems and Western Traditions* (London: Gerald Duckworth & Co., Ltd., 1974) 53, 186-187.

- 16 Ibid, 98.
- 17 Ibid, 186-187.
- 18 Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity*, (Tokyo: UN University; Dobbs Ferry, NY: Transnational Publishers, 1989), 24ff.
- 19 Ibid., 25.
- 20 Edith Brown Weiss, “Intergenerational equity as a Change of Paradigm,” in Emilie Gaillard & David M. Forman, eds., *Legal Action for Future Generations* (Brussels: P.I.E.-Peter Lang S.A., Editions Scientifiques Internationales, 2020), 44.
- 21 William MacAskill, *What We Owe The Future* (New York: Basic Books, 2022), 4.
- 22 Ibid, 9.
- 23 Ibid, 6.
- 24 Siemes, “The More the Merrier?, How the Right to a Healthy Environment Can Guide Decision-Makers in Tackling Population Growth.”
- 25 James Nickel & Daniel Magraw, “Philosophical Issues in International Environmental Law,” in Samantha Besson & John Tasioulas, eds., *The Philosophy of International Law* (Oxford: Oxford University Press, 2010), 453, 458.
- 26 Ibid, 457.
- 27 Brown Weiss, “Paradigm,” 21, 47.
- 28 Nickel & Magraw, 460.
- 29 Brown Weiss, “Paradigm,” 46.
- 30 MacAskill, *What We Owe The Future*, 258.
- 31 Ibid.
- 32 Ibid, 259.
- 33 Ibid, 260.
- 34 Ibid, 261.
- 35 Ibid, 44.
- 36 Efforts in the 2000s to create a Special Rapporteur on human rights and climate change failed but pivoted to the successful establishment of the Independent Expert on human rights and the environment (later changed to the Special Rapporteur on human rights and the environment); the Human Rights Council established the Special Rapporteur on human rights and climate change the same day that it recognized the right to a clean, healthy, and sustainable environment. *See*: UN Doc. RES/48/14 (2021). Early aspects of this history are recounted in Daniel Magraw & Kristina Wienhöfer, “The Fundamental Right to an Environment Capable of Supporting Human Society and the Full Enjoyment of Human Rights: The Malé Formulation of The Overarching Environmental Human Right,” in John Knox & Ramin Pejan, eds., *The Right to a Healthy Environment*, (Oxford: Oxford University Press, 2018) and Daniel Magraw, Anna Rosemberg & Deepika Padmanabhan, “Human Rights, Labour and the Paris Agreement on Climate Change,” *Environment Policy & Law* 46 (2016): 313-20.
- 37 To the extent intergovernmental organizations, businesses, and other non-State actors have human rights obligations (a set of issues beyond the purview of this article), the responsibilities identified in the text also apply to them.