



Sustainability and
Climate Change
Programme

Sustainability and Climate Change Programme (SCCP) Working Papers

Constitutional Changes Related to the Environment,
Climate Change and Sustainable Development in the
Republic of Mauritius

14 July 2022

© UNIVERSITÉ DES MASCAREIGNES 2022

Unless otherwise stated, material in this publication may be freely used, shared, copied, reproduced, printed and/or stored, provided that appropriate acknowledgement is given of Université des Mascareignes as the source and copyright holder. Material in this publication that is attributed to third parties may be subject to separate terms of use and restrictions, and appropriate permissions from these third parties may need to be secured before any use of such material.

ISSN: 2961-0702

ACKNOWLEDGEMENTS

Milan Meetharban (Reviewer), Kritika Treebhooahun (Proof reading), inshō (Design and layout)

REPORT CITATION

Prakash Deenapanray and Sachin Mulloo (2022), Constitutional Changes Related to the Environment, Climate Change, and Sustainable Development in the Republic of Mauritius - SCCP Working Papers WP 2022/1, Sustainability and Climate Change Programme (SCCP), Université des Mascareignes, Mauritius.

DISCLAIMER

This publication and the material herein are provided “as is”. All reasonable precautions have been taken by the authors to verify the reliability of the material in this publication. However, neither the authors nor Université des Mascareignes, its officials, agents, data or other third-party content providers provides a warranty of any kind, either expressed or implied, and they accept no responsibility or liability for any consequence of use of the publication or material herein.

The information contained herein does not necessarily represent the views of Université des Mascareignes. The mention of specific companies or certain projects or products does not imply that they are endorsed or recommended by Université des Mascareignes in preference to others of a similar nature that are not mentioned. The designations employed and the presentation of material herein do not imply the expression of any opinion on the part of Université des Mascareignes concerning the legal status of any region, country, territory, city or area or of its authorities, or concerning the delimitation of frontiers or boundaries.

Executive Summary

With 52 years of constitutional experience in the Republic of Mauritius, demands placed on the existing constitution to respond to broad challenges related to democratic rights, socio-economic development and sustainable development have increased. However, stakes are often high in constitutional reform processes themselves, with vested interests and national divisions in play - in fact constitutional reform discussions in most recent years have hovered around the electoral system and parliamentary representation. Whilst such reforms are of importance to the democratic advancement of the nation, focus should also be on how to better position Mauritius to deal with emerging issues such as those related to the Environment, Climate Change and Sustainable Development. To achieve this aim, there is clearly a strong need to overcome the temptation in politics to focus on short-term gain in order to allow constitutional reform to be durable across generations.

Small island states face special disadvantages associated with small size, insularity, remoteness and inherent vulnerabilities linked with sensitive natural environments and vulnerabilities to climate change - these factors render such countries very vulnerable to forces outside their control, threatening the well-being of their people and overall economic viability. Notwithstanding these threats, there is an apparent lack of environmental protection in their national constitutions - which could be because many of these states were former British colonies using a system of common law and adopting the classic liberal approach to human rights where economic, social and cultural rights are not protected.

This Working Paper discusses reforms related to the Environment and Climate Change within the broader ambit of Sustainable Development. The proposed amendments emanate from best practices underlying the Principles of Sustainable Development (PSD), practical experiences from a number of countries and also empirical evidence from academic reflections. The fundamental premise is to lay down a foundation for framing the interconnectedness between the wellbeing of human beings and the wellbeing of nature; make explicit the PSD as the basis for guiding the formulation of public policies; provides reinforcing constitutional provisions for the right to a healthy environment and rights of nature, as well as positive duties of the State regarding climate change; and the right of litigation for the protection of the environment and nature by giving standing to any legal entity and by constitutionalising the public trust doctrine.

On a practical note, constitutional reforms are generally complex and lengthy, and hence more challenging to design and implement. Hence, intermediary steps that can be taken to better protect the environment and natural ecosystems through (i) a more up-to-date interpretation of Right to Life articulated in Chapter II of the Constitution of Mauritius, and (ii) reinforcing the Environmental Protection Act are also discussed. Nevertheless, these are not without their own hurdles, and the constitutional amendments that are discussed will still need to take place. Actively engaging an informed citizenry and interest groups early on and throughout the reform process will contribute to the popular validity of the renewed constitution.

Contents

Executive Summary	3
1 Introduction	5
2 Proposed Constitutional Changes	7
2.1 Principles of Sustainable Development	8
2.1.1 Principles that Underscore a Green Theory of Value	8
2.1.2 Examples of how the PSD are Reflected in Constitutions	10
2.2 Protection of the Environment	16
2.2.1 A Necessary but Insufficient Right	18
2.2.2 Location and Classification of the Right	26
2.2.3 Right of Litigation	26
2.3 Climate Change	32
3 Epilogue	34
Annex 1 Rio Principles of Sustainable Development	36
Annex 2 Preamble of the Constitution of Ecuador	39
Annex 3 Eleventh and Twelfth Schedule of the Indian Constitution	40

1 Introduction

Prior amendments to the Constitution of Mauritius

Mauritius gained its independence on 12 March 1968, and became a Republic on 12 March 1992. Independence was achieved following the last Constitutional Conference taking place in 1965. Prior to this there had been several amendments to the Constitution.¹

For instance, the Council of Government that was instituted in 1825, and changes brought to the Constitution in 1886 to make room for elected representatives. In 1933, the Constitution was again amended to increase the number of nominated members to the Council not holding public office to two-thirds.

A significant amendment took place in 1948 when franchise was extended to all adults who could pass a simple literacy test. Prior to this date, franchise was restricted to persons within an income bracket and to proprietors. Another change related to replacing the Council of Government by a Legislative Council. Successive Constitutional Conferences took place in 1955 and 1957 to establish the ministerial system.

In 1961, a Constitutional Review Conference was held to establish a programme of further constitutional advancement that resulted in the last Constitutional Conference of 1965. The Constitution of Mauritius was adopted following the elections of 1967. A more detailed historical evolution of the Constitution can be found in Meetarbhan (2017).²

An important point to note is that the Constitution of Mauritius was adopted as a UK legal instrument and did not emanate from the people of Mauritius. In the post-colonial era, the Constitution has arguably seen its most significant amendments in 1991 with the creation of the Republic, and in 2001 with the creation of the Rodrigues Regional Assembly.³

The need for Constitutional Reforms

With 52 years of constitutional experience, there has been growing interest for constitutional reforms that would better cater for the present needs and expectations of citizens, especially regarding the need to reinforce democratic rights of people and nation-building, as well as to better position Mauritius to deal with emerging issues such as those related to the Environment, Climate Change and Sustainable Development.

¹ <http://www.govmu.org/English/ExploreMauritius/Pages/History.aspx> - accessed 23 December 2020.

² Milan JN Meetarbhan. 2017. Constitutional Law of Mauritius – Constitution of Mauritius with commentaries.

³ There have been additional minor changes to the Constitution but none that have treated issues related to the Environment, Climate Change and Sustainable Development. For a summary of Constitutional amendments please see: https://oxcon.ouplaw.com/browse?access_0=all&ct=cc150c45-8243-42f7-8ecd-b4a32f0c9a0f&page=7&pageSize=20&sort=title - accessed 23 December 2020.

2.1 Principles of Sustainable Development

8

2.1.1

Principles that Underscore a Green Theory of Value

The World Charter for Nature⁵ provided general Principles of conservation by which all human conduct affecting nature was to be guided and judged. The World Charter for Nature highlights, often neglected, but poignant elements of public policy planning for supporting human development such as:

“In the decision-making process it shall be recognized that man’s⁶ needs can be met only by ensuring the proper functioning of natural systems”. This statement establishes a hierarchy between socioeconomic activities and the Environment in the strong sense of sustainability that socioeconomic development rests on a healthy environment that provides a steady flow of ecosystem services and functions;⁷

“In the planning and implementation of social and economic development activities, due account shall be taken of the fact that the conservation of nature is an integral part of those activities”. Following from the nested hierarchy model, socioeconomic development takes place within the biosphere. This squarely implies that continued socioeconomic development can only take place by human beings simultaneously giving due care to protect and conserve nature;⁸ and

⁵ United Nations General Assembly (UNGA). Resolution 37/7 World Charter for Nature, 28 October 1982. Accessible at: <https://digitallibrary.un.org/record/39295?ln=en> – 24 December 2020.

⁶ As used here, ‘man’s needs’ may be interchanged with ‘the needs of human beings’. A case can be made to extend underlying logic to all sentient beings and life in general. For instance, the amended 1949 Constitution of Germany, Chapter 1, Article 20Aa provides for “the State protects with responsibility to future generations the natural foundations of life and animals”.

⁷ The nested hierarchical relationship between the three spheres of sustainable development – i.e. Environment, Society and Economy – is captured in Figure 2. Society (human activities) is nested within the biosphere acting as a form of planetary boundary depicted as Environment. In turn, Economy (economic activities) as a social construct is nested within Society; P.N.K. Deenapanray, 2004. Sustainable Development – What is to be sustained? Business Magazine, Issue 630, pp.53-55; Millennium Ecosystem Assessment, 2005. Ecosystems and Human Well-being: Synthesis. Island Press, Washington, DC - <https://www.millenniumassessment.org/documents/document.356.aspx.pdf> - accessed 24 December 2020.

⁸ The current neo-classical economic model assumes that human development happens through economic growth as measured by the gross domestic product (GDP). Economic growth is driven predominantly by consumption that is matched by the production of goods and services that reflect human preferences through a pricing mechanism. The production or economic value added can be described by the simple Cobb-Douglas production function that completely neglects the biophysical limits of the planet to provide natural resources and to assimilate human wastes. The production function also assumes that ecosystem services are free, and their uses and depletion/degradation are not priced. Another wrong assumption implicit in the neo-classical model is the continued availability of cheap energy. The hedonic or utilitarian philosophy underpinning the model is that consumption of goods and services reflects the preferences (utility) of people, and consumption make people better off.

9

“In formulating long-term plans for economic development, population growth and the improvement of standards of living, due account shall be taken of the long-term capacity of natural ecosystems to ensure the subsistence and settlement of the populations concerned...”. The critical issue here is the need for long-term thinking and planning, which is in diametric opposition to prevailing practices of limiting policy planning to short-term political cycles.⁹

The obligatory nature of the generalized Principles is accompanied by regional instruments.¹⁰ The general Principles in the World Charter for Nature have been formalized into twenty seven (27) Principles of Sustainable Development at the UN Conference on Environment and Development in 1992 that saw the adoption of the Rio Declaration on Environment and Development.¹¹ The 27 Rio PSD are listed in **Annex 1**.

Enshrining the PSD in the Constitution – any constitution for that matter – is a matter of significant instrumental value. First, unless constitutions are operationalized into more specific legal and policy frameworks, they may remain of little use for all practical purposes. Second, and, in a classical sense, constitutions set the boundaries for government action in the form of checks and balances. In a more positive sense, constitutions also set out the purposes and objectives of government.¹² Third - related to the limits imposed on governments - the final recourse of any citizen to safeguard individual and collective rights, as well as the rights of the environment and sentient beings, is the judiciary.

This closes the loop as this third point brings us back to the first point that any constitution should support the establishment of a legal framework that serves citizens adequately. Here, the PSD can be instrumental since they can espouse a green theory of value¹³ that will guide establishing appropriate legal and policy frameworks to achieve sustainable development. In a strong sense, the PSD can, on the one hand constitute the corollaries for development, and on the other, define the outcomes and consequences of development.

⁹ P.N.K. Deenapanray, 2004. Sustainable Development – Obstacles to Ecologically Sustainable Development, Business Magazine, Issue 635, pp.56-58.

¹⁰ Daniel A Sabsay, 2004. Constitution and Environment in Relation to Sustainable Development, Pace Environmental Law Review 21(1), Article 8.

¹¹ <https://www.cbd.int/doc/ref/rio-declarations.html> - accessed 24 December 2020; Stakeholder Forum for a Sustainable Future, 2011. Review of Implementation of the Rio Principles. <https://sustainabledevelopment.un.org/content/documents/1127rioprinciples.pdf> - accessed 24 December 2020.

¹² A good example would be Article 3 of the Constitution of Ecuador 2008 (revised 2015) that articulates the State’s prime duties. Two of the eight duties are: (i) planning national development, eliminating poverty, and promoting sustainable development and the equitable redistribution of resources and wealth to enable access to the good way of living; and (ii) protecting the country’s natural and cultural assets.

¹³ There are three theories of value that have been developed to explain what would constitute ‘value’ in the process of development. These are: labour theory of value, utility theory of value, and green theory of value. The first two theories of value have traditionally been more dominant in development discourses. For an in depth exposé of the labour and utility theories of value, please see Mariana Mazzucato, 2018. The Value of Everything – Making and taking in the global economy, Penguin Random House, UK. For a detailed discussion of the third theory of value, please see Robert E Goodin, 1992. Green Political Theory, Polity Press, Cambridge, UK.

A green theory of value will typically:¹⁴ (1) help explain why people should regard nature (the natural environment, and all its free ecosystem services and functions) as irreplaceable; and (2) help explain why people should value the respect in which nature is irreplaceable. Further, the green theory of value can also shed light on the theory of agency¹⁵ that would be required in terms of which actions, choices and mechanisms and processes would result in the desired outcomes and consequences of development.

2.1.2 Examples of how the PSD are Reflected in Constitutions

When they are, there are generally two broad ways in which the PSD are reflected in constitutions. Some constitutions have the PSD embedded in their Preamble. In some others, the PSD are contained in their main articles. When contained in the main articles of the constitution, the PSD can underlie a theory of agency. In this case, examples are provided in terms of the institutional arrangements needed to support sustainable development.

It is the view of the authors that the Preamble is an auspicious placeholder for the PSD. The values carried in the PSD can then be used to develop the articles of the constitution. Hence, it is proposed that reforms to the Constitution of Mauritius should start with the formulation of a Preamble capturing the main PSD.¹⁶

Some of the elements of Vision 2070 could be considered for inclusion in the Preamble.¹⁷ It is pointed out that several of the PSD relate to transboundary pollution, global environmental issues, the linkages between environmental degradation and wars, the rights of oppressed peoples to natural resources, environmental disputes between countries, and to upholding the PSD through partnerships. These issues are not generally captured in the constitutions of sovereign States.

2.1.2.1 References to PSD in the Preamble

A good starting point is the Preamble of the Constitution of Ecuador¹⁸ that is given in **Annex 2**. Figure 1 shows how the PSD (**Annex 1**) are enshrined in this preamble.

¹⁴ Robert E Goodin, 1992. *Green Political Theory*, Polity Press, Cambridge, UK. p.61.

¹⁵ Goodin, 1992, pp. 113-168.

¹⁶ The Gambia is in the process of changing its Constitution. One of the main proposed changes is the reformulation of its Preamble to capture several PSD. For details, please see: https://www.constituteproject.org/search?lang=en&status=in_force&status=is_draft&compare=Gambia_2018&compare=Gambia_2019D – accessed 29 December 2020.

¹⁷ P Deenanaray, S Mulloo, Z Boodoo and T Cunden, 2021, *Future by Design – A series of Information Bulletins, Policy Briefs and Working Papers on Sustainability and Climate Change for Evidence-based Public Policy*, Université des Mascareignes, Mauritius.

¹⁸ Ecuador Constitution of 2008 (revised 2015); https://www.constituteproject.org/constitution/Ecuador_2015?lang=en – accessed 12 August 2019.

Figure 1: Principles of Sustainable Development in the Preamble of the Constitution of Ecuador



2.1.2.2 Reference to PSD in Articles of Constitutions

Figure 2 summarizes the ways in which the PSD are also captured in various articles in countries' constitutions. This list is far from being exhaustive, and it serves to complement the information given in Figure 1.

Figure 2: Reference to the PSD in Articles of Selected Constitutions



Principle 3

Article 41 of the Constitution of Argentina enshrines the “Brundtland Commission definition” of sustainable development. This article (see next section) alludes to the right of development of present generations without jeopardizing those of future generations.

Principle 10, Principle 13

Constitution of Argentina, Article 43 – “Any person may file an expeditious and swift action of “amparo,” whenever no other more appropriate judicial means exists, against any act or omission by public authorities or by private individuals, that presently or imminently harms, restricts, alters or threatens, in an arbitrary or manifestly illegal manner, the rights and guarantees recognized by this Constitution, by a treaty, or by a law. As appropriate, the judge may declare the norm upon which the harmful act or omission is found unconstitutional”.

Principle 6

Constitution of Cuba, Article 16. f - “the establishment of a more just and equitable international economic order ...”.

Principle 7

Constitution of Cuba, Article 16. f – “Promotes the protection and conservation of the environment through the recognition of common, yet differential, responsibilities”.

Principle 8

Constitution of Cuba, Article 16. f - “... as well as the eradication of irrational patterns of production and consumption”.

Principle 9

Constitution of Ecuador, Article 262. 6 – “To establish the policies for research and the innovation of knowledge, development and transfer of technology, as necessary for regional development, within the framework of national planning”.

Principle 10, Principle 13

Constitution of Ecuador, Article 395. 3 – “The State shall guarantee the active and permanent participation of affected persons, communities, peoples and nations in the planning, implementation and monitoring of all activities exerting environmental impacts”.

Principle 15

Constitution of Ecuador, Article 73 – “The State shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles”.

Principle 16

Constitution of Ecuador, Article 397. 2 - “To establish effective mechanisms to prevent and control environmental pollution, restore degraded natural spaces, and to provide for the sustainable management of natural resources”.

Principle 22

Constitution of Ecuador, Article 57. 8
 “Indigenous communes, communities, peoples and nations are recognized and guaranteed, in conformity with the Constitution and human rights agreements, conventions, declarations and other international instruments, the following collective rights:

8. To keep and promote their practices of managing biodiversity and their natural environment. The State shall establish and implement programs with the participation of the community to ensure the conservation and sustainable use of biodiversity”.

2.1.2.3 Institutional Arrangements for Sustainable Development

There are two further issues worth discussing regarding the premise introduced earlier that any constitution is useful in as far as it provides the basis for establishing the appropriate policy and legal frameworks for promoting its objectives. While legal frameworks afforded by constitutions to uphold individual rights to a clean and healthy environment or squarely the right of the environment are discussed in section 2.2, this section deals with constitutional provisions for enabling policy frameworks. Since public policy for sustainable development is mediated by institutions, constitutions can purposefully support the institutionalization of sustainable development planning, implementation and monitoring and evaluation.

The governance framework for sustainable development advocated by FbyD¹⁹ shows the need for an independent statutory body (Planning Commission of Mauritius) that has the mandate for carrying out long-term, integrated cross-sectoral policy planning. As an apex institution, the Planning Commission will rely on inputs from other institutions such as the National Sustainable Development Council (NSDC)²⁰ that will provide the platform for policy dialogues and contributions from a wide range of stakeholders. Decentralized institutional arrangements can also be adopted at lower levels of territorial governance such as municipalities, district councils, and village councils under the aegis of the NSDC.²¹

The need for decentralized institutional arrangements is necessary to implement the Principle of Subsidiarity to promote the democratic process of inclusive participation at all levels. The Principle of Subsidiarity promotes decision making at the lowest appropriate governance level because socioeconomic and environmental impacts are always felt most at the local level. The aim of the principle is to promote efficiency and local ownership over policies and regulation, while placing a check on centralized governance and consolidation of authority at the highest levels of government.²²

¹⁹ See note 18.

²⁰ The Environmental Protection Act 2002 (September 2020) of Mauritius ([https://environment.govmu.org/Documents/THE%20ENVIRONMENT%20%20PROTECTION%20%20ACT%20%202002%5B%202020%5D%20\(1\).pdf](https://environment.govmu.org/Documents/THE%20ENVIRONMENT%20%20PROTECTION%20%20ACT%20%202002%5B%202020%5D%20(1).pdf) - accessed 30 December 2020) makes provision for the setting up of a National Network for Sustainable Development (NNSD). The NNSD is chaired by the Minister of Environment who has the discretion to call for meetings at his/her discretion. The NNSD adopts a centralized approach to governance and its composition is heavily biased towards representation from public institutions. There are no provisions for sub-national institutional arrangements, albeit that all Municipal and District Councils are members of the NNSD. The first objective of the NNSD is to act as a forum for discussions and consultations on the "harmonization of the various sectoral, economic, social and environmental policies and plans operating in the country". Despite the need (and good intention) for cross-sectoral policy harmonization, the NNSD acting under the aegis of the Ministry of Environment, Solid Waste Management and Climate Change is not the appropriate institutional arrangement for achieving this objective. This is because the Ministry of Environment is a line ministry that is at best on par with other line ministries, and it is not obvious that it can fulfil the objective of ensuring policy integration. The Ministry of Environment does not appear to have the mandate for carrying out such a function as reflected by its Mission (<https://environment.govmu.org/Pages/Mission-and-Vision-Statement.aspx> - accessed 30 December 2020). Also, it does not have the technical capacity to fulfil this function.

²¹ A bottom-up institutional arrangement is being designed for testing and validation by FbyD at the Village Council level. The approach will also include a mechanism for linking the local governance structure with the proposed NSDC.

²² Ryan Stoa, 2014. Subsidiarity in Principle: Decentralization of Water Resources Management, *Utrecht Law Review* 10(2), 31-45.

Statutory apex body for sustainable development planning

Part 4 of the Constitution of Tunisia makes provision for the establishment of a Commission for Sustainable Development and the Rights of Future Generations.²³ This is enshrined in Article 129.

"The Commission for Sustainable Development and the Rights of Future Generations shall be consulted on draft laws related to economic, social and environmental issues, as well as development plans. The Commission may give its opinion on issues falling within its areas of responsibility."

The Commission shall be composed of members with competence and integrity, who undertake their tasks for a single six-year term."

Decentralization of decision making

Countries have devolved decision making at the most appropriate local level of governance in different ways. What these examples combine to demonstrate is the strengthening of institutional and technical capacities for planning at the sub-national level. In matter of disaster risk management, decision-making in Ecuador is devolved to the lowest level of governance in alignment with the principle of subsidiary decentralization – i.e. principle of subsidiarity. India is a good example of empowering local authorities to carry out a wide range of planning activities, including integrated land use planning and physical development.

In the case of Ecuador, Article 390 under Section 9 of its Constitution makes the following provision:

"Risks shall be managed on the basis of the principle of subsidiary decentralization, which shall imply the direct responsibility of the institutions in their geographical area. When their capacities for risk management are insufficient, the institutions with the broadest territorial scope and greatest technical and financial capacity shall provide the support needed with respect to their authority in the territory and without relieving them of their responsibility."

²³ Constitution of Tunisia 2014; https://www.constituteproject.org/constitution/Tunisia_2014?lang=en - accessed 30 December 2020.

²⁴ Constitution of India 1949 (rev. 2016); https://www.constituteproject.org/constitution/India_2016?lang=en - 12 October 2020.

The Constitution of India is a good example for provisions that empower local authorities for the purpose of self-government or village administration. Article 243B allows for the setting up of Panchayat, which is an institution of self-government for the rural areas. Specifically, the powers entrusted on the Panchayat under Article 243G (Powers, authority and responsibilities) are:

"Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—
(a) the preparation of plans for economic development and social justice; 98
(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule."

In decision-making related to geographical coverage comprising (i) a space characterized by a transition from a rural area to an urban area, and (ii) an urban area, Part IXA of the Constitution of India provides powers and responsibilities to Municipalities. Article 243W provides for the following:

"Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—
(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—
(i) the preparation of plans for economic development and social justice;
(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule."

The Eleventh Schedule and Twelfth Schedule of the Constitution of India are given in **Annex 3**.

2.2 Protection of the Environment

Small island States are a peculiar class of countries regarding their conspicuous lack of environmental protection in national constitutions.²⁵ This is despite the fact that small island States are known for their inherent vulnerabilities linked with sensitive natural environments and vulnerabilities to climate change. This could be due to the fact that most island States having been former British colonies²⁶ and are thus using a system of common law. While the constitutions of most former British colonies contain Bills of Rights, they adopt the classic liberal approach to human rights — i.e., a focus on civil and political rights while economic, social and cultural rights are not protected (except for property).²⁷ In contrast, the majority of countries using a system of civil law have environmental protection enshrined in their constitutions.²⁸ The same goes for countries that have a mixed system of civil and customary law.²⁹

There are five ways in which countries have incorporated provisions for environmental protection in their constitutions – government’s responsibility to protect the environment; substantive rights to environmental quality; procedural environmental rights; individual responsibility to protect the environment; and a miscellaneous category of diverse provisions.³⁰ However, the effectiveness of placing the onus on individual responsibility to protect the environment is questionable from a legal standpoint. Such provisions appear to be symbolic and serve the purpose to reiterate that protecting the environment from human-induced damage is the business of every citizen. The following discussion will exclude coverage of individual duties to protect the environment. But this does not mean that they cannot be included in an amended version of the Constitution of Mauritius.

While adequate provisions for protecting the environment are necessary, they may not be sufficient on their own. There are two complementary conditions that are necessary. First, and equally important, are provisions enabling citizens to have the legal standing in litigations for protecting the environment. This is particularly important in the case of Mauritius wherein the constitution provides for the enforcement of protective provisions only to an aggrieved individual, whereby attributions between environmental impacts and violations of individual rights and freedoms are difficult to make. Second, the location and classification of provisions to protect the environment are influential in implementation, enforceability and judicial interpretation. In the following discussion, the second complementary condition is discussed before the first one.

²⁵ There are few exceptions such as Belize, Jamaica, Palau and the Seychelles.

²⁶ All of the 22 non-English speaking nations in the Americas have incorporated environmental protection provisions in their constitutions.

²⁷ David R Boyd, n.d. *The Status of Constitutional Protection for the Environment in Other Nations*. David Suzuki Foundation.

²⁸ Ibid. p.9

²⁹ Ibid. p.9

³⁰ Ibid. p.10.

Figure 3: Countries which have introduced the environmental provisions in their national constitutions

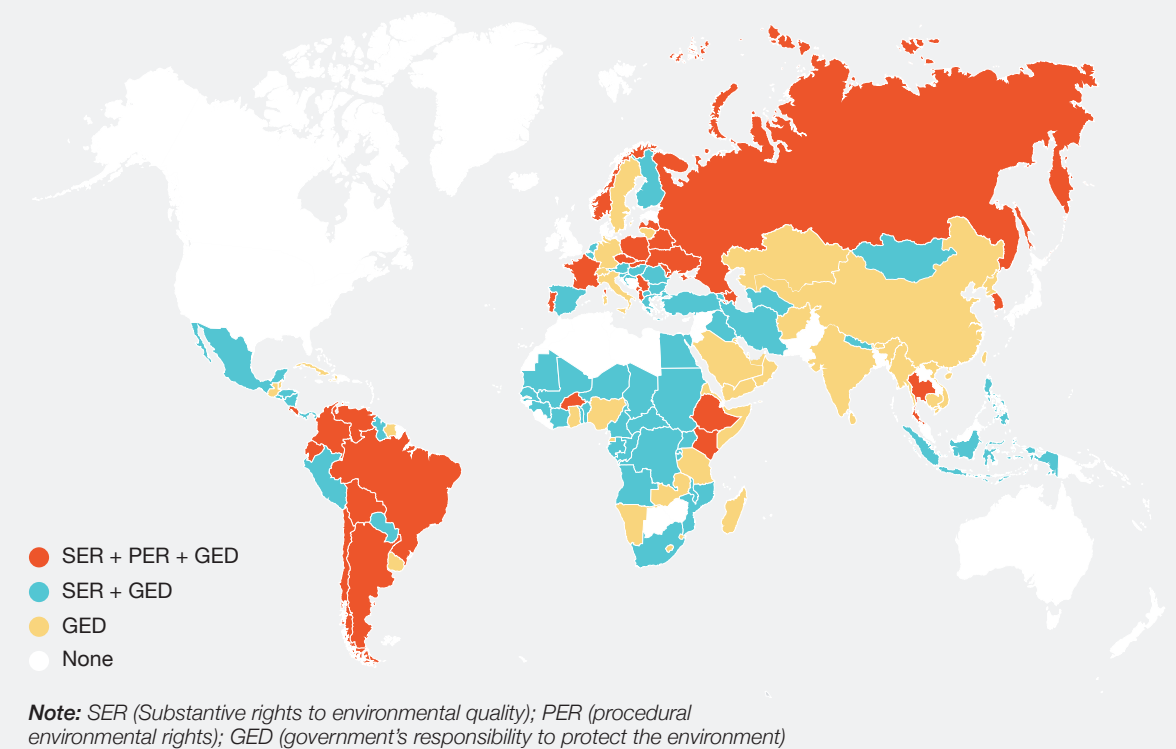
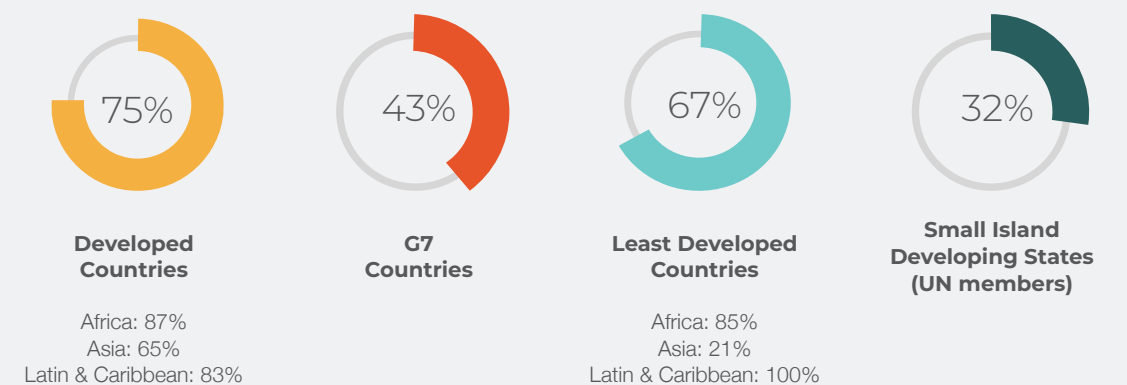


Figure 4: Classification of countries which have adopted environmental provisions in their constitutions



2.2.1 A Necessary but Insufficient Right

This section provides examples of the three main ways in which constitutions may accommodate provisions for protecting the environment. Since one of the main functions of a constitution is to place checks and balances on government, it is proposed that a stronger form of constitutional provision would comprise placing the onus squarely on government to protect the environment. Placing the duty of care on governments to protect and conserve the environment will also reflect a positive approach towards policy planning. The majority of countries that have enshrined protection of the environment in their constitutions have done so by placing the duty of care on government.³¹ In addition, those countries have included provisions regarding the substantive right to a healthy environment. In fact, the Constitution of Ecuador contains all the five forms of provisions mentioned earlier, and it is proposed to adopt a similar comprehensive approach in amending the Constitution of Mauritius to enshrine the PSD, protect and conserve the environment, and to deal effectively with climate change (discussed below).

2.2.1.1 Duty of government to care, protect and conserve the environment

Provisions of this sort impose a duty of care on government to conserve and/or protect the environment. The government duty of care is in fact the most common form of enshrining environmental protection and conservation in national constitutions. A good example is the Constitution of Portugal, which explicitly articulates this duty of care in its Article 9 and Article 66(2), with the latter being more specific to environmental protection:³²

“Article 9: Fundamental tasks of the state - The fundamental tasks of the state shall be:

- a. To guarantee national independence and create the political, economic, social and cultural conditions that promote it;**
- b. To guarantee fundamental rights and freedoms and respect for the principles of a democratic state based on the rule of law;**
- c. To defend political democracy and safeguard and encourage citizens’ democratic participation in the resolution of national problems;**
- d. To promote the people’s well-being and quality of life and real equality between the Portuguese, as well as the effective implementation of economic, social, cultural and environmental rights by means of the transformation and modernisation of economic and social structures;**
- e. To protect and enhance the Portuguese people’s cultural heritage, defend nature and the environment, preserve natural resources and ensure proper town and country planning;**

- f. To ensure education and permanent personal enhancement, and safeguard the use and promote the international dissemination of the Portuguese language;**
- g. To promote the harmonious development of the whole of Portuguese territory, with particular regard to the ultraperipheral nature of the Azores and Madeira archipelagos;**
- h. To promote equality between men and women.”**

“Article 66 (2) In order to ensure enjoyment of the right to the environment within an overall framework of sustainable development, acting via appropriate bodies and with the involvement and participation of citizens, the state shall be charged with:

- a. Preventing and controlling pollution and its effects and the harmful forms of erosion;**
- b. Conducting and promoting town and country planning with a view to a correct location of activities, balanced social and economic development and the enhancement of the landscape;**
- c. Creating and developing natural and recreational reserves and parks and classifying and protecting landscapes and places, in such a way as to guarantee the conservation of nature and the preservation of cultural values and assets that are of historic or artistic interest;**
- d. Promoting the rational use of natural resources, while safeguarding their ability to renew themselves and maintain ecological stability, with respect for the principle of inter-generational solidarity;**
- e. Acting in cooperation with local authorities, promoting the environmental quality of rural settlements and urban life, particularly on the architectural level and as regards to the protection of historic zones;**
- f. Promoting the integration of environmental objectives into the various policies of a sectoral nature;**
- g. Promoting environmental education and respect for environmental values;**
- h. Ensuring that fiscal policy renders development compatible with the protection of the environment and the quality of life.”**

It is timely here to note that the above provisions are also good examples of how the PSD (discussed in section 3.1) are reflected in the Constitution of Portugal.

³¹ Ibid. p.11.

³² Portugal’s Constitution of 1976 (with amendments through 2005); https://www.constituteproject.org/constitution/Portugal_2005.pdf?lang=en – accessed 7 January 2021.

2.2.1.2 Substantive rights to a healthy environment

To a lesser extent, countries provide for their citizens to have substantive rights to living in a healthy environment. In these cases, the obligation of government to protect the environment can be abstracted based on the attribution that there can be no right without a corresponding duty of care.³³ Although, as mentioned earlier, most SIDS exhibit the paradox of having no constitutional provisions for protecting the environment despite having fragile natural ecosystems,³⁴ there are exceptions.³⁵ The Constitution of the Seychelles is a good example as reflected in its Article 38:³⁶

“Article 38. The State recognises the right of every person to live in and enjoy a clean, healthy and ecologically balanced environment and with a view to ensuring the effective realization of this right the State undertakes-

a. to take measures to promote the protection, preservation and improvement of the environment;

b. to ensure a sustainable socio-economic development of Seychelles by a judicious use and management of the resources of Seychelles;

c. to promote public awareness of the need to protect, preserve and improve the environment.”

The substantive right to a healthy environment can have different formulations. For instance, Article 41 of the Constitution of Argentina links the quality of the environment to human development now and in the future.³⁷ It is understood that productive activities can be curtailed in the present in order to secure the rights of future generations to a healthy environment bringing into play intergenerational equity, and providing space for institutionalizing the future.³⁸

“Article 41. All inhabitants enjoy the right to a healthful, balanced environment fit for human development, so that productive activities satisfy current needs without compromising those of future generations ...”

In the case of Ecuador, the right to live in a healthy environment is a substantive right to freedom.³⁹

**“Article 66. The following rights of persons are recognized and guaranteed:
27. The right to live in a healthy environment that is ecologically balanced, pollution-free and in harmony with nature.”**

Like all other fundamental human rights, the right to a healthy environment is not absolute. There are myriad ways in which the right to a healthy environment can be curtailed – generic limits; restrictions during emergencies; provisions that rights will be implemented progressively; and limits of who is entitled to enjoy constitutional rights.⁴⁰ This can be illustrated by looking at the Constitution of Mauritius that provides substantive rights and freedoms of the individual. In this case,⁴¹ Article 3 places generic limits on the rights and freedoms of individuals through “the provisions that this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest”. Restrictions on individual rights and freedoms during emergencies are captured in Article 18 of the Constitution of Mauritius.⁴²

The right to a healthy environment can also be limited by the concept of progressive implementation, recognizing that individual nations have different capacities and resources for respecting, protecting and fulfilling human rights.⁴³ One example is Article 23 of the Constitution of Maldives on economic and social rights.⁴⁴

“Article 23. Every citizen the following rights pursuant to this Constitution, and the State undertakes to achieve the progressive realisation of these rights by reasonable measures within its ability and resources:

a. adequate and nutritious food and clean water;

b. clothing and housing;

c. good standards of health care, physical and mental;

d. a healthy and ecologically balanced environment;

e. equal access to means of communication, the State media, transportation facilities, and the natural resources of the country;

f. the establishment of a sewage system of a reasonably adequate standard on every inhabited island;

g. the establishment of an electricity system of a reasonably adequate standard on every inhabited island that is commensurate to that island.”

³³ Hohfeld, W.N. 1923. *Fundamental Legal Concepts as Applied in Judicial Reasoning*. New Haven, CT: Yale University Press.

³⁴ UNEP. 2014. *Emerging issues for Small Island Developing States. Results of the UNEP Foresight Process*. United Nations Environment Programme (UNEP), Nairobi, Kenya. <https://sustainabledevelopment.un.org/content/documents/2173emerging%20issues%20of%20sids.pdf> – accessed 2 April 2021; Insula and SCBD. 2004. *Island Biodiversity: Sustaining Life in Vulnerable Ecosystems*. C. Marin, P. Deda and J. Mulongoy (eds). <https://issuu.com/pubcipriano/docs/islandbiodiversity> - accessed 2 April 2021.

³⁵ SIDS that have enshrined the protection of the environment in their constitutions, include (among others): Comoros, Sao Tome and Principe, Cape Verde, Maldives, Jamaica, Fiji, Seychelles. Several of these nations do not use the system of common law.

³⁶ Seychelles's Constitution of 1993 (revised 2017); https://www.constituteproject.org/constitution/Seychelles_2017.pdf?lang=en – accessed 30 December 2020.

³⁷ The Constitution of Argentina 1853 (reinst. 1983, rev. 1994).

³⁸ Boston J. 2017. *Safeguarding the Future: Governing in an uncertain world*. Bridget Williams Books Ltd, Wellington;

³⁹ Ecuador Constitution of 2008 (revised 2015).

⁴⁰ Boyd, p.14.

⁴¹ The Constitution of Mauritius, Mauritius National Assembly March 2016; <https://mauritiusassembly.govmu.org/Documents/Legislations/constitution.pdf> - accessed 29 December 2020.

⁴² Ibid.

⁴³ This is akin to the PSD related to 'common but differentiated responsibilities and capacities'.

⁴⁴ Maldives's Constitution of 2008 (subsequently amended); https://www.constituteproject.org/constitution/Maldives_2008.pdf?lang=en – accessed 8 January 2021.

Another example of the progressive implementation of constitutional provisions relates to the decentralization of autonomous governments as stipulated in Article 269 of the Constitution of Ecuador.⁴⁵

“Article 269. The national system of jurisdictions shall have a technical body comprised of a representative of each level of government; this body shall have the following duties:

1. To regulate the procedure and maximum time-limits for transferring exclusive jurisdictions, which must be taken up by decentralized autonomous governments on a mandatory and progressive basis. Governments that can demonstrate they have operating ability may immediately take up these jurisdictions.”

Chapter 4 of the Constitution of Ecuador defines the system of jurisdictions for governance at national and sub-national levels and is another good example of how the PSD can be translated at different levels of governance. Article 261 states that **“(T)he exercise of exclusive jurisdictions shall not exclude the simultaneous exercise, by different levels of government, of ensuring the provision of public services and activities of cooperation and complementariness”**.⁴⁶ In successive articles, the roles and responsibilities of governance moves from the central State (Article 261) to autonomous regional governments (Article 262) to provincial governments (Article 263) to municipal governments (Article 264) to governments of autonomous metropolitan districts (Article 266) to rural parish governments (Article 267). Article 269 is invoked since different levels of government may have varying institutional and human capacities to fulfill their respective roles and responsibilities. Finally, Article 269 proposes the setting up of a technical body comprised of a representative of each level of government. Disputes over jurisdictions are matters of the Constitutional Court to settle based on the principle of subsidiarity.

Article 23 of the Constitution of Maldives applies explicitly to citizens of the Maldives. However, Article 9(d) is categorical that ‘a non-Muslim may not become a citizen of the Maldives’.⁴⁷ It, therefore, appears that the right to a healthy environment is exclusive of non-Muslims.

2.2.1.3 Procedural environmental rights

Some constitutions provide procedural rights specifically related to environmental protection. Such rights typically cover the right to information, the right to participate in decision-making and the right of access to the judicial system to challenge government decisions, unconstitutional laws or alleged violations of individual rights.⁴⁸ There is a multiplicity of forms

in which procedural rights are provided for. In all cases, the conclusion is that procedural rights would be stronger and more consistent if they would be underpinned by provisions to impose a duty of care on government to protect the environment and/or to provide citizens with substantive rights to a healthy environment.

Procedural environmental rights are most commonly found in constitutions from Eastern Europe and Latin America. Procedural rights of access to the judiciary to challenge government decisions, unconstitutional laws or alleged violations of individual rights are discussed in section 2.2.3. The Constitution of Ukraine is used as an example for procedural right to information on the state of the environment. In this case, Article 50 states that:⁴⁹

“Article 50. Everyone has the right to an environment that is safe for life and health, and to compensation for damages inflicted through the violation of this right.

Everyone is guaranteed the right of free access to information about the environmental situation, the quality of food and consumer goods, and also the right to disseminate such information. No one shall make such information secret.”

The right of free access to information about the state of the environment has been triggered by the Chernobyl nuclear catastrophe, where information about high levels of radioactivity was withheld from the public.⁵⁰ Article 16 of the Ukrainian Constitution explicitly places a duty of care on the government to ensure the ecological integrity of the territory, including by overcoming the consequences of the Chernobyl disaster, and to preserve the gene pool of Ukrainian people.⁵¹

2.2.1.4 Miscellaneous provisions to protect the environment

The multitude of legal systems and judiciary traditions has given rise to a host of other provisions to protect the environment. Here, two miscellaneous provisions are discussed providing contrasting examples of what should be avoided and a best practice.

⁴⁵ Ecuador Constitution of 2008 (revised 2015).

⁴⁶ Ibid.

⁴⁷ Maldives's Constitution of 2008 (subsequently amended).

⁴⁸ Boyd, p.16.

⁴⁹ Ukraine's Constitution of 1996 with amendments through 2016 (subsequently amended); https://www.constituteproject.org/constitution/Ukraine_2016.pdf?lang=en – accessed 9 January 2021.

⁵⁰ Shemshuchenko, Y. 1995. “Human Rights in the Field of Environmental Protection in the Draft of the New Constitution of the Ukraine.” In *Environmental Rights: Law, Litigation and Access to Justice*, edited by S. Deimann and B. Dyssli, 33-40. London: Cameron May.

⁵¹ This is presumably related to the fact that high levels of radioactivity can result in gene mutations.

Limits on the exercise of private property

In most constitutions, Bill of Rights typically provide for the protection from deprivation of property. This is related to the historical inclination of favouring property rights to increase material welfare and enticing capital investments. Consequently, placing limits on the exercise of private property – entailing land use changes – can be used as a means to protect the environment. For example, Article 41 of the Constitution of Ukraine provides for the enjoyment of private property with the qualification that **“(t)he use of property shall not cause harm to the rights, freedoms and dignity of citizens, the interests of society, aggravate the ecological situation and the natural qualities of land.”**⁵²

In a weaker formulation, curtailing private property rights can be done in the public interest, which, although not well defined, can refer to considerations over environmental issues. However, such a formulation often results in frictions between legislatures, bureaucracies and courts, and would not be recommended.

Rights of Nature

Ecuador is the first country to bestow and enshrine rights of Nature in its constitution. Article 10 of the Constitution of Ecuador⁵³ identifies the bearers of rights as human beings – either as individuals or persons organised in various groupings. This article goes further to include Nature as subject to rights.

“Article 10: Persons, peoples, nations and communities are bearers of rights and shall

enjoy the rights guaranteed to them in the Constitution and in international instruments. Nature shall be the subject of those rights that the Constitution recognizes for it.”

Articles 71 to 74 in Chapter 7 of the Constitution of Ecuador identify the rights that are bestowed upon nature. These articles capture the very essence of life on the planet as being inimical to nature. Nature provides free ecosystem services that maintain biological life on Earth.⁵⁴

They go beyond the instrumental value that healthy ecosystems bear on human wellbeing. Nature has intrinsic value in the sense ‘that it is not valuable on account of its relations to things other than itself, but rather that it has value in its own right’.⁵⁵ Intrinsic value bestows moral status on nature – i.e. human beings ought not to dispense of nature as we please, and that moral consideration must be given to how human acts or omissions impact nature.

“CHAPTER 7: Rights of nature

Article 71: Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.

All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate.

The State shall give incentives to natural persons and legal entities and to communities

to protect nature and to promote respect for all the elements comprising an ecosystem.

Article 72: Nature has the right to be restored. This restoration shall be apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems.

In those cases of severe or permanent environmental impact, including those caused by the exploitation of nonrenewable natural resources, the State shall establish the most effective mechanisms to achieve the restoration and shall adopt adequate measures to eliminate or mitigate harmful environmental consequences.

Article 73: The State shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles.

The introduction of organisms and organic and inorganic material that might definitively alter the nation’s genetic assets is forbidden.

Article 74: Persons, communities, peoples, and nations shall have the right to benefit from the environment and the natural wealth enabling them to enjoy the good way of living.

Environmental services shall not be subject to appropriation; their production, delivery, use and development shall be regulated by the State.”

Chapter 7 transcends a significant ethical barrier in that something that has moral status does not necessarily have moral rights. The possession of rights has traditionally been attributed to human beings and some animals, but this is extended to nature in the Constitution of Ecuador. Although bestowing rights to nature is commendable, it is not sufficient for protecting the environment especially in the absence of a standing doctrine.⁵⁶ The critical issue of legal standing in a court of law to protect the environment is discussed in more detail in section 2.2.3.



⁵² Ukraine’s Constitution of 1996 with amendments through 2016 (subsequently amended).

⁵³ Ecuador Constitution of 2008 (revised 2015).

⁵⁴ P. Raven and M. Wackernagel. 2020. Maintaining biodiversity will define our long-term success. *Plant Diversity* 42, 211-220.

⁵⁵ C. Palmer, K. McShane and R. Sandler. 2014. Environmental Ethics. *Annual Review of Environment and Resources* 39, 419-442.

⁵⁶ M.E. Whittemore. 2011. The problem of enforcing nature’s rights under Ecuador’s Constitution: why the 2008 environmental amendments have no bite, *Pacific Rim Law & Policy Journal* 20(3), 659-691.

2.2.2 Location and Classification of the Right

The detailed review of constitutions carried out by Boyd (n.d.) shows that the location and classification of the right to a healthy environment within a constitution can also influence its implementation, enforceability and judicial interpretation. This is because location and classification of provisions to protect the environment may create particular perceptions about the nature of the right.⁵⁷ Some of the take away points are:

- In the majority of cases, the right to a healthy environment is articulated in the same section as other fundamental human rights and individual freedoms, which would be in Chapter II in the Constitution of Mauritius. This yields to an interpretation that all of the human rights identified as fundamental, including the right to a healthy environment would be given equal legal consideration;
- In a minority of cases, the right to a healthy environment is grouped together with economic, social and cultural rights, a classification that is sometimes viewed as of secondary importance compared to civil and political rights;
- In other (still minority) cases, the right to a healthy environment is contained in a section that sets out general provisions or guiding objectives and principles of state policy, which can be interpreted as diminishing the legal status of the environmental right; and
- There are few countries that have included the right to a healthy environment in different places in the constitution that might diminish the legal right of the environment. For instance, placing the right to a healthy environment in the preamble may be of limited practical value.

Notwithstanding the above qualifications, the litmus test for environmental protection regardless of where provisions to protect the environment are placed is whether or not individuals or collectives or nature has a standing in a court of law, and where they do what the court findings have been. While a detailed discussion of environmental court cases is beyond the scope of this article, we now turn our attention to the issue of locus standi.

2.2.3 Right of Litigation

In the Constitution of Mauritius, Article 17(1) provides for the enforcement of protective provisions of fundamental human rights and freedoms. It states that:⁵⁸

“Where any person alleges that any of sections 3 to 16 has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress”.

⁵⁷ Boyd (n.d.), p.15.

⁵⁸ The Constitution of Mauritius, Mauritius National Assembly March 2016.

In the absence of any form of constitutional provisions for the protection of the environment in the Constitution of Mauritius, citizens have tried in vain to date to make a successful legal case against projects that entail land use changes and that may have detrimental environmental impacts and adverse consequences on the health of ecosystems.

Two mutually reinforcing issues arise from the application of Article 17(1). The first one relates to the fact that the protective provisions are the concern of individuals, implying that the right or capacity to bring an action or to appear in a court of justice is vested in an individual. So, only an aggrieved person has the standing before a court of law to seek redress regarding any alleged violations of his/her human rights and freedoms. In this case, the aggrieved person can have recourse to redress through the Supreme Court (Article 17(2)). The Supreme Court has also provided a verdict in *Edath-Tally Nizam v Michael James Kevin Glover*⁵⁹ that an individual has no standing to bring a private prosecution related to Articles 3 to 16 and went further to exclude the possibility of such action for the public interest. The lack of definition of what constitutes an ‘aggrieved party’;⁶⁰ the exclusion of litigation for the public interest; and the great difficulties to categorically connect (i.e. attribution) environmental impacts to alleged deprivation of rights and freedoms have to-date prevented individuals or collectivities to have standing in a court of law to protect the environment.⁶¹

This situation is not peculiar to Mauritius and it is present in quite a number of other common law jurisdictions that interpret ‘harm to a person’ through a narrow⁶² utilitarian lens.⁶³ Although related but not part of the discussion here, the utilitarian interpretation of ‘harm to a person’ or even ‘harm to the environment’⁶⁴ can be subjugated by the idea of ‘the most good for the most number of persons’ to defend the need for economic development.⁶⁵ Although not explicitly stated, the catch phrase ‘development (especially land use changes) for the national interest’ is justified using the narrow utilitarian thinking, and it is manifested in and perpetuated by the erroneous neo-classical economic model that assumes perfect substitutability between different forms of capital (here between natural and manufactured capital).⁶⁶

⁵⁹ *Edath-Tally Nizam v Michael James Kevin Glover*1994 SCJ 409. .

⁶⁰ J.D. Mujuzi. 2017. Private Prosecutions in Mauritius: Clarifying Locus Standi and Making the Director of Public Prosecutions more Accountable. *African Journal of Legal Studies* 10: 1-34.

⁶¹ This principally because it is very difficult to directly link personal harm to environmental damages such as loss of biodiversity and the loss of ecosystem functions such as the degradation of a sand dune. A rather easier task is to relate harm to health arising from environmental pollution. Under the Constitution of Mauritius, an individual can make a case from the perspective of harm to person arising out of the pollution but not necessarily because nature was degraded or irreversibly damaged. The causal relationship between harm to health and environmental pollution can be ascertained using scientific evidence beyond the reasonable doubt.

⁶² In contrast to a more expansive utilitarian interpretation of human wellbeing based on new insights and knowledge about the human wellbeing-environment nexus that is discussed in the Epilogue.

⁶³ T. Murombo. 2010. Strengthening locus standi in public interest environmental litigation: Has leadership moved from the United States to South Africa?, *Law, Environment and Development Journal* 6(2): 163-178.

⁶⁴ There are cases where the application of the narrow utilitarian lens has been used to support property and/or infrastructure development that cause harm to the environment in the name of the ‘bigger good’ to all accruing from economic development. This is despite the right to a healthy environment was enshrined in the constitution. Examples of the mixed interpretations of the constitutional right of the environment can be found in: K. Pietari. 2016. Ecuador’s Constitutional Rights of Nature: Implementation, Impacts and Lessons Learned, *Willamette Environment Law Journal* Fall 2016: 37-94.

⁶⁵ C.D. Stone. 1972. Should Trees Have Standing?- Toward Legal Rights for Natural Objects. *Southern California Law Review* 45: 450-501;T. Murombo 2010 at footnote 63.

⁶⁶ H.E. Daly and J. Farley. 2004. *Ecological Economics – Principles and Applications*. Island Press, Washington, DC.

At this juncture, it is timely to note that ***enshrining provisions to protect the environment in constitutions is necessary but not sufficient***. In the final analysis, the litmus test is whether an individual or an association of citizens or nature itself may have standing in a court of law to enforce constitutional environmental protection or the rights of nature. To pass the test of sufficiency, these provisions must be accompanied by additional provisions that substantively allow for the enforcement of provisions to protect the environment.⁶⁷ The different constitutional ways in which protection of the environment or the rights of nature can be upheld are now discussed.

2.2.3.1 Public interest litigation

India provides a unique example of how public interest litigation (PIL)⁶⁸ can be brought by an individual or social action group for the protection of the environment despite the fact that provisions for the protection of the environment cannot be enforced. In other words, “public spirited individuals can file writ petitions in the High Courts and Supreme Court as Public Interest Litigation without following the mandate of locus standi”.⁶⁹

The Writ petition has been developed by the Indian Judiciary to extend the ambit of Locus Standi and giving way to PIL for the safeguard of the environment in order to achieve sustainable development. The court must be satisfied that the Writ petition fulfills some basic needs for PIL as the letter is addressed by the aggrieved person, public spirited individual and a social action group for the enforcement of legal or Constitutional rights to any person who are not able to approach the court for redress. Any citizen can file a public case by filing a petition as follows:

- Under Art 32 of the Indian Constitution, in the Supreme Court;
- Under Art 226 of the Indian Constitution, in the High Court; or
- Under sec. 133 of the Criminal Procedure Code, in a magistrate’s court.

The relaxation of Locus Standi through the use of Writ petitions has succeeded in enforcing environmental protection because of the progressive attitude of the Indian Judiciary. Article 21 of the Indian Constitution states that ***“No person shall be deprived of his life or personal liberty except according to procedure established by law”***.⁷⁰ The Indian Supreme Court has provided a very liberal interpretation of Article 21 to cover within its ambit the ‘right to

⁶⁷ Kyle Burns, 2017. *Constitutions & the Environment: Comparative Approaches to Environmental Protection and the Struggle to Translate Rights into Enforcement*; <http://vjel.vermontlaw.edu/constitutions-environment-comparative-approaches-environmental-protection-struggle-translate-rights-enforcement/> - accessed 13 June 2020; Daniel A Sabsay, 2004. *Constitution and Environment in Relation to Sustainable Development*, *Pace Environmental Law Review* 21(1), Article 8.

⁶⁸ PIL contemplates legal proceedings for the enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. For more details please see: D. Feldman, 1992. *The Modern Law Review* 55: 44-72; J. Oloka-Onyango, 2015. *Human Rights and Public Interest Litigation in East Africa: A Bird’s Eye View* 47: 763-823.

⁶⁹ Garima Prashad, 2018. *Indian Judicial Activism on the ‘Right to Environment’: Adjudication & Locus Standi*;

⁷⁰ *Constitution of India 1949 (rev. 2016)* at footnote 25.

live in a healthy environment’,⁷¹ and, hence, created a new environmental jurisprudence. This is despite the fact that there are constitutional provisions neither for the right to a healthy environment nor for the rights of nature.⁷² Petitions for environmental protection have been entertained both by High Courts and Supreme Court under Article 226 and 32, respectively, even where the petitioner does not have a direct standing in the matter. The basic requirements for a Writ petition to be admitted in a court of law are: (i) that it must be done in good faith, and (ii) that the petitioner must not do so out of enmity or revenge.⁷³

2.2.3.2 Locus Standi to protect the environment and the rights of nature

The treatment of who has standing in a court of law has progressed significantly since the seminal article in 1972 on “Should Trees Have Standing? Toward Legal Rights for Natural Objects”.⁷⁴ Today, rivers in jurisdictions as diverse as New Zealand, Ecuador, Colombia and India have been granted locus standi.⁷⁵ The case of India as discussed earlier is quite peculiar. Here the case of Ecuador is used as an example wherein constitutional provisions explicitly provide locus standing for nature.

Article 71 of the Constitution of Ecuador (section 3.2.1.4) mentions that “[a]ll persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature], which appears to imply providing locus standing to the defined parties. This article goes on to place the onus on the State to support the defined parties to achieve the aforementioned objective to enforce environmental protection through incentives that remain undefined.

The question of standing is made categorical in Article 397 in Section 1 (Nature and the environment) of Chapter 2 (Biodiversity and natural resources). Among others, Article 397 states:⁷⁶

“In case of environmental damages, the State shall act immediately and with a subsidiary approach to guarantee the health and restoration of ecosystems. In addition to the corresponding sanction, the State shall file against the operator of the activity that produced the damage proceedings for the obligations entailing integral reparation, under the conditions and on the basis of the procedures provided for by law. The responsibility shall also pertain to the public servants responsible for carrying out environmental monitoring. To guarantee the individual and collective right to live in a healthy and ecologically balanced environment, the State pledges:

⁷⁴ C.D. Stone 1972 at footnote 66.

⁷⁵ L.D. Pecharrroman, 2018. *Resources* 7, 13; doi:10.3390/resources7010013.

⁷⁶ *Constitution of Ecuador 2008 (revised 2015)*.

1. To permit any natural person or legal entity, human community or group, to file legal proceedings and resort to judicial and administrative bodies without detriment to their direct interest, to obtain from them effective custody in environmental matters, including the possibility of requesting precautionary measures that would make it possible to end the threat or the environmental damage that is the object of the litigation. The burden of proof regarding the absence of potential or real danger shall lie with the operator of the activity or the defendant.”

Litigations by individuals and communities related to the protection of the environment and the rights of nature in Ecuador have been carried out under the provisions of Article 397. Another important point to note is the Constitutional Court's ruling that nature's rights affect all other rights and must be considered by lower courts. Although provisions enshrined in Ecuador's Constitution leave room for interpretation, rulings of the Constitutional Court have strengthened the case for environmental protection by creating legally binding legal rules in favour of nature's rights.⁷⁷ Ecuador is also a good example of the usefulness of a Constitutional Court.⁷⁸ It is noteworthy that Article 397 invokes the Principles of subsidiarity and precautionary precaution, demonstrating the usefulness of enshrining the PSD in the constitution (section 3.1).

2.2.3.3 Public trust doctrine

The Public Trust Doctrine (PTD) is another legal provision that can be used to protect the environment. PTD has been argued as being “the oldest expression of environmental law”.⁷⁹ The basic framework for PTD is derived from private trust law, wherein a trustee has fiduciary duties to manage a property for the benefit of a beneficiary. The property at stake is held in a trust (or the trust property). Under the PTD, the trust property consists of natural resources (e.g. water quality and air quality) and increasingly to broader environmental concepts like biodiversity that are managed by government for the benefit of both present and future generations. Government incurs the fiduciary duties of doing so in ‘utmost good faith, trust, confidence and candor’.

The USA provides an interesting case regarding the application of PTD to safeguard a multitude of environmental interests covering, among others, water quality, navigation, wetlands, wildlife, nature parks and the atmosphere.⁸⁰ This is despite the fact that the Constitution of the United States (US) is silent on the right to a healthy environment, rights of nature and the PTD itself.

⁷⁷ K. Pietari 2016 at footnote 65.

⁷⁸ There has recently been a proposition for the setting up of a Constitutional Court in Mauritius, and this in itself will require constitutional changes. This issue will be the subject of a future working paper in this series. It is timely here to mention that Articles 429 to 440 in the Constitution of Ecuador provide for the setting up – i.e. institutional structure - and operationalization – i.e. roles, responsibilities and modus operandi - of its Constitutional Court.

⁷⁹ D. Quirke. 2016. The Public Trust Doctrine: A Primer, The Environmental & Natural Resources Law Center, University of Oregon School of Law, Oregon, USA, and references therein.

⁸⁰ D. Quirke 2016, p. 8.

Here, the US Supreme Court has indicated that the PTD has its basis in the reserved powers doctrine that is contained in the Tenth Amendment to the US Constitution.⁸¹ The constitutional root of the PTD in the US has been given statutory expression in the National Environment Policy Act (1969) as a national objective to “fulfill the responsibilities of each generation as trustee of the environment for succeeding generations”.⁸²

The example of the US opens up a path that can be adopted in Mauritius without having to make constitutional changes. A lever that can be activated to better protect the environment is to make changes to the Environmental Protection Act 2002 (Sept 2020)⁸³ by imposing a duty of trust on the government to protect the environment and the commons for present and future generations.

Although the PTD has strengths and weaknesses,⁸⁴ it is generally acknowledged to have contributed to environmental protection. Expressions of the PTD can be found in several constitutions; if not on its own, as a reinforcing element to the right of a healthy environment or rights of nature. In the case of Ecuador, the PTD is contained in Article 400.⁸⁵

“The State shall exercise sovereignty over biodiversity, whose administration and management shall be conducted on the basis of responsibility between generations. The conservation of biodiversity and all of its components are declared to be of public interest, especially agricultural and wildlife biodiversity and the country's genetic assets.”

While the PTD is cited as one of the oldest expressions of environmental law, it is being used to address one of the most pressing existential problems that confront humanity that is climate change. In this case, “atmospheric trust litigation takes a macro approach and views the atmosphere as a single public trust asset, with States as sovereign co-trustees”.⁸⁶ Climate litigation is undoubtedly a fascinating area that is pushing the boundaries of environmental law. This brings into discussion the ways in which countries have enshrined climate change in constitutional provisions.

⁸¹ <https://www.govinfo.gov/content/pkg/GPO-CONAN-1992/pdf/GPO-CONAN-1992-10-11.pdf> - accessed 8 April 2021.

⁸² D. Quirke 2016, p. 7.

⁸³ [https://environment.govmu.org/Documents/THE%20ENVIRONMENT%20PROTECTION%20ACT%202002%5Bsep%202020%5D%20\(1\).pdf](https://environment.govmu.org/Documents/THE%20ENVIRONMENT%20PROTECTION%20ACT%202002%5Bsep%202020%5D%20(1).pdf) – accessed 22 April 2021.

⁸⁴ R.D. Sagarin and M. Turnipseed. 2012. The Public Trust Doctrine: Where Ecology Meets Natural Resources Management, Annual Review of Environment and Resources 37: 473-496; G.R. Scott. 2017. The Expanding Public Trust Doctrine: A Warning to Environmentalists and Policy Makers, Fordham Environmental Law Review 10(1): 1-70.

⁸⁵ Constitution of Ecuador 2008 (revised 2015).

⁸⁶ J.M. Tan. 2018. Breathing Life into the Public Trust Doctrine: Holding the State Accountable for Protecting the Atmosphere, Ateneo Law Journal 62: 728-759.

2.3 Climate Change

32

Anthropogenic climate change driven by the accumulation of human-induced accumulation of atmospheric greenhouse gases is a global environmental and developmental issue that will redefine human existence in the decades and centuries to come.⁸⁷ Although the science of climate change dates back several decades, its public policy and governance aspects, especially at the national level, are nascent. Consequently, there are only a handful of countries that have taken the bold steps to capture climate change in their constitutions.

Tunisia is among the first countries to do so with the formulation of a new constitution following the 2011 Arab Spring. The “right to participate in the protection of the climate” is an add-on to the “right to a healthy and balanced environment” in Article 45 of the Constitution of Tunisia.⁸⁸ There is a substantive difference between the two propositions arguably because one is global (climate) and the other local (healthy environment) in nature. On this premise, the state cannot guarantee a right to a stable climate (which would strongly depend on what Parties to the UNFCCC do to curb global emissions), and the burden is only limited to allowing participation of citizens in protecting the climate.

“Article 45 (Tunisia): The state guarantees the right to a healthy and balanced environment and the right to participate in the protection of the climate. The state shall provide the necessary means to eradicate pollution of the environment.”

Zambia, which acceded to independence from the United Kingdom some three and a half years earlier than Mauritius, is one of the few Sub-saharan African countries to mention climate change in Article 257 of its constitution related to the utilization of natural resources and management of the environment.⁸⁹ This article is contained in Part XIX dedicated to ‘Land, Environment and Natural Resources’.

“Article 257 (Zambia): The State shall, in the utilization of natural resources and management of the environment –

g. establish and implement mechanisms that address climate change.”

⁸⁷ For more details please see P.N.K. Deenapanray. 2021. Increasing the mitigation ambition in small emitters: The case of Mauritius, Climate Policy; <https://doi.org/10.1080/14693062.2021.1886898>.

⁸⁸ Tunisia's Constitution of 2014; https://www.constituteproject.org/constitution/Tunisia_2014.pdf?lang=en – accessed 8 April 2021.

⁸⁹ Zambia's Constitution 1991 (2016); https://www.constituteproject.org/constitution/Zambia_2016.pdf?lang=en – accessed 22 April 2021.

33

In the case of Ecuador, the onus on the State is more stringent, and Article 414 articulates positive actions that the State must adopt to limit national contributions to global warming and take appropriate measures to reduce vulnerabilities to climate impacts. However, no specific guidance or normative approach is provided to assess whether the State is fulfilling its climate duties under Article 414.

“Article 414 (Ecuador): The State shall adopt adequate and cross-cutting measures for the mitigation of climate change, by limiting greenhouse gas emissions, deforestation, and air pollution; it shall take measures for the conservation of the forests and vegetation; and it shall protect the population at risk.”

Cuba is one of the latest countries to have added climate change in its constitution.⁹⁰ The formulation of Article 16.f appears in the section of the constitution covering International Relations, and it reflects the position that developing countries have historically taken during international climate change negotiations,⁹¹ namely that the onus is on developed countries to fix the climate problem. This is reflected through the wording “the establishment of a more just and equitable international economic order”, in combination with Article 16.e – i.e. **“Promotes the unity of all Third-World countries and condemns imperialism, fascism, colonialism, neocolonialism, and other forms of subjugation in any of its manifestations”.**

“Article 16. f. (Cuba) Promotes the protection and conservation of the environment as well as responding to climate change, which threatens the survival of the human species, through the recognition of common, yet differential, responsibilities; the establishment of a more just and equitable international economic order as well as the eradication of irrational patterns of production and consumption.”

Some have said that the climate-related language in the Constitution of Cuba is a ‘nice sentiment’ that does not amount to anything. Others have been more positive saying that ‘seeing climate change in the highest law of the land reflects the growing urgency in addressing it’.⁹² Given the existential threat of climate change, enshrining climate change in the constitution can do no harm. Building on a provision like Article 414 in the Constitution of Ecuador would be a good starting point. Such an article may be enhanced through an equity-based approach to climate mitigation,⁹³ and an adequate response to present and future climate change and climate variability based on up-to-date vulnerability assessments and policy-induced resilience building.

⁹⁰ Cuba's Constitution of 2019; https://www.constituteproject.org/constitution/Cuba_2019.pdf?lang=en – accessed 29 December 2020.

⁹¹ Some aspects of the political economy of climate negotiations can be found in: C. Oh. 2019. Political economy of international policy on the transfer of environmentally sound technologies in global climate change regime. *New Political Economy* 24: 22-36; <https://doi.org/10.1080/13563467.2017.1417361>.

⁹² E.R. Mega. 2019. Cuba adds climate to its constitution. *Nature* 567: 155.

⁹³ PNK Deenapanray 2021 at footnote 88.

3 Epilogue

34

Starting with the current Constitution of Mauritius, the examples of India (public interest litigation) and US (public trust doctrine, PTD) are good examples of how an evolutionary approach to judicial interpretation can advance the cause of environmental protection without having to invoke constitutional provisions like rights to a healthy environment or rights of nature. In India, PIL provides for writ petitions to be admitted in any court (Supreme, High or magistrate) by any legal entity, while the PTD serves as the mechanism in the US for environmental protection. One path to better environmental protection can also come from changes to the Environmental Protection Act (EPA), wherein onus is placed on government to act as a trustee for the protection and conservation of the environment and the commons on behalf of present and future generations (PTD). While reference is made to the EPA, the same would be applicable to other legislations such as the much called for Environmentally Sensitive Areas Bill (or similar). However, the PTD is not without its weaknesses.

A second (or concomitant) path, is adopting an evolutionary approach to interpreting ‘right to life’ in Articles 3 and 4 of its constitution. In effect, a broader application of the utilitarian argument would be needed, whereby an individual’s ‘right to life’ would be synonymous to the ‘right to a healthy environment’ and even synonymous to the ‘rights of nature’. The connecting thread is that the health and integrity of ecosystems ensure the provision of a multitude of free ecosystem services that enable life, including human lives, to flourish on the planet.⁹⁴ Consequently, the right to a healthy environment or rights of nature can be interpreted through a broader utilitarian lens as a way to guarantee human’s right to exist. In sum, protecting the environment and nature on which we depend is an instrumental act to human self-preservation. Notwithstanding an act of faith for a more liberal utilitarian interpretation of ‘right to life’, an even bigger act of faith will be required for a more flexible interpretation of locus standi under Article 17 of the Constitution of Mauritius. In this regard, an observation has been made that many judges in common law countries might have lost their appetite for remedial creativity because they “are now so accustomed to issuing rulings within detailed confines of legislation or regulations”.⁹⁵

⁹⁴ See for example, P. Dasgupta. 2001. *Human Well-Being and the Natural Environment*, Oxford University Press, NY; IPBES. 2019. Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. S. Díaz, J. Settele, E. S. Brondízio E.S., H. T. Ngo, M. Guèze, J. Agard, A. Arneth, P. Balvanera, K. A. Brauman, S. H. M. Butchart, K. M. A. Chan, L. A. Garibaldi, K. Ichii, J. Liu, S. M. Subramanian, C. F. Midgley, P. Miloslavich, Z. Molnár, D. Obura, A. Pfaff, S. Polasky, A. Purvis, J. Razzaque, B. Reyers, R. Roy Chowdhury, Y. J. Shin, I. J. Visseren-Hamakers, K. J. Willis, and C. N. Zayas (eds.), IPBES secretariat, Bonn, Germany; P. Dasgupta. 2021. *The Economics of Biodiversity: The Dasgupta Review*, HM Treasury, London.

⁹⁵ M.C. Wood quoted in A.R. Oakes. 2018. *Judicial Resources and the Public Trust Doctrine: A Powerful Tool of Environmental Protection?* *Transnational Environmental Law*: 1-21; doi:10.1017/S2047102518000213.

35

Notwithstanding the above two paths, environmental protection would best be achieved through constitutional provisions. Short of the acts of faith already mentioned, ongoing discussions about constitutional reforms in Mauritius should be broadened to also cover the environment and climate change within the broader ambit of sustainable development. Albeit examples have been drawn from several constitutions, the Constitution of Ecuador appears to give the most comprehensive coverage of these issues. It contains a preamble that provides the foundation for framing the interconnectedness between the wellbeing of human beings and the wellbeing of nature; makes explicit the Principles of sustainable development as the premise for guiding the formulation of public policies; provides reinforcing constitutional provisions for the right to a healthy environment and rights of nature, as well as positive duties of the State regarding climate change; and the right of litigation for the protection of the environment and nature by giving standing to any legal entity and by constitutionalizing the public trust doctrine. The example of Ecuador needs qualification; its constitution reflects an age-old indigenous way of life and spiritual connection with Earth Mother – Pachamama. Nevertheless, it can be used as a starting point, and the best endeavor taken to study and learn from other country’s best practice constitutional provisions. It is understood that each country has its own history of constitutional evolution, and that we would also need to create our own and unique history.

The body of work regarding constitutional protection of the environment has enabled three broad concluding observations to be made:⁹⁶ (i) it is not yet clear what the legal implications and meaning of providing legal personhood to nature might be, resulting in uncertainties regarding when would nature hold locus standi and on what basis; (ii) the enforcement of rulings recognizing rights to nature has proved challenging; and arguably most challenging (iii) is the question of deciding the threshold level of environmental changes that can be admitted for supporting socioeconomic development. These considerations should be borne in mind when studying and learning from the experience of other countries.

Given that the constitutional protection of the environment either through right to a healthy environment and/or squarely attributing rights to nature is in its infancy, we should proceed by drawing lessons learned from early adopters and proceed with the open mind that it will be ‘work in progress’. Solace can be taken from history that law often lags social change, and that “legal standing for nature is nothing but a consequential continuation of a century-long process of expansion of the group of legal subjects”.⁹⁷

⁹⁶ L.D. Pecharroman. 2018. *Resources* 7, 13; doi:10.3390/resources7010013.

⁹⁷ H. Leimbacher. 2016. *Gender and Nature in Comparative Legal Cultures*. In *Comparing Legal Cultures*; D. Nelken (ed.), Routledge: New York, NY, Chapter 8, p. 146.

Annex 1 Rio Principles of Sustainable Development

36

Principle 1

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Principle 2

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 3

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Principle 4

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Principle 5

All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

Principle 6

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.

Principle 7

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

Principle 8

To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.

Principle 9

States should cooperate to strengthen endogenous capacity building for sustainable development by improving scientific understanding through exchanges of scientific and technical knowledge, and by enhancing the development, adaptation,

diffusion and transfer of technologies including new and innovative technology.

Principle 10

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Principle 11

States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and development context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

Principle 12

States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries to better address the problem of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should as far as possible be based on international consensus.

Principle 13

States shall develop national law regarding liability and compensation for the victims of pollution and

other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

Principle 14

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

Principle 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. 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.

Principle 16

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

Principle 17

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

Principle 18

States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States

37

so afflicted.

Principle 19

States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

Principle 20

Women play a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

Principle 21

The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

Principle 22

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

Principle 23

The environment and natural resources of people under oppression, domination and occupation shall be protected.

Principle 24

Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

Principle 25

Peace, development and environmental protection are interdependent and indivisible.

Principle 26

States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the UN.

Principle 27

States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.

Annex 2 Preamble of the Constitution of Ecuador

“We women and men, the sovereign people of Ecuador

RECOGNIZING our age-old roots, wrought by women and men from various peoples,

CELEBRATING nature, the Pacha Mama (Mother Earth), of which we are a part of and which is vital to our existence,

INVOKING the name of God and recognizing our diverse forms of religion and spirituality,

CALLING UPON the wisdom of all the cultures that enrich us as a society,

AS HEIRS to social liberation struggles against all forms of domination and colonialism

AND with a profound commitment to the present and to the future,

Hereby decide to build

A new form of public coexistence, in diversity and in harmony with nature, to achieve the good way of living, the *sumak kawsay*;

A society that respects, in all its dimensions, the dignity of individuals and community groups;

A democratic country, committed to Latin American integration-the dream of Simon Bolivar and Eloy Alfaro-peace and solidarity with all peoples of the Earth;

And, exercising our sovereign powers, in Ciudad Alfaro, Montecristi, province of Manabi, we bestow upon ourselves the present:

Constitution of the Republic of Ecuador”

Annex 3 Eleventh and Twelfth Schedule of the Indian Constitution

Eleventh Schedule

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.

27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

Twelfth Schedule

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughterhouses and tanneries.