



# Environmental Protection in Constitutions Assessment Tool





# Environmental Protection in Constitutions Assessment Tool

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The *Environmental Protection in Constitutions Assessment Tool* is dedicated to everyone who practises compassion for our shared planet and the diverse life forms that call it home, and do what they can to protect and improve the environment within their own spheres of influence, no matter how big or small.

# Foreword

World's Youth for Climate Justice (WYCJ) is rooted in the belief that law can be a powerful force for justice. Since 2020, we have campaigned to take climate change to the world's highest court, the International Court of Justice, wielding international and human rights law to confront one of humanity's greatest challenges. This global campaign, ignited by the vision and courage of Pacific Islands Students Fighting Climate Change, demonstrated how young people, working together with communities on the frontlines of the climate crisis, can reshape the world's legal and political landscape.

Youth and communities across the globe are already leading efforts to protect the right to a clean, healthy, and sustainable environment. From grassroots movements to legal battles, we are demanding accountability and action. The *Environmental Protection in Constitutions Assessment Tool* is a vital resource for this fight. It offers a framework to evaluate whether constitutions—the foundational legal texts of nations—are up to the task of addressing the triple planetary crisis: climate change, biodiversity loss, and pollution.

Constitutions must be drafted, implemented, and interpreted to reflect the urgency of our times. They must safeguard intergenerational equity, ensure meaningful public participation, guarantee access to justice, and protect the right to a healthy environment. This tool equips youth, civil society, policymakers, and advocates to analyse constitutional provisions, identify gaps, and push for transformative reforms.

We see this tool as a bridge between vision and action, a way to connect the aspirations of communities with the legal systems that shape their lived realities well into the future. For youth leading the fight for climate justice, it provides the knowledge and confidence to demand that constitutions embody the values of sustainability, intergenerational equity, and respect for nature.

As we navigate the intersecting crises that threaten the planet, we remain resolutely optimistic. This critical tool can catalyse action across the world, ensuring constitutions reflect our collective responsibility to protect the Earth and ensure a livable present and future for all.

*World's Youth for Climate Justice  
December 2024*

# Introduction

The *Environmental Protection in Constitutions Assessment Tool* helps users to understand how constitutions can help to protect the environment, assess the effectiveness of their own constitution in this regard and develop proposals for reform.<sup>1</sup>

This Assessment Tool is designed for anyone interested in how laws promote environmental protection. It is ideal for people engaged in a process of constitutional reform—whether as members of a constitution-making body, advisors to those bodies or civil society—or for those who wish to advocate for amendments to the existing legal and constitutional framework to strengthen environmental protection.

Through a series of questions, brief explanations and sample provisions from constitutions around the world, the Assessment Tool can enable anyone, regardless of their legal experience, to evaluate their own constitution, compare it with other constitutions and pinpoint environmental priorities to address in their own context.

The *Environmental Protection in Constitutions Assessment Tool* is the first initiative to systematically explore how constitutions worldwide address environmental protection. It collects and organizes environmental provisions from constitutions across Africa, Asia, the Caribbean, Europe, Latin America, the Middle East and Oceania, and it is informed by both comparative practice and international standards.

The Assessment Tool is structured in three chapters:

Chapter 1 discusses the importance of including environmental protection in constitutions and identifies when the Assessment Tool can be most helpful.

Chapter 2 explains how to use the Assessment Tool.

Chapter 3 contains the Assessment Tool questionnaire, which has 36 questions divided into seven sections.

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<sup>1</sup> This tool is part of a series of constitutional assessments developed by International IDEA, following the [Constitution Assessment for Women's Equality](#) (CAWE) released in 2016 and the [Indigenous Peoples' Rights in Constitutions Assessment Tool](#) (IPCAT) published in 2020.

# **1. Assessing environmental protection in constitutions**





## 1.1. Why include environmental protection in constitutions?

A constitution is more than just a legal document: it embodies a state's core values, history and future goals. Modern constitutions set up the state's structure and institutions, define political power and protect fundamental rights. At its core, a constitution outlines how citizens and governments interact (Cats-Baril 2020).

Taking care of the natural world requires laws and policies that are both effective and responsive. A country's legal framework must allow the state to use natural resources within its borders for the benefit of its people while ensuring sustainable development and respect for human rights. Constitutions are unique and powerful in this regard: they are meant to be enduring with a long-term perspective.

Environmental protection is often managed through legislation and policies. Unlike constitutions, laws can be more adaptable and responsive, allowing them to be changed quickly to address new opportunities and challenges, and they tend to be more detailed. However, to ensure that a longer-term outlook is maintained, constitutional protection allows the state to embed deep-rooted environmental measures, mechanisms and institutions that cannot be easily overturned by a change in government. Moreover, constitutionalized values and principles guide legislative content and can serve as a basis for creative advocacy or lawsuits in rapidly evolving situations or where specific laws are lacking.

The urgency of including comprehensive environmental safeguards in a state's supreme law is heightened by the interconnected crises of climate change, pollution and biodiversity loss. These crises critically endanger natural environments and wildlife, and the human societies that rely on them. Climate change especially is recognized as a social, economic and political 'threat multiplier', disproportionately harming the poorest and most marginalized people in society (Ahmadnia et al. 2022). In the coming years, states will have to face the impacts of increasing floods, storms, heatwaves and droughts that can destabilize societies and lead to violent conflict from forced displacement and struggles over scarce resources. The resulting loss of life, social opportunities and marginalization of vulnerable groups may create conditions enabling the rise of non-state armed groups and increase state fragility (Sweijts, Haan and van Manen 2022). Even in stable democracies, growing poverty and inequality, migration, and food and resource insecurity can fuel extreme political movements and authoritarianism (Lindvall 2021: 17).

This reality highlights the importance of the United Nations' Intergovernmental Panel on Climate Change (IPCC) call to action. The IPCC, an expert body focused on climate change science, has stressed that 'political commitment, coordinated policies, international cooperation, ecosystem stewardship and inclusive governance are all important for effective and equitable climate action' (IPCC 2023). Considering this, states must combat both the causes and consequences of environmental harm (also known as degradation) while simultaneously strengthening democratic institutions and ensuring all voices are heard in decision-making processes.

As outlined in this Assessment Tool, constitutions can play a vital role in achieving these goals, including by:

- **Recognizing the right to a healthy environment and the rights of nature.** Constitutions can embed substantive rights, such as the right to a healthy environment, which is widely understood to include clean air, safe and sufficient water, healthy and sustainably produced food, non-toxic environments, healthy ecosystems and biodiversity, and a safe climate. Some legal systems grant legal personality to Nature itself, meaning ecosystems such as rivers or mountains have their own rights and may be represented in court proceedings.

- **Supporting the rights of Indigenous peoples and local communities.** Constitutions can recognize and uphold the rights of Indigenous peoples and local communities to manage and protect their lands. Constitutions can also emphasize the important role of Indigenous and local knowledge in sustainable land use and conservation of biodiversity.
- **Requiring sustainable management of natural resources.** Constitutions can require states to conserve natural resources such as land and water, using them in sustainable ways, to minimize environmental harm, preserve biodiversity and ensure that future generations are able to meet their needs.
- **Setting environmental principles and policies.** Constitutions establish the legal architecture to direct and constrain government and private actions, including for environmental protection. Constitutions can therefore provide a blueprint for environmental governance, guiding the sustainable development of natural resources, mandating biodiversity protection, climate change mitigation and adaptation, and promoting environmentally friendly technologies and renewable energy. Constitutions can also set principles for urban and rural planning that prioritize sustainable land use and climate-resilient infrastructure. These constitutional commitments can shape the content of legislation and executive policies that help states meet their international environmental obligations.
- **Creating environmental protection institutions.** Constitutions can establish institutions and bodies with specific powers to protect the environment, such as an environmental court or tribunal, a national human rights institution, a specialist environmental prosecutor or a representative or consultative body to promote the interests of future generations. Depending on their mandates (i.e. the powers and roles they are given), these bodies provide the state with expertise on complex environmental matters, offer avenues for solving disputes, oversee laws, policies and actions affecting the environment, and ensure public participation and representation of impacted peoples.
- **Facilitating public participation in environmental protection.** Constitutions can empower individuals and communities to participate in environmental decisions, including through a set of rights called procedural environmental rights. These rights generally include the right to information and the right to take part in deciding new environmental plans and policies. Constitutions can also require environmental impact assessments, including consultation with local communities, to ensure that development projects consider and address potential environmental risks and harms before they begin.
- **Providing judicial review.** As the supreme law, all other laws and government officials' actions must comply with the provisions of the constitution. Constitutionalized provisions for environmental protection also have this status as highest law, allowing courts to review and potentially overturn legislation or executive actions that violate constitutional environmental protections.
- **Increasing access to justice.** Constitutions can facilitate the right to access justice when rights or protections are threatened or violated. This allows individuals to challenge actions that might harm them or the environment. Constitutions can also grant broad legal standing to support pre-emptive challenges to actions that might cause harm, and for public interest litigation, enabling individuals or organizations to file lawsuits on behalf of others, nature, future generations or general public interest.
- **Promoting environmental education.** Constitutions can require states to ensure that citizens are informed about environmental issues, as well as their constitutional rights and duties relating to the environment. Constitutions may mandate this through formal education, awareness-raising programmes and the creation of protected areas and nature reserves.

- **Improving state and transnational coordination for environmental protection.** In states with multiple levels of government, constitutions can define and clarify who is responsible for environmental protection. This ensures that streamlined standards of environmental protection are in place across the entire country. As this clarity can help to prevent political and public confusion regarding accountability, it can promote a coordinated approach to tackling environmental concerns. Furthermore, constitutions can require cooperation between states to tackle cross-border environmental concerns, ensure state commitments to promote international treaties on environmental protection and establish intergovernmental organizations for the joint management of natural resources.

In some circumstances, the possibility of constitutional change is not on the table or even on the horizon. In such situations, legislative reform—whether it be in strengthening processes of consultation, establishing institutions or other legal initiatives—can provide the basis for improved environmental outcomes, especially when based on strong social and political consensus. The *Environmental Protection in Constitutions Assessment Tool*, while drawing on practice from constitutional texts and being mainly targeted at constitutional change, can also be used to inform and inspire users to advocate for and implement legislative reforms aimed at protecting the environment.

## 1.2. Why and when is the Environmental Protection in Constitutions Assessment Tool useful?

**During constitution drafting.** Constitutional assessment is important while the language of the constitution is being negotiated and drafted. This constitution-making period offers a unique opportunity to propose and advocate for ways to strengthen the text from the start.

**Throughout the constitution's life.** Constitutional assessment remains valuable throughout the constitution's lifespan. Regular evaluations can help to identify shortcomings in the implementation of environmental protections and highlight potential for improvement (including through comparison with other states' constitutions, legislation and practice). Periodic evaluations can provide opportunities to advocate for the implementation or enforcement of promising provisions or ideas for strengthening the constitution further through amendment. As mentioned above, the Assessment Tool can also be useful in advocating for legislative reform when constitutional change is not possible.

This Assessment Tool is for everyone, not just for constitutional specialists, lawyers and politicians. Every person has the right to understand and influence the creation, content and implementation of their constitution without needing any special status or qualifications. However, given the complexity of constitutions, this tool is designed to support non-specialists in understanding, interpreting and reforming constitutions.

The Assessment Tool is aimed at helping users become deeply familiar with the constitutional text or draft as it pertains to the environment. It alerts them to the scope of issues that the constitution may address, informs them about mechanisms of environmental protection in constitutions around the world and helps them to identify priorities for change. By understanding what the constitution requires regarding environmental protection, users can monitor compliance by institutions and political actors, and identify areas for legislative, policy or constitutional reform.

## **2. How to use the Environmental Protection in Constitutions Assessment Tool**





## 2.1. Gather your materials

Before starting an assessment, users will need:

- a copy of the constitution or draft constitution under assessment; and
- relevant pieces of legislation.

You can conduct an evaluation individually, but working in a group can be beneficial. It allows you to discuss complex issues, such as the meaning of a constitutional provision, identify specific environmental concerns in your country and assess the adequacy of existing laws. Building networks and coalitions can also help you to communicate your findings effectively and take actions based on the assessment.

## 2.2. Familiarize yourself with the tool

The Assessment Tool is flexible: you can choose to answer all the questions for a comprehensive assessment or focus on specific issues that are most relevant to your context.

It contains 36 questions divided into seven sections:

- I. Foundational environmental principles and values
- II. Environmental rights and responsibilities
- III. State duties for environmental protection
- IV. Economy and sustainability
- V. Environmental governance and community engagement
- VI. Accountability: Monitoring, enforcement and remedies
- VII. Transboundary cooperation and international law

Each section contains:

- **Questions.** Focused prompts to explore specific aspects of environmental protection in constitutions.
- **Explanations.** Brief notes detailing the relevance of the question for environmental protection and providing guidance for interpreting the comparative constitutional examples. Foundational principles, terminology and frameworks that underpin environmental law and governance are explained throughout the tool.
- **Samples.** Constitutional provisions from various countries are provided to illustrate how these issues have been addressed.

You should also familiarize yourself with the structure of the constitution you are assessing, paying attention to chapter and section headings. Relevant provisions may be found throughout the constitution, not just in sections on rights or natural resources.

## 2.3. Conduct the assessment: Your findings

In the accompanying workbook you can write down your analysis for each question.

As you identify relevant provisions in the text under assessment, note them in the Findings section, including the article numbers and text. Your observations should include an analysis of how adequately the constitution addresses the issues raised in each question. You should note any inconsistencies or contradictions you find.

A complete answer would begin with a Yes/No response before providing details such as:

- relevant provisions in the constitutional text under assessment (positive and negative);
- contextual information about the country or issue;
- whether the issue is covered in legislation;
- example provisions from other countries or international standards relevant to the assessment; and
- any implementation challenges anticipated.

You should also look for any provisions, even if they are not related to the questions, in the constitution or draft constitution that could result in harm to the environment. Note these provisions and include suggestions for improving or removing them as part of completing the Findings and Actions sections.

## 2.4. Turning assessment into action: Next steps

Turning your assessment into action is critical for driving change. The Actions section is the place to give detailed suggestions for improving the constitutional text, which can include specific language suggestions backed up by international standards, scientific consensus and any examples from other countries.

For those writing or reforming a constitution, proposed actions might include suggesting the inclusion of a specific provision in the constitution. For other users, such as civil society organizations and media stakeholders, actions might include advocacy and events around a certain issue, coalition building, research projects, public education, capacity building and training, and dialogues with national or substate officials on legislative or policy reform.

Your proposed actions might also involve developing a communication and advocacy strategy to tailor your message for your target audiences, which for your findings might include:

- **Political decision makers**, including political party leaders, members of constitution-making bodies and heads of the committees within those bodies.
- **Advocates and influencers**, including community groups and the media.
- **Other stakeholders**, including the general public, citizens and non-citizens (Allen 2016; Cats-Baril 2020).

# Important considerations for users

## Reading a constitution

Constitutions vary greatly from one another in their scope, content and structure. Each part of a constitution should be seen as part of a larger framework, as all the sections are interrelated. Even parts of a constitution that sometimes may not be legally enforced, like the preamble, should be read together with other provisions to understand the underlying values, vision, ultimate goals and intended effects of the provisions. Some constitutions specify that certain rights or institutions are only established or enforced after laws are made (known as 'implementing legislation'). This means that details of these rights and how the bodies will be established will be negotiated and decided by the parliament through the law-making process (Cats-Baril 2020).

A constitution operates within a country's overall legal and political system, so understanding that your country's legal traditions will affect how the constitution is interpreted, implemented and enforced is important for your evaluation.

To read a constitution using the Assessment Tool:

- start by taking keywords and phrases from the question, explanation and example provisions to find the relevant section in the constitution or draft constitution under assessment;
- be aware that constitutions may use different wordings to express the same idea, so while a keyword search is a useful start, consider other terms that may be used.

Note that questions may relate to a single provision, multiple relevant provisions or no relevant provision in the constitution you are assessing. For example, take the question:

Does the constitution promote sustainable development and management of land and natural resources?

This might relate to sustainable development throughout the constitution: in the preamble, in a section on Indigenous rights or within a chapter on natural resources. All relevant provisions should be recorded, along with any institutional mechanisms or principles that are relevant for their interpretation, implementation and enforcement.

## Scope and framing of issues

Given the central importance of the environment and natural resources to a state's well-being and economic development, it is not surprising that most of the world's constitutions contain a variety of provisions that implicate environmental protection and environmental rights (Babeck 2024). The questions in the Assessment Tool are drawn from provisions in existing constitutional texts. They illustrate how environmental protection has been approached in constitutions around the world, but the questions and the related constitutional examples should not necessarily be taken to be recommendations.

The Assessment Tool does not take a stance on contentious issues such as the trade-offs between nuclear energy's potential benefits and risks, or the pursuit of geoengineering. Instead, it highlights where common language has emerged (e.g. the right to a healthy environment) and flags areas, such as resource management and biodiversity conservation, where states must find an appropriate balance based on their unique contexts and in line with their international commitments.

Not every issue covered by the Assessment Tool will be relevant to every country, and certain country-specific issues may not be comprehensively reflected in the tool. For example:

- The inclusion of climate change provisions in constitutions is still relatively rare, although the number is steadily increasing.
- There are currently no constitutionalized provisions that explicitly outline a 'just transition' from fossil fuels to low-carbon economies.
- No constitution specifically protects environmental human rights defenders<sup>2</sup> despite their critical role in protecting the environment and their vulnerability to state and corporate violence.

On the other hand, some issues may seem novel. For example:

- Constitutional provisions requiring a state to maintain a minimum percentage of forest cover across its territory.
- State commitments to discourage unsustainable production and consumption.
- Constitutional recognition of the rights of nature.

A key objective of the Assessment Tool is to inspire users to think about issues in new and innovative ways, including those not typically seen as constitutional matters. Introducing pioneering provisions that depart from a country's previous practices can pave the way for further innovation. Such groundbreaking changes could extend beyond typical environmental provisions to include new or redefined human and non-human rights, state duties, economic provisions, new institutions, accountability mechanisms and transboundary cooperation. They may also involve new mechanisms of coordination in the existing institutional framework.

The challenge of protecting the environment is large, but with bold constitutional innovation and collective action, a sustainable future is still possible.

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<sup>2</sup> The 2018 Escazú Agreement is a regional treaty that includes protection for environmental human rights defenders in Latin America and the Caribbean. It outlines state responsibility to prevent, investigate and provide redress for violations of the rights of environmental human rights defenders.



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# **I. Foundational environmental principles and values**

**Questions 1–4**



## Foundational environmental principles and values



### Is a commitment to protecting the environment articulated as a value in the constitution?

#### EXPLANATION

- Some constitutions include a statement of national values that expresses the state's commitment to protecting the environment. Such a statement is often in the preamble, which provides context for the constitution and sets out the overarching values and principles that should guide all the state's institutions, including the executive, legislature and judiciary.
- While preambles are not always directly enforceable in court, they are symbolically powerful as part of the constitution's framing. Environmental commitments in the preamble can be influential if used by courts to interpret other constitutional provisions and legislation in favour of protecting the environment.

#### EXAMPLES

Czech Republic (1993)	<a href="#">Preamble</a>	At the time of the restoration of an independent Czech state, <ul style="list-style-type: none"> <li>• Faithful to all good traditions of the long-existing statehood of the lands of the Czech Crown, as well as of Czechoslovak statehood, [...]</li> <li>• Resolved to guard and develop together the natural and cultural, material and spiritual wealth handed down to us.</li> </ul>	Centres environmental protection within the legacy of natural, cultural, material and spiritual wealth bequeathed to the people.
Ecuador (2008)	<a href="#">Preamble</a>	We women and men, the sovereign people of Ecuador [...] CELEBRATING nature, the Pacha Mama (Mother Earth), of which we are a part and which is vital to our existence [...] 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.	Lays the foundation for a legal and societal framework that prioritizes the long-term environmental, social and cultural dimensions of well-being (the 'sumak kawsay') over economic growth.
Guyana (1980)	General Principles. Chapter II Principles and Bases of the Political, Economic and Social System  <a href="#">Article 36</a>	The well-being for the nation depends upon preserving clean air, fertile soils, pure water and the rich diversity of plants, animals and eco-systems.	Establishes that clean air and water, fertile land and diversity of plants, animals and ecosystems are necessary for the well-being of the state.
Kenya (2010)	<a href="#">Preamble</a>	We, the people of Kenya - [...] RESPECTFUL of the environment, which is our heritage, and determined to sustain it for the benefit of future generations [...]	Articulates the state's commitment to protecting the climate and ensuring a healthy environment, including for future generations.

Mali (2023)	<a href="#">Preamble</a>	<p>The sovereign People of Mali [...]</p> <p>Resolved to value the cultural, material and immaterial heritage and to preserve the natural resources of the territory for present and future generations [...]</p> <p>Committed to ensuring the improvement of the quality of life and the protection of the environment [...]</p>	Expresses the state's dedication to safeguarding its natural heritage, prioritizing environmental protection and improving quality of life for both present and future generations.
Madagascar (2010)	<a href="#">Preamble</a>	<p>[...] Persuaded of the exceptional importance of the wealth of the fauna, of the flora and of the mining resources of high specificities with which nature has provided Madagascar, and that it is important to preserve it for the future generations [...]</p>	Acknowledges the state's abundance of resources gifted by nature. Highlights the importance of the state's natural resources, including mining resources, which should be preserved for future generations.
Montenegro (2007)	<a href="#">Preamble</a>	<p>Stemming from: [...]</p> <p>The conviction that the state is responsible for the preservation of nature, sound environment, sustainable development, balanced development of all its regions and the establishment of social justice [...]</p>	Connects the state's duty to protect the environment with sustainable development and social justice.

# Foundational environmental principles and values



## Does the constitution establish that natural resources belong to the people and are administered by the state for the benefit of all?

### EXPLANATION

- Resources found in nature—such as soil, water, forests, minerals and hydrocarbons—are foundational to our existence and key to our activities, including food production, energy generation, transportation and manufacturing. Natural resources are also vital for ecosystems and biodiversity, recreation, health and well-being, and they hold religious, spiritual and cultural significance for many people(s), which may require different types of constitutional treatment (Hickey 2024).
- While the state has an important role to play in managing natural resources, constitutions often recognize that this does not entail an unrestrained right to exploitation. Instead, these provisions underscore the state’s responsibility for stewardship of natural resources on behalf of the people.
- Several constitutions specify that the state holds natural resources in trust for the people, including future generations, and highlight the role of citizens in ensuring their sustainable use and conservation ([see question 3](#)).
- Such provisions remind citizens of their stake in protecting their country’s assets and health. This increases the likelihood of public oversight, accountability and transparency in state management of natural resources, and it may reduce the chances of overexploitation and corruption that undermine environmental protection. Articulating natural resources as belonging to the people may also encourage longer-term planning that compels the state to consider its future needs and those of its people ([see questions 10, 21 and 27](#)).

### EXAMPLES

Papua New Guinea (1975)	National Goals and Directive Principles	We declare our fourth goal to be for Papua New Guinea’s natural resources and environment to be conserved and used for the collective benefit of us all and be replenished for the benefit of future generations.	Outlines that all people have the responsibility to ensure that natural resources are used wisely, conserved and replenished, and that flora and fauna should be protected for current and future generations.
	<a href="#">4. Natural Resources and Environment</a>	WE ACCORDINGLY CALL FOR- 1. wise use to be made of our natural resources and the environment in and on the land or seabed, in the sea, under the land and in the air, in the interests of our development and in trust for future generations; and 2. the conservation and replenishment, for the benefit of ourselves and posterity, of the environment and its sacred, scenic, and historical qualities; and 3. all necessary steps to be taken to give adequate protection to our valued birds, animals, fish, insects, plants and trees. [...]	

Papua New Guinea (1975) (cont.)	*** <a href="#">Basic Social Obligations</a>	*** WE HEREBY DECLARE that all persons in our country have the following basic obligations to themselves and their descendants, to each other and to the Nation: [...] d. to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations; and [...]	
Bolivia (2009)	Part IV. Economic Structure and Organization of the State, Title II. Environment, Natural Resources, Land and Territory, Chapter II. Natural Resources  <a href="#">Article 349</a>	I. The natural resources are the property and direct domain, indivisible and without limitation, of the Bolivian people, and their administration corresponds to the State on behalf of the collective interest.	Asserts that natural resources are the collective property of the Bolivian people, administered by the state in the interest of the people.
Ghana (1992)	Chapter 21. Lands and Natural Resources, Part I. Public Lands, 257. Public Lands and Other Public Property  <a href="#">Article 257(6)</a>	Every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana and shall be vested in the President on behalf of, and in trust for the people of Ghana.	Establishes that all minerals in the country are the property of the Republic of Ghana and that the President holds these in trust on behalf of the people.
South Sudan (2011)	Part Twelve. Finance and Economic Matters, Chapter III. Petroleum and Gas Development and Management  <a href="#">Article 173(1)</a>	Ownership of petroleum and gas shall be vested in the people of South Sudan and shall be developed and managed by the National Government on behalf of and for the benefit of the people.	Assigns ownership of the petroleum and gas deposits to the people, on whose behalf the state manages.
Ukraine (1996)	Chapter I. General Principles  <a href="#">Article 13</a>	The land, its mineral wealth, atmosphere, water and other natural resources within the territory of Ukraine, the natural resources of its continental shelf, and the exclusive (maritime) economic zone, are objects of the right of property of the Ukrainian people. Ownership rights on behalf of the Ukrainian people are exercised by bodies of state power and bodies of local self-government within the limits determined by this Constitution.	Designates various natural resources, including land, minerals, atmosphere and water, as the property of the people, and establishes a framework for their management by state and local authorities.



## Foundational environmental principles and values



### Does the constitution view economic development through the lens of sustainable development? Does the constitution promote sustainable development and management of land and natural resources?

#### EXPLANATION

- Economic development should provide opportunities for creating jobs, reducing poverty and raising living standards. However, to ensure the well-being of the planet and future generations, this development must occur within the ecological boundaries of what earth can provide. This concept is known as sustainable development.
- Sustainable development has three pillars: social, economic and environmental sustainability. It entails promoting economic growth that meets the needs of the present without compromising the environment or the ability of future generations to meet their own needs (UN World Commission on Environment and Development 1987). A commitment to sustainable development in a state's constitution is a commitment to balancing economic growth, social inclusion and environmental objectives in the pursuit of long-term prosperity ([see questions 10 and 17](#)).
- Numerous states incorporate principles of sustainable development in their constitutions: some link sustainable development of natural resources to overarching environmental protection principles or connect the sustainable management of natural resources with the interests or rights of future generations ([see question 4](#)).

#### EXAMPLES

Bhutan (2008)	Environment <a href="#">Article 5(2)</a>	The Royal Government shall: a. Protect, conserve and improve the pristine environment and safeguard the biodiversity of the country; b. Prevent pollution and ecological degradation; c. Secure ecologically balanced sustainable development while promoting justifiable economic and social development; and d. Ensure a safe and healthy environment.	Rejects economic development as a goal in itself, and commits the state to ecologically balanced sustainable development, environmental protection and conservation, and the promotion of fair and reasonable economic and social development.
France (1958)	Charter for the Environment <a href="#">Article 6</a>	Public policies shall promote sustainable development. To this end they shall reconcile the protection and enhancement of the environment with economic development and social progress.	Requires public policies to promote sustainable development by balancing environmental protection with economic and social progress.
Maldives (2008)	Chapter II. Fundamental Rights and Freedoms <a href="#">Article 22</a>	The State has a fundamental duty to protect and preserve the natural environment, biodiversity, resources and beauty of the country for the benefit of present and future generations. The State shall undertake and promote desirable economic and social goals through ecologically balanced sustainable development and shall take measures necessary to foster conservation, prevent pollution, the extinction of any species and ecological degradation from any such goals.	Affirms the state's fundamental duty to protect and preserve the natural environment, biodiversity and resources, emphasizing ecologically balanced sustainable development and the prevention of pollution, species extinction and ecological degradation.

Indonesia (1945)	Chapter XIV. The National Economy and Social Welfare <a href="#">Article 33(4)</a>	The organisation of the national economy shall be conducted on the basis of economic democracy upholding the principles of togetherness, efficiency with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy.	Commits the state to an overarching economic framework rooted in democratic principles that prioritize the environment, balance, sustainability, cohesion and justice.
Nicaragua (1987)	Title IV. Rights, Duties and Guarantees of the Nicaraguan People, Chapter III. Social Rights <a href="#">Article 60</a>	[...] The Nicaraguan nation must adopt patterns of production and consumption which guarantee the vitality and integrity of mother earth, social equity among humans, a responsible consumption based on solidarity, and the good life of the community.	Mandates the adoption of sustainable patterns of production and consumption to protect the environment and ensure social equity and community welfare.
Algeria (2020)	<a href="#">Preamble</a>	[...] The people remain concerned with environmental degradation and the negative effects of climate change, and they are eager to ensure protection of the natural environment and the rational use of natural resources in order to preserve them for future generations. [...]	Outlines the people's concerns over climate change and environmental degradation, and commits to the protection of nature and sustainable use of natural resources to ensure their preservation for future generations.

## Foundational environmental principles and values



### Does the constitution embed principles of intergenerational equity and protect the interests or rights of future generations?

#### EXPLANATION

- Constitutions are guides for the present and blueprints for the future, binding state policy over the long term and across successive governments.
- Many constitutions recognize the interests, or even the rights, of future generations. This includes the requirement for sustainable use of natural resources, action against climate change, protecting and preserving the environment and biodiversity, and in some cases creating specific funding mechanisms for future generations (Araújo and Koessler 2021).
- Connecting sustainable development with the rights of future generations in constitutions can firmly underscore the environmental stewardship responsibility of both the state and individuals. This can be especially effective if the constitution also provides for the establishment of institutions dedicated to protecting future generations' interests, ensuring proxy representation in policymaking and law making, and broad legal standing to enforce these provisions in court ([see questions 30 and 34](#)).
- Landmark cases have invoked the constitutional interests of future generations to hold governments accountable for reducing greenhouse gas emissions. For example, in 2021, the German Federal Constitutional Court ruled that the state's constitutional duty under [article 20a](#) to protect the natural foundations of life for future generations obliged the state to take more ambitious climate action (*Neubauer et al. v. Germany* 2021).

#### EXAMPLES

Bhutan (2008)	Environment <a href="#">Article 5(4)</a>	Parliament may enact environmental legislation to ensure sustainable use of natural resources and maintain intergenerational equity and reaffirm the sovereign rights of the State over its own biological resources.	Permits legislation that preserves the environment for future generations in the interests of intergenerational equity.
Germany (1949)	II. The Federation and the Länder <a href="#">Article 20a</a>	Mindful also of its responsibility toward future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.	Outlines state duty to protect the natural environment and animals through legislative, executive and judicial actions, with the responsibility extending to future generations.
Norway (1814)	E. Human Rights <a href="#">Article 112</a>	Every person has a right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. Natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well. [...]	Safeguards the right to live in a healthy environment for future generations, and states that sustainable use of natural resources should be based on long-term considerations.

France (1958)	Charter for the Environment <a href="#">Preamble</a>	[...] In order to ensure sustainable development, choices designed to meet the needs of the present generation should not jeopardize the ability of future generations and other peoples to meet their own needs, [...]	Requires that current choices do not endanger the ability of future generations and other peoples to meet their own needs.
Malawi (1994)	Chapter III. Fundamental Principles, 13. Principles of National Policy <a href="#">Article 13</a>	The State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals [...] d. To manage the environment responsibly in order to— i. prevent the degradation of the environment; ii. provide a healthy living and working environment for the people of Malawi; iii. accord full recognition to the rights of future generations by means of environmental protection and the sustainable development of natural resources; and iv. conserve and enhance the biological diversity of Malawi.	Directs state policy to recognize the rights of future generations by protecting the environment and sustainably developing natural resources.
Qatar (2003)	Chapter II. The Basic Pillars of the Society <a href="#">Article 33</a>	The State endeavors to protect the environment and its natural balance, to achieve comprehensive and sustainable development for all generations.	Compels government protection of the environment for present and future generations.
South Sudan (2011)	Chapter IV. Sources of Revenue <a href="#">Article 178(3)</a>	The National Government shall establish a Future Generation Fund from its share of net oil revenue.	Mandates the national government to create a specific fund from oil revenues for future generations.





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# **II. Environmental rights and responsibilities**

**Questions 5–9**

## Environmental rights and responsibilities



### Does the constitution recognize the right to a healthy environment?

#### EXPLANATION

- A healthy environment is a foundational requirement for human existence and subsistence. Many constitutions explicitly recognize, protect and promote the right to a healthy environment and impose a corresponding individual or collective duty to protect the environment. Alternative constitutionalized formulations include the right to an ecologically balanced, pollution-free, clean, favourable, satisfactory, wholesome, quality, safe or sustainable environment.
- In some cases, constitutional courts have interpreted the right to a healthy environment through other constitutional rights such as the right to life, dignity and health (May 2021), sometimes called ‘greening’ other rights.
- While there are various ways to frame the right to a healthy environment, no single formulation guarantees the best possible outcomes for both human rights and environmental protection. As with all rights, there are legal and constitutional limitations, and a balance must be found between competing interests. Nevertheless, effective implementation is crucial to realize this right, so the courts and other institutions play key roles in achieving the right to a healthy environment ([see questions 30, 31 and 32](#)).
- Research also suggests that incorporating the right to a healthy environment in constitutions or legal frameworks strengthens the legal foundation for environmental protection. This leads to improved adoption, implementation and enforcement of environmental laws and policies (de Vilchez and Savaresi 2021).
- The right to a clean, healthy and sustainable environment was recognized by the UN General Assembly in 2022<sup>3</sup> as foundational for the enjoyment of all other human rights and as a key component of tackling the triple planetary crisis of climate change, pollution and biodiversity loss (UN General Assembly 2022). The right to a healthy environment is also recognized in international regional agreements such as the Aarhus Convention (article 1), African Charter on Human and Peoples’ Rights (article 24), the Arab Charter on Human Rights (article 38), the Escazú Agreement (article 4) and the Protocol of San Salvador (article 11).

#### EXAMPLES

Ecuador (2008)	Chapter 2. Rights of the Good Way of Living, Section 2. Healthy Environment <a href="#">Article 14</a>	The right of the population to live in a healthy and ecologically balanced environment that guarantees sustainability and the good way of living (sumak kawsay), is recognized. Environmental conservation, the protection of ecosystems, biodiversity and the integrity of the country’s genetic assets, the prevention of environmental damage, and the recovery of degraded natural spaces are declared matters of public interest.	Recognizes the right to a healthy environment as part of the Indigenous principle of ‘the good way of living’ (‘sumak kawsay’), making environmental protection a matter of public interest.
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<sup>3</sup> For more information on the substantive and procedural elements of the right to a healthy environment, see OHCHR, UNEP AND UNDP (2023).

Ecuador (2008) (cont.)	***  Chapter 6. Rights to Freedom  <a href="#">Article 66(27)</a>	***  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.	***  Connects the right to a healthy environment with ecological balance, freedom from pollution and harmony with nature.
Fiji (2013)	Chapter II. Bill of Rights  <a href="#">Article 40</a>	1. Every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures. 2. To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorise the limitation of, the rights set out in this section.	Creates a right to a healthy environment and compels legislative action to protect that right for present and future generations while allowing for the limitation of the right.
Honduras (1982)	Title III. Declarations, Rights and Guarantees, Chapter VII. Health  <a href="#">Article 145</a>	[...] The State shall maintain a satisfactory environment for the protection of everyone's health. Consequently, access to water and sanitation are declared to be a human right. Their enjoyment and use shall be equitable with preference to human consumption. Therefore, the preservation of sources of water is guaranteed such that they shall not put life and public health at risk.	Establishes a link between access to water and sanitation as human rights and the state's duty to maintain a satisfactory environment for the protection of public health.
Republic of Korea (1948)	Chapter II. Rights and Duties of Citizens  <a href="#">Article 35</a>	1. All citizens shall have the right to a healthy and pleasant environment. The State and all citizens shall endeavor to protect the environment. 2. The substance of the environmental right shall be determined by law. [...]	Establishes the right to a healthy environment, with the substance of the right to be determined by law.
Slovenia (1991)	III. Economic and Social Relations  <a href="#">Article 72</a>	Everyone has the right in accordance with the law to a healthy living environment. The state shall promote a healthy living environment. To this end, the conditions and manner in which economic and other activities are pursued shall be established by law. [...]	Guarantees the right to a healthy living environment and obligates the state to actively promote this right by regulating economic and other activities.
Somalia (2012)	Chapter 2. Fundamental Rights and Duties of the Citizen, Title Two. Rights, Basic Personal Liberties and Limitations  <a href="#">Article 25(1)</a>	Every person has the right to an environment that is not harmful to their health and well-being, and to be protected from pollution and harmful materials.	Links the right to a healthy environment with protection from pollution and harmful substances.

## Environmental rights and responsibilities



### Does the constitution obligate citizens to protect and improve the environment and to take responsibility for environmental damage they cause?

#### EXPLANATION

- Many constitutions impose environmental duties not only on the state and organizations but also on individuals and citizens. This highlights that environmental protection is a shared responsibility requiring active involvement from all sectors of society.
- Constitutions often frame citizens' constitutional duties as essential counterparts to individual rights and freedoms. The obligation to protect and improve the environment is also often framed as a moral imperative for every citizen to act as stewards of the environment. For example, constitutions may call on citizens to protect biodiversity, conserve natural resources, prevent ecological degradation and promote sustainable practices. This collective stewardship has a dimension of intergenerational responsibility, which emphasizes the duty to preserve the environment so that young people and future generations can not only survive but also thrive.
- In line with the 'polluter-pays principle' ([see question 33](#)), some constitutions require individuals to address and repair environmental damage they may have caused.

#### EXAMPLES

France (1958)	<p>Charter for the Environment <a href="#">Article 2</a></p> <p>***</p> <p><a href="#">Article 4</a></p>	<p>Each person has a duty to participate in preserving and enhancing the environment.</p> <p>***</p> <p>Each person shall be required, in the conditions provided for by law, to contribute to the making good of any damage he or she may have caused to the environment.</p>	<p>Imposes a duty on individuals to preserve and restore the environment, emphasizing personal responsibility for environmental damage.</p>
Bhutan (2008)	<p>Environment <a href="#">Article 5</a></p>	<p>Every Bhutanese is a trustee of the Kingdom's natural resources and environment for the benefit of the present and future generations and it is the fundamental duty of every citizen to contribute to the protection of the natural environment, conservation of the rich biodiversity of Bhutan and prevention of all forms of ecological degradation including noise, visual and physical pollution through the adoption and support of environment friendly practices and policies.</p>	<p>Mandates all Bhutanese citizens, as a fundamental duty, to act as stewards of natural resources and the environment for present and future generations, preserving biodiversity and preventing ecological harm.</p>
India (1949)	<p>Part IVA. Fundamental Duties <a href="#">Article 51A(g)</a></p>	<p>It shall be the duty of every citizen of India [...] g. to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures; [...]</p>	<p>Emphasizes citizens' duty to improve and protect the natural environment, and to show compassion for other living creatures.</p>

Sri Lanka (1978)	Chapter VI. Directive Principles of State Policy and Fundamental Duties <a href="#">Article 28(f)</a>	The exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations and accordingly it is the duty of every person in Sri Lanka [...] f. to protect nature and conserve its riches.	Links exercise of rights with fulfilment of duties, including the obligation to protect and conserve nature.
Seychelles (1993)	Chapter III. Part II. Fundamental Duties <a href="#">Article 40</a>	It shall be the duty of every citizen of Seychelles [...] f. to protect, preserve and improve the environment; [...]	Imposes a duty on citizens to actively protect, preserve and improve the environment.
Venezuela (1999)	Title III. Duties and Human Rights <a href="#">Article 127</a>	It is the right and duty of each generation to protect and maintain the environment for its own benefit and that of the world of the future. [...]	Emphasizes an intergenerational duty to protect and maintain the environment for current and future generations.
Uganda (1995)	Chapter 3. Citizenship <a href="#">Article 17(1)(j)</a>	It is the duty of every citizen of Uganda [...] j. to create and protect a clean and healthy environment.	Obligates every citizen to contribute to creating and protecting a healthy environment.
Romania (1991)	Title II. Fundamental Rights and Duties <a href="#">Article 35</a>	1. The State recognizes the right of every person to a healthy, well-preserved and balanced environment [...] 3. Natural and legal persons have a duty to protect and improve the environment.	Establishes the right to a healthy environment and a duty for individuals and organizations to protect and improve it.
Argentina (1853)	Part 1, Chapter II. New Rights and Guarantees <a href="#">Article 41</a>	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, and have the duty to preserve the environment. Environmental damage shall generate as a priority the obligation to repair it under the terms that the law shall establish. [...]	Establishes both a right to a balanced environment and an obligation to repair environmental damage, with legal enforcement by the state.



## Environmental rights and responsibilities



### Does the constitution recognize and promote procedural environmental rights such as the rights to access information, participation, and access to justice in environmental matters?

#### EXPLANATION

- Procedural rights are important tools for enforcing the substantive right to a healthy environment, increasing public involvement in environmental protection. They promote transparency and accountability in environmental law making and decision making, and in doing so they compel state and private compliance with environmental laws (Boyd 2012).
- Procedural rights typically include rights to information, participation and access to justice in environmental matters.
- The right to **access information** means that the public are entitled to request and receive environmental information held by public authorities. Environmental information includes details on the state of the environment, public policies or other measures impacting the environment, and the impact of environmental factors on public health and safety.
- The right to **public participation** in environmental decision making promotes meaningful engagement of the public and environmental organizations in discussions on plans, programmes and laws impacting the environment. This right is particularly important for Indigenous peoples and local communities, whose health, livelihoods and well-being can be greatly impacted by activities affecting the areas in which they live. This is especially true for extractive industries ([see questions 8, 22 and 23](#)).
- The ability to seek legal recourse gives people a way to challenge acts, omissions and decisions that violate their rights, including the right to a healthy environment. **Access to justice** encompasses issues relating to legal standing (the right to bring a legal case), right to equal protection of the law and right to effective remedies, including compensation and/or injunctive relief ([see question 34](#)).
- Other procedural rights, such as the right to just administrative action, may also be leveraged to promote environmental protection. For example, this right may allow a citizen to challenge an environmental impact assessment ([see question 24](#)) if it was not conducted in a lawful, reasonable or procedurally fair way.

#### EXAMPLES

France (1958)	Charter for the Environment <a href="#">Article 7</a>	Each person has the right, in the conditions and to the extent provided for by law, to have access to any information pertaining to the environment in the possession of public bodies and to participate in the public decision-making process likely to affect the environment.	Establishes a right to environmental information and participation in environmental decision making.
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Moldova (1994)	Right to a Healthy Environment (Information), Chapter II <a href="#">Article 37</a>	[...] (2) The State guarantees every citizen the right of free access to truthful information regarding the state of the natural environment, the living and working conditions, and the quality of food products and household appliances. (3) Non-disclosure or falsification of information regarding factors detrimental to human health constitute offenses punishable by law. [...]	Protects the right to seek and disseminate accurate information about the state of the environment.  Explicitly prohibits the concealment or forgery of information pertaining to factors that pose risks to human health, reinforcing transparency and accountability in matters affecting public well-being.
Azerbaijan (1995)	Second Part. Major Rights, Freedoms and Responsibilities, Chapter III. Principal Human Rights and Civil Liberties <a href="#">Article 39(II)</a>	Everyone has the right to collect information on the environmental situation and to get compensation for damage rendered to the health and property due to the violation of ecological rights.	Establishes the right to access environmental information and advances access to justice by entitling a person to seek compensation for damage to health or property because of violations to ecological rights.
Ethiopia (1994)	Environmental Objectives <a href="#">Article 92(3)</a>	People have the right to full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affect them directly.	Outlines the right for directly impacted people to participate in the planning and implementation of environmental policies and projects.
Turkmenistan (2008)	Section II. Rights, Freedoms and Duties of a Person and a Citizen of Turkmenistan <a href="#">Article 53</a>	Everyone shall have the right to enabling environment for life and health, credible information on its state, compensation of damage caused to health and property as a result of violation of environmental law or natural disasters. [...]	Highlights the right to a healthy environment and access to reliable information about the state of the environment. It also grants the right to seek compensation for harm caused by environmental law violations or natural disasters.
Georgia (1995)	Chapter Two. Fundamental Human Rights <a href="#">Article 29</a>	1. Everyone has the right to live in a healthy environment and enjoy the natural environment and public space. Everyone has the right to receive full information about the state of the environment in a timely manner. [...] The right to participate in the adoption of decisions related to the environment shall be ensured by law. [...]	Underscores the fundamental right to a healthy environment and access to comprehensive environmental information. Guarantees the right to public participation in environmental decision making.
Kenya (2010)	Enforcement of Environmental Rights, Chapter 5, Part 2 (Access to Justice / Standing) <a href="#">Article 70(1) and (3)</a>	1. If a person alleges that a right to a clean and healthy environment [...] is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available [...] 3. For the purposes of this Article, an applicant does not have to demonstrate that any person has incurred loss or suffered injury.	Ensures enforcement of environmental rights, including pre-emptive protection if the right to a healthy environment is likely to be infringed. Importantly, the complainant does not have to show actual loss or injury.

South Africa (1996)	Just Administrative Action  <a href="#">Article 33</a>	<ol style="list-style-type: none"> <li>1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.</li> <li>2. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.</li> <li>3. National legislation must be enacted to give effect to these rights, and must- <ol style="list-style-type: none"> <li>a. provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;</li> <li>b. impose a duty on the state to give effect to the rights in subsections (1) and (2); and</li> <li>c. promote an efficient administration.</li> </ol> </li> </ol>	Establishes the right to review an allegedly unfair administrative action, allowing a procedural remedy for actions or omissions impacting people's rights, including environmental rights.
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## Environmental rights and responsibilities



### Does the constitution recognize Indigenous peoples' rights to collective ownership of land, to protection of their territories, and to manage and conserve natural resources?\*

#### EXPLANATION

- The relationship between Indigenous peoples and their lands is deeply interconnected, with political, social, cultural, spiritual and religious dimensions.
- Indigenous peoples' stewardship of land is informed by generations of sustainable resource management and practices which have contributed significantly to biodiversity conservation (Fa et al. 2020).
- International law protects Indigenous peoples' collective rights to land and the right to self-determination through key legal instruments such as the 1989 Indigenous and Tribal Peoples Convention (No. 169) and the 2007 UN Declaration on the Rights of Indigenous Peoples.
- Some constitutions also recognize the critical link between Indigenous land ownership and environmental protection. They mandate the protection of Indigenous lands, emphasize the role of Indigenous peoples in conserving natural resources, grant authority to Indigenous communities to manage and safeguard these resources, and ensure that their traditional lifestyles are preserved and respected.

#### EXAMPLES

Brazil (1988)	Chapter VIII. Indians  <a href="#">Article 231</a>	The social organization, customs, languages, creeds and traditions of Indians are recognized, as well as their original rights to the lands they traditionally occupy. The Union has the responsibility to delineate these lands and to protect and ensure respect for all their property. 1. Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those indispensable for the preservation of environmental resources necessary for their well-being and those necessary for their physical and cultural reproduction, according to their uses, customs and traditions. 2. The lands traditionally occupied by Indians are destined for their permanent possession, and they shall be entitled to the exclusive usufruct of the riches of the soil, rivers and lakes existing thereon [...].	Mandates state protection of Indigenous lands for their 'permanent possession', recognizing the links between Indigenous ownership and the preservation of natural resources.
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\* See International IDEA's [Indigenous Peoples' Rights in Constitutions Assessment Tool](#) for all questions related to this topic.

Bolivia (2009)	<p>Part IV. Economic Structure and Organization of the State, Title II. Environment, Natural Resources, Land and Territory, Chapter IX. Land and Territory</p> <p><a href="#">Article 403</a></p>	<p>I. The integrity of rural native indigenous territory is recognized, which includes the right to land, to the use and exclusive exploitation of the renewable natural resources under conditions determined by law, to prior and informed consultation, to participation in the benefits of the exploitation of the non-renewable natural resources that are found in their territory, to the authority to apply their own norms, administered by their structures of representation, and to define their development pursuant to their own cultural criteria and principles of harmonious coexistence with nature. The rural native indigenous territories may be composed of communities.</p> <p>II. The rural native indigenous territory includes areas of production, areas of exploitation and conservation of natural resources, and spaces for social, spiritual and cultural reproduction. The law shall establish the procedure for recognition of these rights.</p>	<p>Recognizes the integrity of rural native Indigenous territories, encompassing their rights to land use and exclusive exploitation of renewable natural resources (under legal conditions), prior and informed consultation, participation in benefits from non-renewable resource exploitation and self-administration according to their cultural norms. Acknowledges the multifaceted use of these territories for production, resource conservation and cultural purposes, requiring the creation of legal procedures for recognizing these rights.</p>
	<p>***</p> <p>Part III. Structure and Organization of the State Territories, Title I. Territorial Organization of the State, Chapter VIII. Distribution of Authority</p> <p><a href="#">Article 304</a></p>	<p>***</p> <p>I. The rural native indigenous autonomies shall exercise the following exclusive authorities: [...]</p> <p>3. Management and administration of renewable natural resources, in accord with the Constitution.</p> <p>4. Elaboration of Plans of Land Regulation and land use, in coordination with the plans at the central State, departmental and municipal levels. [...]</p> <p>7. Administration and preservation of protected areas within their jurisdiction, within the framework of the policy of the State. [...]</p> <p>22. Preservation of the habitat and the landscape, in accordance with its principles, norms, and cultural, technological, special and historical practices [...].</p> <p>III. The rural native indigenous autonomies may exercise the following concurrent authority: [...]</p> <p>3. Conservation of forestry resources, biodiversity and the environment.</p> <p>4. Irrigation systems, hydraulic resources, sources of water and energy, within the framework of State policy, within their territory. [...]</p> <p>9. Control and socio-environmental monitoring of the activities of hydrocarbon and mining activities carried out in their jurisdiction. [...]</p> <p>IV. The resources necessary for carrying out their responsibilities shall be transferred automatically by the Pluri-National State in accordance with the law.</p>	<p>***</p> <p>Grants rural native Indigenous autonomies exclusive authorities over the management and administration of renewable natural resources, land regulation and protected areas. It also provides concurrent powers (exercised simultaneously by the federal state and rural native Indigenous autonomies) for conserving forestry resources, biodiversity, water resources, and overseeing socio-environmental monitoring of extractive industries within their jurisdiction.</p> <p>Requires the state to automatically transfer resources necessary for these responsibilities.</p>



Ecuador (2008)	<p>Title II. Rights, Chapter 4. Rights of Communities, Peoples and Nations</p> <p><a href="#">Article 57</a></p>	<p>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: [...]</p> <p>4. To keep ownership, without subject to a statute of limitations, of their community lands, which shall be unalienable, immune from seizure and indivisible. These lands shall be exempt from paying fees or taxes.</p> <p>5. To keep ownership of ancestral lands and territories and to obtain free awarding of these lands.</p> <p>6. To participate in the use, usufruct, administration and conservation of natural renewable resources located on their lands. [...]</p> <p>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. [...]</p> <p>12. To uphold, protect and develop collective knowledge; their science, technologies and ancestral wisdom; the genetic resources that contain biological diversity and agricultural biodiversity; their medicine and traditional medical practices, with the inclusion of the right to restore, promote, and protect ritual and holy places, as well as plants, animals, minerals and ecosystems in their territories; and knowledge about the resources and properties of fauna and flora.</p> <p>All forms of appropriation of their knowledge, innovations, and practices are forbidden.</p>	<p>Guarantees Indigenous communes, communities, peoples and nations the ownership of their community lands, which are inalienable, immune from seizure and indivisible.</p> <p>Protects Indigenous peoples' rights to use, administer and conserve natural resources on their lands and acknowledges their traditional practices of managing biodiversity and natural resources.</p> <p>Protects the collective knowledge, traditional medical practices and the right to restore and protect sacred sites, plants, animals and ecosystems, prohibiting the appropriation of Indigenous knowledge, innovations and practices.</p>
Paraguay (1992)	<p>Part I. Fundamental Declarations of the Rights, Duties, Guarantees, Chapter V. Indigenous Peoples</p> <p><a href="#">Article 64</a></p>	<p>The Indigenous peoples have the right to communal ownership of land sufficient both in terms of size and quality for the preservation and the development of their particular lifestyles. The State will provide them gratuitously with these lands, which will be non-seizable, indivisible, non-transferrable, imprescriptible, not susceptible to guarantee contractual obligations nor to be leased; likewise, they will be exempt from taxes.</p> <p>The removal or transfer of [the indigenous peoples] from their habitat without their express consent is prohibited.</p>	<p>Acknowledges communal ownership of Indigenous lands and prohibits government contracting on Indigenous territories.</p> <p>Prohibits the removal or transfer of Indigenous people from their lands and territories without their consent.</p>

## Environmental rights and responsibilities



### Does the constitution recognize the rights of nature? Does the constitution specify who is entitled to take legal action to protect the environment?

#### EXPLANATION

- Environmental protection often takes a human-centred (or anthropocentric) perspective focusing on human needs and interests. Some constitutions take a nature-centred (or ecocentric) approach, reflecting the belief that nature (including ecosystems, plant life and animals) has intrinsic value beyond a collection of resources for human use.
- For example, the Constitution of Ecuador grants rights to Nature itself, and Bolivia guarantees the right to a healthy environment not only to humans but also to all living things and future generations.
- A growing number of legislative initiatives and court rulings have recognized rivers, mountains and glaciers as legal entities with their own rights (Kauffman 2021). These provisions underscore the interconnectedness of environmental and human well-being, and they provide a unique and potentially powerful avenue to enhance environmental protection.
- Safeguarding nature through rights-based protection encourages a re-examination of society's relationship with the natural environment. Using rights-based language may also increase the potential for enforceability. However, this approach raises questions about who is responsible for advocating on behalf of Nature.
- Some legal systems enable citizens to take legal action on behalf of the public to protect the environment and/or the rights of Nature, and others have specialist environmental prosecutors ([see questions 32 and 34](#)). In various regions, forests and rivers that have been granted legal personhood have been assigned guardians to advocate for their rights. For example, in New Zealand, the Whanganui River was granted legal personhood through the 2017 Te Awa Tupua Act. The river has two guardians: one from the state, and the other is from the local Indigenous group with customary rights and responsibilities in relation to the river (Eco Jurisprudence Monitor 2017).

#### EXAMPLES

Ecuador (2008)	Rights of Nature, Chapter 7 <a href="#">Article 71</a>	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.	Grants Nature rights and protections that all people and communities can legally defend. Emphasizes the need to respect and uphold the integrity and continuity of ecological systems.
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Ecuador (2008) (cont.)	<a href="#">Article 72</a>	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. [...]	Clarifies Nature's right to be not only respected but also restored. Distinguishes between the duty of restoration and the responsibility of compensating those impacted by environmental damage, reinforcing Nature's intrinsic worth.
Bolivia (2009)	Chapter V. Social and Economic Rights Section I. Environmental Rights  <a href="#">Article 33</a>	Everyone has the right to a healthy, protected, and balanced environment. The exercise of this right must be granted to individuals and collectives of present and future generations, as well as to other living beings, so they may develop in a normal and permanent way.	Establishes an individual and collective right to a healthy environment, including for future generations and for all living beings.
Nicaragua (1987)	Title IV. Rights, Duties and Guarantees of the Nicaraguan People, Chapter III. Social Rights  <a href="#">Article 60</a>	[...] The supreme and universal common good, and a precondition for all other goods, is mother earth; she must be loved, cared for, and regenerated. The common good of the earth and of humanity requires us to understand the earth as a living entity and subject of dignity. She belongs to the community of all which inhabit her and to the totality of the ecosystems. Earth forms together with humanity a unique complex identity; she lives and acts as a unique self-regulated system made up of physical, chemical, biological, and human components, which make it fit for the production and reproduction of life and which, for this reason, is our mother earth and our common home. [...].	While not conferring rights, recognizes Mother Earth as alive and entitled to dignity. Places human life in a complex state of interdependence with Mother Earth/Nature.
Brazil (1988)	Fundamental Rights and Guarantees, Title II, Chapter I. Individual and Collective Rights and Duties  <a href="#">Article 5(LXXIII)</a>	any citizen has standing to bring a popular action to annul an act injurious to the public patrimony [...], to the environment and to historic and cultural patrimony; except in a case of proven bad faith, the plaintiff is exempt from court costs and from the burden of paying the prevailing party's attorneys' fees and costs.	Grants legal standing to citizens for legal actions to challenge harmful acts to the environment.  By exempting plaintiffs from paying legal costs, this article advances access to justice and encourages citizen involvement in environmental protection.





# **III. State duties for environmental protection**

**Questions 10–16**

## State duties for environmental protection



### Does the constitution outline state duties to safeguard the environment, protect biodiversity and address environmental degradation?

#### EXPLANATION

- The state's duty to protect the environment obliges it to conserve, protect and remediate harm to the environment. This duty can be found in approximately 150 constitutions. State duties are often framed as directive principles—constitutional objectives anchored in values that guide legislative action (Weis 2017). Courts' approaches to interpreting these provisions vary: whether they are justiciable and legally enforceable, or should be the sole remit of the political branches rather than the judiciary (Babeck 2024).
- Constitutionalized state duties may encompass, for example, protecting biodiversity and fragile ecosystems, creating natural reserves and parks, eradicating pollution, and promoting the environmental quality of rural areas ([see questions 12, 13, 14 and 27](#)).

#### EXAMPLES

Bolivia (2009)	Environment, Title II, Chapter I <a href="#">Article 342</a>	It is the duty of the State and the population to conserve, protect and use natural resources and the biodiversity in a sustainable manner, as well as to maintain the equilibrium of the environment.	Highlights the obligation of the state and people to preserve, safeguard and use responsibly natural resources and biodiversity while ensuring sustainability.
Greece (1975)	Part 3. Organization and Functions of the State, Section I. Structure of the State <a href="#">Article 24(1)</a>	The protection of the natural and cultural environment constitutes a duty of the State and a right of every person. The State is bound to adopt special preventive or repressive measures for the preservation of the environment in the context of the principle of sustainable development. [...]	Provides for a state duty to protect the natural and cultural environment, requiring targeted measures to ensure environmental preservation within the framework of sustainable development.
Dominican Republic (2015)	Title II. Fundamental Rights, Guarantees and Duties, Chapter I. Fundamental Rights, Section IV. Collective Rights and the Environment <a href="#">Article 67(5)</a>	The public powers shall prevent and control the factors of environmental degradation, shall impose the legal sanctions, the objective responsibility for damages caused to the environment and to the natural resources, and shall demand their repair. Additionally, they shall cooperate with other nations in the protection of the ecosystems for the length of the maritime and land borders.	Requires the state to prevent and control causes of environmental degradation, imposing legal sanctions for environmental harm and promoting international cooperation in protecting ecosystems.



Türkiye (1982)	III. Exploration and Exploitation of Natural Resources, A. Protection and Development of Forests <a href="#">Article 169</a>	The State shall enact the necessary legislation and take the measures required for the protection and extension of forests. Burnt forest areas shall be reafforested; other agricultural and stockbreeding activities shall not be allowed in such areas. All forests shall be under the care and supervision of the State.	Mandates that the State legislate to protect and expand forests, requiring reforestation of burnt areas and prohibiting other activities on such lands.
Somalia (2012)	Chapter 3. Land, Property, and Environment, Environment <a href="#">Article 45</a>	3. The Federal Government and the governments of the Federal Member States affected by environmental damage shall: a. Take urgent measures to clean up hazardous waste dumped on the land or in the waters of the Federal Republic of Somalia; b. Enact legislation and adopt urgent necessary measures to prevent the future dumping of waste in breach of international law and the sovereignty of the Federal Republic of Somalia; c. Take necessary measures to obtain compensation from those responsible for any dumping of waste, whether they are in the Federal Republic of Somalia or elsewhere; d. Take necessary measures to reverse desertification, deforestation and environmental degradation, and to conserve the environment and prevent activities that damage the natural resources and the environment of the nation.	Requires the federal and state governments to take swift action to clean up existing hazardous waste, prevent future dumping, and pursue compensation from offenders, while also reversing desertification and deforestation.
Ethiopia (1994)	Economic Objectives, Chapter X <a href="#">Article 89(3)</a>	Government shall take measures to avert any natural and man-made disasters, and, in the event of disasters, to provide timely assistance to the victims.	Obligates the state to prevent and respond to natural and human-made disasters and to provide aid to those impacted.
Zambia (1991)	Part XIX. Land, Environment and Natural Resources, Environment and Natural Resources <a href="#">Article 257</a>	The State shall, in the utilisation of natural resources and management of the environment– a. protect genetic resources and biological diversity; b. implement mechanisms that minimise waste; c. promote appropriate environment management systems and tools; d. encourage public participation; e. protect and enhance the intellectual property in, and Indigenous knowledge of, biodiversity and genetic resources of local communities; f. ensure that the environmental standards enforced in Zambia are of essential benefit to citizens; and g. establish and implement mechanisms that address climate change.	Outlines various state duties related to the use of natural resources, protection of biological diversity and management of the environment.

## State duties for environmental protection



### Does the constitution include commitments to forest cover with minimum thresholds to contribute to environmental protection?

#### EXPLANATION

- Forests are important ecosystems that play a critical role in environmental protection, including through improving air quality, preventing soil erosion and enhancing resilience to climate change.
- Several constitutions have recognized the necessity of safeguarding forests through constitutional provisions mandating a specific percentage of tree coverage in the state. As it provides a clear and quantifiable target, this type of commitment is notably more precise than many other constitutional provisions. This precision can help reduce disagreements and ambiguities regarding fulfilment of this constitutional obligation.
- Although currently uncommon, future reforms may increasingly add provisions with fixed targets for environmental protection to meet a state's international climate change obligations.

#### EXAMPLES

Kenya (2010)	Chapter 5. Land and Environment, Part 2. Environment and Natural Resources, Obligations in Respect of the Environment  <a href="#">Article 69(1)(b)</a>	The State shall [...] b. work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya; [...].	Mandates the state to strive for and sustain tree cover of no less than 10 per cent of the country's total land area.
Bhutan (2008)	Environment  <a href="#">Article 5(3)</a>	The Government shall ensure that, in order to conserve the country's natural resources and to prevent degradation of the ecosystem, a minimum of sixty percent of Bhutan's total land shall be maintained under forest cover for all time.	Requires the state to guarantee that a minimum of 60 per cent of the country's total land area will be permanently covered by forests to conserve natural resources and prevent ecosystem degradation.
Haiti (1987)	Title IX. Chapter II. The Environment  <a href="#">Article 253-1</a>	As long as the forest coverage remains below 10% of the national territory, measures of exception must be taken with a view of working to the restoration of the ecological equilibrium.	Stipulates that the state must take exceptional measures to ensure that forest coverage is above 10 per cent of the national territory.

## State duties for environmental protection



### Does the constitution contain protections for fragile and threatened ecosystems or ecosystems of special importance?

#### EXPLANATION

- Due to their unique ecological characteristics, certain geographic areas play an outsized role in conserving biodiversity and maintaining ecological balance, both within a state and globally.
- By recognizing such areas—such as regions rich in biodiversity or situated on migratory paths of animals—constitutions can promote appropriate levels of protection, ecologically sound planning and an appreciation for these ecosystems' aesthetic beauty and cultural significance.
- In states with Indigenous communities, who often depend on and steward lands with significant biodiversity, constitutional protection can further protect these ecosystems through affirming Indigenous ecological knowledge and land management practices ([see question 8, 13 and 23](#))

#### EXAMPLES

Dominican Republic (2015)	Title I. On the Nation, the State, its Government and its Fundamental Principles, Chapter IV. On Natural Resources  <a href="#">Article 15</a>	The high watersheds of the rivers and the zones of endemic, native and migratory biodiversity, are subjects of special protection by the public powers in order to guarantee their management and preservation as fundamental assets of the Nation. [...]	Outlines the state's responsibility to manage and preserve specially protected areas, ensuring the sustainable use of water resources and the protection of biodiversity as fundamental assets.
Ecuador (2008)	Title V. Territorial Organization of the State, Chapter 2. Organization of the Territory  <a href="#">Article 250</a>  ***  Title V. Territorial Organization of the State, Chapter 3. Decentralized Autonomous Governments and Special Systems  <a href="#">Article 258</a>	The territory of the Amazon provinces is part of an ecosystem that is necessary for the planet's environmental balance of the planet. This territory shall constitute a special territorial district, for which there will be integrated planning embodied in a law including social, economic, environmental and cultural aspects, with land use development and planning that ensures the conservation and protection of its ecosystems and the principle of sumak kawsay (the good way of living).  ***  The province of Galapagos shall have a special system of government. Its planning and development shall be organized on the basis of strict adherence to the principles of conservation of the natural heritage of the State and the good way of living, pursuant to the law [...]. For the protection of the special district of Galapagos, the rights to internal migration, work or any other activity, whether public or private, which might affect the environment, shall be restricted. [...]	Designates the territory of the Amazon provinces as essential for the global environmental balance, mandating integrated planning that encompasses social, economic, environmental and cultural aspects.  ***  Creates a special system of governance—the Governing Council—for the Galapagos Islands for its conservation as part of the state's natural heritage. Allows restriction of rights and certain public or private activities in the special district that might impact the environment.

Brazil (1988)	Title VIII. The Social Order, Chapter VI. The Environment <a href="#">Article 255(4)</a>	The Brazilian Amazonian Forest, the Atlantic Forest, the Serra do Mar, the Pantanal of Mato Grosso, and the Coastal Zone are part of the national patrimony, and they shall be utilized, as provided by law, under conditions assuring preservation of the environment, including use of natural resources.	Declares several ecological regions, including rainforest, tropical wetland and coastal zones as part of the national patrimony. Restricts use under conditions that preserve the environment and natural resources.
Egypt (2014)	Chapter Two. Basic Components of Society, Section Two. Economic Components <a href="#">Article 44</a>	The state commits to protecting the Nile River, maintaining Egypt's historic rights thereto, rationalizing and maximizing its benefits, not wasting its water or polluting it. The state commits to protecting its groundwater, to adopting methods appropriate to achieve water safety, and to supporting scientific research in this field. Every citizen has the right to enjoy the Nile River. It is prohibited to encroach upon it or to harm the river environment. The state guarantees to remove encroachments thereon. The foregoing is regulated by law.	Commits to protecting the Nile, including from pollution, overuse and encroachment, and guarantees citizens the right to enjoy the river. Promotes scientific research for protecting groundwater and water safety.
Switzerland (1999)	Title Three. Confederation, Cantons and Communes, Chapter 2. Powers, Section 4. Environment and Spatial Planning <a href="#">Article 78(5)</a>	Moors and wetlands of special beauty and national importance shall be preserved. No buildings may be built on them and no changes may be made to the land, except for the construction of facilities that serve the protection of the moors or wetlands or their continued use for agricultural purposes.	Restricts construction on and land alterations to moors and wetland areas, except for facilities that aid their protection or for continuing (not new) agricultural purposes.

## State duties for environmental protection



### Does the constitution contain provisions establishing protected areas for nature and wildlife?

#### EXPLANATION

- Natural reserves, parks and protected areas conserve natural habitats and unique biodiversity. They also have culture and heritage significance, encouraging the fulfilment of the right to a healthy environment and providing educational opportunities on the importance of environmental stewardship ([see questions 5 and 28](#)).
- However, in some instances, the establishment of protected areas has undermined human rights by closing off areas traditionally frequented by nomadic peoples or by encroaching on the ancestral lands of Indigenous communities, undermining their culture and rights to land, subsistence livelihoods and self-determination.
- The UN Special Rapporteur on the Rights of Indigenous Peoples (SRIP) has called on states to adopt a human rights-based approach to the creation, expansion and management of protected areas. This includes ensuring that Indigenous peoples retain the right to access and use their lands and resources in accordance with their world view. States must also comply with international law by expanding protected areas to overlap with Indigenous territories only with the free, prior and informed consent of the affected Indigenous peoples (UN SRIP 2022) ([see question 23](#)).

#### EXAMPLES

Portugal (1976)	Part I. Fundamental Rights and Duties, Title III. Economic, Social and Cultural Rights and Duties, Chapter II. Social Rights and Duties <a href="#">Article 66(2)(c)</a>	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: [...] 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; [...]	Charges the state to create parks and natural/recreational reserves to conserve nature and protect cultural assets under the framework of sustainable development. Requires citizens' involvement and participation in the creation of reserves and parks.
Uganda (1995)	National Objectives and Directive Principles of State Policy, The Environment <a href="#">Article XXVII(iv)</a>	The State, including local governments, shall- a. create and develop parks, reserves and recreation areas and ensure the conservation of natural resources; [...]	Obligates state and local government to establish parks with the aim of conserving natural resources.

Angola (2010)	<p>Title II. Fundamental Rights and Duties, Chapter II. Fundamental Rights, Freedoms and Guarantees, Section II. Guarantee of Fundamental Rights and Freedoms</p> <p><a href="#">Article 95(1)(g)</a></p>	<p>1. The following shall constitute property in the public domain: [...]</p> <p>g. Areas of land reserved for the protection of the environment, specifically parks and nature reserves for the preservation of wild flora and fauna, and their infrastructures; [...]</p>	<p>Declares that land reserved for environmental protection, particularly for the preservation of flora and fauna, will be considered property in the public domain.</p>
Egypt (2014)	<p>Chapter Two. Basic Components of Society, Section Two. Economic Components</p> <p><a href="#">Article 45</a></p>	<p>The state commits to protecting its seas, beaches, lakes, waterways, groundwater, and natural reserves. It is prohibited to encroach upon, pollute, or use them in a manner that contradicts their nature. Every citizen has the right to enjoy them as regulated by law. [...]</p>	<p>Lists natural areas subject to state protection, including natural reserves. Prohibits encroachment on, pollution of and misuse of these areas.</p>
Dominican Republic (2010)	<p>Title I. Of the Nation, of the State, of Its Government and of Its Fundamental Principles, Chapter IV. Of the Natural Resources</p> <p><a href="#">Article 16</a></p>	<p>Wildlife, the conservation units that make up the National System of Protected Areas and the ecosystems and species that they contain constitute patrimonial assets of the Nation and are inalienable, imprescriptible, and not subject to seizure. The limits of the protected areas may only be reduced by law with the approval with two thirds of the votes of the members of the chambers of the National Congress.</p>	<p>Emphasizes the significance of wildlife and conservation areas as national assets. Establishes high legislative voting threshold for reducing the boundaries of protected areas.</p>
Bhutan (2008)	<p>Environment</p> <p><a href="#">Article 5(5)</a></p>	<p>Parliament may, by law, declare any part of the country to be a National Park, Wildlife Reserve, Nature Reserve, Protected Forest, Biosphere Reserve, Critical Watershed and such other categories meriting protection.</p>	<p>Permits the legislature to declare any part of the state to be a protected area.</p>

## State duties for environmental protection



### Does the constitution regulate pollution and waste management, including hazardous waste?

#### EXPLANATION

- Pollution impacts human health and the environment by damaging ecosystems and endangering clean air, soil and water. Environmental contamination is a major cause of illness and premature death. It contributes to approximately nine million deaths per year, with over one million people dying annually from diseases attributable to a lack of safe and clean water (World Health Organization [WHO] 2023). Air pollution, caused by activities such as energy production, industrial processes and transport, causes grave impacts on wildlife and food production, and it is a transboundary issue necessitating international coordination and cooperation ([see question 35](#)).
- Many constitutions limit or forbid certain types of hazardous waste or waste management. Nuclear waste is of particular concern, with many constitutions specifically banning the importation or storage of toxic waste.
- As the world's population grows, efforts are needed to ensure that pollution does not rise exponentially. The key to this is reducing unsustainable patterns of consumption ([see question 17](#)), ensuring rational use of natural resources ([see questions 3 and 19](#)) and promoting renewable energy and clean technologies ([see question 20](#)).

#### EXAMPLES

Republic of the Congo (2015)	Title II. Fundamental Rights, Guarantees and Duties, Chapter I. Fundamental Rights, Section IV. Collective Rights and the Environment  <a href="#">Article 43</a>	The transit, the importation, the storage, landfill, [and] dumping in the continental waters and the maritime spaces under national jurisdiction, the expanding in the airspace of toxic wastes, pollutants, radioactive [matter] or of any other dangerous product, originating or not from abroad, constitute crimes punished by the law.	Criminalizes transit, importation, storage, landfill and dumping in national waters of toxic or radioactive wastes and other hazardous materials.
Côte d'Ivoire (2016)	Title I. Rights, Freedoms and Duties, Chapter One. Rights and Freedoms  <a href="#">Article 27</a>	[...] The transit, importation or illegal storage and dumping of toxic waste on the national territory constitute crimes that are not subject to any statute of limitations.	Forbids the transit, introduction, illegal storage or dumping of toxic waste, subject to criminal penalty without statute of limitations.
Dominican Republic (2015)	Title II. On Fundamental Rights, Guarantees and Duties, Chapter I. Fundamental Rights, Section IV. On Collective Rights and the Environment  <a href="#">Article 67</a>	Preventing contamination, protecting and maintaining the environment for the enjoyment of present and future generations constitute duties of the State. Consequently: [...] 2. The introduction, development, production, tenancy, commercialization, transportation, storage, and use of chemical, biological, nuclear, and agro-chemical weapons that are internationally banned is prohibited, as well as nuclear residues and toxic and dangerous waste. [...]	Prohibits nuclear, toxic and hazardous waste and the handling or use of illegal chemical, biological, nuclear and agrochemical weapons as part of the state duty to prevent pollution.



## State duties for environmental protection



### Does the constitution address disaster risk reduction and response?

#### EXPLANATION

- A state's level of preparedness affects its capacity to mitigate and minimize the impacts of disasters, including natural disasters and epidemics caused by zoonotic spillover ([see question 27](#)).
- As adverse weather events—such as floods, cyclones, hurricanes and wildfires—become more frequent and severe due to climate change (UN 2021), constitutions may play a role in enhancing a state's resilience to natural disasters. This can take the form of plans, policies and institutions to protect people and the environment in the aftermath of a disaster.
- Constitutional provisions may also address issues related to decentralization in environmental protection ([see question 26](#)), delineating the roles and responsibilities of local, regional and national governments in mitigating damage, aiding impacted populations and providing ad hoc funding in the event of a catastrophe.

#### EXAMPLES

Ecuador (2008)	<p>Title VII. The Good Way of Living System, Chapter 2. Biodiversity and Natural Resources, Section 1. Nature and the Environment</p> <p><a href="#">Article 397(5)</a></p> <p>***</p> <p><a href="#">Article 389</a></p>	<p>[...] To guarantee the individual and collective right to live in a healthy and ecologically balanced environment, the State pledges: [...]</p> <p>5. To establish a national prevention, risk management and natural disaster system based on the principles of immediateness, efficiency, precaution, responsibility and solidarity.</p> <p>***</p> <p>The State shall protect persons, communities and nature against the adverse impacts of natural or manmade disasters by risk prevention, disaster mitigation, restoration and improvement of social, economic and environmental conditions, for the purpose of minimizing the condition of vulnerability.</p> <p>The national decentralized system for risk management is comprised of risk management units from all local, regional, and national public and private institutions. The State shall exercise leadership of the technical body established by law. It shall have the following main duties, among others:</p> <ol style="list-style-type: none"> <li>1. To identify existing and potential internal and external risks affecting the territory of Ecuador.</li> <li>2. To generate, democratize the access to and disseminate information that is sufficient and timely to adequately manage risk.</li> <li>3. To ensure that all public and private institutions obligatorily incorporate risk management as a cross-cutting issue in their planning and management.</li> </ol>	<p>Outlines state responsibility to establish a national prevention, risk management and natural disaster system.</p> <p>***</p> <p>Affirms state responsibility to protect people and communities from the impact of disasters, including by minimizing socio-economic conditions causing vulnerability.</p> <p>Establishes a technical body to coordinate decentralized risk management across the state, with a multifaceted mandate to: identify and manage risks; produce and disseminate relevant information; ensure risk management is incorporated in all planning in both public and private institutions; build capacity to identify and reduce risk; mandate coordination of institutions to prevent,</p>
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Ecuador (2008) (cont.)		<p>4. To build up among the citizenry and in public and private institutions capacities to identify risks that are inherent to their respective spheres of action, to report about them and incorporate actions aimed at reducing them.</p> <p>5. To articulate institutions so they will coordinate actions to prevent and mitigate risks, as well as address them, recover and improve conditions prior to the occurrence of the emergency or disaster.</p> <p>6. To undertake and coordinate the actions needed to reduce vulnerabilities and prevent, mitigate, tackle and recover from possible adverse impacts stemming from disasters or emergencies on the country's territory.</p> <p>7. To guarantee sufficient and timely funding to ensure functioning of the System and to coordinate international cooperation aimed risk management.</p>	mitigate and recover from disaster; pre-emptively reduce vulnerabilities; and guarantee funding for the system and coordinate international cooperation.
	<p>***</p> <p>Title V. Territorial Organization of the State, Chapter 5. Economic Resources</p> <p><a href="#">Article 273</a></p>	<p>***</p> <p>[...] Only in the case of a catastrophe may there be discretionary, non-permanent allocations to decentralized autonomous governments.</p>	<p>***</p> <p>Provides for an ad hoc budget allocation to decentralized autonomous governments in the case of disaster.</p>
Nepal (2015)	<p>Part 4. Directive Principles, Policies and Responsibilities of the State</p> <p><a href="#">Article 51(g)(9)</a></p>	The State shall formulate and pursue a policy of designing a pre-warning system, disaster preparedness, rescue, relief works and rehabilitation in order to minimize the risks of natural disasters.	Obliges the state to formulate and pursue a policy of disaster risk reduction, preparedness and relief.
Brazil (1988)	<p>Chapter VIII. Indians</p> <p><a href="#">Article 231(5)</a></p>	Removal of indigenous groups from their lands is prohibited except by referendum of the National Congress, in the event of a catastrophe or epidemic that places the population at risk or in the interest of national sovereignty, after deliberation of the National Congress, guaranteeing, under all circumstances, immediate return as soon as the risk ceases.	Puts safeguards in place to ensure that Indigenous peoples can return to their lands as soon as possible after displacement following a disaster or epidemic.
Bolivia (2009)	<p>Part I. Fundamental Bases of the State: Rights, Duties and Guarantees, Title II. Fundamental Rights and Guarantees, Chapter V. Social and Economic Rights, Section II. Right to Health and Social Security</p> <p><a href="#">Article 407(4)</a></p>	To protect agricultural and agro-industrial production from natural disasters and inclement climate, and geological catastrophes. The law shall provide for the creation of agricultural insurance.	Mandates the creation of agricultural insurance in anticipation of impacts on the industry and livelihoods from natural disasters and adverse weather.
Oman (1996)	<p>The Social Principles</p> <p><a href="#">Article 12</a></p>	[...] The State guarantees aid for the Citizen and his family in cases of emergency [...] The State shall work for the solidarity of the Society in bearing the burdens resulting from national disasters and catastrophes. [...]	Promotes solidarity and guarantees state aid to people in the event of a disaster.

# State duties for environmental protection



## Does the constitution address climate change and strategies for mitigation and adaptation?

### EXPLANATION

- As one of the most pressing issues of our time, constitutions are increasingly incorporating strategies to mitigate and adapt to the effects of climate change.<sup>4</sup> Mitigation seeks to reduce greenhouse gas emissions in an effort to slow down and limit the severity of climate change. Examples of mitigation include transitioning to renewable sources of energy (e.g. solar, wind and hydropower), establishing sustainable land use and farming practices, reforestation and reducing waste.
- Climate change adaptation involves ‘adjustments in ecological, social or economic systems’ to better cope with current and predicted climate change risks (UNFCCC n.d.). Examples of adaptation include building sea walls and protection dams to reduce flooding and increasing tree cover in cities to reduce heat. Adaptation extends beyond infrastructure to include efforts such as raising the capacity of healthcare systems to handle increasing numbers of heatstroke cases and developing climate-resilient crops.
- Both mitigation and adaptation are necessary to confront current and future challenges, but policies need to be designed and implemented in a coordinated and synergistic way to ensure they work together effectively and do not undermine each other (UNFCCC 2022).
- States have constitutionalized mitigation and adaptation by establishing extended goals to reduce greenhouse gas emissions, protect the most vulnerable populations, use resources in a sustainable way, require adaptive land use policies and establish and implement mechanisms and bodies to address climate change.
- For some states, climate change is an existential threat. In 2023, Tuvalu, facing the impacts of rising sea levels, became the first country to constitutionally assert its permanent and perpetual statehood in the event of territory loss due to climate change.

### EXAMPLES

Tuvalu (2023)	Part 1, The State and the Constitution, Tuvalu Statehood	The State of Tuvalu within its historical, cultural, and legal framework shall remain in perpetuity in the future, notwithstanding the impacts of climate change or other causes resulting in loss to the physical territory of Tuvalu [...]	Declares the permanent existence of the state of Tuvalu in contemplation of potential territory loss due to climate change.
	<a href="#">Article 2(1)</a> <a href="#">Article 2(5)</a>	Tuvalu is committed to: (a) Protecting and conserving its land area, territorial waters and airspace [...] and retaining its Statehood [...]; (b) Responding to climate change, which threatens the security and survival of its people and its land.	Commits the state to responding to climate change, protecting its territory and conserving its statehood.

4 Other important terms and concepts related to climate change can be found in United Nations Development Programme (UNDP) 2023.

Tuvalu (2023) (cont.)	<a href="#">Article 2(6)</a>	The commitment of Tuvalu to responding to the threat of climate change recognises all relevant regional and international law relating to climate change mitigation and adaptation, as well as the common but differentiated responsibilities of all States, sectors, organisations and individuals and the need for international co-operation to address climate change and to protect those that are most affected.	Recognizes relevant regional and international law relating to climate change mitigation and adaptation and the need for international cooperation to address climate change and protect the most impacted people. Further constitutionalizes the international environmental law principle of 'common but differentiated responsibilities' of states and other actors to combat climate change.
Luxembourg (1868)	Section 4. Constitutional Objectives  <a href="#">Article 41</a>	[...] The State is committed to combating climate change and working towards climate neutrality. [...]	Outlines commitment to achieving climate neutrality.
Ecuador (2008)	Biosphere, Urban Ecology and Alternative Sources of Energy, (Climate Change Provisions)  <a href="#">Article 414</a>	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.	Obligates the state to mitigate the effects of climate change, take specific action to limit greenhouse gas emissions and air pollution, conserve forests and vegetation, and protect the population at risk from the impacts of climate change.
Vietnam (1992)	Chapter III. Economy, Society, Culture, Education, Science, Technology and Environment  <a href="#">Article 63(1)</a>	The State has a policy to protect the environment; manages, and effectively and stably use natural resources; protect the nature and biodiversity; takes initiative in prevention and resistance against natural calamities and response to climate change.	Outlines the state's policy to use its resources sustainably and take affirmative steps to mitigate the effects of climate change.
Dominican Republic (2015)	Title IX. On the Ordering of the Territory and the Local Administration, Chapter I. On the Organization of the Territory  <a href="#">Article 194</a>	The formulation and execution, through law, of a plan of territorial ordering that ensures the efficient and sustainable use of the natural resources of the Nation, in accordance with the necessity of adaptation to climate change, is a priority of the State.	Specifies that adaptation to climate change is a necessary component of land use and natural resources planning.
Zambia (1991)	Part XIX. Land, Environment and Natural Resources, Environment and Natural Resources  <a href="#">Article 257(g)</a>	The State shall, in the utilisation of natural resources and management of the environment– [...] g. establish and implement mechanisms that address climate change.	Requires the state to establish and implement mechanisms to address climate change.





# **IV. Economy and sustainability**

**Questions 17–20**

## Economy and sustainability



### Does the constitution promote responsible and sustainable business practices in relation to the environment?

#### EXPLANATION

- By incorporating responsible business practices into the constitution, states can align themselves with sustainable development principles aimed at ensuring that economic activities are a net positive to society and minimize harm to the environment.
- Such constitutional provisions promote corporate social responsibility, where businesses commit to ethical and sustainable business practices, integrating social and environmental considerations into their activities.
- The importance of companies adopting business practices that benefit society and minimize harm to the environment is also reflected at the international level. For example, over 14,000 companies have signed the UN Global Compact, voluntarily pledging to embed sustainable development principles into their business operations, including a commitment to respect human rights and labour rights and to fight corruption. Through the Global Compact, businesses also commit to protecting the environment by adopting the precautionary principle ([see question 25](#)), promoting environmental responsibility and encouraging the development of environmentally friendly technologies (UN Global Compact n.d.).

#### EXAMPLES

Bolivia (2009)	Part IV. Economic Structure and Organization of the State, Title I. Economic Organization of the State, Chapter III. Economic Policies, Section IV. Sector Policies  <a href="#">Article 337</a>	I. Tourism is a strategic economic activity, which must be developed in a sustainable manner that takes into account respect for the treasures of the culture and the environment. II. The State shall promote and protect community tourism with the objective of benefiting urban and rural communities, and the rural native indigenous nations and peoples where this activity is carried out.	Emphasizes sustainable development of the tourism sector to benefit the national economy and communities, considering the need for cultural and environmental preservation and protection of impacted communities.
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Honduras (1982)	<p>Title VI. The Economic Regime, Chapter 1. The Economic System</p> <p><a href="#">Article 340</a></p>	<p>The technical and rational exploitation of the natural resources of the nation is declared to be of public utility and need. The state shall regulate their development in accordance with the social interest and shall establish the conditions for their grant to individuals. The reforestation of the country and the conservation of forests are declared to be of national importance and collective interest.</p>	<p>Underscores the state's commitment to ensuring that the exploitation of natural resources serves the public good and is carried out in a responsible manner. Also establishes reforestation and forest conservation as national priorities, mandating the government to regulate resource use in line with the social interest and to set conditions for private involvement in such activities.</p>
Zambia (1991)	<p>Part XIX. Land, Environment and Natural Resources, Environment and Natural Resources</p> <p><a href="#">Article 255(i)</a></p>	<p>The management and development of Zambia's environment and natural resources shall be governed by the following principles: [...] i. unfair trade practices in the production, processing, distribution and marketing of natural resources shall be eliminated; [...]</p>	<p>Seeks to eliminate unfair trade practices in the production, processing, distribution and marketing of natural resources.</p>
Egypt (2014)	<p>Chapter Two. Basic Components of Society, Section Two. Economic Components</p> <p><a href="#">Article 30</a></p>	<p>The state commits to protecting fisheries, protecting and supporting fishermen, and empowering them to carry out their work without causing damages to eco-systems, in the manner organized by law.</p>	<p>Guarantees state assistance to fisherfolk in carrying out their work while requiring that such work does not damage ecosystems.</p>

## Economy and sustainability



### Does the constitution prioritize human and environmental well-being over economic development?

#### EXPLANATION

- Sustainable development provisions often involve balancing economic development and environmental protection.
- However, constitutions can explicitly state that fundamental considerations, such as protection of human health and prevention of environmental degradation, should take precedence over economic development.
- Some states even embed this principle in their economic system ([see question 3](#)). For example, Bhutan's governance centres 'Gross National Happiness' as its core goal, based on the four pillars of promoting sustainable development, preserving cultural values, conserving the natural environment and establishing good governance.

#### EXAMPLES

Bhutan (2008)	Principles of State Policy <a href="#">Article 9</a>	1. The State shall endeavour to apply the Principles of State Policy set out in this Article to ensure a good quality of life for the people of Bhutan in a progressive and prosperous country that is committed to peace and amity in the world. 2. The State shall strive to promote those conditions that will enable the pursuit of Gross National Happiness.	Prioritizes 'gross national happiness' as a holistic measure of development and well-being, serving as an alternative to the traditional economic measure of gross domestic product.
	***  The Executive <a href="#">Article 20</a>	***  1. The Government shall protect and strengthen the sovereignty of the Kingdom, provide good governance, and ensure peace, security, well-being and happiness of the people.	
Dominican Republic (2015)	Title I. Of the Nation, of the State, of Its Government and of Its Fundamental Principles, Chapter IV. Of the Natural Resources  <a href="#">Article 15</a>	Water constitutes an inalienable, imprescriptible strategic national patrimony for the use of the public that is not subject to seizure and is essential for life. The human consumption of water has priority over any other use. The State shall promote the development and implementation of effective policies for the protection of the water resources of the Nation.	Prioritizes human consumption of water over other uses and mandates the development of effective policies to protect water resources.

Portugal (1976)	<p>Title III. Economic, Social and Cultural Rights and Duties, Chapter I. Economic Rights and Duties</p> <p><a href="#">Article 66(2)</a></p>	<p>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: [...]</p> <p>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; [...]</p> <p>h. Ensuring that fiscal policy renders development compatible with the protection of the environment and the quality of life.</p>	<p>Obliges the state to ensure economic activities will not jeopardize ecological stability for future generations, and mandates that fiscal policies ensure development is compatible with the protection of environmental and human well-being.</p>
Uruguay (1966)	<p>Section II. Rights, Duties and Guarantees, Chapter II</p> <p><a href="#">Article 47(1)</a></p>	<p>[...] Water is a natural resource essential for life. The access to potable water and the access to sanitation constitute fundamental human rights.</p> <p>1. The national policy concerning water and sanitation shall be based on:</p> <p>a. the ordering of the territory, conservation and protection of the Environment and the restoration of nature.</p> <p>b. the sustainable management, in solidarity with the future generations, of the hydro resources and the preservation of the hydrological cycle which constitutes [a] matter of public interest. The users and the civil society, shall participate in all the instances of planning, management and control of hydro resources; establishing the hydrological basins [cuencas] as basic unities.</p> <p>c. the establishment of priorities for the use of water by regions, basins, or parts of them, having the first priority [be] the provision of potable water to the population.</p> <p>d. the principle that the delivery [prestación] of the services of potable water and sanitation, must have preference for reasons of social order over the economic order.</p> <p>Any authorization, concession or permission that in any manner infringes the provisions above[,] will be considered of no effect.</p>	<p>Affirms the right to water as a fundamental right and directs state policy towards sustainable management of hydro resources and the preservation of the water cycle. Establishes the principle that the delivery of water and sanitation takes precedence over economic uses of water and nullifies any permissions that jeopardize the right to water.</p>

## Economy and sustainability



### Does the constitution safeguard the public interest when permitting the privatization of natural resources?

#### EXPLANATION

- Constitutions often establish that natural resources belong to the people of that state and are managed by the state for the benefit the people ([see question 2](#)). In practice, states may choose to privatize some aspects of natural resources, transferring ownership or control from the state into private or semi-private entities (also called public-private partnerships).
- The privatization of natural resources can have both advantages and drawbacks, depending on the country context. Generally, privatization may improve efficiency in the management and use of natural resources, generate revenue for the state and promote innovation.
- However, privatization may also lead to less transparency and accountability in the management of the natural resources, with decreased oversight and public participation in decision making ([see questions 7 and 22](#)). It can also privilege short-term profits over long-term planning, with attendant risks of overexploitation and environmental degradation. Moreover, since the profits from natural resources are channelled into private hands, the state may have fewer resources to address and mitigate environmental damage.
- To balance these advantages and disadvantages, some constitutions establish safeguards and conditions to ensure that the public interest, environmental concerns and long-term national interests are protected when allowing the privatization of natural resources. Rules mandating public disclosure of contracts related to natural resources can also contribute to transparency, oversight and accountability ([see question 29](#)).

#### EXAMPLES

Ecuador (2008)	Section 8. Financial System, Chapter 5. Strategic Sectors, Services and State Enterprises  <a href="#">Article 316</a>	The State may delegate participation in strategic sectors and public services to mixed-economy companies in which it has a majority shareholding. Said delegation shall be subject to the national interest and shall respect the time-limits and boundaries set by the law for each strategic sector.  The State may, on an exceptional basis, delegate the exercise of these activities to private enterprise and the grassroots solidarity sector of the economy, in the cases set out by law.	Allows a controlled form of privatization through public-private partnerships where the state maintains majority ownership under considerations of the national interest and subject to the time limits and conditions set by law.
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Oman (1996)	<p>Chapter Two. The Principles Guiding the Policy of the State</p> <p><a href="#">Article 11</a></p>	<p>The national economy is based on justice and the principles of free economy. Its essence is the constructive and fruitful cooperation between public and private activity. Its objective is the achievement of economic and social development in order to increase production and raise the standard of living of the Citizens according to the general plan of the State and within the limits of the Law. [...]</p> <p>All natural wealth and resources thereof are the property of the State, which shall preserve and utilise them in the best manner taking into consideration the requirements of the security of the State and the interests of the national economy. No concession or investment of any public resource of the Country shall be granted except by virtue of a law, for a limited period of time, and in a manner that preserves national interests. [...]</p>	<p>Outlines the state's economic principles based on justice, free economy, and cooperation between public and private sectors. Emphasizes state ownership of natural resources, allowing time-bound concessions that preserve national interests.</p>
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**Does the constitution encourage the development and use of renewable energy and environmentally friendly technologies?**

EXPLANATION

- Energy production is a major contributor to greenhouse gas emissions that cause climate change. This makes the transition to more environmentally friendly energy sources like solar, wind and hydro energy crucial (IPCC 2023: 44). Central to this transition is the development of technologies that support renewable energy—such as solar panels, wind turbines and energy storage—and enable integration with existing infrastructure.
- Developing and investing in renewable energy and environmentally friendly technologies also helps to conserve natural resources, combat pollution and reduce the impacts of climate change. Promoting the diversification of energy sources to meet growing energy demands further fosters investment in innovative technologies that can enhance environmental protection.
- Transport is another major contributor to greenhouse gas emissions, accounting for more than a third of carbon dioxide emissions (International Energy Agency 2023). Urbanization and population growth will exacerbate this issue in the coming years. Investing in environmentally friendly public transport such as electric buses and trams can simultaneously lower overall emissions caused by individual car use and traffic congestion while supporting social equity for low-income and marginalized groups.
- Constitutions can institutionalize the advancement, adoption and efficient use of sustainable technologies and renewable, non-polluting energy in both the public and private sectors. Some constitutions explicitly balance energy development with environmental preservation and condition this development on maintaining food sovereignty and the right to water.

EXAMPLES

Ecuador (2008)	Title II. Rights, Chapter 2. Rights of the Good Way of Living, Section 2. Healthy Environment <a href="#">Article 15</a>	The State shall promote, in the public and private sectors, the use of environmentally clean technologies and nonpolluting and low-impact alternative sources of energy. Energy sovereignty shall not be achieved to the detriment of food sovereignty nor shall it affect the right to water. [...]	Promotes environmentally clean technologies, non-polluting energy sources, energy efficiency and diversified renewable energy sources while safeguarding food sovereignty, ecological balance and the right to water.
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Ecuador (2008) (cont.)	***  Title VII. The Good Way of Living System, Chapter 2. Biodiversity and Natural Resources, Section 7. Biosphere, Urban Ecology and Alternative Sources of Energy  <a href="#">Article 413</a>	***  The State shall promote energy efficiency, the development and use of environmentally clean and healthy practices and technologies, as well as diversified and low-impact renewable sources of energy that do not jeopardize food sovereignty, the ecological balance of the ecosystems or the right to water.	
Dominican Republic (2015)	Title II. On Fundamental Rights, Guarantees and Duties, Chapter I. Fundamental Rights, Section IV. On Collective Rights and the Environment  <a href="#">Article 67(3)</a>	Preventing contamination, protecting and maintaining the environment for the enjoyment of present and future generations constitute duties of the State. Consequently: [...] 3. The State shall promote, in the public and private sector, the use of alternative and non-contaminating technologies and energies.	Promotes the use of alternative and clean technologies and energy as part of state duties to prevent pollution and protect the environment.
Egypt (2014)	Chapter Two. Basic Components of Society, Section Two. Economic Components  <a href="#">Article 32</a>	[...] The state commits to making the best use of renewable energy resources, motivating investment, and encouraging relevant scientific research. [...]	Pledges maximum use of renewable energy, promoting investment and scientific research.
Haiti (1987)	Title IX, Chapter II. The Environment  <a href="#">Article 255</a>	To protect forest reserves and expand the plant coverage, the State encourages the development of local sources of energy: solar, wind and others.	Encourages the development of local, renewable energy sources such as solar and wind to protect forest reserves and expand plant coverage.
Switzerland (1999)	Title Three. Confederation, Cantons and Communes, Chapter 2. Powers, Section 6. Energy and Communications  <a href="#">Article 89(1) and (3)</a>	1. Within the scope of their powers, the Confederation and Cantons shall endeavour to ensure a sufficient, diverse, safe, economic and environmentally sustainable energy supply as well as the economic and efficient use of energy.  [...]  3. The Confederation shall legislate on the use of energy by installations, vehicles and appliances. It shall encourage the development of energy technologies, in particular in the fields of saving energy and the renewable energy sources.	Requires state and substate governments to pursue environmentally friendly energy sources. Underscores the importance of ensuring an environmentally sustainable energy supply, economic and efficient energy use, and the development of energy technologies, particularly renewable sources.



Vietnam (1992)	Chapter III. Economy, Society, Culture, Education, Science, Technology and Environment  <a href="#">Article 63(2)</a>	The State encourages all acts of protection of the environment, development and use of new energy and recycled energy.	Links protection of the environment with the development and use of new and recycled energy sources.
Nepal (2015)	Part 4. Directive Principles, Policies and Responsibilities of the State  <a href="#">Article 51(h) (14)</a>	The State shall pursue the following policies: [...] h. Policies regarding the basic needs of citizens: [...] 14. Increasing investment in the transportation sector by ensuring simple, easy and equal access of all citizens to transportation facilities, and prioritizing environment friendly technology, encouraging public transportation and quality private transportation, while also making the transportation sector safe, well managed and disabled friendly.	Outlines commitment to investing in and promoting environmentally friendly and accessible transportation and clean technologies.
Zambia (1991)	Part XIX. Land, Environment and Natural Resources, Environment and Natural Resources  <a href="#">Article 255(g)</a>	The management and development of Zambia's environment and natural resources shall be governed by the following principles: [...] g. saving of energy and the sustainable use of renewable energy sources shall be promoted; [...]	Promotes energy saving and sustainable use of renewable energy.
Uganda (1995)	National Objectives and Directive Principles of State Policy, The Environment  <a href="#">Article XXVII(iii)</a>	The State shall promote and implement energy policies that will ensure that people's basic needs and those of environmental preservation are met.	Balances energy development with environmental preservation.



# **V. Environmental governance and community engagement**

**Questions 21–28**

## Environmental governance and community engagement



### Does the constitution direct state policy towards environmental protection?

#### EXPLANATION

- Directives of state policy are guidelines for the government when formulating laws and policies for the state. They can provide a blueprint for environmental governance that incorporates, for example, an overarching commitment to the sustainable management of land and natural resources and the protection of biodiversity.
- These types of directive principles are generally not judicially enforceable, but several jurisdictions use directive principles to give context and meaning to fundamental rights (Böckenförde, Hedling and Wahi 2011).
- Even if not judicially enforceable, directive principles may be politically important. They guide the content of laws and regulations by influencing decision making at both the national and substate levels and framing public discourse.
- One of the key strengths of state policy directives is their role in highlighting important issues that every government must consistently address.

#### EXAMPLES

Uganda (1995)	National Objectives and Directive Principles of State Policy <a href="#">Article XXVII</a>	<p>i. The State shall promote sustainable development and public awareness of the need to manage land, air, water resources in a balanced and sustainable manner for the present and future generations.</p> <p>ii. The utilization of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of present and future generations of Ugandans; and in particular, the State shall take all possible measures to prevent or minimise damage and destruction to land, air and water resources resulting from pollution or other causes.</p> <p>iii. The State shall promote and implement energy policies that will ensure that people's basic needs and those of environmental preservation are met.</p> <p>iv. The State, including local governments, shall-</p> <p>a. create and develop parks, reserves and recreation areas and ensure the conservation of natural resources;</p> <p>b. promote the rational use of natural resources so as to safeguard and protect the bio-diversity of Uganda.</p>	<p>Directs state policy to incorporate sustainable management of land, air and water resources, ensuring protection for future generations. Stipulates that natural resource management should prevent or minimize damage and pollution, and that the state should adopt an energy policy meeting both environmental protection standards and the people's needs.</p> <p>Requires both the state and local governments to conserve natural resources by establishing parks and reserves, and emphasizes biodiversity conservation.</p>
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Bangladesh (1971)	Part II. Fundamental Principles of State Policy <a href="#">Article 18A</a>	The State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens.	Directs the state to protect and improve the environment, including through safeguarding natural resources and wildlife.
Ethiopia (1994)	Chapter Ten. National Policy Principles and Objectives <a href="#">Article 92</a>	<ol style="list-style-type: none"> <li>1. Government shall endeavour to ensure that all Ethiopians live in a clean and healthy environment.</li> <li>2. The design and implementation of programmes and projects of development shall not damage or destroy the environment.</li> <li>3. People have the right to full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affect them directly.</li> <li>4. Government and citizens shall have the duty to protect the environment.</li> </ol>	Mandates public participation in crafting environmental plans and policies, and prohibits the design or implementation of development initiatives that adversely impact the environment.
Lesotho (1993)	Chapter III. Principles of State Policy <a href="#">Article 36</a>	Lesotho shall adopt policies designed to protect and enhance the natural and cultural environment of Lesotho for the benefit of both present and future generations and shall endeavour to assure to all citizens a sound and safe environment adequate for their health and well-being.	Emphasizes the importance of state policies for environmental protection to promote health and well-being.
Malawi (1994)	Chapter III. Fundamental Principles, 13. Principles of National Policy <a href="#">Article 13(d)</a>	<p>[...] To manage the environment responsibly in order to—</p> <ol style="list-style-type: none"> <li>i. prevent the degradation of the environment;</li> <li>ii. provide a healthy living and working environment for the people of Malawi;</li> <li>iii. accord full recognition to the rights of future generations by means of environmental protection and the sustainable development of natural resources; and</li> <li>iv. conserve and enhance the biological diversity of Malawi.</li> </ol>	Directs state policy to prevent environmental degradation, provide a healthy living and working environment, recognize the rights of future generations and conserve biodiversity.
Namibia (1990)	Chapter 11. Principles of State Policy <a href="#">Article 95(l)</a>	<p>The State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following: [...]</p> <ol style="list-style-type: none"> <li>i. maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future; in particular, the Government shall provide measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory.</li> </ol>	Requires state policy to include ecosystem maintenance and biodiversity, including by prohibiting the dumping or recycling of foreign hazardous waste.

Nepal (2015)	<p>Part 4. Obligations, Directive Principles and Policies of the State</p> <p><a href="#">Article 51</a></p>	<p>The State shall pursue the following policies:</p> <p>(f) Policies relating to development: [...] (2) to develop balanced, environment friendly, quality and sustainable physical infrastructures, while according priority to the regions lagging behind from development perspective, [...]</p> <p>(g) Policies relating to protection, promotion and use of natural resources:<sup>5</sup> (1) to protect, promote, and make environmental friendly and sustainable use of, natural resources available in the country, in consonance with national interest and adopting the concept of inter-generational equity, and make equitable distribution of fruits, according priority and preferential right to the local communities, [...]</p> <p>(5) to conserve, promote, and make sustainable use of, forests, wildlife, birds, vegetation and bio-diversity, by mitigating possible risks to environment from industrial and physical development, while raising awareness of general public about environment cleanliness.</p>	<p>Stipulates that the state must pursue environmentally friendly and sustainable infrastructure.</p> <p>Requires the judicious use of natural resources and their equitable distribution, with local residents receiving preferential rights.</p> <p>Charges the state to pursue sustainable use of natural resources through conservation of biodiversity, forests, flora and fauna, and to minimize the negative impacts of industrialization through public awareness initiatives.</p>
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5 See the entirety of article 51(g) of the Nepal Constitution for relevant 'Policy regarding the conservation, management and use of natural resources'.

## Environmental governance and community engagement



### Does the constitution require consultation with local communities in decisions affecting the environment or natural resources in their vicinity?

#### EXPLANATION

- The geographical distribution of natural resources varies within a state, leading to differential impacts on specific communities when decisions are made to construct environmental projects such as hydroelectric dams, extract non-renewable resources or designate land as a natural reserve.
- Consulting local communities upholds not only democratic values of participation and inclusion but also procedural environmental rights ([see question 7](#)). Many local communities depend on these natural resources for subsistence, meaning they possess in-depth knowledge about their local ecosystems. Further, consulting local people encourages consideration of a project or activity's long-term consequences, increasing the likelihood of its success and minimizing environmental degradation.
- To be meaningful and effective, communities must be provided with comprehensible information about the project ahead of the consultation, including the criteria for appraisal and objection of the project.
- Ecuador's Constitution stipulates that the state must consider the community's opinion alongside the requirements of international human rights instruments. It further incorporates a safeguard: administrative review is triggered in the event of the community's majority objection to the project.
- Ensuring diverse participation in the consultation process is critical. That includes women, whose access to and use of natural resources often differs from that of men due to their typical roles as providers of sustenance and energy in their households and communities.
- The requirement to consult with local communities ties into the necessity of carrying out an environmental impact assessment prior to the commencement of any potentially harmful activities ([see question 24](#)). It is also linked to issues of liability ([see question 33](#)), providing effective remedies for environmental damages ([see question 34](#)) and ensuring the free, prior and informed consent of Indigenous peoples ([see question 23](#)).

#### EXAMPLES

Ecuador (2008)	Title VII. The Good Way of Living System, Chapter 2. Biodiversity and Natural Resources, Section 1. Nature and the Environment <a href="#">Article 398</a>	All state decision or authorization that could affect the environment shall be consulted with the community, which shall be informed fully and on a timely basis. The consulting subject shall be the State. The law shall regulate prior consultation, public participation, time-limits, the subject consulted and the appraisal and objection criteria used with regard to the activity that is being submitted to consultation. The State shall take into consideration the opinion of the community on the basis of the criteria provided for by law and international human rights instruments.	Mandates that all state decisions or authorizations that could affect the environment must undergo consultation with the community, specifying that the law will outline objection criteria.
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Ecuador (2008) (cont.)		If the above-mentioned consultation process leads to majority opposition by the respective community, the decision whether to implement or not the project shall be adopted by a resolution that is duly substantiated by the corresponding higher administrative body in accordance with the law.	Requires the state to consider the community's opinion in conjunction with the requirements of national law and international human rights law.  Provides that, in the case of the community's majority opposition to the project, implementation will only proceed with a resolution approved by a higher administrative body.
Venezuela (1999)	Environmental Rights, Chapter IX  <a href="#">Article 128</a>	The State shall develop a zoning policy taking into account ecological, geographic, demographic, social, cultural, economic and political realities, in accordance with the premises of sustainable development, including information, consultation and male/female participation by citizens. [...]	Mandates consultation and participation of women and men in zoning policy, which also must take ecological, geographic, demographic, social, cultural, economic and political considerations into account.
South Sudan (2011)	Local Government, Chapter II  <a href="#">Article 166(6)(j)</a>	The objects of local government shall be to: [...] j. involve communities in decisions relating to the exploitation of natural resources in their areas and promote a safe and healthy environment; [...]	States that local governments should involve communities in decisions related to the exploitation of natural resources in their regions.



## Environmental governance and community engagement



**Does the constitution obligate the government to consult in good faith with Indigenous peoples or to seek their free, prior and informed consent before implementing development projects and other policies that have an impact on Indigenous lands, territories, rights and resources?\***

### EXPLANATION

- Public participation in environmental matters and consultation of local communities are key components of environmental governance ([see questions 7 and 22](#)). International law imposes a distinct requirement that states consult with Indigenous peoples through their own representative institutions in good faith regarding any activities or projects that impact them. While in most cases the consultations must take place with the objective of obtaining consent, there are also specific circumstances in which consent is required (i.e. relocation of Indigenous peoples from their lands or storage/disposal of hazardous materials on their lands) (OHCHR 2013).
- This requirement, known as free, prior and informed consent (FPIC), necessitates that Indigenous peoples receive information in advance of planned projects on their lands and that they have the authority to approve or reject these plans without physical or other types of coercion.
- These principles are rooted in Indigenous peoples' rights to autonomy and self-determination, protected under the Indigenous and Tribal Peoples Convention 1989 (No. 169) and the UN Declaration on the Rights of Indigenous Peoples. These principles further recognize the role of Indigenous peoples in environmental and biodiversity conservation ([see question 8](#)).
- The FPIC requirement is typically enshrined in legislation, but several constitutions also incorporate this right or essential components of the right.

### EXAMPLES

Bolivia (2009)	Title II. Environment, Natural Resources, Land and Territory, Chapter II. Natural Resources  <a href="#">Article 352</a>	The exploitation of natural resources in a determined territory shall be subject to a process of consultation with the affected population called by the State, which shall be free, prior in time and informed. Citizen participation is guaranteed in the process of the management of the environment, and the conservation of ecosystems shall be promoted, in accordance with the Constitution and the law. In the nations and rural native indigenous peoples, the consultation will be carried out with respect given to their own norms and procedures.	Mandates free, prior and informed consultation and participation of impacted peoples in relation to natural resources exploitation.  Requires that consultation with Indigenous peoples be culturally relevant and appropriate.
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\* See International IDEA's [Indigenous Peoples' Rights in Constitutions Assessment Tool](#) for all questions related to this topic.

Venezuela (1999)	Title III. Duties, Human Rights and Guarantees, Chapter VIII. Rights of Native People  <a href="#">Article 120</a>	Exploitation by the State of the natural resources in native habitats shall be carried out without harming the cultural, social and economic integrity of such habitats, and likewise subject to prior information and consultation with the native communities concerned. [...]	Requires prior information and consultation with Indigenous communities before exploitation of natural resources.
Paraguay (1992)	Part I. Fundamental Declarations of the Rights, Duties, Guarantees, Chapter V. Indigenous Peoples  <a href="#">Article 64</a>	The Indigenous peoples have the right to communal ownership of land sufficient both in terms of size and quality for the preservation and the development of their particular lifestyles. The State will provide them gratuitously with these lands, which will be non-seizable, indivisible, non-transferrable, imprescriptible, not susceptible to guarantee contractual obligations nor to be leased; likewise, they will be exempt from taxes.  The removal or transfer of [the indigenous peoples] from their habitat without their express consent is prohibited.	Acknowledges communal ownership of Indigenous lands and prohibits government contracting on Indigenous territories. Prohibits the removal or transfer of Indigenous people from their lands and territories without their consent.

## Environmental governance and community engagement



### Does the constitution require environmental impact assessment of activities that may negatively impact the environment, health or interests of peoples or communities?

#### EXPLANATION

- The 1992 Rio Declaration on Environment and Development outlined key principles for global environmental governance, including the principles of prevention and precaution, the requirement for environmental impact assessments (EIAs) and the duty of inter-state cooperation ([see questions 25 and 35](#)).
- EIAs are a multi-step process designed to evaluate the potential environmental impacts of proposed projects, as well as their economic and social effects. By assessing both negative and positive impacts before a project begins, EIAs play an important role in predicting and mitigating environmental harm, thereby supporting sustainable development and ensuring compliance with environmental regulations. They also facilitate informed decision making by systematically evaluating proposed projects, as outlined in Rio Principle 17.
- Constitutions may define specific circumstances under which an EIA is necessary, such as development projects that might adversely affect natural resources, human rights, health or community interests. In some cases, constitutions mandate EIAs for every project within particular sectors, such as petroleum or mining.
- Furthermore, constitutions can also detail which level of government has the responsibility for carrying out these assessments (national agencies or regional/local authorities) ([see question 26](#)) and which stakeholders must be involved.
- A significant benefit of EIAs is to foster transparency, accountability and public involvement in environmental decision making.

#### EXAMPLES

Thailand (2017)	Chapter V. Duties of the State  <a href="#">Section 58</a>	In regard to any undertaking by the State or that the State will permit any person to carry out, if such undertaking may severely affect the natural resources, environmental quality, health, sanitation, quality of life or any other essential interests of the people or community or environment, the State shall undertake to study and assess the impact on environmental quality and health of the people or community and shall arrange a public hearing of relevant stakeholders, people and communities in advance in order to take them into consideration for the implementation or granting of permission as provided by the law. A person and community shall have the rights to receive information, explanation and reasons from a State agency prior to the implementation or granting of permission [...].	Compels assessment and mitigation of potential adverse impacts of state undertakings or permissions granted to individuals or entities on the following: natural resources, environmental quality, public health, sanitation, quality of life and other essential interests of the people or community.  Requires a public hearing with relevant stakeholders before implementing or granting permissions to exploit resources.  Outlines an individual and collective right to information and reasoning for the state agency's decision.
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Kenya (2010)	Chapter 5. Land and Environment, Part 2. Environment and Natural Resources <a href="#">Article 69(1)(f)</a>	The State shall- [...] f. establish systems of environmental impact assessment, environmental audit and monitoring of the environment; [...]	Obliges the state to put systems in place for environmental impact assessment, audit and monitoring.
Austria (1920)	<a href="#">Article 11(7)</a>	In the following matters legislation is the business of the Federation, execution that of the Laender: [...] 7. Environmental impact assessment for projects relating to these matters where material effects on the environment are to be anticipated; in so far as a need for the issue of uniform regulations is considered to exist, the approval of such projects.	Establishes a clear division of responsibilities between the state and substate units regarding EIAs for projects with anticipated impacts on the environment.
Kosovo (2008)	Chapter II. Fundamental Rights and Freedoms <a href="#">Article 52(3)</a>	The impact on the environment shall be considered by public institutions in their decision making processes.	Mandates that public institutions consider environmental impacts in their decision-making processes.
Nepal (2015)	The Functions, Duties and Powers of National Natural Resources and Fiscal Commission <a href="#">Article 251(2)</a>	The National Natural Resources and Fiscal Commission shall make recommendations to the Nepal Government, by conducting necessary research into, with regards to environmental impact assessment linked to distribution of natural resources.	Outlines the role of the National Natural Resources and Fiscal Commission in conducting research and making recommendations regarding EIAs linked to the distribution of natural resources.
South Sudan (2011)	Ministry in Charge of Petroleum and Gas, Chapter III <a href="#">Article 175(2)(f)</a>	The functions of the Ministry shall include: [...] f. in consultation with affected communities, ensuring that all petroleum and gas projects be subjected to environmental and social impact assessment; [...]	Mandates the relevant ministry to conduct both environmental and social impact assessments for all petroleum and gas projects.
Brazil (1988)	Title VIII. The Social Order, Chapter VI. The Environment <a href="#">Article 225(1)(IV)</a>	To assure the effectiveness of [the right to an ecologically balanced environment], it is the responsibility of the Government to: [...] IV. require, as provided by law, a prior environmental impact study, which shall be made public, for installation of works or activities that may cause significant degradation of the environment; [...]	Makes the government responsible for ensuring environmental protection, including the requirement for prior environmental impact studies, for projects that may significantly harm the environment. Requires the study to be made public to enhance transparency and public awareness.

## Environmental governance and community engagement



### Does the constitution incorporate the environmental law principles of prevention, precaution and non-regression?

#### EXPLANATION

- The prevention principle requires states to anticipate and avert environmental damage. In many constitutions, the prohibition against importing and storing hazardous waste is based on this principle ([see question 14](#), also under Principle 14 of the 1992 Rio Declaration on Environment and Development).
- The precautionary principle (Rio Principle 15) obliges states to err on the side of caution when considering an action or policy that may harm the environment, even if there is not scientific consensus on the harm. It also cautions states against deploying untested technologies that may harm the environment. For example, in 2023, the independent Climate Overshoot Commission called for a moratorium on new technology aimed at mitigating climate change through reflecting sunlight, rooted in the precautionary principle (Harvey 2023).
- Non-regression prohibits the weakening or rolling back of environmental standards and protections. In constitutions, this is typically expressed as a commitment to preserve, conserve, maintain and improve the environment and ecological equilibrium. Fixed constitutional commitments ([see question 11](#)) are provisions that also exemplify the environmental principle of non-regression.
- Taken together, these principles add to an overarching framework of sustainable and accountable environmental governance rooted in scientific and technical expertise.

#### EXAMPLES

Vietnam (1992)	Chapter III. Economy, Society, Culture, Education, Science, Technology, and Environment  <a href="#">Article 63(1)</a>	The State has a policy to protect the environment; manages, and effectively and stably use natural resources; protects the nature and biodiversity; takes initiative in prevention and resistance against natural calamities and response to climate change.	Embeds the principle of prevention against natural disasters and climate change.
Uganda (1995)	National Objectives and Directive Principles of State Policy, The Environment  <a href="#">Article XXVII(ii)</a>	[...] the State shall take all possible measures to prevent or minimise damage and destruction to land, air and water resources resulting from pollution or other causes.	Obliges the state to prevent environmental harm to land, air and water from pollution or other causes.

Côte d'Ivoire (2016)	Title I. Rights, Freedoms and Duties, Chapter II. Duties <a href="#">Article 40</a>	[...] Where there may be a risk of harm that could seriously and irreversibly affect the environment, the State and public communities are required to assess the potential harm and to adopt the necessary preventive measures by applying the precautionary principle.	Emphasizes the responsibility of both the state and public communities to evaluate and take preventive measures when there is a risk of significant and irreversible environmental harm.
Zambia (1991)	Part XIX. Land, Environment and Natural Resources, Environment and Natural Resources <a href="#">Article 255(c)</a>	The management and development of Zambia's environment and natural resources shall be governed by the following principles: [...] c. where there are threats of serious or irreversible damage to the environment, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation; [...]	Embeds the precautionary principle, stating that uncertainty about environmental harm should not be an obstacle to state action to protect the environment.
Ecuador (2008)	Title VII. The Good Way of Living System, Chapter 2. Biodiversity and Natural Resources, Section 1. Nature and the Environment <a href="#">Article 396</a>	The State shall adopt timely policies and measures to avoid adverse environmental impacts where there is certainty about the damage. In the case of doubt about the environmental impact stemming from a deed or omission, although there is no scientific evidence of the damage, the State shall adopt effective and timely measures of protection. [...]	Builds upon the precautionary principle by emphasizing that actions must be taken not only when there is certainty about environmental harm but also when there is doubt.
Thailand (2017)	Chapter V. Duties of the State <a href="#">Section 58</a>	[...] In the implementation or granting of permission [to undertake an activity that may severely affect the natural resources, environmental quality, health, sanitation, quality of life or any other essential interests of the people or community or environment], the State shall take precautions to minimise the impact on people, community, environment, and biodiversity and shall undertake to remedy the grievance or damage for the affected people or community in a fair manner without delay.	Mandates precautionary measures to minimize the impact on people, communities, the environment and biodiversity when granting permission for activities that could severely affect these interests. Emphasizes accountability by requiring remedies in a timely and fair way.
France (1958)	Charter for the Environment <a href="#">Article 5</a>	When the occurrence of any damage, albeit unpredictable in the current state of scientific knowledge, may seriously and irreversibly harm the environment, public authorities shall, with due respect for the principle of precaution and the areas within their jurisdiction, ensure the implementation of procedures for risk assessment and the adoption of temporary measures commensurate with the risk involved in order to deal with the occurrence of such damage.	Requires public authorities to take precautionary measures, including risk assessment and temporary measures, when there is a risk of unpredictable and irreparable environmental damage.
Montenegro (2007)	Part 2. Human Rights and Liberties, Common Provisions <a href="#">Article 23</a>	Everyone shall have the right to a sound environment. [...] Everyone, the state in particular, shall be bound to preserve and improve the environment [...]	Embeds the principle of non-regression through binding the state to preserve and improve the environment.

# Environmental governance and community engagement



## Does the constitution outline the roles and responsibilities of different levels of government in environmental protection?

### EXPLANATION

- Environmental protection is a concern that spans all levels of government, from local, through provincial or state level, to the national level.
- The effectiveness of a state’s environmental protection policies, and in particular climate change goals, may hinge on effective coordination and cooperation among all levels of government. This is especially significant given that most of the world’s largest carbon emitters operate under a federal or decentralized form of governance (Fenna, Jodoin and Setzer 2023).
- Constitutions can enhance clarity and avoid regulatory gaps by delineating which levels of government and entities are responsible for implementing a state’s environmental policies and managing natural resources.
- States approach the allocation of roles and responsibilities for natural resource management to different levels of government in various ways: exclusive, shared or concurrent authority. The ownership and management of natural resources can be politically complicated, particularly in contexts where natural resources have been linked with conflict or claims for autonomy. Shared management and coordination in fragile settings may be enhanced through the establishment of inclusive and specialist bodies to manage natural resources and related revenues ([see question 30](#)).
- Where a lower level of government is assigned a power or function, sufficient resources and capacities must be ensured for the government to perform its responsibilities adequately.

### EXAMPLES

Belgium (1831)	On General Political Objectives of Federal Belgium, the Communities and the Regions  <a href="#">Article 7bis</a>	In the exercise of their respective competences, the Federal State, the Communities and the Regions pursue the objectives of sustainable development in its social, economic and environmental aspects, taking into account the solidarity between the generations.	Obliges all levels of government to pursue the objectives of sustainable development, including its environmental aspects, in the exercise of their competences.
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Switzerland (1999)	<p>Chapter 2. Powers, Section 4. Environment and Spatial Planning</p> <p><a href="#">Article 73</a></p> <p><a href="#">Article 74</a></p>	<p>The Confederation and the Cantons shall endeavour to achieve a balanced and sustainable relationship between nature and its capacity to renew itself and the demands placed on it by the population.</p> <ol style="list-style-type: none"> <li>1. The Confederation shall legislate on the protection of the population and its natural environment against damage or nuisance.</li> <li>2. It shall ensure that such damage or nuisance is avoided. The costs of avoiding or eliminating such damage or nuisance are borne by those responsible for causing it.</li> <li>3. The Cantons are responsible for the implementation of the relevant federal regulations, except where the law reserves this duty for the Confederation.</li> </ol>	<p>Outlines an overarching shared endeavour between centre and substate units to protect the environment establishing that the centre is responsible for environmental legislation, which the substate units must then implement.</p>
Ecuador (2008)	<p>Title VII. The Good Way of Living System, Chapter 2. Biodiversity and Natural Resources, Section 1. Nature and the Environment</p> <p><a href="#">Article 399</a></p> <p>***</p> <p><a href="#">Article 415</a></p>	<p>The full exercise of state guardianship over the environment and joint responsibility of the citizenry for its conservation shall be articulated by means of a decentralized national environmental management system, which shall be in charge of defending the environment and nature.</p> <p>***</p> <p>The central State and decentralized autonomous governments shall adopt integral and participatory policies for urban development and land use planning that make it possible to regulate urban growth, manage urban fauna, and promote the establishment of green areas. Decentralized autonomous governments shall develop programs for the rational use of water, the reduction of recycling and the adequate treatment of solid and fluid waste. Non-motorized overland transportation shall be promoted and facilitated, especially with establishment of bike lanes.</p>	<p>Expresses that the state's duty to protect the environment be via a decentralized national environment management system.</p> <p>***</p> <p>Articulates that the central state and decentralized governments share the duty of green urban development. Establishes that decentralized governments will manage water use, waste and recycling reduction, and promote non-motorized transport like biking and walking.</p>

Kenya (2010)	<p><u>Fourth Schedule.</u></p> <p>Distribution of Functions between the National Government and the County Governments</p>	<p><u>Part 1. National Government</u></p> <p>22. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular-</p> <ul style="list-style-type: none"> <li>a. fishing, hunting and gathering;</li> <li>b. protection of animals and wildlife;</li> <li>c. water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and</li> <li>d. energy policy.</li> </ul> <p><u>Part 2. County Governments</u></p> <p>10. Implementation of specific national government policies on natural resources and environmental conservation, including-</p> <ul style="list-style-type: none"> <li>a. soil and water conservation; and</li> <li>b. forestry.</li> </ul> <p><u>Part 3. Functions and Powers of County Governments</u></p> <p>1. A function or power of government at one level may be transferred to a government at the other level by agreement between the governments if-</p> <ul style="list-style-type: none"> <li>a. the function or power would be more effectively performed or exercised by the receiving government; and</li> <li>b. the transfer of the function or power is not prohibited by the legislation under which it is to be performed or exercised.</li> </ul> <p>2. If a function or power is transferred from a government at one level to a government at the other level-</p> <ul style="list-style-type: none"> <li>a. arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred; and</li> <li>b. constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule.</li> </ul>	<p>Outlines the national government's duty to create a sustainable development system encompassing water, wildlife, and sustainable fishing and hunting. The country government is tasked with enacting national policies on soil, water conservation and forestry.</p> <p>Specifies that a function or power can be delegated to another level of government if more efficiently managed by the receiving level of government. However, sufficient resources must be provided to discharge the duty, and accountability stays with the government initially entrusted with the function or power by the constitution.</p>
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Bolivia (2009)	<p>Part III. Structure and Organization of the State Territories, Title I. Territorial Organization of the State, Chapter VIII. Distribution of Authority</p>	<p>I. The following are the areas of prerogative authority of the central level of the State: [...] 20. General policy of Biodiversity and Environment. [...]</p> <p>II. The central level of the State has exclusive authority over the following: [...] 4. Strategic natural resources, which include minerals, the electromagnetic spectrum, genetic and biogenetic resources, and water sources. 5. General system of hydraulic resources and services. 6. General system of biodiversity and environment. 7. Forestry policy and the general system for soils, forestry and woods. 8. Policy of generation, production, control, transmission and distribution of energy in the interconnected system.</p> <p>II. The following authorities shall be exercised concurrently by the central level of the State and the autonomous territorial entities. 1. To preserve, conserve and contribute to the protection of the environment and the wild fauna maintained in ecological equilibrium, and the control of environmental contamination. [...] 4. Conservation of soil, forest resources and woods. [...] 7. Promotion and administration of hydraulic and energy projects. 8. Industrial waste and toxic materials. 9. Potable water projects and treatment of solid waste. 10. Irrigation projects. 11. Protection of basins. [...] 16. Administration or river ports.</p>	<p>Reserves exclusive authority to the central state to establish general policies on the environment and biodiversity, and concurrent authority to the autonomous territorial entities on specific elements of environmental protection.</p> <p>It further delineates the role and responsibilities of municipal authorities for matters impacting the environment in their territories.</p>
	<p><a href="#">Article 298</a></p>		
	<p><a href="#">Article 299</a></p>		
	<p>***</p>	<p>***</p>	
	<p><a href="#">Article 302</a></p>	<p>I. The following are the exclusive authority of the autonomous municipal governments, within their jurisdiction: [...] 5. To preserve, conserve and contribute to the protection of the environment and natural resources, wild fauna and domestic animals. [...] 12. Projects of alternative and renewable sources of energy, preserving food security within the municipality. [...] 43. To participate in enterprises of industrialization, distribution and commercialization of Hydrocarbons in the municipal territory in association with the national entities of the sector.</p>	

# Environmental governance and community engagement



## Does the constitution require consideration of environmental protection in urban and development planning?

### EXPLANATION

- Urbanization is expanding rapidly: by 2030, it is anticipated that there will be 43 'megacities' with over 10 million residents (UN Department of Economic and Social Affairs 2018), and by 2050, it is projected that more than two-thirds of all people will live in cities.
- With the exponential increase in urban populations, the integration of environmental considerations in urban planning becomes critical: these decisions will not only impact a greater number of people but will also have increasingly significant consequences for the global environment and ecosystems (Dodman, McGranahan and Dalal-Clayton 2013).
- Ensuring sustainable development is therefore intrinsically linked with the ability to manage urban growth. This includes addressing challenges of adequate water and sanitation, and mitigating air and water pollution in an integrated way ([see question 14](#)). Urban planning must also address the risks of zoonotic diseases—diseases transmitted from animals to humans through close contact—which become more likely when human settlements encroach on or destroy natural habitats (WHO 2020).

### EXAMPLES

North Macedonia (1991)	I. Basic Provisions <a href="#">Article 8</a>	The fundamental values of the constitutional order of the Republic of Macedonia are:  [...] proper urban and rural planning to promote a congenial human environment, as well as ecological protection and development; [...]	Integrates ecological protection in development into urban and rural planning as a fundamental value.
Eswatini (2005)	Chapter XII. Land, Minerals, Water and Environment <a href="#">Article 216(2)</a>	Urbanisation or industrialisation shall be undertaken with due respect for the environment.	Requires environmental protection in the process of urbanisation and industrialisation.
Egypt (2014)	Chapter Three. Public Rights, Freedoms and Duties <a href="#">Article 78</a>	The state guarantees citizens the right to decent, safe and healthy housing, in a way that preserves human dignity and achieves social justice. The state shall draft a national housing plan that upholds environmental particularity, and it guarantees the contribution of personal and collaborative initiatives in its implementation. The state shall also regulate the use of state lands and provide them with basic facilities, as part of a comprehensive urban planning framework for cities and villages and a population distribution strategy. This must be done in a way that serves the public interest, improves the quality of life for citizens and preserves the rights of future generations.	Mandates the development of a national housing plan as part of ensuring the right to safe and healthy housing. This plan must integrate environmental considerations into urban development to enhance citizens' quality of life and protect the rights of future generations.

Egypt (2014) (cont.)		The state shall draft a comprehensive, national plan to address the problem of informal areas that includes providing infrastructure and facilities and improving quality of life and public health. The state shall also guarantee the provision of necessary resources to implement the plan within a specified time frame.	Commits to addressing informal settlements by improving infrastructure and public health, with a commitment to allocate necessary resources and adhere to a specified time frame.
India (1949)	Part IX. The Panchayats <a href="#">Article 243X(3)(a)(i)</a>  ***  <a href="#">Article 243ZE(3)(a)(ii)</a>	Every District Planning Committee shall, in preparing the draft development plan,- a. have regard to- i. matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation. [...]  ***  Every Metropolitan Planning Committee shall, in preparing the draft development plan,- [...] a. have regard to [...] ii. matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation; [...]	Mandates district and metropolitan planning committees to consider sharing of water and natural resources, integrated infrastructure and environmental conservation in their development plans.
Portugal (1976)	Part II. Organization of the Economy, Title II. Plans  <a href="#">Article 90</a>	The objective of economic and social development plans shall be to promote economic growth, the harmonious and integrated development of sectors and regions, the just division of the national product between persons and between regions, the coordination of economic policy with the social, education and cultural policies, the defence of the rural world, the preservation of the ecological balance, the defence of the environment and the quality of life of the Portuguese people.	States that ecological balance, environmental protection and quality of life are objectives to be incorporated into economic and social development plans.

## Environmental governance and community engagement



### Does the constitution promote environmental education and awareness among citizens?

#### EXPLANATION

- Environmental education and awareness are essential for citizens to understand their duties to the environment, meaningfully participate in environmental decision making, hold the state accountable for not upholding its environmental duties and assert their environmental rights.
- Some constitutions mandate environmental education and awareness through education programmes, policies and the establishment of nature reserves.
- Public awareness is further facilitated through the right to access information in environmental matters and other procedural environmental rights ([see question 7](#)).

#### EXAMPLES

France (1958)	Charter for the Environment <a href="#">Article 8</a>	Education and training with regard to the environment shall contribute to the exercising of the rights and duties set out in this Charter.	Promotes education and training on the Charter for the Environment to ensure the fulfilment of the environmental rights and duties it contains.
Haiti (1987)	Chapter II. The Environment <a href="#">Article 256</a>	Within the framework of protecting the environment and public education, the State has the obligation to proceed to establish and maintain botanical and zoological gardens at certain points in its territory.	Creates a state obligation to establish and maintain botanical and zoological gardens as part of protecting the environment.
Uganda (1995)	National Objectives and Directive Principles of State Policy <a href="#">XXVII. The Environment</a>	i. The State shall promote sustainable development and public awareness of the need to manage land, air, water resources in a balanced and sustainable manner for the present and future generations. [...]	Obliges the state to raise public awareness of the sustainable development of natural resources for present and future generations.
Mozambique (2004)	Chapter III. Social Organisation <a href="#">Article 117(2)(c)</a>	With a view to guaranteeing the right to the environment within the framework of sustainable development, the State shall adopt policies aimed at: [...] c. promoting the integration of environmental values into educational policies and programmes; [...]	Mainstreams environmental values into education policies and programmes within the sustainable development framework.

Senegal (2001)	<p>Title II. Fundamental Rights and Freedoms and the Duties of Citizen</p> <p><a href="#">Article 25-2</a></p>	<p>[...] Public authorities have the obligation to [...] promote environmental education and to ensure the protection of populations in the development and implementation of projects and programs whose social and environmental impacts are significant.</p>	<p>Outlines the state's obligation to promote environmental education.</p>
Bolivia (2009)	<p>Part I. Fundamental Bases of the State: Rights, Duties and Guarantees, Title II. Fundamental Rights and Guarantees, Chapter VI. Education, Cultural Diversity and Cultural Rights</p> <p><a href="#">Article 80(I)</a></p>	<p>[...] Education shall be directed toward the following: individual and collective development; [...] the conservation and protection of the environment, biodiversity and the land to assure well being. Its regulation and fulfillment shall be established by law.</p>	<p>Directs education towards individual/ collective development and environmental conservation.</p>
Brazil (1988)	<p>Title VIII. The Social Order, Chapter VI. The Environment</p> <p><a href="#">Article 225(1) (VI)</a></p>	<p>To assure the effectiveness of [the right to an ecologically balanced environment], it is the responsibility of the Government to: [...]</p> <p>VI. promote environmental education at all levels of teaching and public awareness of the need to preserve the environment; [...]</p>	<p>Obliges the government to promote environmental education in all levels of teaching as part of ensuring the realization of the right to a healthy environment.</p>





# **VI. Accountability: Monitoring, enforcement and remedies**

**Questions 29–34**

## Accountability: Monitoring, enforcement and remedies



### **Does the constitution require public disclosure of contracts related to natural resources? Does it require legislative authorization, ratification or oversight of such contracts?**

#### EXPLANATION

- Contracts relating to natural resources signed between state authorities and companies contain key information about duties, risks and benefits. In addition to financial terms, such as taxes and royalties, these contracts can detail the environmental impact of the project, infrastructure development and timelines. This information is crucial for citizens and the media to monitor and seek accountability from the government and companies involved in development projects (Open Contracting Partnership et al. n.d.; see also Extractive Industries Transparency Initiative 2024). Accordingly, in a growing number of states, the constitution or legislation mandates the disclosure and publication of natural resources contracts.
- Some states also require legislative authorization, approval or oversight of contracts related to natural resources. Ideally, requiring legislative approval increases the likelihood that exploitation of these important resources takes place in line with the state's national priorities, long-term development goals and environmental regulations. Research shows that legislative scrutiny enhances government incentives and leverage with companies to negotiate strong contract terms, and it encourages civil society engagement and public debate through stakeholder involvement in public hearings. Nevertheless, there is also the possibility that subjecting the contracts to legislative approval can politicize the contracting procedure, cause delays in investment or result in a perfunctory review because of a lack of capacity (NRGI 2016).
- In some states, such as Bolivia, the constitution declares that contracts concluded without legislative approval are null and void, and it imposes criminal liability for any agreements that infringe on the principle of state ownership and management of hydrocarbons. Other states, such as the Philippines, constitutionally limit the duration of such contracts to promote periodic review and adjustment of terms to reflect changing economic, environmental and social conditions. Flexibility in natural resource contracts and the adaptation of terms to address climate risks may be particularly important to ensure that long-term contracts do not inhibit states from pursuing policy or legislative changes to proactively address climate change, meet international climate change commitments and decarbonize their economies (Woodroffe 2021).
- By constitutionalizing legislative oversight and other conditions, states signal the importance of transparency and accountability in contracts relating to their natural resources. This may counteract a public perception that such contracts, especially those related to the oil, gas and mining sectors, are shrouded in secrecy, promote corruption and serve elite interests instead of those of the state (NRGI 2016).
- Beyond contract approval, standard parliamentary powers, such as law making, budget approval, review of government ministry agency reports and powers of inquiry, investigation and censure, are vital in ensuring the comprehensive and effective management of the extractive sectors, including for environmental protection (NRGI 2016).

## EXAMPLES

Central African Republic (2023)	Title III. Of the Executive Power, Chapter 2. Of the Government <a href="#">Article 93</a>	[...] The Government is obligated to obtain prior authorization from the National Assembly before signing any contracts concerning natural resources or financial agreements. It must publish said contract within eight (8) calendar days following its signature.	Obliges the government to obtain parliament's approval prior to signing any contract related to natural resources. Provides a specific timeline for making the contract public (within eight days of signing).
Bolivia (2009)	Part IV. Economic Structure and Organization of the State, Title II. Environment, Natural Resources, Land and Territory, Chapter III. Hydrocarbons <a href="#">Article 359</a>  ***  <a href="#">Article 362(II)</a>	I. The hydrocarbons, in whatever state they are found or form in which they are, are the inalienable and unlimited property of the Bolivian people. The State, on behalf of and in representation of the Bolivian people, is owner of the entire hydrocarbon production of the country and is the only one authorized to sell them. The totality of the income received by the sale of hydrocarbons shall be the property of the State. II. No contract, agreement or convention, whether direct or indirect, tacit or express, may violate totally or partially that which is established in this article. In the event of violation, the contracts shall be null and void as a matter of law, and those who have agreed to, signed, approved or executed them, have committed the crime of treason.  ***  The contracts referring to activities of exploration and exploitation of hydrocarbons must have prior authorization and express approval of the Pluri-National Legislative Assembly. In the event this authorization is not obtained, they shall be null and void as a matter of law, without the necessity of a judicial or extra-judicial declaration.	Asserts state ownership and control of hydrocarbons, prohibiting any agreements that infringe on this provision as treason.  ***  Requires parliament's prior authorization and approval for both hydrocarbon exploration and exploitation.  Without parliamentary authorization, declares these contracts null and void without a legal hearing.
Kenya (2010)	Chapter 5. Land and Environment, Part 2. Environment and Natural Resources <a href="#">Article 71(1)(a)</a>	A transaction is subject to ratification by Parliament if it- [...] a. involves the grant of a right or concession by or on behalf of any person, including the national government, to another person for the exploitation of any natural resource of Kenya; [...]	Mandates parliamentary ratification for contracts granting rights or concessions for natural resource exploitation.

Ghana (1992)	Chapter 21. Lands and Natural Resources, Part V. Protecting Natural Resources  <a href="#">Article 268</a>	<p>1. Any transaction, contract or undertaking involving the grant of a right or concession by or on behalf of any person including the Government of Ghana, to any other person or body of persons howsoever described, for the exploitation of any mineral, water or other natural resource of Ghana made or entered into after the coming into force of this Constitution shall be subject to ratification by Parliament.</p> <p>2. Parliament may, by resolution supported by the votes of not less than two-thirds of all the members of Parliament, exempt from the provisions of clause (1) of this article any particular class of transactions, contracts or undertakings.</p>	Obliges parliamentary ratification for transactions granting exploitation rights but allows for possible exceptions with two-thirds majority in parliament.
Philippines (1987)	Article XII. National Economy and Patrimony  <a href="#">Sec 2</a>	<p>All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. [...] The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. [...]</p> <p>The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources. The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.</p>	<p>Forbids the transfer of ownership of natural resources (except agricultural lands) from the state. Institutes full control and supervision by the state over the exploration, development and use of natural resources.</p> <p>Stipulates any exploration, development and use of natural resources can only take place with Filipino citizens or entities with at least 60 per cent Filipino ownership. Limits such contracts to a term of 25 years, renewable once.</p> <p>Permits the president to enter into contracts with foreign-owned corporations for technical and financial assistance in exploring, developing and using certain natural resources (oil and minerals), requiring the president to notify congress of such contracts within 30 days of their execution.</p>

## Accountability: Monitoring, enforcement and remedies



### Does the constitution incorporate environmental protection responsibilities into independent bodies' mandates and responsibilities?

#### EXPLANATION

- Constitutions commonly establish specialist bodies for various functions, and many of the sectors and activities under these institutions may have a significant impact on the environment. Thus, it is important for these bodies to also have environmental protection responsibilities incorporated into their mandates.
- For example, many constitutions include land commissions specifically tasked with sustainable and equitable land management. Such commissions aim to prevent corruption in the sale and leasing of public lands, ensuring that these resources benefit the public and are used responsibly. Similarly, other constitutionalized commissions have been established to protect, manage, monitor and regulate valuable natural resources like petroleum and gas, based on environmentally, socially and economically sustainable principles (Bulmer 2019). Commissions are generally composed of various types of stakeholders, including a mix of technical experts and political representatives, especially in decentralized or federal systems. The selection and appointment process for commission members must be transparent and inclusive, including ensuring that members are recognized as people of integrity with appropriate qualifications and expertise.
- Other types of independent bodies—such as national human rights institutions and ombudsmen—have mandates to protect, promote and monitor human rights, including any constitutionalized environmental rights. Some independent institutions focus on specific themes, such as intergenerational equity, environmental protection or sustainability. For example, environmental or 'green' ombudsmen might participate in environmental impact assessments, provide expert opinions on project planning from an environmental perspective and mediate environmental disputes. These institutions often advocate for interests that lack representation, such as nature, future generations or the general public. They may also advance access to justice by representing these interests to the government and parliament or in court. If sufficiently independent, well-resourced and respected, these institutions can also provide an institutionalized challenge to government actions that shrink the civil space and limit civic engagement in environmental protection, including the criminalization of environmental protest and environmental human rights defenders.

#### EXAMPLES

Kenya (2010)	National Land Commission <a href="#">Article 67</a>	<ol style="list-style-type: none"> <li>1. There is established the National Land Commission.</li> <li>2. The functions of the National Land Commission are: <ol style="list-style-type: none"> <li>a. to manage public land on behalf of the national and county governments;</li> <li>b. to recommend a national land policy to the national government;</li> <li>c. to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;</li> </ol> </li> </ol>	Establishes a land commission with various duties, including managing public land, recommending national land policies, researching land use, investigating land injustices, using traditional dispute resolution, assessing land tax and overseeing the planning of land use.
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Kenya (2010) (cont.)		<ul style="list-style-type: none"> <li>d. to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;</li> <li>e. to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;</li> <li>f. to encourage the application of traditional dispute resolution mechanisms in land conflicts;</li> <li>g. to assess tax on land and premiums on immovable property in any area designated by law; and</li> <li>h. to monitor and have oversight responsibilities over land use planning throughout the country.</li> </ul> <p>3. The National Land Commission may perform any other functions prescribed by national legislation.</p>	
Sri Lanka (1978)	<a href="#">Appendix II. Land and Land Settlement, Section 3</a>	<p>3:1. The Government of Sri Lanka shall establish a National Land Commission which would be responsible for the formulation of national policy with regard to the use of State land. This Commission will include representatives of all Provincial Councils in the Island.</p> <p>3:2. The National Land Commission will have a Technical Secretariat representing all the relevant disciplines required to evaluate the physical as well as the socioeconomic factors that are relevant to natural resources management.</p> <p>3:3. National policy on land use will be based on technical aspects (not on political or communal aspects), and the Commission will lay down general norms in regard to the use of land, having regard to soil, climate, rainfall, soil erosion, forest cover, environmental factors, economic viability, etc. [...]</p>	Mandates the establishment of a land commission with representatives from all provincial councils. Outlines responsibilities of the commission, including the formulation of a national land use policy. Integrates an expert technical secretariat to advise on issues related to natural resource management. Obliges land use policy to be formulated for technical (rather than political) reasons.
Nepal (2015)	The National Natural Resources and Fiscal Commission  <a href="#">Article 251(2)</a>	The National Natural Resources and Fiscal Commission shall make recommendations to the Nepal Government, by conducting necessary research into, with regards to environmental impact assessment linked to distribution of natural resources.	Outlines the role of the National Natural Resources and Fiscal Commission in conducting research and making recommendations regarding environmental impact assessments on its thematic expertise.



Hungary (2011)	<p>The State, The Commission for Fundamental Rights</p> <p><a href="#">Article 30</a></p>	<ol style="list-style-type: none"> <li>1. The Commissioner for Fundamental Rights shall perform fundamental rights protection activities, his or her proceedings may be initiated by anyone.</li> <li>2. The Commissioner for Fundamental Rights shall inquire into any violations related to fundamental rights, that come to his or her knowledge, or have such violations inquired into, and shall initiate general or specific measures to remedy them.</li> <li>3. The Commissioner for Fundamental Rights and his or her deputies shall be elected for six years with the votes of two-thirds of the Members of the National Assembly. The deputies shall protect the interests of future generations and the rights of nationalities living in Hungary. The Commissioner for Fundamental Rights and his or her deputies may not be members of political parties or engage in political activities. [...]</li> </ol>	<p>Establishes an ombudsman office tasked with the protection of fundamental rights, with the authority to inquire into and remedy any violations of these rights.</p> <p>Outlines that the deputy commissioner is charged with protecting the rights of future generations.</p> <p>Requires the commissioner and deputies to be politically neutral.</p>
Argentina (1853)	<p>Part 2. Authorities of the Nation, Title I. Federal Government, Section I. The Legislative Power, Chapter VII. Of the Defender of the People</p> <p><a href="#">Article 86</a></p> <p>***</p> <p>Part 1. Chapter 1. Declarations, Rights and Guarantees</p> <p><a href="#">Article 43</a></p>	<p>The Defender of the People is an independent body created within the ambit of the National Congress, which shall operate with full functional autonomy, without taking orders from any authority. Its mission is the defence and protection of human rights and other rights, guarantees and interests protected by this Constitution and by the law, against deeds, acts, and omissions of the Administration, and to oversee the exercise of public administrative functions. The Defender of the People has standing to litigate. They are appointed and removed by Congress by a vote of two-thirds of the members present in each of the Chambers. They enjoy the immunities and privileges of legislators. The term of office is five years, with the possibility of one reappointment. [...].</p> <p>***</p> <p>Any person may bring [an amparo action], against any act or omission by public authorities or private individuals that currently or imminently infringes, restricts, alters, or threatens, with manifest arbitrariness or unlawfulness, rights and guarantees recognized by this Constitution. ... This action may be brought [...] concerning rights protecting the environment [and] collective rights in general, by the affected party, the Defender of the People, and associations pursuing these purposes [...].</p>	<p>Establishes an independent body called the Defender of the People, mandated to defend human rights and constitutional guarantees against the government.</p> <p>Outlines the ombudsman's right to initiate litigation, including the power to bring actions defending environmental and collective rights, and safeguards its independence with the same immunities and privileges as legislators.</p>



<p>South Africa (1996)</p>	<p>Chapter 9. State Institutions Supporting Constitutional Democracy</p> <p><a href="#">Article 184</a></p> <p>***</p> <p><a href="#">Article 181</a></p>	<p>1. The South African Human Rights Commission must-</p> <ol style="list-style-type: none"> <li>promote respect for human rights and a culture of human rights;</li> <li>promote the protection, development and attainment of human rights; and</li> <li>monitor and assess the observance of human rights in the Republic.</li> </ol> <p>2. The South African Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power-</p> <ol style="list-style-type: none"> <li>to investigate and to report on the observance of human rights;</li> <li>to take steps to secure appropriate redress where human rights have been violated;</li> <li>to carry out research; and</li> <li>to educate.</li> </ol> <p>3. Each year, the South African Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment. [...]</p> <p>***</p> <p>1. The following state institutions strengthen constitutional democracy in the Republic: [...]</p> <ol style="list-style-type: none"> <li>The South African Human Rights Commission.</li> </ol> <p>[...]</p> <p>2. These institutions are independent and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.</p> <p>3. Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.</p> <p>4. No person or organ of state may interfere with the functioning of these institutions.</p> <p>5. These institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year.</p>	<p>Establishes a human rights commission tasked with promoting, protecting and monitoring the observance of human rights, with powers to investigate rights violations, secure redress, conduct research and educate the public.</p> <p>Mandates the commission to annually gather information from state organs on the realization of environmental rights, integrating active monitoring and reporting on environmental progress.</p> <p>***</p> <p>Obliges state organs to protect the commission's independence, impartiality, dignity and effectiveness, forbidding any interference in its operations.</p>
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## Accountability: Monitoring, enforcement and remedies



### Does the constitution establish environmental courts and tribunals?

#### EXPLANATION

- Courts and tribunals are venues for the adjudication of legal disputes. Courts tend to have jurisdiction over a wide range of civil, criminal and administrative matters, higher status than tribunals and staffed by professional judges. While there is great variation across legal systems, tribunals are typically administrative bodies, enforcing regulations in areas like labour or immigration, and operate with less procedural formality than courts.
- Recognizing the need for specialist expertise to address the complexity of environmental legal issues, many states have created specialist courts and tribunals specifically for environmental issues: Environmental Courts and Tribunals (ECTs). These ECTs may be established alongside regular courts or as specialist chambers within general courts. While in 2021, there were 2,115 ECTs around the world, only two states—Kenya and Bolivia—had elevated them to a constitutional level.<sup>6</sup>
- ECTs can play a crucial role in addressing environmental harms, vindicating environmental rights and increasing access to justice. Research shows that the most successful ECTs have a comprehensive jurisdiction, meaning that they can hear a wide range of environmental issues, and their powers include administrative, civil and criminal enforcement of environmental laws, as well as alternative dispute resolution (Preston 2014). The design of these courts is also vital, and they should be staffed with competent judges with the specialist knowledge and training to handle complex environmental and scientific issues, supported by research staff and impartial scientific experts.
- Operationally, ECTs must be independent, impartial, flexible and innovative. Moreover, they should be accessible to the public and their procedures tailored for swift, cost-effective and equitable dispute resolutions (Preston 2014).
- All courts and tribunals, including ECTs, face specific challenges in environmental matters. These range from issues of defining ambiguous terms like ‘environment’ or ‘healthy’ to the complexities of deciding complex policy issues and issuing appropriate remedies ([see question 34](#)). Challenges such as budgetary constraints and acquiring the needed technical or scientific expertise can also be significant hurdles. Potential political repercussions can impact their decisions and the likelihood of implementation.
- In addition to ECTs, entities like human rights institutions, ombudsmen and public prosecutors play a key role in advancing environmental justice, ensuring accountability and transparency, and helping states meet their national and international environmental commitments ([see questions 30 and 32](#)).

<sup>6</sup> See United Nations Environment Programme (UNEP 2022) for a full list of ECTs and discussion of their powers, including good practices.

## EXAMPLES

Kenya (2010)	Chapter 10. Judiciary, Part 1. Judicial Authority and Legal System  <a href="#">Article 162(2)(b)</a>  ***	Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to- [...] b. the environment and the use and occupation of, and title to, land.  ***	Grants the environment court a broad scope to give any order or direction that it deems necessary to stop acts or omissions that may be harmful to the environment.  ***
	Chapter 5. Land and Environment, Part 2. Environment and Natural Resources, Enforcement of environmental rights  <a href="#">Article 70(2)</a>	[...] the court may make any order, or give any directions, it considers appropriate- a. to prevent, stop or discontinue any act or omission that is harmful to the environment; b. to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or c. to provide compensation for any victim of a violation of the right to a clean and healthy environment.	The court can further require public officers to take any necessary action to prevent or cease such acts or omissions, and it can order compensation to any person whose right to a clean and healthy environment has been violated.
Bolivia (2009)	Part II. Functional Structure and Organization of the State, Title III. Judicial Organ and Plurinational Constitutional Court, Chapter III. Agro-Environmental Jurisdiction  <a href="#">Article 186</a>	The Agro-Environmental Court (Tribunal Agroambiental) is the highest court specialized in agro-environmental jurisdiction. It is governed specifically by the principles of social benefit, comprehensiveness, immediacy, sustainability and being inter-cultural.	Creates a specialist agri-environmental court. The governing principles are reflected in the court's holistic mission statement, to impart 'specialist justice in agrarian, forestry, livestock, environmental, water and biodiversity matters, based on the principles of social function, comprehensiveness, immediacy, sustainability and interculturality, committed to the protection of the rights of Bolivians and Mother Earth, through the full and unrestricted enforcement of the [constitution and laws]' (Tribunal Agroambiental n.d.).

## Accountability: Monitoring, enforcement and remedies



### Does the constitution mandate the public prosecutor to take legal action to protect the environment?

#### EXPLANATION

- Public prosecutors represent the state in legal proceedings typically related to criminal offences. They are generally responsible for initiating and conducting prosecutions, though the role and constitutional status of prosecutors differs widely across jurisdictions and legal traditions. Public prosecutors in civil law countries more often tend to have a constitutionalized role.
- Prosecutors have a distinct role in upholding environmental standards through enforcing environmental laws and constitutional protections where they exist. Some states have specialist environmental prosecutors mandated to prosecute violations of environmental law (often related to water or air pollution, hazardous waste, dangerous substances, environmental incidents or protected lands) by public and private entities. Prosecutors may also have a role in investigating crimes, plea negotiations, alternative dispute resolution and post-trial issues like enforcement, compliance and monitoring of judgements.
- Certain constitutions specifically mandate the public prosecutor to investigate and initiate prosecutions to protect the environment, to defend collective interests and to promote the fulfilment of constitutional rights, including those of Indigenous peoples. The functional and financial independence of the office of the public prosecutor must also be guaranteed, as this status supports the ability of prosecutors to act without undue political influence in environmental enforcement.

#### EXAMPLES

Brazil (1988)	<p>Title IV. Organization of the Branches, Chapter IV. Positions Essential to Justice, Section I. The Public Ministry</p> <p><a href="#">Article 127</a></p> <p>***</p> <p><a href="#">Article 129(II), (III), (V)</a></p>	<p>[...] The Ministério Público is assured functional and administrative autonomy [...].</p> <p>***</p> <p>The institutional functions of the Ministério Público are: [...]</p> <p>II. to safeguard effective respect by the Government and services of public relevance for rights protected by this Constitution, taking the necessary action to guarantee such rights; III. to institute civil investigations and public civil actions to protect the public and social patrimony, the environment and other diffuse and collective interests; [...]</p> <p>V. to defend judicially the rights and interests of indigenous populations; [...]</p>	<p>Grants the environment court a broad scope to give any order or direction that it deems necessary to stop acts or omissions that may be harmful to the environment.</p> <p>***</p> <p>The court can further require public officers to take any necessary action to prevent or cease such acts or omissions, and it can order compensation to any person whose right to a clean and healthy environment has been violated.</p>
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Colombia (1991)	<p>Title X. On the Control Bodies, Chapter II. On the Public Ministry</p> <p><a href="#">Article 277(2)–(4)</a></p>	<p>The General Prosecutor of the Nation, by himself/herself or through his/her delegates and agents, shall have the following functions: [...]</p> <ol style="list-style-type: none"> <li>2. To protect human rights and ensure their effectiveness, with the assistance of the Ombudsman.</li> <li>3. To defend the interests of society.</li> <li>4. To defend the collective interests, especially the environment. [...]</li> </ol>	<p>Mandates the public prosecutor to take legal action to protect human rights and defend shared interests of society, in particular the environment.</p>
Paraguay (1992)	<p>Part II. The Political Order of the Republic, Title II. The Structure and Organization of the State, Chapter III. The Judicial Power, Section IV. The Public Prosecutor's Office</p> <p><a href="#">Article 268</a></p>	<p>The duties and powers of the Public Prosecutor's Office are:</p> <ol style="list-style-type: none"> <li>1. ensure respect for constitutional rights and guarantees;</li> <li>2. Promote public criminal action to defend public and social heritage, the environment and other diffuse interests, as well as the rights of indigenous peoples; [...]</li> </ol>	<p>Mandates the public prosecutor to ensure respect for constitutional rights and guarantees, and to initiate legal actions for the protection of public assets, the environment, collective interests, and the rights of Indigenous peoples.</p>

## Accountability: Monitoring, enforcement and remedies



**Does the constitution outline liability for environmental damage (i.e. polluter-pays principle) binding private actors? Does it exempt environmental harms from time limits on bringing legal actions?**

### EXPLANATION

- The polluter-pays principle, a tenet of environmental law and policy, focuses on assigning the cost of pollution prevention, liability and compensation for environmental damage to those who cause it. This principle shifts the financial burden of pollution from society at large to the individuals, organizations and corporations responsible for environmental harm. The polluter-pays principle has been integrated into numerous international environmental conventions and treaties (Pinto-Bazurco 2022) and is also contained in international frameworks related to sustainable development, such as Principle 16 of the 1992 Rio Declaration on Environment and Development. That Principle states national authorities should ensure that polluters bear the cost of managing and remediating environmental impacts rather than society at large.
- States have incorporated the polluter-pays principle into their legal and regulatory frameworks in a variety of ways, as both an incentive to prevent pollution and a mechanism to ensure accountability. Diverse constitutions have embedded the polluter-pays principle to mandate compensation and restoration for environmental damages, set standards for remediation and subject violators to financial, criminal and administrative sanctions.
- Multiple constitutions and legal systems also exempt legal actions against environmental polluters from the statute of limitations, meaning that the passage of time does not prevent offenders from being held accountable in court. This is important because the full effects of environmental damage may only become apparent years after the events that caused it.

### EXAMPLES

Moldova (1994)	Title II. Fundamental Rights, Freedoms and Duties, Chapter II. Fundamental Rights and Freedoms <a href="#">Article 37(4)</a>	Natural and legal entities shall be held liable for the damages caused to a person's health and property due to ecological trespasses.	Establishes accountability for people and legal entities (e.g. companies or organizations) for environmental damage caused to health or property.
Vietnam (1992)	Chapter III. Economy, Society, Culture, Education, Science, Technology, and Environment <a href="#">Article 63(3)</a>	Organizations and individuals who cause environmental pollution, debilitate natural resources and weaken biodiversity shall be strictly dealt with and must be responsible for remedy and compensation for damage.	Establishes the liability and duty to compensate for environmental pollution, misuse of natural resources and weakening biodiversity.

Ecuador (2008)	<p>Title VII. The Good Way of Living System, Chapter 2. Biodiversity and Natural Resources, Section 1. Nature and the Environment</p> <p><a href="#">Article 396</a></p>	<p>[...] Responsibility for environmental damage is objective. All damage to the environment, in addition to the respective penalties, shall also entail the obligation of integrally restoring the ecosystems and compensating the affected persons and communities. Each one of the players in the processes of production, distribution, marketing and use of goods or services shall accept direct responsibility for preventing any environmental impact, for mitigating and repairing the damages caused, and for maintaining an ongoing environmental monitoring system.</p> <p>The legal proceedings to prosecute and punish those responsible for environmental damages shall not be subject to any statute of limitations.</p>	<p>Creates objective standards for environmental damage, holding each actor involved in production processes accountable, and it mandates the restoration of ecosystems and compensation for affected individuals and communities.</p> <p>Removes the time limit for any environmental prosecutions or legal actions against those who have damaged the environment.</p>
Türkiye (1982)	<p>III. Exploration and Exploitation of Natural Resources, A. Protection and Development of Forests</p> <p><a href="#">Article 169</a></p>	<p>[...] Acts and actions that might damage forests shall not be permitted. No political propaganda that might lead to the destruction of forests shall be made; no amnesties or pardons specifically for offences against forests shall be granted. Offences committed with the intention of burning or destroying forests or reducing forest areas shall not be included within the scope of amnesties or pardons [...].</p>	<p>Prohibits acts that damage forests and forbids propaganda encouraging their destruction. Excludes offences related to burning or destroying forests from any amnesty or pardon.</p>
Somalia (2012)	<p>Chapter 3. Land, Property, and Environment, Environment</p> <p><a href="#">Article 45</a></p>	<p>3. The Federal Government and the governments of the Federal Member States affected by environmental damage shall:</p> <p>[...]</p> <p>c. Take necessary measures to obtain compensation from those responsible for any dumping of waste, whether they are in the Federal Republic of Somalia or elsewhere [...].</p>	<p>Compels the state to pursue accountability and compensation for dumping waste, including by individuals or companies outside the country.</p>
South Sudan (2011)	<p>Part Twelve. Finance and Economic Matters, Chapter III. Petroleum and Gas Development and Management</p> <p><a href="#">Article 173(2)</a></p>	<p>2. Petroleum and gas development and management shall be guided by the following principles: [...]</p> <p>n. ensuring accountability for violations of human rights and degradation to the environment caused by petroleum and gas-related operations; and</p> <p>o. ensuring restoration of land and resources affected by development and management.</p>	<p>Requires that petroleum and gas operations respect human rights and protect the environment, holding operators accountable for any harm done and obligating them to restore affected land and resources.</p>



Brazil (1988)	<p>Title VIII. The Social Order, Chapter VI. The Environment</p> <p><a href="#">Article 255</a></p>	<p>2. Those who exploit mineral resources are obligated to restore any environmental degradation, in accordance with technical solutions required by the proper governmental agencies, as provided by law.</p> <p>3. Conduct and activities considered harmful to the environment shall subject the violators, be they individuals or legal entities, to criminal and administrative sanctions, irrespective of the obligation to repair the damages caused.</p>	<p>Ensures that those responsible for environmental degradation via mineral extraction must remediate the damage in line with solutions required by the relevant governmental agencies.</p> <p>Establishes that those conducting harmful environmental activities will be subject to criminal and administrative sanctions, in addition to the obligation to repair the damage done.</p>
Zambia (1991)	<p>Part XIX. Land, Environment and Natural Resources, Environment and Natural Resources</p> <p><a href="#">Article 255(b)</a></p>	<p>b. the person responsible for polluting or degrading the environment is responsible for paying for the damage done to the environment; [...]</p>	<p>Embeds the polluter-pays principle to ensure that those who degrade the environment are financially accountable.</p>

## Accountability: Monitoring, enforcement and remedies



### **Does the constitution outline the legal remedies available to citizens or organizations to enforce environmental rights and challenge harm to the environment? Does it allow for broad legal standing to bring environmental cases?**

#### EXPLANATION

- Remedies in environmental cases are generally aimed at restoring the environment and compensating impacted people or communities. However, it can be a complex issue to address the harms caused by environmental degradation or the violation of environmental rights. Violations of environmental rights can have immediate and long-term consequences, both for the environment and for affected individuals. In some instances, such as illegal extraction of natural resources, restoring the environment to its original state is impossible.
- While many constitutions oblige states and private entities to respect environmental rights, uphold environmental duties and provide compensation or other remedies for environmental harms, they do not typically specify the exact remedies. This task falls to legislatures, which must enact laws governing compensation and remedies, and/or courts, which must exercise creativity and discretion.
- The most common type of legal remedy in environmental cases is an injunction compelling a party to stop activities detrimental to the environment. The second most common remedy is damages, encompassing compensation for affected parties (May and Daly 2022). Depending on the legal system, courts might also issue orders to the government or private entities to restore the environment, impose financial, administrative or criminal sanctions, and award litigation costs and fees to the prevailing (i.e. winning) party (UNEP 2022).
- Constitutions may also encourage public interest litigation by granting broad legal standing (i.e. the right to bring a lawsuit) in constitutional matters. A person can usually only file a lawsuit when they have been directly harmed by an act or omission, but broad rules for standing may allow interested individuals or organizations to file lawsuits on behalf of others, on behalf of nature ([see question 9](#)), on behalf of future generations ([see question 4](#)) and in the public interest. Such provisions may be accompanied by reduced or waived court fees and exemption from legal costs. This promotes access to justice for vulnerable communities and encourages public interest lawyers to advocate on their behalf.
- In all cases, remedies can only be granted when the lawsuit is based on legal and/or constitutional environmental rights and protections, or when judges have interpreted such rights and protections through other constitutional provisions such as the right to life ([see question 5](#)). Not all constitutional provisions can be settled by law, for example some preambles or directive principles. This means that not every part of the constitutional text can be used in a court case seeking remedies if the state does not implement it.

## EXAMPLES

Kenya (2010)	<p>Enforcement of Environmental Rights, Chapter 5, Part 2 (Access to Justice/ Standing)</p> <p><a href="#">Article 70</a></p>	<ol style="list-style-type: none"> <li>1. If a person alleges that a right to a clean and healthy environment [...] is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available [...]</li> <li>2. On application under clause (1), the court may make any order, or give any directions, it considers appropriate- <ol style="list-style-type: none"> <li>a. to prevent, stop or discontinue any act or omission that is harmful to the environment;</li> <li>b. to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or</li> <li>c. to provide compensation for any victim of a violation of the right to a clean and healthy environment.</li> </ol> </li> <li>3. For the purposes of this Article, an applicant does not have to demonstrate that any person has incurred loss or suffered injury.</li> </ol>	<p>Provides a robust framework for citizens to legally challenge actions that have damaged or threaten to violate their environmental rights. Outlines several specific remedies, including injunctions and compensation.</p> <p>Exempts a complainant from needing to show actual loss or injury, allowing pre-emptive protection of the right to a healthy environment and in complex cases where individual loss or injury may be difficult to prove.</p>
Argentina (1853)	<p>Part 1. Chapter 1. Declarations, Rights and Guarantees</p> <p><a href="#">Article 43</a></p>	<p>Any person may bring [an amparo action], against any act or omission by public authorities or private individuals that currently or imminently infringes, restricts, alters, or threatens, with manifest arbitrariness or unlawfulness, rights and guarantees recognized by this Constitution. This action may be brought [...] concerning rights protecting the environment [and] collective rights in general, by the affected party, the Defender of the People, and associations pursuing these purposes [...].</p>	<p>Empowers individuals, the Defender of the People and associations to bring legal action to prevent or address the infringement of environmental and collective rights by public bodies or individuals.</p>
Portugal (1976)	<p>Part I. Fundamental Rights and Duties, Title II. Rights, Freedoms and Guarantees, Chapter II. Rights, Freedoms and Guarantees Concerning Participation in Politics</p> <p><a href="#">Article 52</a></p>	<ol style="list-style-type: none"> <li>3. Everyone shall be granted the right of <i>actio popularis</i>, to include the right to apply for the appropriate compensation for an aggrieved party or parties, in such cases and under such terms as the law may determine, either personally or via associations that purport to defend the interests in question. The said right shall particularly be exercised in order to: <ol style="list-style-type: none"> <li>a. Promote the prevention, cessation or judicial prosecution of offences against public health, consumer rights, the quality of life or the preservation of the environment and the cultural heritage; [...]</li> </ol> </li> </ol>	<p>Creates a right for every person and interested organization to bring legal action in defence of the environment and other public interests.</p>
Brazil (1988)	<p>Fundamental Rights and Guarantees, Title II, Chapter I</p> <p><a href="#">Article 5(LXXIII)</a></p>	<p>[...] any citizen has standing to bring an <i>actio popularis</i> to annul an act injurious to the public patrimony [...], to the environment and to historic and cultural patrimony; except in a case of proven bad faith, the plaintiff is exempt from court costs and from the burden of paying the prevailing party's attorneys' fees and costs; [...]</p>	<p>Grants legal standing to any citizen for legal actions to challenge harmful acts to the environment.</p> <p>By exempting good faith plaintiffs from paying legal costs, advances access to justice and encourages citizen involvement in environmental protection.</p>





**VII.**

**Transboundary  
cooperation and  
international law**

**Questions 35–36**

## Transboundary cooperation and international law



### Does the constitution promote international cooperation and coordination for the protection of the environment and natural resources?

#### EXPLANATION

- Constitutions are primarily designed to address issues within a country's borders, but many environmental problems, such as climate change, deforestation and pollution, do not stop at national borders. Addressing these issues requires international coordination and cooperation in various forms. Some constitutions reflect this need by including commitments to support international treaties on environmental protection, cooperate with neighbouring states to protect ecosystems in border regions and establish intergovernmental organizations for the joint management of natural resources.
- Numerous constitutions emphasize the importance of regional and international solidarity in environmental matters, including economic solidarity, which highlights the interconnectedness of economic cooperation and environmental protection. Moreover, at least one state has demonstrated a commitment to solidarity via a constitutional provision envisaging the transfer of essential natural resources like water to states in distress.
- A key international principle in this context is 'common but differentiated responsibilities', which has been incorporated into core multilateral environmental agreements and, increasingly, into constitutions. By constitutionalizing this principle, states affirm the international principle requiring cooperation and coordination between states to share technological innovations and funding for climate change mitigation and adaptation based on their respective capacities and historical contribution to the climate crisis.
- As new technologies emerge with the potential to irreversibly harm the environment, such as deep-sea mining and geoengineering, international solidarity is needed to ensure that states collectively assess risks and benefits to the global ecosystem.

#### EXAMPLES

Tuvalu (2023)	<a href="#">Preamble</a>	WE, the People of Tuvalu [...] Deeply concerned with the imminent existential threat of Climate Change and sea-level rise to the security and survival of Tuvalu, and the urgent need for meaningful work with the rest of the world to protect and save Tuvalu [...]	Asserts that urgent and meaningful international cooperation is needed to prevent the loss of Tuvalu's physical territory from rising sea levels.
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Tuvalu (2023) (cont.)	<p>***</p> <p>Part 1. The State and the Constitution, Division 1 – The State</p> <p><a href="#">Article 2(6)</a></p>	<p>***</p> <p>(6) The commitment of Tuvalu to responding to the threat of climate change recognises all relevant regional and international law relating to climate change mitigation and adaptation, as well as the common but differentiated responsibilities of all States, sectors, organisations and individuals and the need for international co-operation to address climate change and to protect those that are most affected.</p>	<p>***</p> <p>Recognizes relevant regional and international law relating to climate change mitigation and adaptation and the need for international cooperation to address climate change and protect the most impacted people. Further constitutionalizes the international environmental law principle of 'common but differentiated responsibilities' of states and other actors to combat climate change.</p>
Dominican Republic (2015)	<p>Title I. On the Nation, the State, Its Government and Its Fundamental Principles, Chapter VI. On International Relations and International Law, Section 1. On the International Community</p> <p><a href="#">Article 26(6)</a></p>	<p>The Dominican Republic is a State member of the international community, open to cooperation and tied to the norms of international law, consequently: [...]</p> <p>6. It declares itself in favor of economic solidarity between the countries of America and supports all initiatives in defense of its basic products, raw materials, and biodiversity.</p>	<p>Affirms commitment to international and regional cooperation, including for economic solidarity and the protection of natural resources and biodiversity.</p>
Ghana (1992)	<p>Chapter 6. The Directive Principles of State Policy, 36. Economic Objectives</p> <p><a href="#">Article 36(9)</a></p>	<p>The State shall take appropriate measures needed to protect and safeguard the national environment for posterity; and shall seek co-operation with other states and bodies for purposes of protecting the wider international environment for mankind.</p>	<p>Establishes commitment to seeking international collaboration for safeguarding the global environment for the benefit of all humans.</p>
Côte d'Ivoire (2016)	<p>Title VII. Association, Co-operation and Integration among African States, Chapter II. The Objective of the Agreements</p> <p><a href="#">Article 124</a></p> <p><a href="#">Article 125</a></p>	<p>The Republic of Côte d'Ivoire may conclude association or integration agreements with other African states including the partial relinquishment of sovereignty with a view to achieving African unity.</p> <p>The Republic of Côte d'Ivoire agrees to establish with these States, intergovernmental organizations for joint management, coordination and free cooperation.</p> <p>The objectives of the organizations referred to in Article 124 may notably include:</p> <p>[...]</p> <p>cooperation in environmental protection and management of natural resources.</p>	<p>Promotes dedication to African unity through cooperation agreements and establishment of intergovernmental organizations, including for environmental protection and natural resource management.</p>



Cuba (2019)	<p>Title I. Political Foundations, Chapter II. International Relations</p> <p><a href="#">Article 16(f)</a></p>	<p>The Republic of Cuba bases its international relations on the exercise of its sovereignty as well as on the antiimperialist and internationalist principles in accordance with the interests of the people and, in consequence: [...]</p> <p>f. 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; [...]</p>	<p>Emphasizes the necessity of international action to address climate change to ensure the survival of humans, establish fair international economic policies and reject unsustainable production and consumption.</p>
Ecuador (2008)	<p>Title VIII. International Relations, Chapter 1. Principles Governing International Relations</p> <p><a href="#">Article 416(13)</a></p> <p>***</p> <p>Title VII. The Good Way of Living System, Chapter 2. Biodiversity and Natural Resources, Section 2. Biodiversity</p> <p><a href="#">Article 403</a></p>	<p>Ecuador's relations with the international community shall respond to the interests of the Ecuadorian people, to which those persons in charge of these relations and their executors shall be held accountable, and as a result:</p> <p>[...]</p> <p>13. It promotes the creation, ratification, and enforcement of international instruments for the conservation and regeneration of the life cycles of the planet and biosphere.</p> <p>***</p> <p>The State shall not make commitments to cooperation agreements or accords that include clauses that undermine the conservation and sustainable management of biodiversity, human health, collective rights and rights of nature.</p>	<p>Pledges the state's commitment to creating, ratifying and enforcing international treaties for the preservation and regeneration of the planet's natural cycles and ecosystems. It also prevents the state from entering into agreements that jeopardize conservation, biodiversity, human welfare, collective rights and the rights of nature.</p>
Colombia (1991)	<p>Title II. On Rights, Guarantees, and Duties, Chapter III. On Collective Rights and the Environment</p> <p><a href="#">Article 80</a></p>	<p>The state shall plan the handling and use of natural resources in order to guarantee their sustainable development, conservation, restoration, or replacement. [...] In the same way, it shall cooperate with other nations in the protection of the ecosystems located in the border areas.</p>	<p>Promotes cooperation with neighbouring states to protect ecosystems in border regions.</p>
Uruguay (1966)	<p>Section II. Rights, Duties and Guarantees, Chapter II</p> <p><a href="#">Article 47(4)</a></p>	<p>The law, by three-fifths of the votes of the total of the members of each Chamber, can authorize the supply of water, to another country, when such [country] encounters [the] inability to provide it[,] and for reasons of solidarity.</p>	<p>Permits the state, upon receiving three-fifths majority approval in parliament, to provide water to other states in the spirit of solidarity.</p>

## Transboundary cooperation and international law



**Does the constitution establish that regional and international human rights treaties take effect automatically upon ratification, or is a domestication process required? What is the status of international law in relation to the constitution and ordinary law?**

### EXPLANATION

- In some states, once an international treaty has been formally approved (ratified), it automatically becomes part of the state's legal system and can immediately be used by domestic courts. These are called monist states. In other states, the parliament must pass legislation to incorporate the requirements of each international treaty that the state ratifies—this is usually called 'implementing legislation'.
- In a monist legal system, international law and treaties can directly impact domestic practice, while in dualist states, the national parliament decides how and when to incorporate international standards into domestic law. In all cases, a state that has signed or ratified an international treaty is obligated to refrain from acts that would defeat the purpose of the treaty (Vienna Convention on the Law of Treaties 1969: article 18).
- In practice, however, the distinction is not always so clear, and some constitutions blend elements of both the monist and dualist traditions. For example, a constitution might declare that international law is automatically part of domestic law but still require some types of treaties to be passed through parliament. Moreover, monist states vary on how international law stands in relation to national law—is it superior or inferior to national law or the constitution? (Sloss and Van Alstine 2015).
- National courts are sometimes called on to decide whether a particular treaty provision automatically becomes part of the domestic legal system—known as 'self-executing'—or requires additional legislation to take effect.
- Being monist or dualist does not make a state's constitution more or less likely to protect the environment, but identifying how international law takes effect under the constitution is important for advocacy, reform and litigation. Given the growing consensus on the urgent need to mitigate environmental harms to the planet, future international treaties will likely address environmental concerns. Therefore, assessing a state's incorporation of international law may aid civil society in mounting more successful lawsuits and engaging more effectively with the government.

### EXAMPLES

Kenya (2010)	Chapter 1. Sovereignty of the People and Supremacy of This Constitution  <a href="#">Article 2</a>	5. The general rules of international law shall form part of the law of Kenya. 6. Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.	Establishes that international law forms part of domestic law. This is an example of monism.
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Dominican Republic (2015)	Chapter III. On the Principles of Application and Interpretation of the Fundamental Rights and Guarantees  <a href="#">Article 74(3)</a>	Treaties, pacts, and conventions related to human rights, adopted and ratified by the Dominican State have constitutional hierarchy and are for direct and immediate application by the courts and other organs of the State.	Puts human rights treaties on the same level as constitutional provisions for immediate use by courts and all parts of the state. This is an example of monism.
Ireland (1937)	International Relations  <a href="#">Article 29(6)</a>	No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas.	Specifies that international law must be incorporated into national law by the Oireachtas, Ireland's parliament. This is an example of dualism.
Romania (1991)	Title II. Fundamental Rights, Freedoms, and Duties, Chapter I. Common Provisions  <a href="#">Article 20</a>	2. In case of an inconsistency between domestic law and the international obligations resulting from the covenants and treaties on fundamental human rights to which Romania is a party, the international obligations shall take precedence, unless the Constitution or the domestic laws contain more favorable provisions.	Prioritizes international human rights obligations over domestic law in cases of inconsistency, except where the constitution or laws provide better protection.

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